

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.336 of 2009

Arising Out of P. S. Case No. -64 Year-2006 Thana -Mohania District- BHABHUA (KAIMUR)

Jai Ram Chaudhary son of late Chhabinath Chaudhary, resident of village- Mallah Tolim Mohania, P.S.- Mohania District- Kaimur at Bhabua

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant/s : Mr. Kanhaiya Prasad Singh, Sr. Adv.
Mr. Yogendra Kumar, Adv.
Dr. M. K. Gautam, Adv.
Mr. Ram Naresh Ray, Adv.
For the Respondent/s : Mr. S. N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 07-07-2015

This appeal is directed against the judgment dated 3.3.2009 passed by the Additional District & Sessions Judge, FTC-I, Kaimur (Bhabua) in Sessions Trial No. 128 of 2006/ 61 of 2006 arising out of Mohania P. S. Case No. 64 of 2006, whereby the learned trial Court has convicted the appellant under Sections 364, 302 and 201/34 IPC. For the offence under Sections 364 and 302 IPC, the appellant was sentenced to life and a fine of Rs.10,000/-additionally for the offence under Section 302 IPC and in default of fine he was further directed to suffer rigorous imprisonment for three years. For the offence under Section 201 IPC, the appellant was sentenced to seven years rigorous

imprisonment. All the sentences are directed to run concurrently.

2. The prosecution case, in short, as made out in the written report of Shanti Devi, wife of deceased Shiv Kumar Prasad Kesari, resident of Chandani Chowk Mohania, P.S. Mohania, District-Kaimur made to Officer-in-Charge, Mohania Police Station on 6.4.2006 is as follows:-

Shanti Devi stated that at about 7.30 P.M. on 5.4.2006 her husband's friend Jai Ram Chaudhari along with his brother-in-law came to her house in a Qualis Car, bearing Registration No. JH- 09A 2574. At about eight P.M., Jai Ram Chaudhari took her husband in his Qualis car and took sweets at the Sweet Shop of Munna Gupta near Mundeshwari Gate. She recalled that Jai Ram Chaudhari had taken a sum of Rs.1,00,000/- on loan from her husband, which he had not returned in spite of repeated request and demand. She became anxious when her husband did not return till 11 P.M.. She rang up Sita Ram Master, brother of Jai Ram Chaudhari, who replied that his brother had not yet returned home. The informant received similar answer at about 12 O'clock in the night, when she rang up sister-in-law (Bhaujai) of Jai Ram Chaudhari. When the informant's husband did not return even on the following day till 2 P.M., she lodged this written report, alleging that Jai Ram Chaudhari and his brother-in-law have kidnapped her husband for the purpose of killing.

3. On the basis of written report initially Mohania P. S. Case No. 64 of 2006 dated 6.4.2006 was registered under Section 364 IPC.

4. In course of investigation, the dead body of Shiv Kumar Prasad Kesari was found in a Jute bag near G. T. Road and as such on the requisition of police Sections 302 and 201 IPC were added to the FIR on 8.4.2006 by Judicial Magistrate at Bhabua. Cognizance of the offence was taken under Sections 364, 302 and 201/34 IPC and the case was committed to the Court of Sessions. Charges were framed against both the accused under Sections 364, 302 and 201/34 IPC. However, on the ground of juvenility, the trial of Sunil Kumar Chaudhary, brother-in-law of Jai Ram Chaudhary, was separated.

5. The prosecution examined 17 witnesses, whereas, the defence also examined six witnesses in support of its case. Out of seventeen prosecution witnesses, P. W. 2 Anil Kumar Keshri is the son of the deceased, P.W. 10 Asha Kumari is the daughter of the deceased, P.W. 11 Shanti Devi is the wife of the deceased and P.W. 15 Girja Prasad Keshari is the brother of the deceased. Dr. Ashwani Kumar Sinha has been examined as P. W. 9, who conducted the post-mortem examination of the deceased Shiv Kumar Prasad Kesari while he was posted as Civil Assistant Surgeon, Sadar Hospital, Sasaram on 6.4.2006 at 12.20 P.M. The Investigating Officer of the case, namely,

Ramesh Prasad Singh, has been examined as P. W. 17.

6. The defence of the appellant is complete denial of the case. The defence examined six witnesses including D. W. 1 Ram Prakash Sahni and D. W. 5 Krishna Kumar Sahni, who were the seizure witnesses. D. W. 2 Sita Ram Chaudhary is the younger brother of Jai Ram Chaudhary who denied having received any phone call from the wife of the deceased, Shanti Devi. Defence had examined D. Ws. 3 and 4 only to the extent that Jai Ram Chaudhary (appellant) did not have any house in Mohania. He was only a resident of village Dandwa. The trial Court on consideration of materials on record convicted the sole appellant under Sections 364, 302, 201/34 IPC and sentenced as mentioned in para 1 of the judgment.

7. The prosecution in order to establish his case examined four members of family of the deceased as noticed above. They are P. W. 2 Anil Kumar Keshri, son of the deceased, P. W. 10 Asha Kumari, daughter of the deceased, P. W. 11 Shanti Devi, wife of the deceased and the informant of the case; and P. W. 15 Girja Prasad Keshri, brother of the deceased. P. W. 8 Sudarshan Prasad Keshri, was another brother of the deceased who is a hearsay witness. It is relevant to state here that there is no eye witness to the occurrence. The evidence of P.W. 2, P.W. 10, P.W. 11 and P.W. 15 is to effect that Jai Ram Chaudhary on 5.4.2006 came on his Qualis Car bearing

Registration No. JH- 09A 2574 and took the deceased from his house at 8 P.M. on 5.4.2006. They took sweet from the Sweet Shop of one Munna Gupta situated near Mundeshwari Gate, thereafter the deceased Shiv Kumar Prasad Kesari was not seen and his dead body was finally recovered in a Jute bag lying by the side of G. T. Road. The Statement of other brother (P. W. 8) also corroborated the statement of four family members that he too learnt that the appellant took his brother on Qualis car in the night of 5.4.2006 at 8 P.M.

8. In order to establish that the death of the deceased was not accidental but homicidal, prosecution examined Dr. Ashwani Kumar Singh (P.W. 9) who conducted post-mortem on the dead body of the deceased on 6.4.2006 at 12.20 P.M., while he was posted as Civil Assistant Surgeon at Sadar Hospital, Sasaram. He noticed following ante-mortem injuries on the person of the deceased:-

Ligature mark about 2” wide, depressed slightly pale with echohymin margins all round the neck about middle of the neck.

On dissection skull intact, brain and ménages congested. Dissection of neck deposition of blood, laceration of muscles under the ligature mark and around submucus haemorrhage and congestion at the level of ligature mark in trachea. Thorax intact, lungs congested. Heart intact and contains blood of dark colour, lever plus spleen plus both kidney: intact and congested. Stomach

empty, small intestine contains fluid and gas. Large intestine contains gas and faecal matters, urinary bladder empty.

9. According to him, the death is result of Asphyxia caused by strangulation by soft ligature. In his opinion, time elapsed since death was 6 hours to 36 hours.

10. The report of the doctor establishes beyond doubt that the deceased was done to death by strangulation. The core issue is whether the deceased was murdered by the appellant as noticed in the forgoing paragraphs. The case against appellant is based on circumstantial evidence and one of having been last seen. We would examine as to whether the prosecution has been able to establish the chain of circumstances to prove that the murder of the deceased has been committed by the appellant and none other than him. Defence argued that as per post-mortem report (Ext. 4), the death took place between 6 hours to 36 hours of examination of the deceased on 6.4.2006 at 12.20 P.M.

11. Sri Kanhaiya Prasad Singh, learned Senior Counsel has assailed the judgment of conviction on a number of grounds. He argued that in view of the approximate time of death mentioned in the post-mortem report, the deceased was done to death much prior to the evening of 5.2.2006, whereas the appellant is alleged to have come to the house of the informant at about 7.30 P.M. and took the deceased



in his car at 8 P.M.. He next argued that seizure witnesses did not support the seizure of Qualis car used in carrying the deceased from his house by the appellant in the evening of 5.4.2006. The seizure witnesses also did not support the seizure of pant and other materials from the premises of under-construction house of the appellant on Mohania G. T. Road. Furthermore, as the house was still under construction, any one could have concealed the shirt + Pant of the deceased underneath the sand from the unconstructed area. Besides this, there was strained relation between the deceased and the appellant and as such, it is not likely that the deceased would go all alone in car accompanied with his brother-in-law- a co-accused in the late evening hours.

12. In the light of points raised by the learned counsel for the appellant, we would now examine whether the prosecution has been able to demonstrate the chain of circumstance to establish the guilt of the accused in the case.

13. We find that the deceased was last seen with the appellant at about 8 P.M. by the informant and his family members when the latter took him in his car. Thereafter, they took sweets in the Sweet Shop of Munna Gupta, situated near Mundeshwari Gate and just on the following morning at about 6.30 A.M. the dead body of the deceased was found in a stitched Jute bag towards south end of G. T.

Road, near Pakhanari More by Chaukidar Raj Keshwar Ram. The officer-in-charge of Shiv Sagar Police Station seized the dead body and forwarded it for its post-mortem. The dead body was fully identified by the informant and other family members as that of Shiv Kumar Prasad Keshri.

14. Besides this, it further transpires from the evidence of Investigating Officer (P.W. 17) that when the dead body of the deceased was pulled out from the Jute Bag, only an under garment (Janghiya) was found on his person. It is relevant to state here that the Investigating Officer (P.W. 17) along with Shailendra Tiwari (P.W. 3) and Girja Prasad Keshri (P.W. 15) raided another house of the appellant which was under construction in Mouza Baraj on Mohania G. T. Road on 7.4.2006. In course of raid, apart from other incriminating articles, the pant and shirt were recovered from underneath sand of the unconstructed area. P. W. 15, Girja Prasad Keshri, brother of the deceased, who accompanied the Investigating Officer, identified the same as that of his brother who had worn them in the evening of 5.4.2006 before being taken away by the appellant on Qualis car. The wife of the deceased too recognized the pant and shirt to be of her husband.

15. Learned Counsel for the appellant argued that the pant and shirt ought to have been put on T. I. Parade which was not done,



only to falsely implicate the appellant in this case. In our view, the submission of the appellant is only to be noted to be rejected. We find that Girja Prasad Keshari used to reside with his brother and he instantly recognized the recovered pant and shirt to be of his brother (deceased) which he had worn on the fateful day. The informant too identified the pant and shirt to be that of her husband. Thus, non-holding of T. I. Parade would in no way weaken the prosecution case.

16. Besides this, the Qualis car bearing Registration No. JH- 09A 2574 was also recovered from the main house of the appellant. The Motor Vehicle Inspector who was examined by the prosecution deposed before the Court that front glass of the Qualis car had cracks. He certified that the vehicle was in a running condition. Counsel for the appellant argued that the Motor Vehicle Inspector did not submit his report in typed format and as such his report cannot be taken into evidence. We find no substance in this submission of the defence. It is true that the report of the Motor Vehicle Inspector was not in the prescribed format but it was stated by the Inspector that the car was in a running condition and there was nothing untoward in his evidence to make him unreliable. Non submission of report in format would not affect its worth, when the Motor Vehicle Inspector himself testified to it in the Court.

17. Next submission of counsel for the appellant is that



there was strained relations between the appellant and the deceased as the appellant was not returning his money (Rs.1,00,000/-) taken on loan despite repeated requests. As such, it would not be very natural that the deceased would agree to go out with the appellant, who had come along with his brother-in-law in his Qualis car. It is relevant to state that the informant in her written statement had stated that the appellant and the deceased were close friends. Furthermore, there is nothing on record to show that any altercation or feud took between them on account of money transaction. Thus, there was no concrete circumstances for the deceased to doubt the intentions of the appellant in going out with him on his request.

18. On consideration of materials on record we find that the deceased was last seen with the appellant before his death at about 8 P.M. on 5.4.2006 and his dead body was found on the following morning at 6.20 a.m. just after 10 hours. A Qualis car in which the deceased had gone, was seized from the house of the appellant situated on Ramgarh Road and shirt and pant which the deceased was wearing on the fateful evening was recovered from the other premises of the appellant in Mauja Beraj on Mohania G. T. Road. Furthermore, the appellant could have also the possible motive for killing the deceased as time and again the appellant was being reminded to return the loan amount. Thus, in our considered view, we hold that the

prosecution has been able to establish a chain of circumstance to bring home charge under Sections 302 and 201 IPC. The prosecution, however, has failed to prove charge under Section 364 IPC, as there is no evidence that any force was applied in abducting the deceased from his house. As such, the appellant is acquitted of the charge under Section 364 IPC.

19. Once having held the appellant guilty for the offence under Sections 302 and 201 IPC, we would now consider the quantum of sentence to be awarded. The trial Court has awarded life imprisonment to the appellant for the offence under Section 302 IPC. We find that the sentence is just and proper. However, the fine amount of Rs.10,000/- is reduced to Rs.5000/-. So far offence under Section 201 IPC is concerned, we deem it appropriate to reduce the sentence to four years from seven years. Both the sentences would run concurrently.

19. With the aforesaid modification, the appeal is dismissed.

(Samarendra Pratap Singh, J)

N. A. F. R.

Kanchan/-

(Amaresh Kumar Lal, J)

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