

(2001) 08 PAT CK 0068
In the Patna High Court
Case No : Cr. Appeal (DB) No. 25 of 1995

Dina Nath Pandit @ Dindayal Pandit

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 03-08-2001

Acts Referred:

Citation : (2001) 08 PAT CK 0068

Final Decision : Dismissed

Judgement

A.K. Sinha, J.—This appeal has been directed against the judgment of conviction and sentence dated 5.1.1995 passed by Sessions Judge, Katihar in Sessions Trial No. 223 of 1993 by which the sole Appellant has been convicted under Sections 302 and 380 of the Indian Penal Code and has, been sentenced to undergo rigorous imprisonment for life and a period of seven years under Sections 302 and 380 of the Indian Penal Code respectively.

2. The prosecution in narrow compass may be recapitulated as hereunder:

On 1.4.1992 the informant was in Satkar Hotel gossiping with one Chamariya Ji where his son informed him that his mother is lying unconscious in pool of blood and the informant rushed to his house immediately where he found the doctor who informed him that his wife is dead. The informant also noticed a cut mark on the neck of his wife and on query his daughter-in-law informed him that servant who was employed two days before the occurrence gave her child and asked to make her sleep and went away on the upstairs. After 10 to 20 minutes the informant's son Manoj Kumar came home and when he went to the upstairs, he saw that his mother is lying in pool of blood. So, he rushed to call a doctor and thereafter, went to inform the informant. The informant and his son searched the servant, but he was traceless. It was detected that Almirah, kept in the northern room, was open but the articles were not removed from that Almirah. The informant also found a blood stained dagger kept on a gunny bag. It has been stated that the servant had disclosed his name as Din Dayal Pandit and had also disclosed that he used to work in plastic factory at Birat Nagar. It was suspected

that the servant killed the informant's wife and fled away. On the basis of the fardbeyan (Ext. 5) formal F.I.R. (Ext. 7) u/s 302 of the I.P.C. was lodged against Din Dayal Pandit and S.I. of police prepared the inquest report (Ext. 6) and sent the dead body for postmortem examination. The police started investigation and recovered the Eveready torch of three cell which was kept near the head of the deceased and it had some blood mark on it. Besides that the investigating officer seized a blood stained pillow cover, a blood stained dagger of 6 size which he seized and prepared the seizure-list (Ext. 2/1) The police went to Jogbani in search of Din Dayal Pandit from where he was arrested and on his disclosure, house of one Manoj Sharma was searched and several stolen ornaments and cash (material Exts. I to IX) were recovered which the police seized and prepared the seizure-list (Ext. 2). The accused was brought to Katihar and after obtaining the postmortem examination report (Ext. 4) and completing the investigation charge sheet was submitted against the Appellant under Sections 302, 380 and 411/34 of the I.P.C. The case was committed to the court of Sessions after taking cognizance.

3. In course of trial, charges were framed against the accused-Appellant under Sections 302/380 of the I.P.C. to which he pleaded not guilty. The case of the defence was that the accused Appellant is innocent.

4. In order to bring home the charges against the Appellant, the prosecution examined as many as 11 witnesses in the case out of whom P.W. 10 Rana Surendra Pratap Singh, P.W. 11 Shyam Narayan Singh are the police officers who took part in the investigation of the case and P.W. 7 Dr. Bipin Kumar Singh conducted autopsy on the dead body of the deceased. P.W. 1 Manoj Kumar Agrawal, P.W. 3 Anil Kumar Agrawal are the sons of the informant. P.W. 4 Sudha Agrawal is daughter-in-law of the informant, P.W. 5 Shyamlal Agrawal and P.W. 6 Ashok Kumar Agrawal are the seizure-list witnesses, P.W. 8 Sitaram Chamariya who is informant's friend and P.W. 2 Hansraj Sharaf are the witnesses who reached at the place of occurrence on getting information about the murder of the deceased.

5. It may be stated at the very outset that there is no eye witness to the alleged occurrence and this case is based totally on circumstantial evidence. It is well settled by a catena of decisions that in a case based on circumstantial evidence the prosecution must establish the following conditions:

(i) The circumstances from which the conclusion of guilt is to be drawn should be fully established. The circumstances concerned must "must or should" and not "may be" established, (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty, (iii) The circumstances should be of a conclusive nature and tendency, (iv) They should exclude every possible hypothesis except the one to be proved and, (v) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show

that in all human probability the act must have been done by the accused. Sharad Birdhichand Sarda Vs. State of Maharashtra, relied upon).

6. I will, therefore, see hereinafter as to whether the prosecution has been able to establish the aforesaid conditions essential for conviction of an accused "based upon circumstantial evidence" or not.

7. It is not unfortunate case in which the murder of the house lady is alleged to have been committed by a domestic servant who was employed to serve the family members and it was never conceived that the servant would commit such a ghastly murder of the house mistress for the sake of money and would conveniently elope with the booty after accomplishing his object in order to satisfy his desire.

8. P.W. 4 Sudha Agrawal was the only witness present in the house when the alleged crime is said to have been committed and she has deposed that on the day of the alleged occurrence she was in her room as she was not feeling well. At about 7.15 P.M. her servant Dina Nath Pandit brought her daughter and asked to make her sleep and went away. Thereafter, at about 8.30 P.M. her husband called her and on his calling she came out of the room and flashed torch light in the stair case so that her husband may come to upstairs and when her husband went to the room of her mother-in-law, he found that her mother-in-law is lying in pool of blood with cut injury on her neck and he also found cut injury on her abdomen. She has stated that her husband went to call the doctor and in the meantime the younger brother of her husband also came and after sometime her husband came with the doctor and after that her husband went to call his father who came on getting information and it was declared that her mother-in-law is dead. She was further stated that servant Dina Nath Pandit was not found in the house and it was detected that ornaments belonging to her and* her mother-in-law were missing from the Almirah. P.W. 4 has stated that Dina Nath Pandit was employed on Sunday and the alleged occurrence took place on Wednesday and she has identified the accused in dock. In her cross-examination this witness has stated that the room of her mother-in-law is situated at a distance of 50 ft. from her room and she had not heard any sound of disturbance from the room of her mother-in-law and she learnt about the occurrence for the first time when her husband came home. She has further stated that the stolen ornaments were recovered and given back to her.

9. The next important witness is P.W. 1 Manoj Kumar Agrawal who is the husband of P.W. 4 and he has also corroborated the statement of his wife (P.W. 4) by stating that he came to his house at about 8.30 P.M. and when he went to the room of his mother, he found that his mother is lying in pool of blood with cut injury on her neck, so, he immediately called Dr. Dilip Kumar and also informed his father who was in Satkar Hotel along with Chamariyaji (P.W. 8) and the doctor declared that his mother is dead.

10. P.W. 1 asked about the servant who was not seen in the house but the

servant was found traceless and the articles kept in her mother's Almirah were found scattered. P.W. 1 has further stated that he informed the police telephonically and police came, recorded the statement of his father and prepared the inquest report and his statement was also recorded by the police on the same day. He has further stated that at the time of recording statement it could not be detected that which articles were missing from the Almirah but on verification it was, later on, detected that five to six golden bangles, five to six golden rings out of which one or two were embedded with diamond, one golden Kanthi, some silver ornaments and Rs. 2500/- cash were missing. He also stated that blood stained dagger of 6" to 7" size was kept on a gunny bag and he searched for the servant but could not get any trace of him. P.W. 1 has identified the accused in dock. In cross-examination P.W. 1 has stated that when he left the house, the servant Din Dayal Pandit was working in the house and he had not entertained any doubt or suspicion on his activities and the room of his mother is situated at a distance of about 40 ft. from the room of his wife. There is nothing else worth comment in his cross-examination.

11. P.W. 2 Hansraj Sharaf has been examined to say that on getting information about the murder of the informant's wife when he went to the house of the informant, he saw that his wife is lying in pool of blood with mark of cut injury on her neck and articles were scattered in the room and Dina Nath Pandit was found missing from the house. On the next day, he learnt from P.W. 1, P.W. 3 and P.W. 4 that the servant has fled away with the ornaments etc. P.W. 2 has signed as witness in the inquest report and has proved his signature (Ext. 1) on the inquest report. In cross-examination P.W. 2 has stated that his house is situated at a distance of 50 to 55 steps from the house of the informant and immediately went to the house of the informant on getting information about the murder of his wife and at that time Dina Nath Pandit was not present in the house. There is nothing else worth comment in his cross-examination.

12. The evidence of P.W. 3 Anil Kumar Agrawal who is another brother of P.W. 1, is similar to that of P.W. 4. He has also stated that on reaching home he found his mother dead and his servant Dina Nath Pandit was traceless from the house and it was detected that he has decamped with the ornaments etc. In cross-examination he has stated that when he reached home there was no body else in the house except his sister-in-law and he became nervous to see his mother dead.

13. P.W. 5 Shyam Lai Agrawal went along with P.W. 10 to Jogbani who had gone to arrest accused Dina Nath Pandit. He has stated that S.I. of police arrested Dina Nath Pandit and he confessed before him that he has kept the stolen articles in the house of Manoj Sharma. So, he along with Dina Nath Pandit and S.I. of police went to the house of Manoj Sharma and, on being disclosed by Dina Nath Pandit, S.I. of police seized the articles and prepared the seizure-list on which he signed as a witness. He has also stated that a copy of the seizure-list was given to Dina Nath Pandit who made endorsement on it and put his

signature in his presence. He has proved the seizure-list as also the endorsement made by Dina Nath Pandit (Exts. 2 and 3 respectively). He has also identified the seized articles which have been marked as material Exts. I to IX. He has also stated that the S.I. of police seized a Hero Cycle which was not produced in court at the time of his examination. This witness also identified accused Dina Nath Pandit in dock. In his cross-examination P.W. 5 stated that accused Dina Nath Pandit was present at the time of recovery of the articles and at first he was arrested and then the recovery was made. He further stated that the seizure-list was prepared at the place of seizure as also at the police station and he had signed at both the places.

14. P.W. 6 Ashok Kumar Agrawal is another seizure-list witness who has deposed that the S.I. of police had seized the blood stained torch, blood stained dagger and blood stained pillow cover from the house of the informant and prepared the seizure-list on which he had signed as a witness. He has proved his signature (Ext. 1/1) on the seizure-list and has identified the torch (Ext. X) and dagger (Ext. XI). He has stated that the S.I. of police had prepared the seizure-list of the aforesaid articles at about 11.00 to 12.00 P.M. and the articles were seized from the house of the informant and he had put his signature in that very room in presence of so many persons. He has further stated that he cannot say from which place the S.I. of police had brought those articles to the room where the seizure-list was prepared.

15. P.W. 8 Sitaram Chamariya has been examined to say that on 1.4.92 he was sitting with Raghunath Pd. Agrawal (informant) in Hotel Satkar where Manoj Kumar Agrawal informed him about the sad incident on which he along with Raghunath Pd. Agrawal came to the house of the informant and found the informant's wife in dead condition lying in pool of blood. He has further stated that the police was informed and within 6 to 7 minutes the police came at the P.O. and prepared the inquest report on which he signed, he proved his signature (Ext. 1/2). He has stated that the servant of the house was found missing from the house. There is nothing significant in the cross-examination of this witness.

16. P.W. 9 Raghunath Prasad Agrawal is the informant of this case who has also made corroborative statements to the effect that on getting information from his son Manoj Kumar Agrawal, he came to his house along with his friend Sitaram Chamariya and found his wife lying in pool of blood with mark of cut injury on her neck and it was disclosed to him by his daughter-in-law that his servant Din Dayal Pandit who was employed three to four days before came to his daughter-in-law with her child just before the occurrence and asked to make her sleep and after some time when his son Manoj Kumar Agrawal came to house and when he went to the room of his mother, he found that his mother was lying in pool of blood and, thereafter, he was informed about the occurrence on which he came to house. He further stated that he saw a blood stained dagger kept on gunny bag and the Almirah was open and the articles kept therein were found scattered in the room and at that time the servant was not present. So, a search was

made but he was traceless. He further stated the servant had informed him that he used to work in plastic factory at Birat Nagar. He has stated that he gave his statement to the S.I. of police in the house and he has proved his signature (Ext. 1/3) on the fardbeyan. He further stated that after Institution of the case he verified his articles and found that the ornaments and five to six thousand of cash were missing from the Almirah, the details about the ornaments has been stated by him.

17. In cross-examination P.W. 9 has stated that his house is a double storeyed building and no tenant used to live in the house. The ground floor of house was used for keeping articles of the house whereas, the family members used to live in the first floor. He further stated that his wife was lying in Baithak Khana which was situated at a distance of 50 ft. from the room of his daughter-in-law. It was stated by this witness that he found mark of injury on the neck and abdomen of his wife who was lying in pool of blood. He has explained that he had not given the details about the missing articles at the time of his fardbeyan recorded by the police, because at that time he was not knowing that which articles were missing and, that is why, he made statement that nothing was found missing from the Almirah but he made further statement before the police. There is nothing else worth comment in his evidence.

18. The next important witness in this case is P.W. 10 Rana Surendra Pratap Singh A.S.I, posted at Katihar police station. He has deposed that on 3.4.92 he had gone to Jogbani to arrest accused Dina Nath Pandit on the orders of the Officer Incharge. He further stated that the witness, namely, Shyam Lai Agrawal and Rana Rajendra Singh had also accompanied him to Jogbani. He reached at Jogbani police station on the same day and went to Jogbani Chowk along with A.S.I. Shivendra Kumar Singh who was posted as A.S.I, of Police at Jogbani P.S. and arrested Dina Nath Pandit. He has identified the accused in dock. P.W. 10 has further stated that Dina Nath Pandit disclosed to him that he had kept the stolen articles in the house of Manoj Sharma, so he went to the house of Manoj Sharma and, on his disclosure, made search and recovered golden and silver ornaments as also one cycle from his house which he seized in presence of Ram Awatar Sharma, Baleshwar Sah, Khushlal Sah, Rana Rajendra Singh and Shyamlal Agrawal (P.W. 5) who put their L.T.I, and signatures on the seizure-list (Ext. 2). He has further stated that a copy of the seizure-list was given to accused Dina Nath Pandit who also made his endorsement in proof of the receipt of the seizurelist. P.W. 10 was recalled for his re-examination in course of which he identified the seized ornaments and currency notes. In cross-examination this witness has stated that the articles seized by him were given to Raghunath Pd. Agrawal (informant) on his Ziminama and those articles were identified at the police station but he could not say as to whether any paper was prepared for that or not.

19. P.W. 11 Shyam Narayan Singh is the I.O. of this case. He has deposed that on getting information about the occurrence on telephone he made station diary

entry No. 24 dated 1.4.92 and proceeded to the place of occurrence with the Officer Incharge of Katihar P.S. He recorded the fardbeyan (Ext. 5) of Raghu Nath Pd. Agrawal which has been proved by him. He has further stated that he prepared the inquest report of the dead body of the deceased, namely, Ram Piyari Devi and he has proved the inquest report (Ext. 6) which was prepared on 1.4.92 at 10.00 P.M. On the basis of the fardbeyan a formal F.I.R. (Ext. 7) was lodged. P.W. 11 has given description of place of occurrence which was the first floor of the double storeyed house of the informant and has stated that he found blood near the dead body and he also found blood stained cloth and blood stained knife kept on the gunny bag. He further stated that Almirah was open and the articles were scattered and he also found torch of tree cell having stain of blood near the dead body besides blood stained pillow cover. He seized the blood from the place of occurrence as also knife, torch pillow cover and prepared the seizure-list (Ext 2/1). Thereafter, he sent the dead body for postmortem and recorded the statement of the witnesses. He further stated that he sent A.S.I. Rana Surendra Pratap Singh to Jogbani to arrest the accused and the accused was brought by him under arrest. He further stated that A.S.I. brought the stolen articles which were seized by him and on the orders of the C.J.M. he gave the recovered ornaments to the informant on his giving undertaking that he will produce the same in court as and when required. In his cross-examination P.W. 11 has stated that he had mentioned the injury in the inquest report and it also appears from the inquest report (Ext. 6) that he had mentioned the injuries found on the person of the deceased. He has further stated that the informant had not given the detailed description of the articles stolen away by the accused but on the same night his son Manoj Kumar Agrawal had given the detailed description of the articles which were stolen by the accused. He further stated that he had sent the seizure-list to C.J.M. and kept the articles in Thana Malkhana before handing over the same to the informant. P.W. 11 has admitted that Manoj Sharma was arrested by S.I. R.P. Yadav but he submitted charge sheet against Dina Nath Pandit only.

20. P.W. 7 Dr. Bipin Kumar Singh conducted autopsy on the dead body of the deceased on 2.4.92 at 9.30 A.M. and found the following ante mortem injuries on the person of the deceased:

- (1) Incised wound right side of the neck cutting muscles, major blood vessel and trachea up to the cervical bone 3" x 2.1/2" x bone deep.
- (2) Stab injury on abdomen right side above umbilicus. 1.1/2" x 1" x abdominal cavity.
- (3) Swelling right eye-brow about 1" square.
- (4) Abrasion right knee joint 1" long In the opinion of the doctor the cause of death was due to shock and haemorrhage on account of injury Nos. 1 and 2 which was caused by sharp cutting weapon such as dagger and knife. Those injuries were sufficient in usual course of nature to cause death. P.W. 7 has

proved the postmortem report (Ext. 4). The defence declined to cross-examine the doctor who was discharged without cross-examination.

21. From the above analysis of the evidence and the materials available on record I find that the prosecution has been able to prove the fact that the accused/Appellant was appointed as domestic servant in the house of the informant three to four days back and it is also established from the evidence of P.W. 4 Sudha Agrawal that just before the occurrence no male member was present in the house except the deceased and P.W. 4 who was sleeping in her room as she was not feeling well since morning. It is also well established that the accused came with child of P.W. 4 at about 7.15 P.M. before the occurrence and asked her to make the child sleep and at about 8.30 P.M. the husband of P.W. 4, namely, Manoj Kumar Agrawal (P.W. 1) came and when he went to the room of his mother he found her dead in pool of blood. Therefore, it is established that the occurrence took place in between 7.15 P.M. to 8.30 P.M. It is also established that the accused was traceless when P.W. 1 came home and he remained traceless after that. The fardbeyan of the informant was recorded within few minutes of the occurrence and as such it does not suffer with any embellishment. It has also been established by the ocular evidence of the witnesses and the objective finding of the I.O. that Almirah kept in the room of the deceased was found open and articles were scattered and subsequently, P.W. 1 found that the ornaments and cash were missing from the Almirah. The I.O. has made statement to the effect that the informant's son (P.W. 1) gave the detailed description of the articles which were missing from the Almirah, although, the informant could not give the detailed description of those articles at the time of recording of his fardbeyan since he was not aware of that. It will, therefore, appear that the move for the alleged occurrence has been well established from the evidence of the witnesses, inasmuch, as it will transpire that accused committed the murder for the sake of ornaments and cash which he took away after the commission of the murder. The most important link in the chain of circumstances is that the accused was arrested at Jogbani by P.W. 10 on 3.4.92 and on his confession the looted articles viz. The ornaments, cash etc. were recovered from the house of one Manoj Sharma where the accused had kept those articles which were later on identified by the informant and those articles were produced in court and P.W. 1 also identified those articles in court. Therefore, recovery of stolen ornaments, cash etc. from the house of one Manoj Sharma on disclosure made by the accused is the very important circumstance which goes to show that the accused had committed murder of the deceased and had decamped with the ornaments, cash etc. from the Almirah kept in the room of the deceased and on his arrest and disclosure made by him the articles were recovered by the police on 3.4.92 i.e. on the third day of the occurrence.

22. Another important link in the chain of circumstances is that the accused became traceless after committing the murder of the deceased and was arrested at Jogbani and on his confession stolen articles were recovered from the house of one Manoj Sharma. It appears that the accused was appointed as domestic

servant two to three days before the alleged occurrence and he disappeared soon after the alleged occurrence. Hence this circumstance also goes to show that, his modus operandi was to get himself appointed as domestic servant and taking advantage of the absence of male members of the house and seeing that P.W. 4 was in her room on account of her illness and the deceased was alone in her room which was situated at a distance of 50 ft. from the room of P.W. 4, he found it convenient to accomplish his object. Accordingly, he inflicted injury on the vital part of the deceased such as neck and abdomen and when the deceased died, he took away ornaments, cash etc. from the Almirah and fled away. The doctor has also found injury on the neck and abdomen of the deceased which was caused by dagger or knife and those injuries were sufficient to cause death of the deceased in ordinary course of nature.

23. In his statement u/s 313 of the Code of Criminal Procedure the accused has stated that in between 7.00 to 8.30 P.M. he was sent to market and he further stated that the inmates of the house asked him to flee away from the house but the explanation submitted by the accused appears to be palpably false in view of the recovery of the stolen articles at his instance from the house of one Manoj Sharma and it is not believable that the inmates of the house would ask the Appellants to go away from the house along with the ornaments, cash etc. which were found missing from the Almirah. Therefore, the false explanation given by the accused regarding his absence from the house immediately after the occurrence is yet another circumstance against him.

24. The learned Counsel appearing for the Appellant submitted that there is no eye witness to the alleged occurrence and the Appellant has been made accused in the case merely on suspicion but there does not appear any force in such argument in view of the evidence, facts and circumstance of the case which I have discussed above.

25. Thus, on consideration of all the materials on record and considering the facts and circumstances of the case, I am of the view that the prosecution has been able to establish the chain of circumstances pointing only to the guilt of the Appellant. The circumstances as pointed out above are fully consistent with the guilt of the Appellant and the only inference which can be drawn is that the murder of the deceased was committed by none else than the Appellant. I, therefore, hold that the prosecution had proved the charges under Sections 302/380 of the Indian Penal Code against the accused/Appellant beyond all reasonable doubts and the learned trial court was justified in convicting the Appellant. Accordingly, the judgment and order of conviction and sentence recorded by the trial court is upheld.

26. In the result, therefore, I do not find any merit in this appeal which is dismissed. The Appellant who is reported to be in jail custody shall serve out the remaining period of sentence.