

**Court No. - 42**

**Case :-** CRIMINAL APPEAL No. - 3674 of 2016

**Appellant :-** Nanhaku Singh

**Respondent :-** State of U.P.

**Counsel for Appellant :-** Anupam Tripathi

**Counsel for Respondent :-** G.A.

**Hon'ble Ashwani Kumar Mishra,J.**

**Hon'ble Mohd. Azhar Husain Idrisi,J.**

1. The present appeal has been preferred by the accused appellant Nanhaku Singh challenging the judgment and order of conviction and sentence dated 23.06.2016, passed by the Additional Session Judge, Court No.2, Shahjahanpur in Session Trial No.77 of 2013 (State vs. Nanhaku Singh) arising out of Case Crime No.56 of 2012, Police Station Jaitipur, District Shahjahanpur, whereby the accused appellant has been convicted and sentenced to life imprisonment under sections 302, 376 IPC and 3(2)(V) SC/ST Act with fine of Rs.5,000/-, in default whereof he is to further undergo three years rigorous imprisonment; under section 201 IPC for four year rigorous imprisonment. All the sentences are to run concurrently.

2. Written report (Ex.Ka.1) given by the informant is the basis of present case, which alleges that on 18.03.2012 the daughter of informant (PW-1), aged 11 years, had gone alone to fetch fodder from the field. She did not return till 4-5 pm and the family members got concerned. The informant kept searching for his daughter and ultimately

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the dead body of the deceased daughter was found near the wheat field of Bhubnesh Singh. There were signs of injuries on neck and apprehension was expressed that she was done to death. The dead body was recovered at 08.00 am on the next day i.e. 19.03.2012.

3. On the basis of written report (Ex.Ka.1) First Information Report (Ex.Ka.2) was lodged at 10.30 am on 19.03.2012 as Case Crime No.56 of 2012 under Section 302 IPC, Police Station Jaitipur, District Shahjahanpur. Investigation proceeded in the matter. Inquest (Ex.Ka.4) was conducted at 10.30 am on 19.03.2012. In order to ascertain the cause of death the inquest witnesses opined that the postmortem of deceased be conducted. Consequently, the dead body was sealed and sent to mortuary for postmortem. The postmortem (Ex.Ka.8) was conducted at 04.45 pm on the same day. The Autopsy Surgeon determined the cause of death as shock and haemorrhage as a result of ante-mortem injuries. Following ante-mortem injuries were found on the deceased:-

"(i) Incised wound 2cm x 1 cm x muscle deep over the right side chin 3cm below from right angle of mouth margins are clear cut and regular. Clotted blood present in the wound.

(ii) Incised wound 1cm x .5cm x muscle deep over the right side of chin 1cm lateral to the injury no.1 margins regular and clear cut. Clotted blood present in the wound.

(iii) Incised wound 3cm x 1.5cm x muscle deep over the left side face 2cm medial to the ear tragus, margins regular and clear cut. Clotted blood present in the wound.

(iv) Incised would 1cm x 1cm x muscle deep on the left side of face 1cm medial to the left ear tragus, margins regular and clear cut. Clotted blood present in the wound.

(v) Incised wound 11cm x 5cm x oesophagus deep over the front and lateral aspect of neck some part of muscle, skin, and underneath trachea and oesophagus missing. Margins regular and clear cut. Clotted blood present in the wound.

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(vi) Incised wound 9cm x 3cm x oesophagus deep over the front of neck just above injury no.5 over part of skin and muscle missing and underneath part of trachea and oesophagus also missing and both neck vessels found cut and separated. Margins regular and clear cut. Clotted blood present in the wound.

(vii) Incised wound 8cm x 2cm x trachea deep over the front of upper neck just above injury no.6, some part of muscle and underneath larynx and trachea also missing and neck vessels cut and separated. Margins regular and clear cut. Clotted blood present in the wound.

(viii) 1<sup>st</sup> to 2<sup>nd</sup> degree burn injury present over the front of chest 7cm x above the right nipple margins blurred size 16x11cm.

(ix) 1<sup>st</sup> to 2<sup>nd</sup> degree burn injury over the left clavicle 4cm lateral to medial end of left clavicle. Margins blurred.

(x) Lacerated wound present around the labia minora and laceration present in the both lateral aspect of anterior 1/3rd vaginal wall, hymen was also found lacerated and some part of hymen missing, margins irregular and clotted, blood present in the wound. "

4. Investigating Officer has recovered the clothes, slippers etc. of the deceased vide Ex.Ka.13 and has also recovered a plastic sack and sickle (daranti) etc. vide Ex.Ka.11. The Investigating Officer has collected bloodstained earth and plain earth vide Ex.Ka.10 as also recovered bloodstained plants of wheat crops vide Ex.Ka.13. Such recovered materials were sent for scientific investigation by the Forensic Laboratory.

5. Role of accused appellant surfaced on the basis of information given to the parents of the deceased by the family members. The Investigating Officer, after recording the statement of witnesses under Section 161 Cr.P.C., concluded the investigation and submitted chargesheet against the accused appellant under Sections 302, 376, 201 IPC and 3(2) (V) SC/ST Act. The Magistrate took cognizance on the chargesheet and committed the case to the Court of Sessions where it got registered as Session Trial No77 of 2013. Charges

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were framed against the accused appellant under aforesaid sections. On being read out the charges to the accused appellant, he denied the accusations made against him and demanded trial.

6. The prosecution in order to prove its case has exhibited various documentary evidence, noticed above. In addition to the exhibited documentary evidence, the prosecution has also produced the oral testimony of following prosecution witnesses:

7. PW-1 (Premwati) is the first informant/mother of deceased. In her examination-in-chief, she has stated that she has five daughters and on the date of incident her husband as well as her eldest son were working in Delhi. She has supported the prosecution case that having gone to fetch fodder from the field her daughter disappeared and ultimately her dead body was found near the field of Bhubnesh and that her throat was slit and she had no clothes on her. It is also stated that clothes, slippers, sickle (daranti) etc. were recovered from near vicinity of dead body. The report was got scribed by someone on the asking of the informant and she placed her thumb impression on it. PW-1 has also stated that she later came to know that her daughter has been done to death by accused appellant, who came in possession over her agricultural land after it was got released from accused appellant about three years back, due to which he maintained enmity.

In her cross-examination, PW-1 has admitted that she has not seen the incident and the contents of written report are based on hearsay information received from others. The person from whom such information has been received has

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not been identified. She has also stated that accused appellant has five children and eldest daughter is about 18-19 years of old. PW-1 has been elaborately examined in which she has disclosed her family composition and except to state that she has apprehension that accused appellant had committed the murder, there was no other basis for her to implicate the accused appellant. PW-1 has also admitted that initially one Atul Kumar was apprehended by the police whereafter Gopal Jatav was arrested but both of them were released. PW-1 has admitted that she has won the election of member of Gram Panchayat after defeating the wife of one Ram Bharose. She has denied the suggestion that on account of political dispute she has falsely implicated the accused appellant.

8. PW-2 (Ram Charan) is the father of deceased. In his examination-in-chief he has stated that on account of enmity accused appellant has committed the offence as he got his land released from him. In the cross-examination, PW-2 has stated that he was not in the village and only after death of the deceased he returned. The source of information to implicate the accused appellant by PW-2 is also hearsay statement without specifying the person from whom such information was received.

9. Omveer has been produced as PW-3, who has turned hostile during trial.

10. PW-4 (Neelam Kumari) is the minor girl whose statement was recorded by the police during investigation under section 161 Cr.P.C. in which she alleged that the deceased was done to death by the accused appellant. In her statement before the trial court PW-4 has denied having given

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any information to the Investigating Officer about complicity of the accused appellant.

11. PW-5 (Rohil Husain) is the Head Constable, who has proved the police papers. PW-6 (K. P. Singh) is the Sub Inspector, who has proved the inquest papers.

12. PW-7 (A. K. Rai) is the Autopsy Surgeon, who conducted the postmortem of deceased. He has proved the postmortem report and as per him ten injuries were found on the deceased.

13. PW-7 (Balwant) is stated to be an independent witness, who has turned hostile during trial. PW-9 and PW-10 are also the independent witnesses, who have turned hostile and have not supported the prosecution case.

14. PW-10 (Mukesh), PW-11 (Harirai Tripathi) and PW-12 (Vinay Kumar Saroj) are the police personnel, who have conducted the investigation in the matter from time to time.

15. The accused appellant has been confronted with the above incriminating materials produced by the prosecution during trial for recording his statement under section 313 Cr.P.C. in which he has denied the charges by stating that he has been falsely implicated in the present case while he is innocent.

16. It is on the basis of such evidence led during trial by the prosecution and upon consideration of the explanation furnished by the accused appellant under section 313 Cr.P.C. that the court below has come to the conclusion that the prosecution has established its case beyond reasonable doubt against the accused appellant and found him guilty of

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committing the offence. The court below has convicted and sentenced the accused appellant vide impugned judgment and order. Thus aggrieved, the accused appellant is before this Court in the present appeal.

17. Shri Ashok Kumar Tripathi, learned counsel for the appellant submits that this is a case in which accused appellant has been falsely implicated only on account of suspicion of the parents of deceased. He submits that absolutely no evidence of any kind has been produced by the prosecution to prove the guilt of accused appellant. Submission is that it is neither a case of direct evidence nor any circumstance adverse to accused appellant has been produced so as to implicate him. Argument is that without any cogent evidence produced during trial against the accused appellant he has remained in jail for over twelve years and that as the trial court has not correctly appreciated the evidence on record, as such the judgment of conviction and sentence is liable to be set aside.

18. Learned A.G.A. for the State, on the other hand, has supported the judgment of conviction and sentence for the reasons recorded therein.

19. We have heard learned counsel for the parties and have perused the materials brought on record, including the original records of the court below.

20. Perusal of record would go to show that the deceased was a girl aged about 11 years, who died on account of ten injuries caused to her. Her dead body was recovered at about 08.00 am on 19.03.2012. It is on the basis of information received by family members that the accused appellant has been implicated in the present case.

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21. We have carefully gone through the evidence on record, which consists of documentary evidence as well as oral testimony. This is not a case of direct evidence against the accused appellant. This is also not a case falling in the category of circumstantial evidence, inasmuch as none of the circumstances have been produced by the prosecution to implicate the accused appellant.

22. PW-1 and PW-2 are the star prosecution witnesses, who are parents of the deceased. PW-2 admittedly was not present in the village when the incident occurred. PW-1 is the mother, who also admits that she has not seen the accused appellant committing the offence. She claims to have learnt of the complicity of accused appellant but no person has been identified from whom information has been received. None has otherwise been produced who has either seen the incident or any incriminating material against the accused appellant has been produced.

23. Admittedly, there is no recovery from the accused appellant. It is also not the case that dead body has been recovered on the pointing out of the accused appellant. No weapon of assault has been recovered from the appellant. In the absence of any evidence produced by the prosecution to implicate the accused appellant, we are amazed as to how the prosecution on the basis of such non-existent material could either implicate the accused appellant or the court of sessions could have convicted the accused appellant.

24. The only basis to implicate the accused appellant is the suspicion on account of alleged reclaiming of land by the informant from the accused appellant about three years back.



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Mere apprehension howsoever strong cannot be the substitute for evidence which alone can justify implication of an accused.

25. In the absence of evidence worth the name we find it difficult to approve the judgment of conviction and sentence of the trial court in the facts of the present case. It appears that the trial court has not carefully examined the records and in its anxiety to convict the accused has proceeded to deliver the judgment even without any evidence appearing on record against the accused appellant.

26. We are also informed that the accused appellant is in jail since 2012. It is unfortunate that despite there being no evidence against the accused appellant he has been forced to remain in jail for over twelve years. We are tempted to make harsh observations not only against the Investigating Officer but also the Presiding Officer but we refrain from doing so as they have not been heard in the matter. Nevertheless, we are disappointed by the manner in which a person is incarcerated in jail for over twelve years without any evidence against him.

27. From the discussions and deliberations held above, we have no hesitation in coming to the conclusion that the prosecution has failed to establish its case against the accused appellant beyond reasonable doubt. We also hold that the court below has not evaluated the evidence led during trial in correct perspective and, therefore, the impugned judgement and order of conviction and sentence is liable to be reversed.

28. Consequently, the appeal succeeds and is allowed. The judgment and order of conviction and sentence dated 23.06.2016 is hereby set aside. The appellant is acquitted of the charges levelled against him. Since the appellant is in jail,

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he shall be released forthwith, unless he is wanted in any other case, subject to compliance of section 437A Cr.P.C.

29. Copy of this judgment shall be communicated to the Chief Judicial Magistrate concerned as also the concerned Superintendent of Jail for necessary compliance.

**Order Date:-** 16.04.2024

Ashok Kr.