

(2024) 02 PAT CK 0060

In the Patna High Court

Case No : Criminal Appeal (DB) No. 1055, 1100, 1110 Of 2016

Sunita Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 20-02-2024

Acts Referred:

Indian Penal Code, 1860 — Section 34, 149, 302, 307
Code Of Criminal Procedure, 1973 — Section 161, 313

Citation : (2024) 02 PAT CK 0060

Hon'ble Judges : Rajeev Ranjan Prasad, J; Shailendra Singh, J

Bench : Division Bench

Advocate : Ajay Kumar Thakur, Ram Adya Singh, Ritwaj Raman, Vaishnavi Singh, D.K. Sinha, Raghwanand, Pratik Kumar

Final Decision : Allowed

Judgement

1. These three criminal appeals arising out of the judgment of conviction and order of sentence dated 26th September, 2016 and 29th September, 2016 respectively (hereinafter called "impugned judgment and order") passed by the learned Additional Sessions Judge XI, East Champaran at Motihari (hereinafter referred to as the "learned trial court") in Sessions Trial No. 374 of 1998 / Supplementary Registration No. 183 of 2015 arising out of Chakia P.S. Case No. 19 of 1998, G.R. No. 259 of 1998 (State through Jagdish Singh vs. Dinesh Chaudhur and Others) have been heard together and are being disposed of by this judgment.

2. By the impugned judgment and order, the learned trial court has been pleased to hold the appellants guilty for the offence under Section 302 read with Section 149 of the Indian Penal Code (in short 'IPC') and they have been sentenced to undergo imprisonment for life and also to pay a fine of Rs. 10,000/- each. In default of payment of fine, they will have to undergo further rigorous imprisonment for six months.

Prosecution Story

3. As per the prosecution story, fardbeyan of the informant Jagdish Singh (PW-3) was recorded on 11.02.1998 in Referral Hospital, Chakiya at 11/15 hours by S.I. Ram Naresh Prasad Singh (PW-5) in front of the dead body of his daughter Sudha Kumari @ Tuni (deceased). The informant stated that today in the morning at about 7 hours he was at his Baithka and his wife and daughter were sleeping in the room inside the house and at that time, his gotiyas (1) Gagandev Chaudhur, (2) Anandev Chaudhur, (3) Sunerdev Chaudhur, (4) Ramdev Choudhur, (5) Laliteshwar Kumar Singh @ Bhola Singh, (6) Shubh Narayan Choudhur, (7) Manoj Kumar, (8) Krishna Kant Singh @ Chutun, (9) Pradeep Chaudhur, (10) Dinesh Chaudhur, (11) Shobha Devi, (12) Manju Kumari, (13) Sunita Devi, (14) Shanti Devi and (15) Kapildev Narayan Singh, all of village Gangati, P.S.- Chakiya, District- Motihari entered into his house by abusing having 'lathi-danda' and tengari and started searching his daughter Sudha Kumari. On hearing their sound, the informant also came in the angan and saw that above named Gagandev Chaudhur and Laliteshwar Kumar Singh slammed down his daughter after dragging her from bed and with these two persons other above named togetherly started beating his daughter on which his daughter started crying loudly, when the informant and his wife tried to save her then Anandev Chaudhur assaulted the informant also and caused head injury by the butt of tengari. In the meantime, Shubh Narayan Chaudhur threw the double barrel gun no. 7405123 kept in his house after damaging it's kunda and butt. Kapildev Singh told all the persons to kill the girl as she is always leading quarrel. On his instigation, above named all accused persons caught hold of his daughter and killed her by pressing her neck. On shouting of informant, his villager Braj Kishor Prasad, Binod Kumar Pandey and others came running then above persons fled away from his house. The informant stated the reason behind the occurrence that yesterday in the evening of 10.02.1998, there was a quarrel of Sudha Kumari with the daughter of Gagandev Chaudhur. The informant and his wife brought the daughter to Chakiya Government Hospital through tyre vehicle where doctor declared her to be dead. The informant claimed that all the accused persons killed his daughter by pressing her neck with common intention and conspiracy in the background of dispute of pattidari and case.

4. On the basis of fardebyan of PW-3, Chakiya P.S. Case No. 19 of 1998 was registered under Section 302/34 IPC. Upon investigation, police submitted four chargesheets on four different points of time and commitments were done in all the four chargesheets separately, four different sessions trial cases came to be registered i.e. S.Tr. No. 374 of 1998, 305 of 2000, 466 of 2000 and 493 of 2000 were registered. Ultimately, vide order dated 12.03.2004, the learned trial court having found that all the material witnesses in all the four cases which arise out of same FIR are the same, it is expedient to amalgamate the four session trial cases for joint trial of the accused. Thus, all the accused have been tried jointly in Sessions Trial No. 374 of 1998. The accused were tried for the charge under Section 302/149 of the Indian Penal Code.

5. In this case, the prosecution has examined six witnesses whereas the defense

examined two witnesses. The exhibits marked at the instance of the prosecution and defence are provided hereunder for a ready reference:-

Serial No. of List of Exhibits of Prosecution

Exhibits

- 1 Signature of Jagdish Singh on Fardbeyan
- 2 Fardbeyan
- 3 Endorsement on Fardbeyan
- 4 Formal FIR
- 1/1 Signature of P.W- 5 on formal FIR
- 5 Postmortem Report (carbon copy)
- 6 C.C of First Information report of Chakia -82/82
- 7 C.C. of order sheet of Suit -59/84
- 8 C.C. First Information report of Chakia- 59/84
- 9 C.C. of petition of Chakia- 59/84
- 10 C.C. of order of Cr. Rev. 453/94
- 11 C.C. of F.I.R. of Chakia -7/97
- 12 C.C. of chargesheet of Chakia- 7/97
- 13 to 13 B C.C. of charge framed
- 14 Sale deed Ramkrit Pd. vrs. Smt. Sobha Singh
- 15 C.C. of Sale deed Hardeo Pd. Vs. Anand Deo Chaudhur
- 16 C.C. of order sheet of Cr. Rev. 491/99
- 17 C.C. of order sheet of Tr. 671/12

Serial of Exhibit Exhibit list of Defence

A Signature of Braj Kishore on petition dt. 01.06.98

A/a Signature of Braj Kishore on attendant

6. The learned trial court having examined the evidences available on the record held that even though the prosecution witness nos. 1, 2, 3 and 4 are the family members of the deceased Sudha Kumari @ Tunni, since they are the eye witnesses to the occurrence, their evidences cannot be discarded only because they happen to be related witnesses. The learned trial court opined that the prosecution has been able to prove the date and time of occurrence, place of

occurrence and motive behind the same. The prosecution, according to the learned trial court, has proved the manner of occurrence also. In ultimate analysis, the learned trial court has held the accused-appellants guilty of the offence under Section 302/149 IPC and sentenced all of them to undergo imprisonment for life and each one shall pay fine of Rs.10,000/-, failing which each one would undergo an additional period of rigorous imprisonment for six months.

Submissions on behalf of the appellants

7. Learned counsel for the appellants led by Mr. Ajay Kumar Thakur, learned Advocate has submitted that the learned trial court could not appreciate the material inconsistencies and contradictions in the testimonies of the prosecution witnesses. It is submitted that the prosecution witnesses are not only related but they are also inimical to the accused persons. In such circumstance, where the prosecution witnesses are the related and interested witnesses and there is no independent witness to corroborate them, it was all the more incumbent upon the learned trial court to take a view of their credibility and examine the evidences on the record with more circumspection and care.

8. Learned counsel further submits that in this case, PW-3 Jagdish Singh is the informant and father of the deceased. According to him, the occurrence took place at 7 O'clock in the morning. He was sitting at his baithaka, his wife and daughter Sudha (deceased) were sleeping in the house. At this point of time, altogether fifteen named accused who are his co-sharers came lashed with lathi, danda and tengari, they were abusing, entered into the house and started searching his daughter Sudha Kumari. PW-3 also entered into the house and came in the courtyard from where he saw that Gagandev Chaudhur and Laliteshwar Kumar Singh pulled down the informant's daughter and all the accused persons including those two started beating his daughter whereupon his daughter started shouting. PW-3 further states that he and his wife tried to save her but Anandev Chaudhur assaulted him on his head by the bainth (wooden part) of the tengari and injured his head. In the meantime, Shubh Narayan Chaudhur took possession of the licensee double barrel gun no. 7405123 and damaged the butt of the gun and threw that butt. At this stage, Kapil Dev Singh instigated them to kill the daughter of the informant because it was she who was all the time indulging in the quarrel. According to PW-3, all the accused persons caught hold of his daughter and killed her by pressing her neck. PW-3 has further stated that his co-villager Braj Kishore Prasad and Vinod Kumar Pandey came running to his house, then the accused persons fled away.

9. It is submitted that PW-3 was examined in course of trial. He came out with a statement that in attempt to snatch the gun, Sudha got awaken. Shubh Narayan Chaudhur took out the barrel of the gun. This witness then states that barrel remained in the hand of Sudha, butt and the bag went into the hand of Shubh Narayan Chaudhur. In his fardebyan, he had not stated about any scuffle between Sudha and Shubh Narayan Chaudhur for purpose of taking possession

of the gun. In his fardebyan, he stated that Gagandev and Laliteshwar pulled down his daughter from the bed but in examination-in-chief, he confined his statement with respect to Laliteshwar. In his fardebyan, he has stated that all the accused persons assaulted the daughter of the informant but in his examination-in-chief, he states that Manju, Shobha caught hold of the leg of Sudha. Manoj Kumar was holding her hair, Pradeep Kumar was holding the one hand and Dinesh Chaudhur was holding another hand of Sudha. PW-3 has further stated in course of trial that Shanti Devi and Sunita had caught hold of the informant's wife. Ramdev Singh pressed the neck of Sudha by one hand and pressed her mouth by another hand. He has further stated that Laliteshwar Prasad pressed the neck of Sudha by his both hands.

10. Learned counsel submits that even though PW-3 claims that he is an eye witness to the occurrence, in his fardebyan he has not specifically stated as to who pressed the neck of Sudha. The allegations have been made against all the accused persons that all of them caught hold of her and killed her by pressing her neck. In trial, PW-3 has improved upon his statement but the falsity of his statement may be found from his own statement in the examination-in-chief where he says that he had been assaulted by tengari on his head and he was bleeding, however, he did not go to any doctor, no injury report of PW-3 has been proved in course of trial and the Investigating Officer (PW-5) did not find any blood-stained cloth or blood-soaked soil. PW-3 has stated that Sunerdev Chaudhur had caught hold of Ajay Kumar (PW-1), brother of the deceased, and Krishna Kant Singh had placed his legs on Lovely Kumari (PW-4) but in his fardebyan, he had not stated about presence of PW-1 and PW-4 in the house at the time of occurrence.

11. It is further submitted that PW-3 has stated in his examination-in-chief that Shubh Narayan Chaudhur left his slipper in the house but no seizure list of the slipper was prepared and the Investigating Officer never verified about the said slipper being that of Shubh Narayan Chaudhur. It is stated that in his cross-examination, PW-3 has stated that Anandev Chaudhur, Gagandev Chaudhur, Sunerdev Chaudhur, Kapil Dev Narayan and Ramdev Chaudhur are his full brothers. He admitted that there is a land dispute and a case under Section 307 of the Indian Penal Code was also registered. He also submitted that a Partition Suit No. 276 of 2003 has been filed by him. His attention was drawn towards his statement in his fardebyan and he has admitted that in his fardebyan he had not stated about Manju and Shobha holding the legs, Manoj, Pradeep and Dinesh holding her by hair and both hands. PW-3 contradicted his statements in examination-in-chief when he stated in his cross-examination that in the FIR, he had stated that all the accused persons had pressed the neck of Sudha. In his cross-examination, PW-3 has stated in paragraph '15' that he has stated before police that Gagandev Chaudhur and Anandev Chaudhur had caught hold of him in the courtyard and he had heard the ghighiana (implore) of Sudha from the room. He had not stated before the police that after hearing the ghighiana, when he went into the room, he found that her neck was broken. PW-3 denied the

suggestion that his daughter was in love affair and for that reason, he was beating her which led to commission of suicide. In paragraph '23' of his cross-examination, he has stated the main reason for the killing of Sudha was the quarrel which had taken place one day before the date of occurrence between Sudha and the daughter of Gagandev Chaudhur. Prior to this, the accused persons had no quarrel or enmity with his daughter. PW-3 denied the suggestion that because he was unable to arrange marriage of his daughter, he himself killed her.

12. Learned counsel submits that as regards the place of occurrence, it may be found from the deposition of the witnesses that the courtyard (angan) is north of the main house/room and the baithaka is further north of the angan, hence, if the accused persons would have entered into the house then they have to first cross the baithaka where PW-1 and PW-3 claims to be present. PW-1, Ajay Kumar has stated in paragraph '9' that his house is north facing and the baithka is north of his house which is at a distance of 15 feet. The baithka is north facing, from the north side is the gate of the baithka. PW-3 has also stated in paragraph '17' that angan is north of his house (four feet).

13. PW-1, Ajay Kumar is the elder brother of Sudha (deceased). He claims in his examination-in-chief that at 07:00 A.M. (in the morning) he was sitting at his baithka. He saw Shanti Devi wife of Gagandev Chaudhur, Sunita Devi wife of Shri Narayan Chaudhur, Shobha Devi wife of Aniruddh Tiwary and Manju Kumari daughter of Gagandev Chaudhur all of a sudden entered into his house. His mother asked them as to why they had come all of a sudden. On hearing the voice of his mother, he along with his father went into the courtyard (angan). Behind them, Laliteshwar Prasad Singh, Ramdev Singh, Dinesh Chaudhur, Pradeep Kumar, Manoj Kumar, Shubh Narayan Chaudhur, Krishna Kant Singh entered into his angan and went into the room in which Sudha was sleeping. According to PW-1, Sudha was sleeping with the licensee gun. Krishna Kant and Shubh Narayan Chaudhur indulged in snatching the gun from Sudha. Subh Narayan caught the butt and bag in his hand whereas the barrel of the gun remained in the hands of Sudha. PW-1 states that thereafter Manoj Kumar caught hold of her by her hair, Dinesh caught her right hand and Pradeep caught her left hand, Shobha and Manoj caught hold of her legs on the bed itself. P.W.-1 further states that Ramdeo Singh pressed the mouth and Laliteshwar pressed the neck of Sudha. Sudha Ghighiyai ikik-ccqvk js and all of a sudden became silent.

14. Learned counsel for the appellants submits at this stage that according to PW-3, Gagandev and Laliteshwar had pulled/ slammed down Sudha from the bed and thereafter Ramdev had pressed her neck by one hand and mouth by another hand and then Laliteshwar had pressed her neck by both of his hands but according to PW-1, Sudha was caught on the bed itself. Thus, PW-1 and PW-3 are not consistent as to the manner of occurrence. In his cross-examination, he came out with a statement in paragraph '8' that one day before the alleged occurrence, there was a quarrel between Shobha and his sister at about 3-4 PM

because Manju was in relationship with a boy of lower caste, his sister was not opposing that relationship but she had disclosed it to PW-1 which led to the quarrel. In the said quarrel, no injury was caused to his sister only clothes were torn. PW-1 has denied the suggestion that his sister was involved in relationship with a boy and wanted to marry him but her family was opposing her. In paragraph '8' of his cross-examination, PW-1 has stated that he had not told the police that Manju was in relationship with a boy of lower caste and he had not stated that there was any quarrel for this reason.

15. Learned counsel, therefore, submits that the prosecution story about the quarrel between Shobha and Sudha on 10.02.1998 could not be substantiated in course of trial. In fact, the evidence of PW-1 and PW-3 on this point are inconsistent and contradictory. PW-3 has stated in paragraph '13' of his evidence that in the occurrence which took place one day before, his daughter was assaulted because of which she was bleeding from her nose and had suffered a simple injury on her back side but PW-1 has categorically stated that no injury had been caused to his sister. The doctor (PW-6) who has prepared the postmortem report did not find any injury on the back of the deceased. In paragraph '10', PW-1 has stated that he had entered into the house after hearing hulla raised by his mother, when he reached there, he found that 15 persons were there, his sister was not in injured condition. It is submitted that even at this point, PW-1 is not consistent because in his examination-in-chief, he has stated that when he was sitting at his baithka, he saw the four ladies accused entering into his house and thereafter, he went into his angan and then from behind, the male accused persons entered, therefore his statement that when he entered into the courtyard, he found 15 accused persons is not a consistent statement and it would take away the credibility of PW-1. The defence had suggested that he was not present at the place of occurrence. Further according to this PW-1, his father was assaulted by Anandev Chaudhur and he fell down in the courtyard whereafter nobody assaulted him, therefore, it is submitted that his father (PW-3) having fallen down in the courtyard could not have seen the occurrence which was taking place inside the main room. PW-1 could not see how much bleeding had taken place from the injury caused to PW-3. PW-1 says that he and his father were caught hold of at the southern corner of his Marai (hut). It is pointed out that Marai is a place where PW-1 claims that he was sleeping with his father on the date of occurrence (Paragraph '10' of PW-1). It is, thus, submitted that if PW-1 and PW-3 were caught hold at the southern corner of Marai, their statement that they had reached to the courtyard (angan) would not be correct. He could not say that for how much time, he had been restrained there, he states that till the accused persons kept them under restraint, he, his father and his mother kept on shouting but no person came from the village. In paragraph '10', he has stated that police came at about 11.00 AM (day time), the FIR was recorded at police station. In paragraph '11', he states that when Darogaji came, he was not shown blood in the courtyard. When he went inside the room with police, there was no blood on the bed. In paragraph '11', PW-1

states that dead body was on the bed, there was no blood on her clothes. He has further stated that her neck was pressed by both hands and mouth was pressed by one hand. When her neck was being pressed, nine accused persons were inside the room and rest of them had caught hold of him, his mother and father in the courtyard.

16. Learned counsel further submits that the testimony of PW-1 falsifies the statement of PW-3 that he had seen the occurrence inside the room. In paragraph '12', PW-1 has stated that only after the accused persons left the house, they went inside the room. He has specifically stated that "मुदालय लोगों के room में से चले जाने के बाद हमलोग उस room में गए आंगन से हमलोग room में मुदालय लोगों के जाने के बाद गए।" This witness says that Chowkidar had come but he could not remember his name. Chowkidar has not been examined by the prosecution.

17. Learned counsel submits that in this case, no inquest report could be prepared as it is evident from the fardbeyan itself that PW-3 had brought his daughter to the government hospital at Chakia and made his statement before the police in the hospital itself at 11.15 AM.

18. It is submitted that the Doctor (PW-6) has proved the postmortem report. He found anti-mortem injury on her body. PW-6 found that there was ligature mark of half centimeter diameter below the thyroid cartilage circular around the neck (more prominent in left side of neck and less marked in the right side of neck intially). The Doctor opined the cause of death is asphyxia due to strangulation. In the opinion of the Doctor, the death was homicidal and not suicidal. The doctor could not say by what means the strangulation had been caused. He did not mention that whether the face of the deceased was swollen or not. He had not mentioned regarding oozing out of blood from the ear, mouth and nose.

19. Learned counsel relies on the text book of Modi Medical Jurisprudence and Toxicology (Twenty Seventh Edition) written by Jaising P Modi Edited by K Kannan published by LexisNexis to submit that ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. It is submitted that according to Modi "When constriction is produced by the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold)." It is submitted that ordinarily strangulation with pressing with hand is one of the types of strangulation in which the marks of pressure by the thumb and the fingertips are usually found on the either side of windpipe. Learned counsel submits that in this case, no thumb impression or fingerprint has been found. Therefore, the post-mortem report is not suggesting strangulation by throttling.

20. Regarding PW-2, it is submitted that she has stated in her examination-in-chief that Dinesh Singh had caught hold of right hand of Sudha, Pradeep had caught left hand and Manoj had caught hold of her hair, Shobha and Manju had

caught right leg and left leg of Sudha respectively. She was killed by Laliteshwar who had pressed her neck and Ramdeo had placed his hand on her mouth. In her cross-examination, she has stated in paragraph '5' that there was no quarrel prior to the occurrence and both the sides used to visit each other's house. In paragraph '6', she has stated that one day prior to the occurrence, no physical violence had taken place. She has stated in paragraph '6' that PW-3 is her husband and PW-1 is her son against whom Lalit Babu had lodged a case under Section 307 IPC. On the date of occurrence, her husband was assaulted but she had not gone for treatment of her husband, her husband never told her that who had assaulted. She has stated that she was assaulted and bleeding had occurred and the accused persons had caught the hand of her daughter.

21. It is, thus, submitted that PW-2 claims that she had been assaulted and was bleeding out but she had also not been treated by any Doctor and there is no injury report of PW-2. She has stated that the hand of her daughter was cut but in the post-mortem report (Exhibit '5'), no external injury has been found on the hand of the deceased. In paragraph '8' of her cross-examination, PW-2 has stated that nobody came from the village and no male person came in the room except the accused persons. She has stated that even after the accused persons left her house, no male person came to her house. Even after she started crying, no person came to her house and nobody came to see her deceased daughter. In paragraph '8', she has stated that the police had come to her house at about 11:00 A.M., the dead body was not in the house and the police had not taken her signature on any piece of paper. She had not shown any blood either in the courtyard (angan) or in the room. In paragraph '9' of her cross-examination, she has stated that the veramdah where she was standing was at a distance of one and half laggi and she could not say as to who among the accused persons were standing where inside the room. She could not say that who among the accused persons was wearing which cloth. In paragraph '10', she has stated that police was not handed over the gun but she says that the police had seen that. It is, therefore, submitted that the gun or the barrel of gun was not seized by PW-5.

22. Learned counsel for the appellant has submitted that from the testimonies of PW-2, it is clear that a day before the occurrence, no physical quarrel had taken place between the deceased and daughter of Gagandev Chaudhur. The statement of PW-3 that the deceased had been assaulted, she was bleeding from her nose and had suffered an injury on her backside stands falsified from the statement of PW-1 and PW-2. Thus, the immediate cause behind the occurrence of 11.02.1998 is not supported from the version of PW-1 and PW-2. Further, PW-2 has stated that she could not say that who among the accused persons were standing in the room of which side, therefore, PW-2 has not seen as to who pressed the neck and mouth of the deceased.

23. PW-4 is Kumari Lovely who is the younger sister of the deceased. At the time of occurrence, she was aged about 9 years. She has claimed in her examination-in-chief that she was sleeping in the same and one room in which her elder sister

Sudha @ Tunni was sleeping. She has stated that she was sleeping on a separate bed. According to PW-4, in the quarrel which took place in course of the snatching of the gun, her elder sister Sudha had fallen down. She has stated that when her father entered inside the room then Gagandeo Chaudhur and Anandev Chaudhur caught hold of him. Her father shouted whereupon Anandev Chaudhur assaulted him on his head by tengari as a result whereof, the head was injured.

24. Learned counsel submits that PW-3 has stated in his examination-in-chief that Laliteswar Singh had pulled down Sudha from her bed whereas PW-1 has stated that Sudha was caught on the bed itself. According to PW-2 both his sisters were sleeping from North to South direction. Head was in the South direction whereas leg was in the North direction whereas PW-4 states that Sudha had fallen down from the bed and she was sleeping in the same room but on separate bed, therefore, the statements of prosecution witnesses are not consistent on material aspects of the matter.

25. It is submitted that PW-4 states that when her father entered into the room, then he was caught by Gagandeo and Anandev whereas PW-1 has categorically stated that he, his father and his mother all were caught in the Southern end of marai and PW-2 has stated that she could not see who among the accused persons were standing at what position.

26. In her cross-examination PW-4 states that when her sister was declared dead in Chakiya Hospital, she was not treated but her injured father was treated. Police had come there in the Chakiya Hospital. Police had taken her, her mother and her father's statement. In paragraph '14', PW-4 states that four persons had caught hold of her father outside the room, they were Gagan Dev Chaudhur, Anandev Chaudhur, Sunerdev Chaudhur and Kapil Dev Singh.

27. She has stated in her cross-examination that there were two chauki (cots) in the room, one was from north to south and the second one was from east to west but she did not remember that on which chauki she was sleeping. In paragraph '17', she has stated that when the accused persons left the room, she had come near her sister and then came outside the room. When she came to the courtyard (angan), the accused persons had caught hold of her father (PW-3). The accused persons left her father after the occurrence, her father was lying in the fallen condition. Her father had been bleeding but she did not remember whether blood had fallen on the earth, she did not remember which cloth her father had been wearing at that time. In paragraph '20', she has stated that her sister was taken out from the room by Jagarnath Prasad, Balram Singh and other two persons whose names she did not remember. Jagarnath Prasad is a co-villager whereas Balram Singh was a teacher in the village school. It is submitted that neither Jagarnath Prasad nor Balram Singh have been examined by police, moreover, this statement of PW-4 is completely inconsistent with the statement of PW-3 who has stated in his examination-in-chief that on the date of occurrence, 2-4 persons from the village came at his door but no one from them went inside the angan or in the room. PW-1 and PW-2 have also stated that

nobody had come from the village even after the occurrence.

28. Learned counsel further submits that in paragraph '26' of her cross-examination, PW-4 has stated that she had not stated before police that in the quarrel for snatching, her sister had fallen down and further she had not stated before police that Shobha and Manju had caught hold of both the hands of her sister. In paragraph '32', she denied the suggestion that on the date of occurrence, she was not in the village and she had been in her nanihal. In paragraph '33', she has stated that prior to the occurrence, there was no land dispute with the accused persons. In paragraph '34', she has stated that she does not know the accused Kapil Dev Singh who is a teacher in Zila School at Muzaffarpur and that she was purposely concealing it. It is submitted that this witness (PW-4) is a tutored witness.

29. Learned counsel has pointed out the evidence of PW-5, Ram Naresh Prasad who was the Officer-in-Charge of Chakiya Police Station on 11.02.1998. He had registered the case on the basis of the fardebyan of PW-3 which he recorded at Referral Hospital, Chakiya. In paragraph '5' of his examination-in-chief, he has stated that he had prepared the inquest report which is entered in the case diary. It is, however, submitted that the inquest report has not been proved/exhibited by the prosecution. In paragraph '6' of his examination-in-chief, PW-5 has given the description of the place of occurrence i.e. the room of 15×10 feet size. He has stated that in front of the room, there is a courtyard (angan) measuring 30×20 feet. In front from north, there is a straw hut which is baithka of the informant. It is surrounded by taat from all the four sides and there is a door. One can enter into the courtyard (angan) and the room through the baithka. There was a partition in the hut, one side of which is used for cooking. PW-5 found one plastic slipper in the courtyard and he was told by the informant that the slipper is of the accused but he did not find any other article at the place of occurrence. In paragraph '6', he has stated that he had prepared a seizure list of a barrel of a double-barrel gun. Learned counsel for the appellants submits that the seizure list was neither proved nor exhibited nor the barrel was produced as material exhibit.

30. PW-5 has stated that he was told by the witnesses that the victim Sudha was sleeping on the cot (chauki) which was set with the western wall of the room and she was sleeping on the said chauki with her mother and the gun. He found second chauki was set with the northern wall and the barrel of the gun was found on this chauki. He was told that the body of the deceased was lying in between the almirah and the bed from east to west direction. Head was towards the eastern side whereas the legs were towards the western side. In paragraph '3' of his examination-in-chief, PW-5 has stated that he had recorded statement of Makeshwar Nath Singh (Chaukidar), Loha Rai, Ram Naresh Pandey, Ram Ayodhya Singh and Shambhu Prasad Narayan Baitha who had supported the prosecution case. In paragraph '9', PW-5 further states that he had recorded the statement of Braj Kishore Prasad and the independent witnesses Dipu Das, Ramagya Singh,

Rajdev Singh, Ramasrey Pandey, Shyamdev, Ram Junum Singh, Govardhan Chaudhur and Ram Vinod Pandey who had supported the prosecution.

31. Learned counsel for the appellants submits that it is quite surprising that the Investigating Officer has named so many independent witnesses but no one of them have been examined by the prosecution. It is pointed out that Braj Kishore Prasad and Rajdeo Singh about whom the Investigating Officer had stated that they had supported the prosecution case appeared as defence witness as DW-1 and DW-2 respectively. They were cross-examined by the prosecution but they stayed by their stand and did not support the prosecution case.

32. Learned counsel submits that in paragraph '17', PW-5 has stated that the seized barrel was not with him and in paragraph '18', he has stated that the seized slipper/sandal could not be verified and it could not be found that it belongs to which of the accused. He had not verified whether slipper belonged to family of the informant or not. In paragraph '19' of his cross-examination, PW-5 has stated that PW-4 had not stated in her statement that her sister had fallen down in the quarrel, she had not stated that her sister was pulled down by the accused persons and Shobha and Manju had caught hold of her hands. PW-4 stated that Ramdeo Singh had pressed the mouth of her sister and she had not stated that Laliteshwar Prasad Singh had pressed the neck of her sister. PW-4 had not stated that Krishnakant Singh had kept her pressed/pushed on the bed itself.

33. Learned counsel for the appellants submits that the I.O. (PW-5) has contradicted PW-4 in material particulars. It is submitted that from the description of the place of occurrence and the distance between the hut and the room, it may be easily appreciated that if PW-1, PW-2 and PW-3 had been confined at the Southern end of the hut, they could not have seen the occurrence.

34. Learned counsel has further submitted that under Section 313 CrPC a stereotype statement has been recorded of all the accused persons. All the accused persons were put only one question saying that there are evidences against them that on 11.02.1998 at 07:00 A.M., they had entered into the house of the informant and killed his daughter Sudha Kumari by pressing her neck and injured the informant. It is submitted that the accused persons were not informed of the materials which had come against them in course of trial and, therefore, they have been deprived of a valuable right conferred upon the accused by Section 313 CrPC to explain the circumstances.

35. It is, thus, submitted that learned trial court has completely erred in relying upon the testimonies of the prosecution witnesses who are all related and interested witnesses in this case. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the case of Sekaran versus State of Tamil Nadu reported in AIR 2024 SC 397 and in the case of Jaikam Khan versus State of Uttar Pradesh reported in (2021) 13 SCC 716 to submit that where the prosecution witnesses were related and interested witnesses, non-examination of

the independent witnesses despite their availability would be fatal to the prosecution.

Submission on behalf of the son of the Informant

36. The informant has opposed these appeals. It is submitted that PW-1, PW-2, PW-3 and PW-4 are consistent in their deposition that some of the accused as named in the deposition had caught hold of the deceased, Ramdeo Singh smothered, the accused Laliteshwar Prasad Singh strangulated (throttled) the daughter of the informant as a result whereof she died.

37. Learned counsel submits that PW-5 who is the Investigating Officer of the case has proved the fardebyan (Exhibit '2'), his endorsement over it (Exhibit '3') and the formal FIR (Exhibit '4'). PW-5 had also prepared the inquest report, however, the same could not be marked inadvertently by the learned trial court. Therefore, it would not be correct to say that the inquest was not proved. Learned counsel submits that if the document is proved by a competent witness but not marked by the learned trial court, in such circumstance, it cannot be said that the document was not proved. Further, it is submitted that the Investigating Officer has admitted that he recovered barrel having no. WM 7405123 of double-barrel gun of the informant from the place of occurrence and prepared the seizure list but it could not be produced before the court.

38. It is submitted that in paragraph '19' of the deposition of PW-5, contradictions have been taken in respect of the statement of PW-4 recorded under Section 161 CrPC but such contradictions appeared to be 'error of fact'. The Investigating Officer is the author of the case diary, therefore, he was required to refresh his memory after going through the statement of PW-4 as recorded in the case diary. Thereupon only he could have answered regarding the former statement of PW-4. It is submitted that if the statement of the author is found against the record i.e. the case diary, it must be discarded as an 'error of fact'. As regards the evidence of PW-6, it is submitted that PW-6 has proved the post-mortem report and he has specifically stated that the death was homicidal and not suicidal, therefore, it corroborates the prosecution case.

39. Learned counsel for the informant submits that in view of the consistent evidence of all the prosecution witnesses who have given ocular account of the occurrence supported with the evidence of the Investigating Officer (PW-5) and the Doctor (PW-6), the case of the prosecution that the daughter of the informant was killed by strangulation (throttling) stands proved beyond all reasonable doubts. Accordingly, the learned trial court has rightly convicted the appellants for the offence under Section 302 IPC with the aid of Section 149 IPC. It is submitted that some minor variance in the testimonies of the witnesses are not material contradictions in respect of the facts and issues involved in the prosecution case which are required to be proved.

40. Learned counsel for the informant submits that the facts in issue are as under:-

1. Whether all the accused persons entered into the house of the informant on the relevant date and time of the occurrence forming an unlawful assembly with a common object to kill the daughter of the informant.

II. Whether accused Ramdeo Singh smothered and accused Laliteshwar Singh strangled (throttled) the daughter of the informant, as a result of which she died.

41. Learned counsel for the informant submits that there are so many facts and circumstances mentioned in the prosecution case but they are not logically connected with the facts and issues. They may be relevant facts but the same are having no bearing to prove or disprove the charges. For sake of argument, the recovery of broken double barrel gun by the Investigating Officer at the place of occurrence and thereupon to prepare the seizure list but not to produce it before the learned trial court may be a prosecution lapse, however, such type of lapse has no bearing in either way to prove or disprove the case because no serious prejudice would be caused to the defence by non-production of the seizure list material. If it would have been a case of murder by gunshot injury, in that event, non-production of the seized gun or the material exhibit would have necessarily caused serious prejudice to the defence.

42. As regards the medical jurisprudence on the subject, learned counsel submits that the mark of pressure by thumb and fingertips are created by the epidermal soft tissue of the thumb and fingertips, there is every possibility that after lapse of a considerable time, the same may disappear. In the present case, the post-mortem having been done after lapse of 24 hours, the absence of mark of pressure on the neck of the deceased would not take away the consistent ocular evidence of the prosecution witnesses and they cannot be doubted or discarded. It is further submitted that the medical jurisprudence nowhere conclusively says that in the case of strangulation by throttling, there is no possibility of ligature mark, therefore, appearance of ligature mark cannot be ruled out in a case of throttling whereas on the point of throttling, there are consistent evidences. The text of medical jurisprudence is not a conclusive evidence, rather, the same are of suggestive nature and are used to appreciate the circumstances of the case. If it would have been a case of circumstantial evidence, in that case, such text would be of much relevance to explain the circumstances but such text cannot be used to discard the consistent ocular evidence of the prosecution witnesses with regard to throttling of the daughter of the informant.

43. Reliance has been placed upon the judgment of Hema Vs. State through Inspector of Police, Madras reported in (2013) 10 SCC 192, Abdul Sayeed Vs. State of M.P. reported in (2010) 10 SCC 259, Kamaljit Singh Vs. State of Punjab reported in (2003) 12 SCC 155 and Rammi Vs. State of M.P. reported in (1999) 8 SCC 649.

44. Learned Additional PP for the State has endorsed the submission of learned counsel for the son of the informant.

Consideration

45. Having heard learned counsel for the appellants, the son of the informant and learned Additional PP for the State as also on perusal of the records, this Court finds as under:-

(i) As regards the place of occurrence, PW-5 has given the description of the same in paragraph '6' of his examination-in-chief. The room in which the occurrence took place is a pakka room measuring 15 × 10 feet situated in northern side. The entry point of this room is towards North and it is fitted with a door of 3-1/2 feet fixed with Eastern-North side of wall. In front of the room, there is a courtyard measuring an area of 30×20 feet and North to that courtyard, there is a straw hut which is the baithka of the informant and it is fenced by taat (wooden baars) from all the four sides and there is a door with the hut and only through this door, any person can enter into the baithka and reach to the courtyard (angan). The Investigating Officer (PW-5) found that the cot/bed (chauki) on which the deceased was sleeping was fixed with the Western wall. The accused persons/appellants are said to have entered into the courtyard through baithka, at this point of time, PW-2 was brooming in the courtyard whereas PW-1 and PW-3 are said to be at baithka. PW-1, PW-2 and PW-3 all were caught by the four accused persons and according to PW-1, they were caught and restrained at the Southern side of the hut. On this point, this Court finds that the prosecution witnesses are not consistent and are not reliable. They have stated that the accused persons, namely, Manju and Shobha had caught hold of the legs of the deceased whereas Manoj had caught her by her hair, Dinesh had caught hold of her right hand and Pradeep had caught hold of her left hand but PW-2 has stated in her cross-examination that she cannot say that who among the accused persons were standing in which position in the room. The prosecution witnesses have claimed that PW-2 and PW-3 were assaulted and they were bleeding but neither PW-2 nor PW-3 was examined by any doctor. No injury report of PW-2 and PW-3 have been proved. This would give rise to a serious doubt as to the ocular account of the prosecution story. The Investigating Officer did not seize any blood stained cloth or blood soaked soil/earth from the place of occurrence even though it was a kuchcha floor. It was not a concrete/pucca floor. Police is said to have recovered the barrel but no seizure list of the same has been prepared. The slipper/sandal which was allegedly left by accused Shubh Narayan Chaudhur in the courtyard of the informant has not been verified by the Investigating Officer.

(ii) As to the immediate cause of the occurrence, PW-3 came with a story that one day before the occurrence, a quarrel had taken place between his daughter, Sudha (deceased) and the daughter of Gagandev Chaudhur in which Sudha (deceased) had suffered bleeding from her nose and small injury was caused on her backside but this statement of PW-3 is not getting corroborated from the testimony of PW-1 and PW-2. PW-1 and PW-2 have stated that during the occurrence and after the occurrence even after shouting, no villager had come

inside the courtyard or the room but PW-4 has stated that the dead body of her sister was taken out by Jagarnath Prasad, Balram Singh and other two persons. Those persons have not been examined. This Court finds that there are strong contradictions in the statement of PW-4 which may be found from the testimony of the Investigating Officer (PW-5). In paragraph '19' of his cross-examination, PW-5 has stated that PW-4 had not stated before him that her sister was pulled down by the accused persons or that she had fallen down in course of snatching. She had not stated before police that Shobha and Manju had caught hold of her sister and that Ramdeo had smothered her. She had also not stated that Laliteshwar Prasad Singh had throttled her neck and she had not stated that she was confined to her bed by Krishna Kant Singh.

iii. This Court finds that when the I.O. (PW-5) contradicted PW-4, the prosecution could have re-examined him for clarification with reference to the statements recorded in the case diary, but that was not done. The submission of learned counsel for the informant that the court could still look into the case diary would not be acceptable because the case diary does not form part of the evidences.

46. Considering that the prosecution witnesses have not given a consistent account of manner of occurrence, they are related and interested witnesses as they have chequered history of litigations against each other and further finding that PW-4 has been contradicted by PW-5, this Court is of the considered opinion that withholdment of the independent witnesses whom PW-5 has stated to have investigated in course of investigation of the case would prove fatal to the prosecution. The statement of PW-2 in paragraph '9' of her cross-examination is that inside the room who among the accused was standing from which side cannot be said would raise a strong doubt as to whether the prosecution witnesses can be said to be an eye witness of the occurrence. If PW-2 cannot say that which accused was standing where inside the room, how can she give a complete account of the entire occurrence, PW-1 and PW-3 having been confined and restrained by four of the accused at the Southern end of the hut would also not be in a position to see the occurrence which took place inside the room. Therefore, it would not be safe to believe the prosecution witnesses as eye witnesses to the occurrence. It is not a case where the prosecution story suffers from minor discrepancies. The inconsistencies in the eye witnesses account of the occurrence and contradictions in their statements are taking away the credibility of these witnesses.

47. As regards the post mortem report, both the parties have come out with their own views on the text of medical jurisprudence. Both have relied upon the 27th Edition of Modi Textbook of Medical Jurisprudence and Toxicology. In paragraph 20.3 (page 577) strangulation has been defined as the compression of the neck by a force other than hanging. Weight of the body has nothing to do with strangulation. Ligature strangulation is a violent form of death, which results from constricting the neck by means of a ligature or by any other means without suspending the body. Modi further says:-".....When constriction is produced by

the pressure of the fingers and palms upon the throat, it is called as throttling. When strangulation is brought about by compressing the throat with a foot, knee, bend of elbow, or some other solid substances, it is known as mugging (strangle hold).” In para 20.3.2, types of strangulation is provided. Ligature strangulation is one type of strangulation whereas throttling (manual strangulation-compressing with hand) is another type of strangulation.

Paragraph 20.3.3 talks of symptoms and it reads as under:- “If the windpipe is compressed so suddenly as to occlude the passage of air altogether, the individual is rendered powerless to call for assistance, becomes insensible, and may die instantly. If the windpipe is not completely closed, the face becomes cyanosed, bleeding occurs from the mouth, nostrils and ears, the hands are clenched, and convulsions precede delayed death. As in hanging, insensibility is very rapid, and death is quite painless.”

48. Regarding the external appearances due to constriction force applied to the neck, and those due to asphyxia, Modi says in paragraph 20.3.5.1.1:-

“(i) Ligature mark- Ligature mark is a well-defined and slightly depressed mark corresponding roughly to the breadth of the ligature, usually situated low down in the neck below the thyroid cartilage and neck horizontally and completely. The marks are multiple if the ligature is twisted several times round the neck, also more than one firm knot of the ligature is certain of homicide. The mark may be oblique as in hanging, if the victim has been dragged by a cord after he has been strangled in a recumbent posture, or if the victim was sitting and the assailant applied a ligature on the neck while standing behind him, thus using the fore backward and upward. The base of the mark, which is known as a groove or furrow, is usually pale with reddish and ecchymosed margin. It becomes dry, hard and parchment-like, several hours after death. If the skin has been excoriated. The pattern of the ligature may also be seen. Very often, there are abrasions and ecchymoses in the skin adjacent to the marks. In some cases, the mark in the neck may not be present at all, or may be very slight, if the ligature used is soft and yielding like a stocking or scarf, and if it is removed soon after death. A careful search of the neck may reveal minute fibres and any other material from the ligature....”

“(ii) If fingers are used (throttling), marks of pressure by the thumb and the fingertips are usually found on either side of the windpipe. The thumb mark is ordinarily higher and wider on one side of the front of the neck, and the finger marks are situated on its other side obliquely downwards and outwards, and one below the other. However, the marks are sometimes found clustered together, so that they cannot be distinguished separately. These fingertip bruises, each disc-shaped and 1-2 cm in diameter, look like red bruises (six penny bruises) if examined soon after death, but they look brown, dry and parchment-like sometimes after death. One should refrain from drawing inference from the direction of curved abrasion, as to how the hand of the assailant might have been applied to the neck of victim. The inherent quality of the victim’s skin, the

sahpe and length of the fingernails of the assailant render such inferences extremely tenuous. This linear or crescentic marks produced by the fingernails are occasionally present, if the fingertips are pressed deeply into the soft tissues of the neck....”

49. In the light of the text mentioned above, it is submitted that in this case PW-6 has found on external examination a ligature mark of ½ cm diameter below the thyroid cartilage circular around the neck. Cartilage of larynx and tracheal rings were fractured. These are clear symptoms of death by ligature strangulation and not by throttling. It is submitted that the post mortem was conducted on 12.02.1998 at 10:00 am and doctor has opined that the time elapsed since death is 36 hours approximately which would go to suggest that the deceased had died in the night itself. The inquest report has not been exhibited and the doctor has stated that he did not mention whether face of the deceased was swollen or not rather the same has been mentioned in the inquest report but the fact remains that the inquest report has not been exhibited.

50. Even though it is the submission of learned counsel for the informant that the medical text is only suggestive in nature and it is not a conclusive evidence, this Court is of the considered opinion that in order to appreciate the entire circumstances of the cause of death of the deceased, in the present set of facts, the opinion of the doctor (PW-6) gains much importance. The post mortem report does not indicate any sign of strangulation by throttling.

51. This Court further finds that in the name of examination of accused persons under Section 313 CrPC only a formality has been done. All the accused persons were asked only one question which are being reproduced hereunder:-

This Court finds that the attention of the accused persons were not drawn towards the evidences brought by the prosecution against them.

52. For the reasons mentioned hereinabove, this Court would of the considered opinion that the prosecution could not prove the guilt of the accused persons beyond all reasonable doubts. The trial court’s judgment suffers from non-consideration of the material inconsistencies and the contradictions in the statement of the prosecution witnesses. This Court, therefore, sets aside the impugned judgment and order respectively. The appellants are acquitted of the charges under Section 302/149 IPC giving them benefit of doubt. These appeals are allowed.

53. The appellant namely, Laliteshwar Prasad Singh @ Bholu Singh and Krishnakant Singh @ Chutun (appellant no. 4 and 5 of Cr. Appeal (DB) No. 1100 of 2016) are in custody, hence, they would be set free, if not wanted in any other case. The other appellants who are on bail are discharged from all liability of their respective bail bonds.