

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1341 of 2010

[Against the judgment and order of conviction dated 5th October, 2010, passed by the Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No.930 of 2008 arising out of Hasanpur P.S. Case No.124 of 2008]

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Amar Ram, son of late Bino Ram, resident of village- Naya Nagar, P.S.-
Hasanpur, District- Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhimanyu Sharma, Advocate

For the Respondent/s : Mr. Ashwani Kumar Sinha, Addl. PP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 01-12-2015

1. Sole Appellant has been convicted under section 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with fine of ₹3,000/- and in default of which simple imprisonment for nine months and further under Section 201/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for three years with fine of ₹2,000/- and in default of which simple imprisonment for six months by judgment and order of conviction dated 5th October, 2010, passed by the Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No.930 of

2008 arising out of Hasanpur P.S. Case No.124 of 2008.



2. The case of the Informant (PW 6) Mahangu Ram is that his daughter, Ranju Devi, deceased was married about 10-12 years back to the Appellant and was living in her matrimonial home. However, she did not have any children and so, her husband and brother-in-law used to torture her by saying that she was barren. Subsequently, the Appellant remarried a younger lady and brought her home and when her daughter came to the maternal home she informed that the Appellant used to torture her. On 05.07.2008 at about 12.00 Noon, he learnt from someone that his daughter has been killed by the Appellant and rest of his family members and had quietly put her dead body in the field to decompose. At this information, he reached the house of the Appellant and found no one there. The villagers told him that in the previous night the deceased had been killed by her husband, his brother-in-law and second wife of her husband and had thrown the dead body in the cane field. He then proceed there but he did not find any one and found the half burnt dead body of his daughter at which he gave information to the police.

3. During trial, the prosecution examined 13 witnesses. PW 1 (Ram Nah Thakur), PW 2 (Ram Naresh Ram), PW 3 (Naresh Paswan), PW 4 (Sagar Ram) and PW 9 (Achit Ram) have

been declared hostile.

4. PW 7 (Md. Abdul Samad) proved the Inquest Report which is Ext.1, whereas, he stated in his cross-examination that he had signed on a blank paper and there was no dead body where he had made signature.

5. PW 8 (Lallu Kumar) is a formal witness who has proved the formal First Information Report (Ext.2).

6. PW 10 (Sanjeev Kumar) is also a formal witness, who has proved the writing and signature of the Officer-in-Charge on the First Information Report being Ext.3.

7. PW 11 (Shambhu Das @ Ramu Das), who was co-villager of the Appellant, stated that he had heard that the wife of the Appellant had died but how she died he did not know.

8. We, thus, find that the material witnesses in the present case are PWs 5, 6, 12 and 13.

9. PW 5 (Anita Devi), mother of the deceased, stated that her daughter had been married to the Appellant about 10-12 years back but she did not have any child on account of which she was assaulted by the family members. The Appellant had remarried on account of which he had committed murder of her daughter. On the date of occurrence, she got information on phone that her daughter has been murdered by her in-laws at which she went to the



house of the Appellant where she learnt that the Appellant after murdering her daughter had thrown the dead body in the field. She identified the dead body on the basis of the bangles that she was wearing. In cross-examination, she stated that the deceased had told her that the accused persons used to torture by saying that she was barren. She stated that she did not inform the police with regard to the occurrence nor did she know the exact location of the field from where the dead body was recovered. She also stated that the Appellant used to play some instrument and she did not know the place from where the dead body was recovered and was, in fact, a *Burning Ghat*.

10. PW 6 (Mahangu Ram) is the father of the deceased, who also stated that about 10-12 years back the deceased had been married with the Appellant but she did not have any children on account of which she was assaulted by the Appellant and family members. On the date of occurrence, he learnt that his daughter had been killed at which he went to the place of occurrence and found the house locked. He then proceeded towards the fields where the dead body was recovered with green bangles on the basis of which they identified it to be that of their daughter. In cross-examination, he stated that house of the Appellant was right in the middle of the village and Udgar Ram and Mannu Ram had told him

that the Appellant and others had committed the murder of the deceased. However, none of them have been examined and, hence, that part of his evidence is inadmissible in law. He stated that none of the bangles which were on the dead body was broken.

11. PW 13 (Dr. Ashok Vardhan Sahay) stated that he had conducted Post Mortem Examination of the corpse of the 23 years old lady, wife of the Appellant, namely, Ranju Devi and found following injuries:

- A. Rigor mortis partially present. 98% burn injury all over the body completely blackened and charred including head, face, neck. Both side of chest, back and whole abdomen anteriorly as well as posteriorly and both arms, fore arms, hands and both legs.
- B. Internally viscera pale including small and large intestine, liver and kidney. Pleura congested, intratracheal mucose congested and soot particles found inside the trachea.
- C. Time since death 36 to 48 hours.

He stated that the burn injuries were ante mortem but was completely burnt.

12. PW 12 (Gurudayal Ram) is the Investigating Officer, who stated that on 06.07.2008 he had registered the present case and assumed investigation and inspected the place of occurrence. The place of occurrence happens to be a humble hut of the Appellant which was bounded by other huts. A bed was found in the room. The second place of occurrence was the place from where



half burnt dead body was recovered. We find from his examination-in-chief that no attention was drawn to the statement of PWs 1, 2, 3, 4 and 9, who have been declared hostile and hence, their evidence is completely irrelevant. In cross-examination, he stated that he did not make any enquiry from the persons, who used to stay nearby the house of the Appellant. He recorded the *fard-e-bayan* of the Informant which is Ext.5. From the Inquest Report which may not be admissible in evidence but can be perused to assist this Court, we find that it was noted that the corpse was completely burnt and was incapable of being identified. In these circumstances, the evidence of PW 5 and 6 on the point of its identification is unacceptable. Even the Doctor has stated that the dead body was completely burnt. In such circumstances, when the *corpus delicti* has not been proved, the prosecution case will have to be rejected since all that remains is the oral testimony that the Appellant had killed the deceased.

13. Hence, the judgment and order of conviction dated 5th October, 2010, passed by the Additional Sessions Judge, Rosera, Samastipur, in Sessions Trial No.930 of 2008 arising out of Hasanpur P.S. Case No.124 of 2008, is hereby set aside the Appellant is acquitted of the Charge under Section(s) 302/34 and 201/34 Indian Penal Code.

14. The Appellant, who is in custody, is directed to

be released forthwith if not required in any other case.

15. In the result, the appeal is **allowed**.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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J.Alam/-

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