

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.269 of 1994**

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PRADEEP KUMAR S/O Raja Ram Sah, Resident of Village Bishunpura,
Police Station Adapur, Distt. East Champaran.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Amis Kumar (Amicus Curiae)
For the Respondent/s : Mr S.N. Prasad, A.P.P.

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**CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)**

Date : 03-03-2022

Heard Mr. Amis Kumar, learned counsel appearing for
the appellant as well as Mr. S.N. Prasad, learned Additional
Public Prosecutor for the State.

2. This appeal is preferred by the appellant
challenging the judgment of conviction and order of sentence
dated 18th day of April 1994 passed by the learned 2nd Additional
Sessions Judge, East Champaran, Motihari in Sessions Trial no.
62 of 1993.

3. By the aforesaid judgment dated 18th day of April,
1994 appellant- Pradeep Kumar has been convicted for the
offence punishable under Section 302/34 of the Indian Penal
Code. After hearing the convict on the point of sentence, vide
consequential order dated 18 day of April, 1994, the trial court



sentenced the appellant Pradeep Kumar to undergo rigorous imprisonment for life for the offence punishable under Section 302/34 of the Indian penal Code.

4. The FIR giving rise to the sessions trial was registered on the basis of the statement of the informant, namely, Panna Lal Sah, P.W.-8 who is husband of the deceased. Recapitulating the prosecution case, in short, is that on Wednesday, dated 12th day of August, 1992, the informant, Panna Lal Sah (P.W.-8) came to his home situated at Laxamipur from his shop at 3 P.M. and saw his nephew, namely, Pradeep Kumar with one person coming out from his gate of his house towards road. Associate of Pradeep was not known to the informant but he claimed to identify him by face. He asked Pradeep Kumar to stop as he had to say something, upon which he replied that he would talk later as he has some urgent work and proceeded towards Raxaul Bazar. When the informant entered into his house, none met him. In the meantime, his daughter, Sunita came there from neighbour's house. The informant asked about her mother. She replied that her mother was talking with Pradeep Kumar and his friend, Arun Kumar Singh in the middle room of the house. She had gone to her neighbour's house half an hour before. Informant went in that



room with his daughter, Sunita. Since it was dark, he switched on the bulb and saw his wife lying dead under the 'Palang' and blood was found on the floor.

5. Informant started crying and local people gathered there. He checked all his rooms and found that his son's (Jata Shankar) Almirah was broken and ornaments were missing. His son and daughter-in-law had gone to Deoghar. So he could not give details of the ornaments. Informant suspected involvement of Pradeep Kumar and his friend in robbery and murder of his wife.

6. A telephonic message was given to police station at about 3.25 P.M. on 12.08.1993 by the informant about murder of his wife. On the basis of his information, station diary entry no. 226 dated 12.08.1992 was made. Police party including the I.O. proceeded towards the place of occurrence and statement of Panna Lal Sah (Ext.3) was recorded, which was made basis for FIR (Ext.-4) and for the first time the name of the appellant surfaced in the alleged occurrence.

7. Matter has been investigated by the I.O. and charge sheet has been submitted. Ultimately, cognizance was taken and the case was committed to the court of Sessions for trial.



8. Charge has been framed against the appellant and other co-accused Arun Kumar Singh under Sections 302/34 and 394 of the IPC. The trial court explained the charges to the accused under Section 302/34 and 394 of the IPC, to which he pleaded not guilty and claimed to be tried.

9. To substantiate the charge leveled against the accused, altogether 10 witnesses have been examined by the prosecution. P.W.-1, P.W.-2, P.W.-3, P.W.-4, P.W.-5 and P.W.-6 are highly interested witnesses. There are two star witnesses, namely, P.W.-7, daughter of the informant and P.W.-8 the informant. P.W.-9 is the doctor and P.W.-10 is the I.O. of the case. No witness has been examined on behalf of the defence. However, they have expressed their innocence to the occurrence in their statement made under Section 313 Cr.P.C..

10. P.W.1 Dinesh Prasad Chourasia is a hearsay witness of the incident. He had seen that Arun Singh and Hriday Singh were washing the clothes in which red spot was there and Pradeep kumar was standing with his scooter besides the river, on which bundle of cloth was loaded. Red spot was also present on that cloth bundle. When he reached near Raxoul Bazar, he heard that Pradeep Kumar and his friend have killed his maternal aunt (maami).



11. P.W. 2- Kapildeo Dubey is also a hearsay witness. He is an agent in a Transport company and on the alleged date at 3.00 p.m., he had gone near Pankaj Talkies. He saw accused Pradeep Kumar accompanied by two others in restless state. When he tried to talk Pradeep Kumar, he along with his two associates, proceeded from there on the scooter. A bundle of cloth was also with them.

12. P.W.-3 Shankar Singh stated in his evidence that he has a tea stall near Pankaj Cinema Hall. Accused Pradeep Kumar along with his two associates had come to his shop and took tea. In the evening of the same day, he heard that Pradeep Kumar has killed his maami and also committed dacoity.

13. P.W.-4 Mahendra Das stated in his evidence that he had seen the accused Pradeep Kumar under a peepal tree near the nahar. Pradeep Kumar was standing with his scooter and a bundle of cloth was loaded on that scooter in which red spot was present. He stated that he along with P.W. 1 Dinesh Prasad Chourasia was returning after purchasing paddy and they saw that Arun Singh and Hriday Narayan Singh were washing clothes in the nahar and water was draining out from the clothes which was red in colour. Pradeep Kumar was seen in restless mood. When he reached near Nahar Chowk, he heard that



Pradeep kumar had killed his maami and committed dacoity.

14. P.W.-5 Tejarath Hussain has put his signature on seizure list regarding a pair of black plastic chappal, which was seized from the place of occurrence. There was no blood stain on the seized chappal.

15. P.W.-6 Kishori Lal Prasad is the witness of the seizure list. He is full brother of the informant. He has stated that in courtyard there was no bloodstain. Room was locked from outside in which dead body was lying. No smell was coming out on opening of the door and the blood was frozen which was lying on the floor of the room.

16. P.W.-7 Sunita Kumari, is a star witness in this case. She is daughter of the informant. She has deposed in her evidence that on alleged date of occurrence, she was at her house along with her mother. There was no male member. Pradeep Kumar (appellant) and his friend came to her house at about 1:00 p.m. and they began to talk to her mother in middle room of the house. At about 2:00 p.m. she went to the house of her friend, Guddi and returned back to her house at about 3:00 p.m. and met with her father, who was searching for her mother. She further deposed in para 2 that Pradeep Kumar and his friend was talking with her mother in middle room of the house and



she had gone to her friend's house after informing her mother. She took her father to that room, where her mother was talking with Pradeep Kumar. When his father switched on the light, they saw that her mother was murdered and her dead body was lying under the bed. Blood was on the floor. She rushed towards her brother's room and saw that almirah was broken and ornaments were missing. She was subjected by the defence by way of cross-examination. She stated in para 10 of the cross-examination that there was no conflict and dispute with Pradeep Kumar and he used to come to her house frequently. Vide para 12, she stated that she and her mother had taken meal before arrival of Pradeep Kumar at her house. She further stated that her mother had not called her during one hour of stay of accused Pradeep Kumar in her house.

17. P.W.-8 informant has deposed in his evidence that on Wednesday, 12th of August 1992, he had returned from his shop to his house situated in Laxmipur at about 3:00 p.m.. While he was on pitch road, he saw that Pradeep Kumar and one unknown person were coming out of his home. Pradeep Kumar is his nephew (bhagina). Informant asked Pradeep Kumar to stay for a talk but he refused to stay and replied that he would talk later on as he was in hurry and proceeded towards North.



When the informant entered into his house, his daughter, namely, Sunita was coming from her friend's house. He asked Sunita about her mother. He stated that she told that her mother was talking with Pradeep Kumar and one other person in middle room of house. Informant and his daughter proceeded towards that room and saw that door was closed and darkness was there. After entering into the room, he switched on the bulb and saw that blood was there on the floor and his wife was lying dead under the palang. Both of them visited upper floor of the house where he found in his son's room that lock of almirah was also broken and ornaments were missing from there. Vide para-4 of the evidence, he has further deposed that at the alleged date and time of occurrence, his son along with his wife had visited to Babadham, Deoghar and their children had gone to school. Only his wife and daughter were present at the house and he had gone to his shop. This witness was subjected by the defence in cross-examination. In his cross-examination, vide para 15 he deposed that as a routine work, he used to visit his shop between 11:00 a.m. to 11:30 a.m. after taking food. He and his family members used to contact each other on telephone on need. On the day of occurrence, he had not received any call from his house and without any rhyme or reason, he suddenly returned to his house



by rikshaw. Vide para-18 he has deposed that firstly he informed the police on telephone at about 3:25 p.m. to 3:30 p.m. on the alleged day of occurrence in respect of commission of murder of his wife. He does not remember that he had informed the police about dacoity in his house. Vide para 24, he further deposed that his daughter had informed him that she has seen her mother in middle room of the house talking with Pradeep Kumar and he has stated that he had seen Pradeep Kumar while he was going out of his house.

18. P.W.-9 is the doctor, who had conducted postmortem examination of the deceased, namely, Ram Sawari Devi. Postmortem was held on 13.8.1992 at 12:00 noon. Time elapsed since death within 48 hours. The following ante mortem injuries were found on body of deceased Ram Sawari Devi :-

(a) Several incised wounds expanding from back of left shoulders to the back of right side of neck almost amputating the neck from behind except a flap of skin and part of stromastoid muscle in front.

(ii) 6" x 4" incised cavity deep (sic) wound on the upper part of the front of abdomen causing protusion of stomach with (sic)

(iii) 3" x 1" bone deep incised wound along the right ring finger on the dorsal surface of palm.

(iv) Amputation of left index finger and distal filanses of right middle finger and ring finger with sharp



margins.

(v) 2" x 1" x 1" incised wound on posterior lateral surface of upper part of right arm.

The doctor opined that death is not natural. The injuries found on the person of the deceased were caused by sharp cutting weapon. Injury no. 1 was sufficient to cause death. Doctor opined that no rigor mortis was found on the body of the deceased.

19. P.W.-10, who is the I.O. of this case, has stated that the appellant/convict Pradeep Kumar was taken into police custody during investigation and on the basis of his confessional statement, a scooter was recovered which was used by the accused on the date of alleged occurrence. In para 8 of his evidence he stated that the appellant has confessed his guilt and the scooter was recovered on his confession with the help of Nepal Police. In para 15 of his cross examination, the I.O. has stated that no blood was found on the seized chappal.

20. Mr. Amish Kumar, learned Amicus Curiae has argued that according to postmortem report, death occurred between 36-48 hours before conducting the postmortem examination. The case of the prosecution is that death had occurred at about 3:00 p.m. on 12.8.1992, which is falsified by the postmortem report because the time of conducting the



postmortem examination is 12.00 noon on 13.08.1992 while the death had occurred on 12.8.1992 at about 3:00 p.m., which shows that the death had occurred within 24 hours of the postmortem examination. P.W.-8 the informant in his cross-examination denied this fact vide para 27 of his cross examination.

21. Learned Amicus Curiae further submitted that from perusal of the evidence, it is apparent that there is no motive for commission of murder by the appellant/convict as he is a relative of the informant and the deceased. Only making conversation, just before the death of the deceased, by the appellant as deposed by the P.W.-7 in her evidence, is not a believable evidence on the basis of which the appellant can be held guilty and P.W.-8 had also seen the appellant/convict accompanied with his friend when they were coming out from the house of the informant, just after the commission of the murder also does not come within the purview of trustworthy evidence.

22. On the basis of the above submissions, learned Amicus Curiae submitted that the judgment of conviction passed by the trial court is bad on law as there was no eye witness to the occurrence and the medical evidence also does



not support the prosecution case.

23. On the other hand learned counsel for the State submitted that the judgment of conviction passed by the trial court is correct and based on strong circumstantial evidence. He further submitted that though the star witnesses i.e. P.W.-7 and P.W.-8 are related to the deceased but their evidence is trustworthy and reliable and has rightly been appreciated by the trial court.

24. We have heard learned counsel for the parties and perused the evidences on record. It is an admitted fact that the appellant Pradeep Kumar is the son of the informant's sister. The deceased died an un-natural death as proved by the postmortem report prepared by P.W.-9.. Charges have been framed against the appellant and other co-accused Arun Kumar Singh under Sections 302/34 and 394 of the IPC. After scrutinizing the evidence adduced in this case by the prosecution, the case of robbery has not been established during trial and co-accused Arun Kumar Singh was acquitted by the trial court. Only appellant was convicted by the trial court under Section 302/34 of the IPC and was acquitted from other charge under Section 394 of the IPC.

25. In respect of commission of the murder of



deceased, Ram Sawari Devi, appellant has been convicted on the basis of circumstantial evidence. In order to prove a case based on circumstantial evidence it has been observed by the Supreme Court in the case of **Sharad Birdhichand Sharda Vs. State of Maharashtra** reported in **AIR 1984 SC 1622** as follows:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established.

(ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused.

(iii) The circumstances should be of conclusive nature and unerringly pointing towards the guilt of the accused.

(iv) There should exclude every possible hypothesis except the one to be proved.

(v) There must be chain of evidence as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused.

26. P.W.-8 has also deposed that he used to return his home from shop at about 7:00 to 8:00 p.m. but he could not explain his return to his house on the alleged day just after the commission of the murder without any telephonic communication made with his family members. It is also



apparent from perusal of the evidence that the blood stained material was not sent to FSL for chemical examination. This evidence has come into light from perusal of the evidence of the I.O., who also deposed that during investigation, he had collected the blood stained material from the place of occurrence, but the same was not sent to FSL.

27. In this case, during robbery, the commission of murder of the deceased was disbelieved by the trial court. The case of robbery was not established during trial. The medical evidence is not in consonance with the evidence of prosecution witnesses. The prosecution story is not supported by medical evidence.

28. Circumstantial evidence is an indirect evidence. It is an evidence of circumstances which can be relied upon not as proving a fact in issue directly, but instead as pointing towards its existence. Where ever direct evidence is not available then, it becomes necessary to appreciate circumstantial evidence meticulously.

29. So We come to the conclusion that the prosecution failed to prove its case beyond reasonable doubt against the convicted accused in commission of murder of the deceased. The chain of evidence is not completed.



30. The appeal is allowed. The judgment of conviction and order of sentence dated 18th day of April 1994 passed by the learned 2nd Additional Sessions Judge, East Champaran, Motihari in Sessions Trial no. 62 of 1993 is hear by set aside. The appellant who is on bail is discharged from the liability of the bail bonds.

31. Mr. Amish Kumar, learned Amicus Curiae was appointed to represent the appellant/accused. We put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 5000/- (rupees five thousand only) to Mr. Amish Kumar.

(Sunil Kumar Panwar, J)

A. M. Badar, J:

(A. M. Badar, J)

Sushma/-

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