

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 188 of 1993

Against the judgment of conviction dated 29.03.1993
and order of sentenced dated 03.04.1993, passed by Sri
Hari Shankar Prasad, 6th Additional Sessions Judge,
Bhagalpur, in Sessions Case No. 269 of 1988/141 of
1990 arising out of Sabour P.S. Case No. 112 of 1987

- =====
1. Anandi Sah, son of late Bhola Sah
 2. Draupadi Devi, wife of Anandi Sah, all are residents of
village Thatheri Tola, Sabour, P.S. Sabour, district
Bhagalpur

..... Appellants

With

Criminal Appeal (DB) No. 283 of 1993

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Arbind Kumar Sah, son of Anandi Sah, resident of village
Thatheri Tola, Sabour, P.S. Sabour, district Bhagalpur

..... Appellant

Versus

The State of Bihar

..... Respondent

(In both the Appeals)

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Appearance :
(in both the appeals)

For the Appellants : None

For the Respondent : Mr. Ajay Mishra, APP

Mr. Kumaresh Singh, Advocate as *Amicus Curiae*

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 25-03-2015

Under the judgment, dated
29.03.1993, passed, in Sessions Case No. 269 of
1988/141 of 1990, by learned 6th Additional Sessions

Judge, Bhagalpur, the appellants, Anandi Sah, Draupadi Devi and Arbind Kumar Sah, stand convicted under Sections 302 and 328 read with Section 34 of the Indian Penal Code. Following their conviction under Sections 302 and 328 read with Section 34 of the Indian Penal Code, the accused-appellants have been sentenced to suffer imprisonment for life. No separate sentence has been passed for offence under Section 328 of the Indian Penal Code.

2. The case of the prosecution, as unfolded at the trial, may, in brief, be set out as under:

(i) Deceased Rani Devi was maternal grand-daughter of the informant, Reshma Devi (P.W. 3). In the night of 15.05.1987, when the informant was asleep in her house, a woman, unknown to the informant, came to her house, at about 11.00 P.M., woke her up and told her that husband and parents-in-law of Rani Devi had killed her by administering poison. Before, however, informant could ask the said woman as to who she was, the woman went away.

(ii) The informant, then, went to the

house of accused, Anandi Sah and saw the dead body of Rani Devi lying in the courtyard and, at that time accused, Anandi Sah, Draupadi Devi and Arbind Kumar Sah were leaning over the said dead body. On seeing Rani Devi lying there, the informant started crying, accused Arbind Kumar Sah closed her mouth and forbade her from crying and told her that she should not cry as Rani Devi was still alive.

(iii) On hearing the informant's cry, many of the co-villagers assembled there and saw the dead body of Rani Devi lying in the courtyard of the house of the accused. Though the accused stopped the informant from going to the Police Station, she managed to escape and went rushing to Sabour Police Station and reported orally about the occurrence to the police there. The oral information, so given, regarding the occurrence, by the informant, Reshma Devi, was reduced into writing and treating the same as First Information Report, Sabour P.S. Case No. 112 of 1987 was registered, under Sections 328/302/34 of the Indian Penal Code, against the three accused aforementioned.

3. During investigation, police visited the place, where the said dead body was found, and held *inquest* over Rani Devi's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 328/302/34 of the Indian Penal Code, against accused aforementioned.

4. At the trial, when *charges*, under Sections 328 and 302 read with Section 34 of the Indian Penal Code, were framed against the accused, all the accused pleaded not guilty thereto.

5. In support of their case, prosecution examined as many as 10 (ten) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Criminal Procedure Code and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. While denying the commission of the alleged offences, the defence case is that Rani Devi wanted to go with her husband, accused Arbind Kumar

Sah, to Ahmadabad, but her husband refused to take her to Ahmadabad due to fracture, which his mother, accused Draupadi Devi, had suffered and, annoyed and hurt by the refusal of her husband to take her to Ahmedabad, Rani Devi gulped some solution and despite the efforts, made by accused persons, Rani Devi died.

6. In support of their case, the defence, too, adduced evidence by examining three witnesses.

7. Having, however, arrived at the finding that accused-appellants, Anandi Sah, Draupadi Devi and Arbind Kumar Sah, had been proved guilty of the *charge* under Sections 302 and 328 read with Section 34 of the Indian Penal Code, the learned trial Court convicted them accordingly. Following their conviction, sentence has been passed against the convicts, Anandi Sah, Draupadi Devi and Arbind Kumar Sah, as mentioned above.

8. Aggrieved by their conviction and the sentences passed against them, the convicts, Anandi Sah, Draupadi Devi and Arbind Kumar Sah, have preferred this appeal.

9. Both these appeals have been heard together and are being disposed off by this common judgment as the two appeals have arisen out of the judgment of conviction, dated 29.03.1993, and the order of sentences, dated 03.04.1993.

10. We have heard Mr. Kamaresh Singh, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecution, appearing for the State.

11. While considering the present appeal, it may be noted that according to the evidence of the doctor (P.W.7), who conducted the *post mortem* examination on, 16.05.1987, at 03.00 P.M., on the dead body of Rani Devi, he found following injuries on her dead body:-

- "(i) *Bruise and abrasion 2½" x 1½" at right arm above elbow lateral with prissnu band of rope as post mortem wound.*
- (ii) *Multiple abrasion on right elbow posterior (ante mortem)*
- (iii) *Abrasion and bruise with prissnu band of rope at right wrist (post*



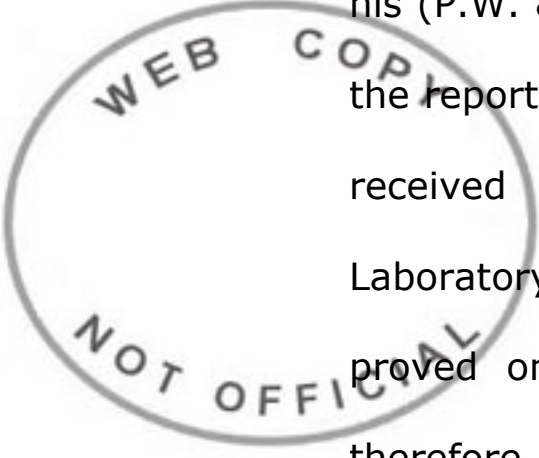
mortem wound)

- (iv) Linear abrasion at abdomen just above and right to umbilicus (ante mortem)*
- (v) Multiple strain and semi lunar linear abrasions and bruises on both breasts and around nipples more on right breast (nail and pressure) mark like ante mortem."*

12. According to the doctor, injury Nos. (ii), (iv) and (v) were *ante mortem* and rest were *post mortem* and weapons used were hard blunt substance for injury Nos. (i), (ii), (iv) and (v) may be caused by nails, whereas injury No. (iii) may be caused by hard blunt substance and the cause of death, in his tentative opinion, was poisoning. P.W. 7 has clearly deposed that he can not give confirmatory opinion about the cause of death without going through the report of viscera analysis.

13. From the medical evidence on record, it is clear that the doctor could not determine the cause of death of Rani Devi.

14. Bearing in mind what has been indicated above, when we turn to the evidence of



Investigating Officer (P.W. 8), we notice that according to his (P.W. 8) evidence, though viscera had been collected, the report of the chemical examination of viscera was not received by him. The report from Forensic Science Laboratory, where the viscera was sent, has not been proved on record. The cause of death of Rani Devi, therefore, remains undetermined and undisclosed.

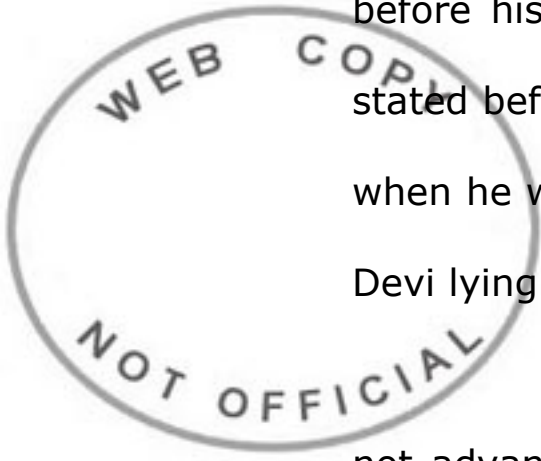
15. In the light of the fact that the cause of death of Rani Devi is not known, when we turn to the evidence of P.W. 6, who is uncle of the deceased, we find his evidence is that on receiving information that Rani Devi had died, he went to her house and saw Rani Devi lying with her hands and legs tied and, on seeing her condition, he fainted and, thereafter, he did not know as to what had happened. It is also in the evidence of P.W. 6 that he went to Sabour Police Station after getting up in the morning and saw Rani Devi's dead body lying on a rickshaw.

16. Notwithstanding the evidence so given by PW 6, his previous statement, recorded by the Investigating Officer, is to the fact that he had received

information regarding the occurrence just about an hour before his statement was recorded and that he had not stated before the police that on receiving the information, when he went to the house of the accused, he found Rani Devi lying dead with her hands and legs tied.

17. Thus, the evidence of P.W. 6 does not advance the case of the prosecution as he does not know the cause of death of Rani Devi.

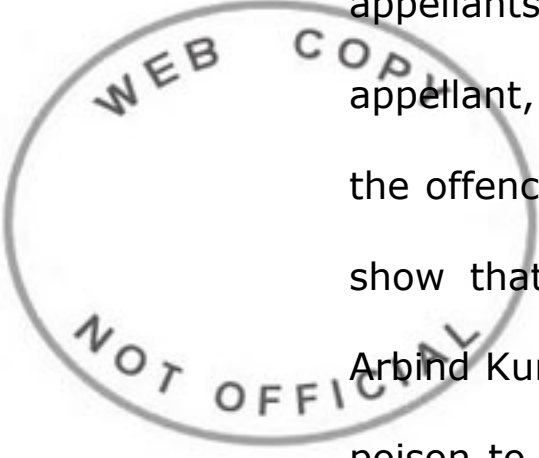
18. Turning the evidence of the informant (P.W. 3), we notice that according to her evidence, while she, in the night of occurrence, was sleeping in her house, a woman came to her at about 10.00 or 11.00 A.M. and told her to go and see Rani Devi, who had been killed by her husband and her parents-in-law by administering poison, whereupon she (P.W. 3) went to the house of the accused and saw Rani Devi lying on the floor with froth coming out of her mouth and as she started crying, accused, Arbind Kumar Sah, closed her mouth and many people arrived there. It is in the evidence of the informant (P.W. 3) that she went to the Police Station and reported there about the death of



Rani Devi. She alleges that Rani Devi's mother-in-law, Draupadi Devi, was in illicit relation with Laxmi Sao and since Rani Devi had protested, all the accused had killed her.

19. There is nothing in the evidence on record to show that any illicit relation was being maintained by the accused-appellant, Draupadi Devi, with one Laxmi Sao. There is also nothing in the evidence of the informant to show that any of the accused had stopped her from going to the Police Station and/or from reporting the occurrence to the police. There is also no evidence given by the informant that any of the accused-appellants had ever raised any demand for dowry or money or any valuable security and/or subjected Rani Devi to cruelty in any form.

20. What emerges from the above discussion is that apart from the fact that the cause of death of Rani Devi is not known, there is no evidence to show that any of the accused-appellants had ever subjected Rani Devi to cruelty. This apart, since the house, wherein Rani Devi used to live, had, admittedly,



been in occupation and use of, at least, three accused-appellants and all of them used to reside there, accused-appellant, Arbind Kumar Sah, can not be held guilty of the offence charged with inasmuch as there is nothing to show that at the time, when Rani Devi died, accused Arbind Kumar Sah was the person, who had administered poison to Rani Devi even if she died of poison. Far from this, the evidence adduced by the defence, which has substantially remained unshaken, shows that Rani Devi consumed some solution in her house aggrieved by the fact that her husband had refused to take her to Ahmadabad, because her mother-in-law had sustained fracture of her leg.

21. Because what has been discussed and pointed out above, we are clearly of the view that there was no legally sustainable evidence on record to hold accused-appellants, Anandi Sah, Draupadi Sah and Arbind Kumar Sah, guilty of the offences charged with and they deserved to be acquitted.

22. In the result and for the foregoing reasons, we allow these appeals. The impugned

conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeals, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

23. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

24. Let the Amicus Curiae be paid a fee of Rs. 5,000/-.

25. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court, along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

N.A.F.R.
S.A./Kundan

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