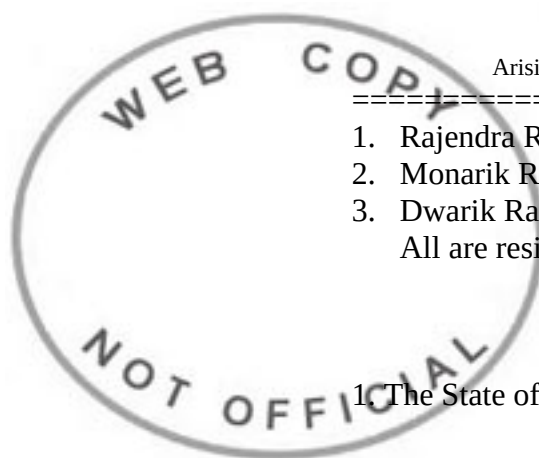




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.431 of 2010

Arising Out of PS.Case No. -38 Year- 2007 Thana -SARAI District- VAISHALI(HAJIPUR)

- 1. Rajendra Ram, aged about 35 Years, S/O Nanda Ram
 - 2. Monarik Ram, aged 48 years, S/O Late Jodhan Ram
 - 3. Dwarik Ram, aged about 45 Years, S/O Late Jodhan Ram
- All are residents of village Dumari, P.S.-Sarai, Dist.-Vaishali.

.... Appellants

Versus

- 1. The State of Bihar

.... Respondent

With

Criminal Appeal (DB) No. 706 of 2010

Arising Out of PS.Case No. -38 Year- 2007 Thana -SARAI District- VAISHALI(HAJIPUR)

Upendra Ram, son of Late Ram Chandra Ram, resident of Village Dumri, P.O. Dumri, P.S. Sarai, District Vaishali

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

- For the Appellants : Mr. Pramod Kumar Singh, Advocate
Mr. Manish Chandra Gandhi, Advocate
- For the State : Mr. A.K. Sinha, APP
Mr. S.C. Mishra, APP

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

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

Date: 01-09-2015

Heard learned counsel for the appellants and the State.

2. Both these appeals arise out of judgment/ order dated 22/ 23.03.2010, passed by Additional Sessions Judge, Fast



Track Court 2nd, Vaishali at Hajipur in Sessions Trial No. 444/2007 whereunder Accused No. 1, Appellant in Criminal Appeal (DB) No. 431 of 2010 has been convicted for the offences under Sections 302, 201 of the Penal Code and sentenced to suffer rigorous imprisonment for life, fine of Rs. 10,000/- and in default of payment of fine to further suffer simple imprisonment for six months. He, however, has not been awarded any sentence for the offence under Section 201 of the Penal Code. Accused Nos. 2 to 4, Appellants in Criminal Appeal (DB) No. 706 of 2010 have been convicted for the offence under Section 201 of the Penal Code and sentenced to suffer rigorous imprisonment for five years, fine of Rs. 3,000/- each and in default of payment of fine to further suffer simple imprisonment for two months each. Both the sentences have, however, been directed to run concurrently.

3. Prosecution case, as set out in the self statement of A.S.I. Chandar Oraon (P.W. 7) of Sarai Police Station, recorded on 10.05.2007 at 18.30 hours at Village Dumri, is that he is posted as A.S.I. in Sarai Police Station, District Vaishali and is recording his self statement in Dumri Village near post office that around 17.00 hours he received telephonic information in the police station that Upendra Ram, resident of Village Dumri within Sarai Police Station has strangulated his wife and is proceeding to cremate her. After



recording the said information in the Station Diary vide S.D. No. 00197/07 informant proceeded to Village Dumri along with Dy. S.P. (Probation) Sanjay Kumar-cum- Officer-in-Charge, Sarai Police Station with police station mobile for doing the needful i.e. verification of the information. The police party reached around 6.00 P.M. near the post office in Dumri Village and saw four men carrying a dead body on bier (Ranthi). The four men having seen the police jeep left the dead body, tried to run away but were apprehended after a chase. The four apprehended men disclosed their name as Dwarik Ram, Munarik Ram, Rajendra Ram and Upendra Ram. Upendra Ram, husband of the deceased claimed that his wife Suraj Devi suffered heart attack and that he was going to cremate her. A.S.I. Chandar Oraon further stated in the self statement that he could notice strangulation mark, circular in shape, on the neck of the deceased Suraj Devi caused by a rope. Chandar Oraon also stated in the self statement that after recovery of the dead body of Suraj Devi her husband was subjected to interrogation, who disclosed that because of family dispute between him and the deceased for last few days, he out of anger strangulated her and along with three apprehended persons was proceeding to cremate the dead body. According to self statement, husband of the deceased further disclosed that rope, used to strangulate her, has been thrown in the



passage behind his house. Informant also stated in the self statement that he along with four apprehended men went to the house of Upendra Ram, recovered red colour plastic rope therefrom. On one end of the rope hair of the deceased was also found. It further appears from the self statement that both rope and the hair was seized after preparing seizure-list. Author of self statement also claimed that the deceased Suraj Devi has been strangled by her husband with the rope and to disappear the evidence Upendra Ram and the three apprehended with him, were proceeding to cremate the dead body. Self statement also indicates that its author arrested the four accused persons. Inquest on the dead body of Suraj Devi was conducted in the same evening at 18.00 hours in presence of two witnesses, namely, Manoj Kumar Singh and Sachidanand Sharma. Perusal of inquest report further indicates that the inquest proceedings was conducted Sri Sanjay Kumar near the post office in Village Dumri where the four accused persons of the case were arrested with the dead body by the informant after he and the police party reached near the post office. It also indicates that Suraj Devi was done to death by strangulation with the help of a rope. On the basis of the self statement of S.I. Chandar Oraon Sri Sanjay Kumar, Dy. S.P. (Probation) cum Officer-in-Charge, Sarai Police Station registered Sarai P.S. Case No. 38/07 dated 10.05.2007 under Section 302 and



other allied Sections of the Penal Code further stating on the *fardbeyan* that he will investigate the case. It appears, seizure-list was prepared by him on 10.05.2007 at 6.45 P.M. in presence of Ram Dayal Paswan and Ashok Thakur. Perusal of seizure-list, however, indicates that the seizure of rope has been made from the place near the post office. Having made seizure the dead body was sent for autopsy to Hajipur Sadar Hospital where the same reached on 11.05.2007 at 4.00 P.M. and post mortem conducted on the same day at 4.30 P.M. From the post mortem report it is evident that Suraj Devi suffered homicidal death as she was subjected to strangulation and ligature mark was found over her neck. The time elapsed between death and the post mortem is within 48-72 hours. Post mortem report also confirmed that the cause of death is asphyxia due to strangulation done by a rope. In the light of the statement of A.S.I. Chandar Oraon and the villagers together with the findings recorded in the inquest, post mortem report the Investigating Officer of the case was satisfied that the case of 302, 210 I.P.C. is true against the accused persons and, accordingly, submitted charge-sheet having found the allegation true during investigation. In the light of the charge-sheet cognizance was taken and after supply of police paper to the four accused persons case was committed to the Court of Sessions. Sessions Court framed charge under order dated

04.03.2008 to which the four accused persons pleaded not guilty and claimed to be tried.

4. In support of the charge prosecution party examined as many as eight witnesses, namely, P.Ws. 1, 2, 5 Harikant Sharma, Mohajani Devi, Manoj Sharma are the co-villagers of the accused persons but have not supported the prosecution case in court and have been declared hostile to the prosecution. P.Ws. 3, 4 Niranjana Ram, Amarjeet Sharma are also co-villagers of the accused persons and have only deposed about the fact that they learnt about the death of Suraj Devi. In the circumstances, their evidence is also of no assistance to the prosecution. P.Ws. 7, 6 are the two police officers, namely, A.S.I. Chandar Oraon (P.W. 7), on whose self statement case has been instituted and Sanjay Kumar, Dy.S.P. (Probation), who at the relevant time was the Officer-in-Charge of Sarai Police Station and the Investigating Officer of the case.

5. From the evidence of P.Ws. 7, 6 it is quite evident that Accused No. 1 Upendra Ram along with Accused Nos. 2 to 4 was proceeding with the dead body of Suraj Devi and were apprehended by the police party near the village post office where accused Upendra Ram recorded his confessional statement, on the basis of which a rope was recovered, which is said to be the weapon used by Upendra Ram to strangle his wife, as is appearing from

her post mortem report duly prepared by P.W. 8, the autopsy surgeon.

6. Learned counsel for the appellants contended that the recovery of rope at the instance of Upendra Ram is not to be relied upon, as from the self statement of P.W. 7 together with his evidence it will appear that the same was recovered from the passage behind the house of Upendra Ram, but fact of recovery of rope from the passage behind the house becomes doubtful in view of the contents of seizure-list (Exhibit-6) which was made 15 minutes after recording of the self statement at 6.30 P.M. on 10.05.2007 itself as not only from the seizure-list but also from the evidence of P.W. 6, the Investigating Officer of the case, it is evident that the same was recovered from the place near the post office. It is submitted that once the story of recovery of rope at the instance of Upendra Ram is doubted, his conviction may not be sustained.

7. Learned counsel for the appellants next submitted that from the statement of Upendra Ram recorded under Section 313 Cr.P.C. also it will appear that the incriminating circumstances associating him with the strangulation of his wife with the help of a rope was never put to him and such being the position his conviction cannot be sustained in law.

8. Learned counsel also brought to our notice the



advance age of appellant Upendra Ram on the date of his statement recorded under Section 313 Cr.P.C. as on that date he was 62 years of age. He having remained in jail custody for more than eight years is now more than 70 years of age, this Court may not choose to remand the matter for inviting his attention to the incriminating circumstances connecting him with strangulation of his wife while recording his statement under Section 313 Cr.P.C. and for rewriting the judgment.

9. Learned counsel for the State, on the other hand, supported the judgment but having perused the statement of Upendra Ram under Section 313 Cr.P.C., at page 54 of the brief, accepted the fact that the trial court committed serious error in law by not inviting attention of Upendra Ram to the incriminating circumstances connecting him with the strangulation of his wife with the help of a rope. He, however, pointed out that in view of the provisions contained in Section 106 of the Indian Evidence Act the onus was on Upendra Ram to have explained the circumstances in which his wife suffered strangulation in the house, which is proved by the contents of the post mortem report and the evidence of P.W. 8, the autopsy surgeon.

10. We, having considered the rival submissions, are of the view that appellant Upendra Ram was required to have



explained the circumstances in which his wife suffered death, as he alone was privy to such fact, however, considering the present age of Upendra Ram, who has now become over 70 years old and has remained in jail custody for more than eight years, we do not think appropriate in the interest of justice to remand the matter for recording fresh 313 Cr.P.C. statement of Upendra Ram after inviting his attention to the incriminating circumstances connecting him with the strangulation of his wife, especially considering the fact that neither inquest witnesses, namely, Manoj Kumar Singh, Sachidanand Sharma, both residents of Village Dumri nor the two Chowkidar, namely, Ram Dayal Paswan, Ashok Thakur, in whose presence seizure-list was prepared, have been examined, as in our opinion, their non-examination has seriously prejudiced the defence. There is hardly any material on record to indicate that the three appellants in Criminal Appeal (DB) No. 431 of 2010 were aware of the fact that Suraj Devi was subjected to strangulation. Those appellants had come forward to help their neighbour Upendra Ram believing that his wife has suffered heart attack.

11. In the facts and circumstances of the case, we choose to grant benefit of doubt to the four accused persons, appellants in the two appeals. Accordingly, both the appeals are allowed. The impugned judgment of conviction and order of sentence

is set aside. Accused No. 1 Upendra Ram, appellant in Criminal Appeal (DB) No. 706 of 2010 is in jail custody, is directed to be released forthwith if not wanted in any other case. Accused Nos. 2 to 4, appellants in Criminal Appeal (DB) No. 431 of 2010 are discharged from the liability of their respective bail bonds.

(V.N. Sinha, J)

(Jitendra Mohan Sharma, J)

Rajesh/N.A.F.R.

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