

(2006) 09 PAT CK 0101

In the Patna High Court

Case No : Criminal Appeal No. 745 of 2002 (D.B.)

Nand Lal Manjhi and Another

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 08-09-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302

Citation : (2006) 4 PLJR 288

Hon'ble Judges : Rekha Kumari, J; Chandramauli Kr. Pd., J

Bench : Division Bench

Advocate : Vikramdeo Singh and Raj Bansh Dubey, for the Appellant; Lala Kailash Bihari Prasad, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad and Rekha Kumari, JJ.—Appellants being aggrieved by their conviction and sentence for offence under Sections 302 and 201 of the Indian Penal Code and sentence of rigorous imprisonment for life and two years respectively, passed by the XIth Additional Sessions Judge, Patna in Sessions Trial No. 657 of 1999, have preferred this appeal. Prosecution started on the basis of a report given by PW. 2 Ayodhya Manjhi before the Sub-Inspector of Paliganj Police Station on 6.1.1998 at 9 P.M. According to the report, the two appellants had illicit relationship with the daughter of a co-villager and on 4.1.1998 at about 10 P.M. the informant saw the appellants in a compromising position with the said lady. According to the informant, the two appellants threatened him not to disclose the same to anybody, failing which he or any member of his family shall be killed. The informant had alleged that although he did not disclose the aforesaid incident to anybody, but slowly the news spread in the village.

2. According to the informant, on 5.1.1998, his daughter was playing in the village, where other villagers were warming themselves around a fire place. In

the night when the informant was to take food, he started looking for his daughter and made search in the night, when he was informed that appellant Nandlal Manjhi had enticed the girl on the pretext of giving her biscuit and other appellant Ashok Mochi was also with him. According to the report, in the morning when the ladies of the village had gone to attend the call of nature, they found the dead body of his daughter in the field and informed him about that. He along with other villagers named in the first information report, went and found the dead body of his daughter Ranju Kumari in the field of Harihar Maharaj with abdomen slit and open and intestine coming out. He had also stated that the blood was coming from the neck of his daughter. On the basis of the aforesaid report, Paliganj P.S. Case No. 2 of 1998 was registered against the two appellants.

3. Police after investigation submitted charge-sheet and ultimately appellants were committed to the Court of Sessions, where they were charged for committing the murder of Ranju Kumari by intentionally causing her death. Appellants refuted the charges and claimed to be tried.

4. Prosecution in support of its case examined altogether five witnesses. P.W.1 Laxman Manjhi is the cousin of the informant and is alleged to have seen the two appellants enticing the deceased. P.W.2 Ayodhya Manjhi is the informant himself, whereas P.W. 3 Subhash Kumar has been declared hostile. P.W. 4 Dr. Kaushal Kishore Sinha is a Civil Assistant Surgeon, who had conducted the post mortem examination on the dead body of the deceased. P.W. 5 Dilu Lohar is the Sub-Inspector of Police, who had investigated the case.

5. Appellants pleaded not guilty and asserted false implication. However, no defence witness was examined.

6. P.W. 1 Laxman Manjhi, in his deposition had stated that on 5.1.1998 at about 6.30 P.M. he was warming at the Dalan of the informant, Ayodhya Manjhi (P.W. 2) and his daughter deceased Ranju Kumari was also there. According to this witness, appellants picked up the deceased in the lap and took her promising to provide biscuit and mixture. Thereafter, according to this witness he returned to his home and in the night the informant came and enquired the where about of his daughter, then he informed that his daughter has been taken away by the two appellants. According to this witness, her dead body was found in the following morning in a field in the southern side of the village and when he went there, he found her abdomen slit and open and mark of injury on the neck. He had also stated that biscuit and mixture were found in her hands.

7. According to this witness, inquest report was prepared in his presence and he is a witness to that. He had also stated that appellant Nandlal Manjhi had illicit relationship with the daughter of a co- villager and informant had seen that on 4.1.1998, when the appellants threatened the informant that in case he discloses the incident to anybody he or his family member shall be killed.

8. In the cross-examination he had stated that as he did not know about the

earlier incident, he made no enquiry from the appellants as to why they are taking away the girl. In the cross-examination he had admitted that informant is his cousin (Mamera Bahi).

9. P.W. 2 Ayodhya Manjhi is the father of the deceased and the informant of the case. He had stated in his evidence that on 5.1.1998 after he had returned from the work in the night, he had started looking for his daughter before taking the food, but she was not found. According to this witness, he went in search of his daughter, when he met P.W.1 Laxman Manjhi, who disclosed to him that it was the appellants who had taken her away on the pretext of giving biscuit. According to this witness, on 6.1.1998 when the ladies of the village had gone in the morning to attend the call of the nature, they found his daughter killed and dead body thrown in the field of one Harihar Pathak. According to this witness, on hearing the aforesaid information he went to the field of Harihar Pathak and found the dead body of his daughter with her abdomen split-open and knife injury at two places on the neck. According to this witness, he intimated to the Chaukidar the said fact so that Police may be informed.

10. P.W. 2 had stated in his evidence that on 4.1.1998 at 10 P.M. he had seen the two appellants in a compromising position with the daughter of a co-villager and both the appellants had threatened that in case he discloses the said incident to any one, either he or any one of his family shall be killed.

11. In cross-examination he had stated that he narrated the aforesaid fact to the Chaukidar in the night, while he was looking for his daughter. In the cross-examination he had stated that in the night he had gone to the residence of the two appellants but there they were not found. He had stated that he had not informed to the police the threat given by the appellants earlier.

12. P.W. 3 Subhash Kumar had denied to have any knowledge of the incident and has been declared hostile by the prosecution and cross-examined. In the cross-examination he had denied to have given any statement to the police.

13. P.W. 4 Dr. Kaushal Kishore Sinha at the relevant time was the Medical Officer in the hospital and had conducted the post mortem examination of the deceased Ranju Kumari on 6.1.1998 at 3 P.M. He had found on her person the following injuries:

(i) Incised wound over middle of abdomen extending from costal margin to umbilicus size 6" x 3" into cavity deep and internal abdominal gut.

(ii) Incised wound 1" x 1/2" into muscle deep over left side of neck.

Internal Examination:

Thoracic cavity filled with clotted blood. Heart-both chambers empty and pale, lungs-pale, liver-pale, kidney-pale, stomach 2 oz digested food material. Small gut and gass. Large guts punctured and faecal matter coming out. Urinary bladder empty, skull, brain pale.

14. According to the doctor, cause of death was haemorrhage and shock due to the injuries found on her person caused by sharp cutting weapon and sufficient in ordinary course of nature to cause death and time elapsed since death is within 24 hours.

15. P.W. 5 Dilu Lohar, at the relevant time was a Probationary Sub-inspector and was posted at Paliganj. He had stated that he received the information from the Chaukidar about death of the daughter of the informant and on his information he had gone to the village, where he had recorded the fard beyan of the informant P.W.2 Ayodhya Manjhi. He had also prepared the Inquest report and sent the dead body for post mortem examination and recorded the statement of the witnesses. During the investigation he had visited the place of occurrence and found blood there and seized the blood stained earth.

16. The trial Judge relying on the two circumstances that the appellants had enticed the girl and further threatened the informant either to kill him or anyone of family, as deposed by P.W.1 Laxman Manjhi and P.W.2 Ayodhya Manjhi, considered those circumstances, sufficient to establish the guilt of the appellants and, accordingly, convicted and sentenced them as above.

17. Mr. Vikramdeo Singh, appearing on behalf of the appellants submits that it shall be wholly unsafe to sustain the conviction of the appellants on the sole testimony of P.W.1 Laxman Manjhi. He points out that P.W.2 Ayodhya Manjhi had not seen the appellants enticing the victim but has stated, what was told to him by P.W.1 Laxman Manjhi.

18. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, appearing on behalf of the State, however, submits that evidence of P.W.1 Laxman Manjhi is wholly reliable and, as such, the judgment of conviction is not fit to be interfered by this Court.

19. Having appreciated the rival submission, we find substance in the submission of Mr. Singh. In the present case, there is no eye witness to the occurrence and the prosecution wants to bring home the charge only on the basis of the circumstantial evidence. The two circumstances which the prosecution had brought on record are that the appellants were last seen with the deceased and a day before the occurrence appellants had threatened the informant either to kill him or anyone of his family member.

20. It is relevant here to state that P.W.1 Laxman Manjhi is the cousin of the informant and his name does not figure as a witness in the first information report. This itself may not be of significance but in the present case we have found that the informant in the first information report had given the names of a large number of persons, who had gone along with him in the field where the dead body was thrown. Informant in his evidence has admitted that he met P.W.1 Laxman Manjhi in the night and he had disclosed to him that the appellants had enticed the girl, in such circumstance it was expected of the informant to give his name in the first information report.

21. It is further relevant here to state that in the charge-sheet, a large number of witnesses have been cited, but none of them have been examined by the prosecution. In that view of the matter, we are of the opinion that the evidence of P.W.1 Laxman Manjhi cannot be said to be wholly reliable. It is relevant here to state that it was the informant who had seen the appellants in a compromising position, hence we fail to understand for what purpose the appellants would kill the informant's daughter.

22. Mr. Singh has further drawn our attention to the examination of the appellants u/s 313 of the Code of Criminal Procedure and submits that the two circumstances appearing against the appellants have not been put to them in their examination u/s 313 of the Code of Criminal Procedure and that itself vitiates their conviction. He points out that examination of the accused u/s 313 of the Code of Criminal Procedure is not an empty formality.

23. Mr. Prasad, however, contends. that this itself shall not vitiate their conviction and in support of the submission, he has placed reliance on a judgment of the Supreme Court in the case of State of Punjab vs. Naib Din [2002 SCC. (Cri) 33] and our attention has been drawn to the following passage from the said judgment, which reads as follows:

That apart, the respondent failed to show that there was any failure of justice on account of the omission to put a question concerning such formal evidence when he was examined u/s 313 of the Code. No objection was raised in the trial court on the ground of such omission. No ground was taken up in the appellate court on such ground. If any appellate court or revisional court comes across that the trial court had not put any question to an accused even if it is of a vital nature, such omission alone should not result in setting aside the conviction and sentence as an inevitable consequence. Effort should be made to undo or correct the lapse. If it is not possible to correct it by any means the court should then consider the impact of the lapse on the overall aspect of the case. After keeping that particular item of evidence aside, if the remaining evidence is sufficient to bring home the guilt of the accused, the lapse does not matter much, and can be sidelined justifiably. But if the lapse is so vital as would affect the entire case, the appellate or revisional court can endeavour to see whether it could be rectified.

24. Having given our anxious consideration to the submission advanced, we do not find any substance in the submission of Mr. Prasad and the decision relied on is clearly distinguishable. It is well settled that examination of the accused u/s 313 of the Code of Criminal Procedure is not mere a formality. Explanations given by the accused to the questions put during such examination have a practical utility for criminal Court. This not only affords opportunity to the accused to explain incriminating circumstances, it helps the Court in appreciating the entire evidence. The effect of not asking the accused to explain the circumstances appearing in evidence was considered by the Supreme Court in the case of Rautu Bodra and Anr. vs. State of Bihar [1999 S.C.C. (Cri.) 1319] in which it has been held that circumstances not put to the accused for explanation, cannot be made

the basis of conviction. Relevant portion of the judgment reads as follows:

Though the above findings of the trial court and the High Court are based on proper appreciation of the evidence, we are unable to sustain the conviction of the appellants in view of the grave error committed by the trial court, in that, while examining the appellants u/s 313 CrPC, it did not ask them to explain any of the circumstances appearing in the evidence against them. Indeed, except one question as to what they have got to say about the prosecution case, the trial court did not put any other question to the appellants. In the context of the facts of the instant case, it was obligatory on the part of the trial Judge, in view of Section 313 CrPC, to put questions to the appellants relating to the evidence of P.W.6 and their going to the police station with the head of the deceased and the weapons of offence immediately after the occurrence. What would be the effect of such non-compliance was considered by a three-Judge Bench of this Court in *Sharad Birdhichand Sarda vs. State of Maharashtra* and it was held, following earlier decisions of this Court, that the circumstances which are not put to the accused in his examination u/s 313 CrPC must be completely excluded from consideration because he did not have any chance to explain them.

25. In the present case the two circumstances appearing against the appellants in the evidence of the prosecution witnesses are that they came to the place of occurrence, took away the girl on the promise of giving her biscuit and mixture and a day before the incident, the appellants had threatened the informant either to kill him or anyone of his family member. It is unfortunate that in the examination u/s 313 of the Code of Criminal Procedure these two circumstances have not at all been put to the appellants and only question put to them was that on 5.1.1998 they had killed the deceased Ranju Kumari. Thus the appellants were not given any opportunity to explain the circumstances appearing against them in the evidence of the prosecution witnesses. The case of the prosecution is founded on these circumstances and when no opportunity was given to the appellants to explain these circumstances inevitable consequence is that it had occasioned failure of justice and caused prejudice to the appellants and these circumstances cannot be relied to record conviction. Besides aforesaid, there is no further evidence which is sufficient to bring home the guilt.

26. Now referring to the authority of the Supreme Court in the case of *Naib Din* (supra), the Supreme Court had observed that in case the trial Court had not put any question to an accused even if it is of a vital nature, such omission alone would not result in setting aside the conviction and sentence as an inevitable consequence. It had observed that if it is possible to correct its efforts should be made to do that and in any view of the matter after keeping that particular item of evidence aside, if the remaining evidence is sufficient to bring home the guilt of the accused, the lapse does not matter. Here in the present case if the two circumstances referred to above, which alone are of vital nature, are ignored, there is nothing in the entire record pointing towards the guilt of the appellants. The only way to correct is to remit the matter back to the trial court to proceed

with the matter from the stage of examination of the accused but at such a distance of time and further on account of the infirmities found above in the case of the prosecution, we are not inclined to charter this course.

27. We hasten to add that each of the infirmities found above alone may not be sufficient to reject the case of the prosecution, but the cumulative effect thereof certainly creates a doubt and for that, benefit must go to the appellants. We are of the opinion that the prosecution has not been able to bring home the charge beyond all reasonable doubt and the appellants deserve to be given the benefit thereof and we grant that accordingly. in the result, the appeal is allowed, impugned judgment of conviction and sentence is set aside. Appellant No. 1 Nand Lal Manjhi is in jail, he shall be set at liberty forthwith, if not required in any other case. Appellant No. 2 Ashok Mochi is on bail, he shall be discharged of his bail bonds.