



RESEARCH ARTICLE

BIHAR'S 1ST JUDGMENT AFTER THE ENFORCEMENT OF NEW LAWS -THROUGH DNA STR ANALYSIS

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ABSTRACT

This is the Bihar's 1st judgment provided by the Court of Session by implementing the new laws, BNSS, BNS and BSS. By application of the judicial mind, the better interpretation of the law has come up. In the case of "*BIHAR Vs. ANKIT KUMAR & ANR. SENTENCE*", the court held the accused guilty of murder by provided life imprisonment. In the new law scientific evidence plays a crucial role, as in BSS, the concept of Forensic evidence has provided, in BNSS, the Video graphing of the forensic evidence and crime scene must be done and provided to the authorities. Modernisation impacted in crimes also, crime also get modernised because of which, modernisation of law was needed. It has come up with new form of law and penalties.

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INTRODUCTION

Before independence, the British government were ruling over India so, it was obvious that the criminal justice system of India would be inspired from the penal legal system of British government. Criminal Justice System of India is one of the oldest forms of justice. The Indian Penal Code, 1860, The Criminal Procedure Code, 1973, The Indian Evidence Act, 1872 all of these were made during the British rule. And, even after the 76th year of Independence, our justice system was governing from the British rule. So, with changing of time, and India needs new modern criminal justice by repealing old British made laws. So, with the thought of establishment of Modern Justice System, the government was presented the bill of new laws in the Parliament, which contain The Bharatiya Nyaya Sanhita, The Bharatiya Nagarik Suraksha Sanhita, The Bharatiya Sakshya Adhiniyam. It replaced the old laws, and has enforced on 1st July 2024. In nowadays, Scientific evidence plays a vital role in justice system. It helps the court in fast and fair trial. In BNSS, it mandates forensic investigations for offences carrying sentences exceeding 7 years, ensuring thorough evidence gathering.

This is a departure from CrPC, which left the use of forensics at the discretion of the police, leading to potential inconsistencies.¹"SECTION 176 (3)- Procedure for investigation.—"On receipt of every information relating to the commission of an offence which is made punishable for seven years or more, the officer in charge of a police station shall, from such date, as may be notified within a period of five years by the State Government in this regard, cause the forensic expert to visit the crime scene to collect forensic evidence in the offence and also cause videography of the process on mobile phone or any other electronic device: Provided that where forensic facility is not available in respect of any such offence, the State Government shall, until the facility in respect of that matter is developed or made in the State, notify the utilisation of such facility of any other State."² The practice of identifying the properties of evidence and comparing pieces of evidence to each other or to a source of origin is what forensic scientists use to provide direct links

¹ Pg no. 6,Capsule Course on Forensic Science Approaches in New Criminal Laws, National Forensic Science University, Ministry of Home Affairs

² The Bharatiya Nagarik Suraksha Sanhita, 2023, ACT NO. 46 OF 2023, 1st July 2024.

between evidence and offenders.³ The advent of DNA typing has allowed scientists to match samples of blood, semen, and other materials to individual offenders. Use of these techniques makes it possible to demonstrate links such as those placing an individual offender at a crime scene, determining injurious contact between a victim and a specific offender.⁴

In BSA, 2023," *Section 39- Opinion of Experts- When the Court has to form an opinion upon a point of foreign law or of science or art, or any other field, or as to identity of handwriting or finger impressions, the opinions upon that point of persons especially skilled in such foreign law, science or art, or any other field, or in questions as to identity of handwriting or finger impressions are relevant facts and such persons are called experts.*"

FACTS: In reference to the murder of 03 persons with sharp weapons on the roof of villager Tarkeshwar Singh's House in Dhamadih Village under Rasulpur police station of Saran district on 17th July 2024, Rasaulpur Police Station case no 133/24 dated-17.07. 2024 under Section 103(1)/109(1) 329(4)3(5) BNS was registered and as per the instructions of Superintendent of Police, Saran, following a thorough and prompt investigation and action, two accused 1. Sudhanshu Kumar alias Roshan, father- Santosh Ram 2. Ankit Kumar, father- Sunil Ram, both resident of Rasulpur, Police Station- Rasulpur, District-Saran were arrested within 01 hour and sent to judicial custody, after completing a detailed and scientific investigation on other points in a scientific manner at fast pace, and after submitting the charge sheet against the accused in the Hon'ble Court within 14 days, the Hon'ble Court has started speedy trial from 13th August 2024 and after conducting the trial, on 03 September 2024, both charge-sheeted accused were found guilty and convicted under Sections 103(1)/109(1)329(4) BNS (Bhartiya Nyay Sanhita). Today, on 05 September 2024, on the 50th day of the case, the Hon'ble Court of Mr. Puneet Kumar Garg. Honorable District and Sessions Judge of Saran praised the investigation done by Saran Police in relation to this case, validating it and sentenced both the accused found guilty to Life imprisonment and a fine of 25-25 Thousand rupees. Saran Police has also requested the concerned authorities to provide maximum compensation to the victim's family in this case under the "Victim Compensation Scheme".

JUDGMENT

Considering the submissions of the learned counsels for both sides and perusing the record of this case and the judgment delivered on 03.09.2024 this court finds that the offences committed by the convicts have been established and proved by the prosecution. In this case apart from other sections of B.N.S, accused persons has been convicted u/s 103 (1) of B.N.S. And as per this section Whoever commits murder shall be punished with death or imprisonment for life, and shall also be liable to fine. On consideration of the entire set of attendant facts and circumstances of the case in the light of mitigating and aggravating circumstances including the nature and the mode/manner of commission of the crime, the act and conduct of the accused/convicts, their age and antecedents as well as the larger interest of justice, the life imprisonment is an adequate sentence and the case does not warrant the capital

punishment. Hence the convicted persons Ankit Kumar and Raushan @ Sudhanshu Kumar are sentenced to undergo imprisonment for life with fine of Rs. 25,000/- (Twenty five Thousand) on each of the convict for the offence committed u/s 103 (1) of B.N.S. In default of payment of fine they are further sentenced to undergo simple imprisonment for the period of six months. Further, the accused-convicts are also directed to undergo rigorous imprisonment for six years with fine of Rs. 10,000/- (Ten Thousand) on each of the convict for the offence punishable u/s 109 (1) of B.N.S. In default of payment of fine they are further sentenced to undergo simple imprisonment for the period of three months. Further, the accused-convicts are also directed to undergo rigorous imprisonment for six months with fine of Rs. 5000/- (Five Thousand) on each of the convict for the offence punishable u/s 329 (4) of B.N.S. In default of payment of fine they are further sentenced to undergo simple imprisonment for the period of two months. The sentences awarded to the convicted persons shall run concurrently except the sentences made in default of payment of fine.

The Hon'ble Supreme in case titled as Suresh v. State of Haryana, (2015) 2 SCC 227 as below, held as under:-

At the stage of final hearing it is obligatory on the part of the court to advert to the provision and record a finding whether a case for grant of compensation has been made out and, if so, who is entitled to compensation and how much. It is also further observed in para 19 of this judgment as below. In fact even without such petition, the High Court ought to have awarded compensation. There is no reason as to why the victim's family should not be awarded compensation under Section 357-A CrPC by the State. In the present case, admittedly all the family members of the informant were killed by the accused/convicts. Informant, Shobha devi is the only victim who has to suffer unbearable pain & suffering for whole of her life. Hence this court observed that compensation must be awarded to her.

In the case of MANOHAR SINGH Vs. STATE OF RAJASTHAN, reported in (2015) 3 SCC 449, the Hon'ble Supreme Court observed as follows:- "Just compensation to the victim has to be fixed having regard to the medical and other expenses, pain and suffering, loss of earning and other relevant factors. While punishment to the accused is one aspect, determination of just compensation to the victim is the other. At times, evidence is not available in this regard. Some guess work in such a situation is inevitable. Compensation is payable Under Section 357 and 357-A. While Under Section 357, financial capacity of the accused has to be kept in mind, Section 357-A under which compensation comes out of State funds, has to be invoked to make up the requirement of just compensation."

In view of the above settled position for the victim compensation, though the application for the victim compensation has not been filed but I am of the view that the State of Bihar is liable to pay compensation under section 357A Cr.P.C. to the informant Shobha Devi who has lost her husband as well as her two daughters. She has to suffer mental pain & agony for whole of her life as no one remains in her life. As such the Secretary, District Legal Services Authority, Saran, Bihar is recommended for compensation to her under the Victim Compensation Scheme formulated by the State

³ Ashu Kumar Jha & others, "Establishment of Primary Crime Scene in a Mysterious Murder Case Through DNA – STR Analysis – A Case Study" Volume 10, Issue No 2, 01 February, 2023

⁴ IBID 1

Government for such cases: The period already under gone by the convict shall be set off in computing the period of sentences awarded against the convict in accordance with section 468 B.N.S.S. Copy of the judgment; be sent to the Secretary, District Legal Services Authority, Saran, Bihar, for the compliance and payment of compensation as directed above. Let a copy of this judgment and order be furnished to the convict persons free of cost. In this case, Investigation team has completed the investigation in just 14 days and thereafter bring all the witnesses before the court in time. It is pertinent to mention that not only the investigation team but also the prosecution has put the mammoth efforts for getting the accused persons convicted. I expect the same in other cases also.

Copy of the judgment be also forwarded to the Ld. District Magistrate, Saran as per the provision of Section 406 B.N.S.S.

Let conviction warrants be prepared accordingly. Case property, if any, be disposed of as per rules, after lapse of period of filing of appeal or revision against this judgment or the outcome of the same, as the case may be. File be consigned to Record Room after compliance of all the requisite steps. This judgment is provided by the judiciary, upon new law with the help of the Forensic Evidences. It is the Bihar's 1st judgment under the new law.

DNA PROFILING

DNA profiling is the process of determining an individual's DNA characteristics, which are as unique as fingerprints. DNA analysis intended to identify a species, rather than an individual, is called DNA barcoding. DNA profiling is a forensic technique in criminal investigations, comparing criminal suspects' profiles to DNA evidence so as to assess the likelihood of their involvement in the crime.⁵ It is also used in parentage testing,⁶ STR analysis is a tool in forensic analysis that evaluates specific STR regions found on nuclear DNA. The variable (polymorphic) nature of the STR regions that are analysed for forensic testing intensifies the discrimination between one DNA profile and another.⁷ The system of DNA profiling used today is based on PCR and uses simple sequences⁸ or short tandem repeats (STR). This method uses highly polymorphic regions that have short repeated sequences of DNA.⁹

MATERIAL AND METHODS

Sample Collection: Blood samples were collected from the cases of FSL Team which are as follows

- The paper packet marked-A said to contain blood-stained gauze cuttings

⁵Murphy, Erin (2017-10-13), "Forensic DNA Typing". Annual Review of Criminology, 1: 497–515. doi:10.1146/annurev-criminol-032317-092127. ISSN 2572-4568.

⁶Petersen, K., J. Handbook of Surveillance Technologies, 3rd ed. Boca Raton, FL. CRC Press, 2012; p815.

⁷National Commission on the Future of DNA Evidence (July 2002). "Using DNA to Solve Cold Cases" (PDF). U.S. Department of Justice. Retrieved, 2006; 08-08.

⁸Tautz D. (1989). "Hyper variability of simple sequences as a general source for polymorphic DNA markers". Nucleic Acids Research, 17(16): 6463–6471. doi:10.1093/nar/17.16.6463.

⁹Scientific Working Group on DNA Analysis Methods (SWGDM). Guidelines for the validation of probabilistic genotyping systems. FBI Laboratory, 2015. <https://www.swgdam.org/publications> (accessed September 10, 2019).

- The paper packet marked-B said to contain blood-stained gauze cuttings
- The paper packet marked-C said to contain blood-stained gauze cuttings
- The paper packet marked-D said to contain blood-stained gauze cuttings
- The paper packet marked-E said to contain blood-stained gauze cuttings.
- The paper packet marked-F said to contain blood-stained soil.
- The paper packet marked-H said to contain blood stained (R-L) accused gauze cuttings.
- The paper packet marked-I said to contain blood stained (L-Leg) accused gauze cuttings
- The paper packet marked-J said to contain blood stained (R-hand) accused gauze cuttings.
- The paper packet marked-S said to contain blood-stained jeans pants cuttings.
- The paper packet marked-T said to contain blood-stained knife swab gauze cuttings.
- The paper packet marked-B/1 said to contain blood-stained gauze cuttings.
- The paper packet marked-B/2 said to contain blood-stained bed sheet cuttings.
- The paper packet marked-B/3 said to contain blood-stained pillow cover cuttings.
- The paper packet marked-P/1 said to contain blood-stained T-shirt cuttings.
- The paper packet marked-P/2 said to contain blood-stained jeans pants cuttings.
- The paper packet marked-P/3 said to contain blood-stained bra cuttings.
- The paper packet marked-Q/1 said to contain blood-stained T-shirt cuttings.
- The paper packet marked-Q/2 said to contain blood-stained pants (Trousers) cuttings.
- The paper packet marked-Q/3 said to contain blood stained janghia cuttings.
- The paper packet marked-R/1 said to contain blood-stained white colour ganji cuttings.
- The paper packet marked-R/2 said to contain blood-stained black janghia cuttings.
- The paper packet marked-R/3 said to contain blood-stained pants cuttings.
- The paper packet marked-G said to contain control soil.

Material required

- Blood-stained gauze cuttings
- Automate Express DNA Extraction System
- Real Time PCR/ Biophotometer
- Globalfiler (TM) IQC PCR Amplification Kit
- The GeneAmp® PCR System 9700
- Genetic Analyzer 3500 XL

Extraction of DNA

The DNA from above samples was extracted using the PrepFiler Express Forensic DNA Extraction Kit. Cell lysis using the PrepFiler Express Kit was performed by adding 500 µL of the Prep Filer lysis solution to the lysis using the Prep Filer Express Kit was performed by adding 500 µL of the Prep Filer lysis buffer solution to the biological sample in a LySep

column assembly. The PrepFiler lysis solution is prepared by mixing 500 µL of PrepFiler lysis buffer and 5 µL of 1.0 M freshly prepared dithiothreitol (DTT). The lysis mixture was incubated at 70 °C for 40 min with shaking at about 750 rpm using an Eppendorf Thermomixer. Following lysis, the LySep column assembly was centrifuged for 2 min at 10,000 x g to transfer the lysate to the sample tube. The lysate in the sample tube was processed on the Automate Express Forensic DNA extraction instrument using the PrepFiler Express instrument protocol. The DNA extracts obtained were stored at 4 °C and -20 °C for short- and long-term storage, respectively.

Quantitation of DNA: DNA extracted from above-described sample was quantified using the Quantifiler Duo DNA Quantification Kit on an Applied Biosystems 7500 Real-Time PCR System according to manufacturer recommended procedures.

STR Analysis: Quantified DNA was processed for STR profiling using the AmpF^{STR} Identifiler PCR Amplification Kit. The extracted DNA were subjected to multiplexing PCR reaction for co-amplification of 21 microsatellite Loci of Autosomal STR and DYS391, Yindel and Amelogenin marker. Samples were amplified on a GeneAmp 9700 thermal cycler, electrophoresed on 3500 XL Genetic Analyzer, and analyzed using GeneMapper ID-X Software v1.6 with respect to Gene Scan600lize size standard according to manufacturer recommended procedures (Applied Biosystems).

CONCLUSION

New law has come in enforce by replacing the old penal laws for the establishment of the modern criminal system. Bihar's first judgment upon criminal case "*Thes state of bihar vs. ankit kumar & anr. sentence dated- 08.09.2024*". In this case , the implementation of the new law could be seen . In this case the accused has been held guilty with the help of the forensic evidence, "The human female Autosomal STR genetic profile generated from the source of exhibit marked-H (Source Blood stained gauze cuttings Right Legs accused) that matches with the genetic profile generated from the source exhibit market-P/3 (Source Blood stained bra cuttings) and exhibit marked Q/3 (Source Blood stained janghia cuttings)", DNA Analysis and provided life imprisonment". This will be seen as the application of the judicial mind in accordance of the new law.
