

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.100 of 1993

Arising Out of PS.Case No. -87 Year- 1987 Thana -TOWN District- MUZAFFARPUR

- =====
1. Ravi Shankar Agrawal, son of Dhabil Chandra Agrawal
 2. Gita Devi, wife of Shri Dhabil Chandra Agrawal
- Both residents of Mohalla Dhobia Galli, Saraiyaganj, P.S. Town, District Muzaffarpur

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : None

For the State : Mr. A.K. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 30-06-2015

This appeal is directed against the judgment/ order dated 16.02.1993, passed by 1st Additional District and Sessions Judge, Muzaffarpur, in Sessions Trial No. 133/89/ 13/91 whereunder the two appellants i.e. the son, mother have been convicted for the offence under Section 302/34 of the Penal Code and sentenced to suffer rigorous imprisonment for life.

2. Prosecution case, as set out in the fardbeyan of Manju Sureka, daughter of Ram Ballabh Jalan of Mohalla Daldali Bazar, P.S. Town Muzaffarpur recorded by Sri Kalika Nandan Singh of Town Police Station on 30.03.1987 at 10.15 A.M. in the house of the deceased Sarita Devi, wife of Ravi Shankar Agrawal, is that deceased Sarita Devi is her own sister-in-law, who was married in



April, 1985 prior to her marriage held on 03.07.1986 and since then she had connections with Sarita Devi and her family. Informant further stated in the fardbeyan that she often visited her sister-in-law and she informed her that her husband, mother-in-law are threatening her to either leave or suffer torture, assassination. Sarita Devi also told the informant that in her presence they are cordial but after she returns they act otherwise. Informant further stated that Sarita Devi was not even willing to come to her parent's house as her husband, mother-in-law threatened her that if she goes to her parent's house they may leave her. Because of such threat she never used to come to her parent's house. Informant also stated that as and when Sarita Devi wrote letters, the same was also not allowed to be posted by her husband, mother-in-law. Informant further stated that on the date of fardbeyan at about 7.00 A.M. Ravi Shankar Agrawal, husband of Sarita Devi came to her house, told her that there is emergency in his house and his mother is calling her whereafter informant asked his brother Shyamanand Jalan to visit the house of Ravi Shankar Agrawal, who went to his house but having found the door locked from inside, which was not opened, returned back and informed the informant that the door was locked from inside. Informant along with her mother went to the house of Ravi Shankar Agrawal, saw the dead body of her sister-in-law Sarita Devi in the court-yard covered, tied with a cotton sheet. Her husband was standing by the side of the

coffin and was preparing to take the dead body for cremation. Informant asked Ravi Shankar Agrawal that she will not allow the dead body to be taken for cremation unless the parents of the deceased come to his house. In the meantime, police arrived, recorded her fardbeyan and performed the inquest of the dead body. After performing inquest dead body of Sarita Devi was sent for post mortem to S.K.M.C.H., Muzaffarpur which was received in the post mortem house of S.K.M.C.H. on 30.03.1987 at 3.00 P.M. and post mortem conducted on the same day at 3.30 P.M.

3. On the basis of the aforesaid fardbeyan Officer-in-Charge, Town Police Station, Muzaffarpur registered Town P.S. Case No. 87/87 dated 30.03.1987 for the offences under Sections 498-A, 302/34 of the Penal Code against both the husband, mother-in-law of the deceased. First Information Report was dispatched to the court of Chief Judicial Magistrate, Muzaffarpur on 31.03.1987, which was received by him on the same day. In the light of the fardbeyan, further statement of the informant, police statement of the witnesses as also the inquest, post mortem report and the report received from the Forensic Science Laboratory, Patna Investigating Officer of the case submitted charge-sheet finding the case true against both the husband, mother-in-law of the deceased. On the basis of the charge-sheet cognizance was taken and after supply of police papers case was committed to the Court of Sessions. Sessions Court framed charges

against both husband, mother-in-law of the deceased under order dated 22.02.1991 to which both pleaded not guilty and claimed to be tried.

4. In support of the charge prosecution examined as many as eight witnesses, out of whom P.W. 1 Shyamanand Jalan is the brother of the informant. P.W. 2 Sajjan Kumar Sureka is the brother of the deceased, who was requested by the husband of the deceased to come to his house at the time of occurrence on the pretext that there was some emergency in his house and he is being called by the mother-in-law of the deceased. P.W. 3 Shankar Lal Sureka is the father of the deceased. P.W. 4 Manju Sureka is the informant, sister-in-law of the deceased. P.W. 5 Dr. Manoranjan Kumar Srivastava at the relevant time was Associate Professor, Forensic Medicine, S.K.M.C.H., Muzaffarpur and conducted autopsy on the dead body of Sarita Devi. P.W. 6 Sunita is the sister of the informant. P.W. 7 Savitri Jalan is the mother of the informant. P.W. 8 Kalika Nandan Singh is the Investigating Officer of the case.

5. From the prosecution case, as set out in the fardbeyan and the examination-in-chief of the informant, it appears that the deceased Sarita Devi was married to Accused No. 1 in April, 1985 and was being tortured by her husband, mother-in-law. She used to complain about their ill-behaviour to the informant, which fact is stated not only in the fardbeyan but also in the



deposition of the informant and other witnesses. Sarita Devi, however, never lodged any case of torture against the husband and the in-laws. On the date of occurrence also as per fardbeyan statement of P.W. 4 it is evident that husband of the deceased had come to the house of the informant informing that she is being called by her mother to attend the emergency in his house whereafter P.W. 4 asked P.W. 1 Shyamanand Jalan to visit the house of Accused No. 1, who went there but the house was locked from inside, as such, he could not see the occurrence in the house and returned back whereafter informant came to the house of Accused No. 1 and saw the dead body of Sarita Devi lying in the court-yard. Accused No. 1 was also standing next to the coffin and making preparation for funeral. Informant proclaimed that she will not allow Accused No. 1, the husband of the deceased to take the dead body for cremation until parents of the deceased arrived, meanwhile, Kalika Nandan Singh, Sub-Inspector Town Police Station came to the house of Accused No. 1, recorded the fardbeyan statement of P.W. 4 on 30.03.1987 at 10.15 A.M. and performed the inquest proceeding on the dead body of Sarita Devi on the same day at 10.45 A.M.

6. From perusal of the inquest report (Exhibit 5), it, however, appears that the dead body was covered with a red Sari and there were burn injuries on the person of the deceased. From the



post mortem report it, however, appears that the burn injuries found on the face, front of chest, back of chest, upper extremity, both thighs and some parts of the legs were post mortem. On opening and dissection of the dead body no sign of asphyxia found on the trachea or lungs. Viscera found congested and preserved. Evidence of two months' pregnancy also found in the uterus. Autopsy surgeon declined to record any opinion about the cause of death and stated in the report that cause of death will be ascertained after chemical analysis report is made available. Autopsy surgeon, however, categorically stated in the report that the injuries were post mortem burn injuries.

7. From the evidence of the prosecution witnesses, namely, the informant as also the other witnesses, it does not appear as to how deceased suffered death. Prosecution witnesses only speak about the torture made by the appellants to the deceased but there is nothing on record to suggest that either the deceased or the prosecution witnesses including the informant, to whom deceased had been reporting about the torture as and when she visited her, ever submitted any written report about such torture to the police or even filed any complaint. In the circumstances, it may not be safe to accept the oral testimony of the prosecution witnesses about the appellants subjecting the deceased to torture.

8. There is another aspect of the matter. From

perusal of post mortem report there does not appear any cause of death and viscera of the deceased having been found congested was preserved. From the chemical analysis report of the viscera (Exhibit-6), it also does not appear that the deceased was ever poisoned. The evidence on record does not indicate any material on the basis of which it can be concluded that the deceased suffered unnatural death. In the light of the post mortem report the deceased having suffered post mortem burn injuries, it was for the prosecution party to have explained as to how such post mortem burn injuries were caused on the person of the deceased.

9. Prosecution having not established that Sarita Devi died unnatural death, it may be difficult for us to maintain the conviction of both the appellants and both are granted benefit of doubt. Appeal is, accordingly, allowed. Judgment/ order dated 16.02.1993 is set aside. Appellants have been released on bail, as such, they are being directed to be relieved of the liability of their respective bail bonds.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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