

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 510 of 2007

Arising out of P. S. Case No. - 157 Year - 2004 Thana - Kochadhaman District - KISANGANJ

Anwar Alam, Son of Late Asiruddin, Resident of Village – Bhagpunas, P.S. Kocha
Dhaman, District - Kishanganj

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Smt. Rina Sinha, Amicus Curiae

For the Respondent : Shir Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 18-02-2015

This appeal preferred by the appellant Anwar Alam poses two questions for our consideration – (i) as to whether a mere statement by a witness that the appellant had admitted his guilt as appears from the ordinary translation of “गॉव वाले के सामने उसने अपना दोष गछ लिया” could be treated as a full-fledged confession and (ii) whether the finding of the dead body of deceased Firdosh Begum, the wife of the present appellant be sufficient enough a circumstance to fasten the guilt upon the appellant as regards its proof.

2. Before we answer the two questions, we want to point out that undisputedly deceased Firdosh Begum was married to the appellant, about four years prior to 15.12.2004, when she died an

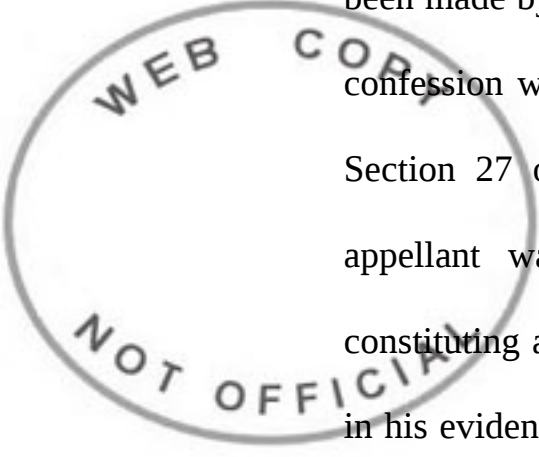
unnatural death, probably induced by some external force, strangulating her to death. The informant P.W. 7 who happened to be the father of deceased Firdosh Begum stated that he got an information about the illness of his daughter and came to the house of the appellant to find the dead body of his daughter lying in the *Angan* (courtyard) where villagers had apprehended the appellant and had made him to sit and to whom appellant confessed his guilt.

3. Usual lodging of the report ultimately ended in the submission of the charge-sheet which put the appellant on trial in Sessions Trial No. 327 of 2005 before the learned Additional Sessions Judge, Kishanganj and that ended in the impugned judgment of conviction dated 20.06.2005. The appellant after being heard under Section 235 Cr.P.C. was directed to suffer rigorous imprisonment for life.

4. We to refer *AIR 1939 Privy Council 47 Pakala Narayana Swami v. Emperor* in which their Lordships were construing the word “confession” which appeared in the Evidence Act in Sections 24 to 30 and were laying down that the word “confession” as used in Evidence Act cannot be construed as meaning a statement by an accused “suggesting the inference that he committed” the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. **An admission of a gravely incriminating fact, even a conclusively incriminating fact,**

is not of itself a confession. A statement that contains self exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact which if true would negative the offence alleged to be confessed. (Emphasis Added)

5. There was no witness telling the learned trial Judge that the appellant had confessed his guilt by stating the fact indicating the manner in which the offence was committed before him or within his hearing. P.Ws. 1, 2, 3, 4, 5 and 6 all stated to the Court that they had learnt about the incident and it was only P.W. 2 Tahir Alam who stated that the appellant had accepted his guilt before the villagers. We have extracted the relevant part of ***Pakala Narayana Swami*** (supra) which very well highlights that a statement merely suggesting the inference that the accused committed the crime is no confession. What appears relevant when a Court is called upon to judge the admissibility of a confession is that it should be, firstly, voluntary, it should be coming out of some sort of remorse from the very pure heart of the accused and there was never ever a shadow of threat or a lurking promise so as to extracting a statement from an accused. The accused must not have made the statement either in presence of the police or in presence of a person in authority. There are two exceptions to the above rule which is more by way of a rule of caution and prudence than of law. The first is that a confession recorded by a Magistrate as per settled norms and rules could only be admissible and secondly, if the

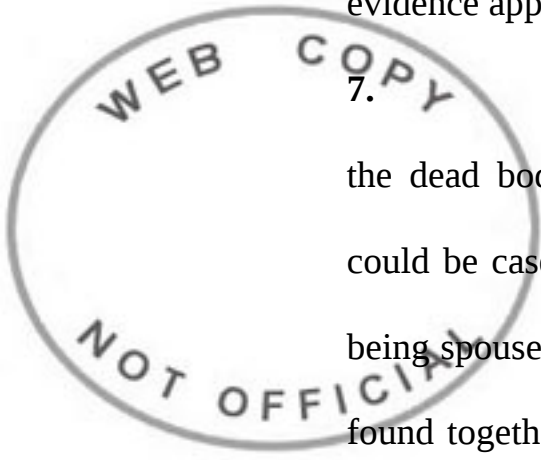


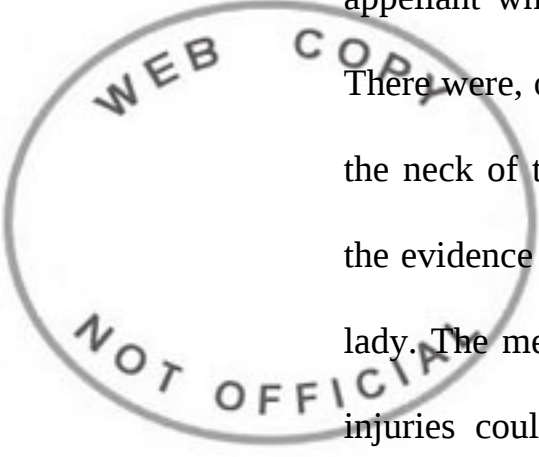
confession lead to the discovery of a fact and if that confession has been made by an accused while in police custody, then that part of that confession which led to the discovery of a fact was admissible under Section 27 of the Evidence Act. As sated by P.W. 2, the present appellant was admitting or accepting his guilt. It may not be constituting an offence as the above line of statement given by P.W. 2 in his evidence is shorn off all factual details which may constitute the offence or which may convey the manner in which the offence was committed.

6. The other aspect of the confession which was stated to by P.W. 2 and which was also stated to by the Investigating Officer P.W. 11 was that whatever statement the appellant made was in presence of P.W. 11 and at that particular time this appellant was within the custody of villagers. Almost all witnesses have stated that the villagers had apprehended him and had made him to sit near the dead body and he was making the statement before the villagers under the above circumstances. The very fact of being apprehended and further fact that the appellant was made to sit by the villagers does indicate quite some amount of threat and coercion both under which we could very well assume the appellant having made the statement. On the score of the two reasons which we have just noted, after considering the evidence, we find that the confession which was used by the learned trial Court for returning the verdict of guilt was inadmissible and, as

such, the finding that the appellant had committed the offence on that evidence appears not sustainable in law.

7. There is divergence of view that being found with the dead body may be a circumstance against an accused but those could be cases where the accused might not be found in a position of being spouses as in the present case. It is very natural for spouses to be found together either alive or dead in their house or its premises. The finding of the dead body of the deceased Firdosh Begam in the house of the appellant, as such, may not be an incriminating circumstance against the appellant. However, Shri Dilip Kumar Sinha, the learned Additional Public Prosecutor was very strenuously arguing that the dead body was bearing marks of violence and further suggests that she was strangled to death. Shri Sinha submitted that there was no explanation coming from the appellant as to how the deceased happened to bear those fatal injuries around her neck. The very evidence of P.W. 7 Najmul Haque who happened to be the father of the deceased Firdosh Begam indicates that the appellant was an extravagant fellow, so much so that thrift and frugal life-style was not his domain. He was selling his land and prior to the occurrence, he had probably decided to sell some more part of his estate. The deceased lady Firdosh Begam was opposed to the very idea of alienating property. P.W. 7 Najmul Haque had very well stated on that account that the couple used to pick up quarrel and the deceased Firdosh Begam had also





complained to her parents about the extravagant behaviour of the appellant who was inclined always to sell the immovable properties. There were, of course, ante-mortem scratches and ligature mark around the neck of the deceased Firdosh Begam, but it does not appear from the evidence of P.W. 13 that any ligature was used in strangulating the lady. The medical evidence does not give any reason as to how those injuries could be possible except that the lady suspected to die of asphyxia. The appellant in his statement under Section 313 Cr.P.C. has denied killing his wife and what appears from the medical evidence further is that the lady was carrying foetus in her womb. Medical Science suggests that pregnancy of a women creates depression in them and there is medical data and reports suggesting that during that period a lady may be driven to commit suicide. Kindly see **AIR 1984 SC 1622 Shared Birdhi Chand Sarda v. State of Maharashtra**. It may be that on account of the distressing situation which was faced by the lady on account of the decision of the appellant to sell some part of his land and also on account of carrying pregnancy, she had gone depressed and had committed suicide.

8. On considering the above inferences which reasonably appear from the evidence, we are of the opinion that the prosecution has not succeeded in bringing the charges home against the appellant and he deserves to be acquitted after being given benefit of doubt.

9. In the result, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence. The appellant is in jail. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

Brajesh Kumar/Kundan
A.F.R

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