

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.578 of 2009

Arising Out of PS.Case No. -271 Year- 1993 Thana –Lakhisarai (Chanan)
District- LAKHISARAI

- =====
1. Chando Yadav son of Late Ghuter Yadav @ Chuter Yadav.
 2. Sita Devi @ Rupiya Devi, wife of Chando Yadav
 3. Arvind Yadav son of Chando Yadav.

All resident of village Basmatiya, Police Station Chanan District- Lakhisarai.

.... Appellant/s

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Shri Rajendra Narain, Senior Advocate.

Shri Raj Kishore Sinha, Advocate

For the State : Susri Shashi Bala Verma, APP.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 16-04-2015

The present appeal is directed against the judgment of conviction dated 11.06.2009 and order of sentence dated 16.06.2009 consequently passed by the learned Additional Sessions Judge, Lakhisarai in Sessions Trial No.63 of 1998. The three appellants had been held guilty of committing offence under Section 302 Indian Penal Code and while appellant Arvind Yadav was directed to suffer rigorous imprisonment for life and to pay a fine of Rs.10,000/- in case he defaulted in making the payment of fine, the two appellants, namely, Chando Yadav and Sita Devi @ Rupiya Devi were directed to suffer simple imprisonment for life as also to pay a fine of



Rs.10,000/- . Both appellants Chando Yadav and Sita Devi @ Rupiya Devi were further held guilty of committing the offence under Sections 498A, 201 and 342 Indian Penal Code and each of them was directed to suffer simple imprisonment for three years and to pay a fine of Rs.3,000/- under Section 498A Indian Penal Code, rigorous imprisonment of seven years with a fine of Rs.5,000/- under Section 201 Indian Penal Code and finally for simple imprisonment for one year and to pay a fine of Rs.1,000/- under section 342 Indian Penal Code. As regards the sentence, the appellants were to suffer in case of non-payment of fine, the learned trial Judge had passed a consolidated order directing that each of them shall have to suffer imprisonment for a further period of one year.

2. P.W.1 Rajendra Yadav was the father of deceased Samudri Devi and admittedly the deceased was married to appellant Arvind Yadav. It does not appear disputed that the deceased Samudri Devi was residing on 04.08.1993 in the house of appellants and it is also not disputed that the dead body of Samudri Devi was found in a well at village-Basmatiya. Another undisputed facts were that the deceased had been murdered probably by being asphyxiated to death on account of heavy pressure being put on her neck.

3. In the above background, it was stated by P.W.1 in his fardbeyan that he had been informed by one Padarath Yadav (not



examined) that his daughter wanted to see him. The informant stated that he came to village-Basmatiya and arrived there at 5 P.M. when on being informed, the deceased came with a *lota* full of water and holding his feet, she started weeping. The informant soothed his daughter and asked her to point out the reason for which she was weeping. The deceased Samudri Devi is said to have stated to the informant P.W.1 that her husband was planning to commit her murder when the informant consoled her that it was not possible and he stayed in the house of the appellants.

4. It was stated by the informant that after he had retired after taking his meals in the night, he heard some cries and woke up and found that the five accused persons comprising of the three appellants and the daughter of the appellants Chando Yadav and Sita Devi @ Rupiya Devi as also her husband Suresh Yadav had put the deceased Samudri Devi on the ground and were strangulating her to death by putting a *lathi* across her neck. The accused persons were pressing the *lathi*. The informant protested by telling them as to why they were killing his daughter and further that if the deceased Samudri Devi was not acceptable to the family, the informant could very well take her back to his house. It was stated that appellant Arvind Yadav put a pistol on his temple and silenced when other appellants tied him at his feet and hands and put him into a room which was described by



the informant. After quite sometime, the informant heard some whispering sounds and further gathered with 8-10 persons were there who were removing the body of the deceased. Finally, when the informant was sure that the deceased Samudri Devi had been removed, he started weeping which attracted the people of the neighbourhood who untied his feet and hands and thus, the informant was freed.

5. The informant stated that on coming out of the confinement, he found that the members of the house hold had disappeared and he himself set out on the search of his daughter by telling the people of Basmatiya village about the incident. lastly, at about 4 A.M. on 05.08.1993, the informant could learnt that the dead body was lying in the well situated east of the house of the appellants and then, he went there and found that it was that of his daughter the informant sent an information to the concerned police station about the incident through a Chaukidar.

6. As regards the reason for committing the murder of deceased Samudri Devi, it was stated that from the very time of the marriage of his daughter to appellant Arvind Yadav, the said appellant along with his family members were requiring the informant to give a *Rajdoot* motorcycle which was not being given as a result of which, the accused persons had not performed the *Roksati* ceremony and

lastly, under the pressures of the villagers, the Roksati was performed and, lastly, the accused persons had committed the murder of his daughter.

7. The investigating officer has not been examined, as such, we do not know as to how the investigation had proceeded and how the officer who had recorded the fardbeyan on the basis of which, the FIR of the case (Ext-2) was drawn up came to the village to record the documents. However, what appears is that the inquest on the dead body was held at about 5 P.M. on 05.08.1993 and the dead body was sent for postmortem examination which was conducted by P.W.8 Dr. Arjun Prasad Singh, who had opined that the deceased Samudri Devi had been murdered by being asphyxiated to death. At any rate, what appears further is that after close of the investigation, the three appellants were sent up for trial which ended in the impugned judgment of conviction and order of sentence.

8. The defence of the appellants was of their innocence and false implication.

9. Eight witnesses were examined by the prosecution, out of whom, P.W.1 Rajendra Yadav, the informant of the case had only supported the prosecution story. P.W.2 Fulo Modi, P.W.4 Babu Lal Yadav, P.W.5 Sadhu Saran Yadav, P.W.6 Mahendra Yadav and P.W.7 Sato Yadav had all turned hostile. P.W.3 Brij Nandan Yadav



was one of the relatives of the informant and he had not given an eye witness account to the occurrence rather he stated that he heard about the incident and came to the well from where the dead body was retrieved. We have already pointed out that P.W.8 Dr. Arjun Prasad Singh had held autopsy on the dead body and had issued the postmortem examination report (Ext-1).

10. The defence had also examined two witnesses, namely, D.W.1 Dev Saran Rajak and D.W.2 Nawal Kishore Yadav, those witnesses were on fact that the dead body had been recovered very early in the morning and not in the evening as was claimed by the informant.

11. It was contended by Shri Rajendra Narain, learned senior counsel appearing on behalf of the appellants that the informant has himself admitted that there was no demand for dowry ever made by the accused persons rather the evidence of P.W.1 indicated that it was a dowry-less marriage and no demand of anything was ever made by the accused persons. Submission was that the evidence further indicated as if the relationship between the two family members were very cordial and there had never been any complaint from the deceased to his parents. Shri Narain further contended that the solitary evidence of P.W.1 did not inspire confidence for the reason that no one was coming to support him that he had been tied on his hands and



feet and that he was freed from the confinement. It was further contended that P.W.1 admitted that he had incurred abrasion on his hands on account of his attempt to untie himself but he admitted that he did not show that injury to the investigating officer and also did not appear having been examined by any medical man. Submission was that his relatives were there in the village on account of his brother being married there besides his sister being also married to a man there but none of his relatives also turned up to support any part of the prosecution story. It was, lastly, contended that as per the evidence of P.W.1 in paragraph-25, he remained tied down from 12 O' clock in the night on 04.08.1993 till 6 O' clock in the morning on 05.08.1993 and after he was freed by the villagers, he did not go himself to the police station for almost 12 hours and lodged the report at 5.30 P.M. on 05.08.1993. Submission was that these circumstances attending on the evidence of P.W.1 make him an untrustworthy witness.

12. The facts presented through a first information report which is further supplemented or supplanted by the evidence of witnesses created situations of perplexity as regards the commission of a crime especially when it is a murder of a person. Here in the present case, we do not have a different situation than the situation of perplexity and a redial being presented through the FIR which was lodged by P.W.1 Rajendra Yadav. On the first place, we must be



anxious on recording seriously which they deserved to be viewed as a father was coming out as an eye witness to the incident as regards the murder of deceased Samudri Devi. His story was so forthright and acceptable at the first place that we find it a case of that class which could invite any stringent punishment but when we were taken through the evidence of P.W.1 by Shri Narain, we found ourselves at a loss as to how the facts could be fabricated to give it a serious and graver look to the story so as to ensuring the conviction of accused persons and further infliction of punishments of imprisonment for life.

The basic prosecution story was that since after the date of marriage of deceased Samudri Devi to appellant Arvind Yadav, who was a handicapped person as admitted by P.W.1. He was requiring the informant to give him a *Rajdoot* motorcycle. P.W.1 has himself admitted that the groom was a handicapped and one of his hands was not working. This evidence as admitted in paragraph-11 of P.W.1. That apart, we could have still acted on the allegation of demand of an article, like a motorcycle as human greed could have no any bounds. Parents of a groom are known to have harassed the parents of a bride to any extent so as to extracting any benefit. However, when we were roving through the evidence of P.W.1 in different paragraphs, what we found out was that the deceased had never complained to her father and whatever complaint was received, it was through Padarath



Yadav. Incidentally, Padarath Yadav was not produced and we believed that he had never been cited as a chargesheet witness. P.W.1 further stated in paragraph 20 that when he had received the complaint from Padarath Yadav, he did not complain to the police nor did he inform any responsible person or authority and he did not even lodge a protest with his *Samadhi* appellant Chando Yadav. In fact, he admitted that no complaint was lodged by him as there was nothing which could have been demanded by the accused persons. Besides the above, what appears from the FIR was that when the informant had arrived at the house of the appellants, his daughter had come to him with a lota full of water and holding the feet he started weeping and later on, she narrated to the informant that her husband was planning to murder. When it came to supporting the above story by P.W. 1, we found that he was completely silent on that part of the story and was in stead speaking in paragraph-6 that when he arrived, he had a very warm reception from his *Samadhi* and he talked with him for 1-2 hours and during that talk each of them knew about the welfare of others and not only of others but their children also and there was no complain of any hot exchange between the two relatives. Thus, what we find is that in addition to the absence of evidence as regards the demand of motorcycle, the relationship between the two families were quite cordial and in fact there was no complain ever made by the



deceased Samudri Devi to her parents nor the informant had any action of any occasion of lodging any protest or complaint about behaviour of the accused persons. If this was the state of witness as per P.W. 1, then we are simply inclined to take a view that the initial story which was put down in the FIR by P.W. 1 that his son-in-law, i.e., appellant Arvind Yadav and his family members were pestering him to give a Rajdoot motorcycle appears a doubtful story.

13. The informant admittedly had stayed in the house of the appellants in the night. He had taken his meals and during that night, he had as may appear from his evidence, heard some whispering sound and on getting up he could find that the accused persons were committing the murder of his daughter by strangulated her to death by using a lathi which had been put across her neck so as to putting pressure on it and thereby to asphyxiate her to death. P. W. 8 Dr. Arjun Prasad Singh had found two abrasions during the course of holding of post mortem examination. The abrasions were ante mortem injuries and the first wound was on the left ear which measuring 1" x 1/4". The other abrasion was over the nap of neck on its left side. If it co-related to the injuries what we find is that as if the article which had been used in giving pressure or the blow or whatever was almost parallel to the nap of neck on the left side of the deceased which was never across it. Thus, what we find is that the



story of the informant that *lathi* was put across the neck of the deceased so as to exerting pressure over it to asphyxiate appears a doubtful proposition. In addition to that what we find further is that the deceased had been tied down on his feet and hands. His own evidence in paragraph 25 indicates that he had been struggled to free himself from the confinement and specially from the tiding by the rope and during that course, he had incurred an abrasion both on his hands and feet. But curiously enough, he was not showing that those abrasions either to the Investigating Officer who had investigated the case or he had shown those abrasions to the general public. Besides, if he had been as confined as was to continue from 12 P.M. on 04.08.1993 till 6 A.M. on 05.08.1993. It was expected that that fact ought to have been supported by persons who had freed him by untying knots which had been put on his hands and feet. Incidentally, no one had come forward to say that he had seen or found the informant tied on his hands and feet and thus, may mobilize so as to confine at a particular place. Besides, no one further came to say that after untying the informant, he had seen some abrasions or injury on his hands and feet and no one could also come before the Court during trial to say that the informant had shouted or cried as was the case made out by him and that had attracted any one of the village who had untied him and freed him. Even if, we could believe the above



evidence for the sake of argument, we could expect the informant who was the only witness to the murder of his daughter to rush to the police station for lodging the report but what we find is that he had in spite of being freed at 6 A.M. on 05.08.1993, the informant was not moving anywhere and was trying to convince the Court that he was searching for his daughter and was instead of sending Chaukidar to lodge a report. We do not know the name of the Chaukidar and the name had never been given and if at all any Chaukidar had reached the police station and what report had he lodged there. We believe that no Chaukidar had been sent to the police station, else what was the reason to lead any officer come to record the fardbeyan of P.W. 1 that in itself suggests that particular claim of P.W. 1 was not acceptable. If P. W. 1 was not moving from his village for almost 12 hours so as to lodging the report that further creates a doubt in the veracity of his story especially that part of it which recorded of to his claim of overstaying in the village in the night so as to see the commission of murder of his daughter. We viewed the evidence of P. W. 1 that serious doubts as regards the claim of overstaying and seeing the occurrence of being committed by the accused persons. The other circumstances which have also created a doubt in our mind. P. W. 1 had admitted that one of his brothers, namely, Girawaldhari was married to a lady in the same village Basmatiya. His sister was



married to one Mahendra Yadav. We do not have any evidence on record to indicate that the relationship between the informant on the one hand and the above two persons on the other were as strained as precluding them to come forward to support his case. Not only he kept staying in the village and also kept moving around in search of his daughter and further claimed that he informed all the villagers about the incident but none of the villagers neither any of the relatives was coming forward to support his claim that indeed the informant had been seen by them present in the village who had told them about the offence being committed by the accused persons.

14. These are some of the circumstances, which arise out of the evidence of P.W. 1 which render him utterly untrustworthy. We are of the view that P.W. 1 was not present during the fateful night in the village and further he had not been a witness to the incident. We have serious doubt that the deceased had been murdered in the house of the appellants. The evidence has come that the deceased was married since last 12 years. She was married to a person who was handicapped. The evidence further indicates that she had not blessed with any child. The injury which was found by P.W.8 indicates as we have already noted that it could not be barred across her neck which could have pressured to asphyxiate her death rather it was a parallel blow which could run from pinna of left ear to nap of



left side of neck of the deceased and might be that the deceased had been murdered somewhere else under certain other circumstances and finding no clue to the murder of the deceased, the informant suffered from the suspicion and lodged the report himself and came to support the case. What we find from the analysis of the evidence produced by the prosecution was that the evidence of P.W.1 was not acceptable and, as such, the accused persons deserved to be acquitted.

15. In the result, we allow the appeal by setting aside the judgment of conviction and order of sentence passed upon the appellants. The appellants are acquitted of the charges, they had been held guilty of. Appellants Chando Yadav and Sita Devi @ Rupiya Devi are on bail, they shall stand discharged from the liability of their respective bonds. Appellant Arvind Yadav is in custody, he shall be released forthwith, if not wanted in any other case.

16. Before we part we could insist ourselves to make some comments on the sentencing order passed by the learned trial Judge. The learned trial Judge was directing appellants Chando Yadav and Sita Devi @ Rupiya Devi to suffer rigorous imprisonment for life and what he did was to direct that rigorous imprisonment shall be simple. Learned trial Judge was simply oblivious of the provisions of Section 53-A of the Indian Penal Code and a few decisions of the Supreme Court in the case of *Naib Singh v. State of Punjab as*

reported in AIR 1983 SC 855 in which Supreme Court has held that with reference to Section 53-A and 55 of the Indian Penal Code that sentence of imprisonment for life means rigorous imprisonment for life. We have already noted that learned trial Judge was not only oblivious but also as untrained as not to consult even the basic provision of sentence which are contained in the penal code. We want to remind the judges of all ranks that sentencing is a serious jurisdiction which has to be exercised by judges with clear mind and all seriousness which they deserve the commission of an offence and that too an offence under Section 302 Indian Penal Code is as serious as if proved strictly to the satisfaction of the Court the minimum could be the life imprisonment. Sentencing jurisdiction also informs the judges that it is not only the duty of judge to hold someone guilty but it is also part of his duty as a judge to make appropriate sentence so as to reconcile the offence with the social justice system.

(Dharnidhar Jha, J.)

(Amaresh Kumar Lal, J.)

Brajesh/Kanchan

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