

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.155 of 2012

[Against the judgment and order of conviction dated 13th December, 2011, passed by the Additional Sessions Judge, Fast Track Court No. IV, Supaul, in Sessions Trial No. 141 of 2009/50 of 2011 arising out of Birpur P.S. Case No.87 of 2007]

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1. Devanand Paswan, S/O Late Biku Paswan, resident of village- Samda, P.S- Ratanpura, District- Supaul.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Murari Narain Choudhary, Advocate
Mr. Vijay Kumar, Advocate
Mr. Mohit Srivastava, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

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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: 08-10-2015

1. The sole Appellant has been convicted under Section 302 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with fine of ₹10,000/- in default of which further one month rigorous imprisonment by judgment and order of conviction dated 13.12.2011 passed by the Additional Sessions Judge, FTC IV, Supaul, in Sessions Trial No.141 of 2009/50 of 2011 arising out of Birpur P.S. Case No87 of 2007. .

2. The case of the Informant, Godo Devi, is that her



daughter Raj Kumari Devi had been married about ten years ago to one Burhwa, who left for Delhi for earning wages and did not return. She did not have any children from the said marriage and since he did not return her daughter stayed in the maternal home with her. Later, the Appellant married her even though he was earlier married and had five children. After marriage, her daughter started staying with the Appellant and his first wife and even gave birth to one son, who was about one year old. About five days ago, the deceased had come to her maternal home and started living there but on asking she did not reply anything. On 30.07.2007 at about 8.00 PM, the Appellant came to the house and after dinner his daughter and son-in-law both went to sleep in one room. At about 4.00 AM, she suddenly heard the sound of her grand-son crying at which she started to wake her daughter but found that she was dead. Her son-in-law, the Appellant, was not there. She then started crying and filed the present First Information Report.

3. During trial, the prosecution examined eight witnesses.

4. PW 1, Sulekha Kumari, is the younger sister of the deceased. She stated that about two years ago, the deceased had married the Appellant and a daughter had been born out of the said marriage. At about 8.00 PM, the Appellant had come to their house



and eaten food which her sister had prepared and had gone to sleep together. At about 4.00AM, sound of cries of the child was heard at which the mother got up and called out to the deceased but she did not reply, so, she entered the room and found her dead. The Appellant was missing from there. He had run away. She stated in the cross-examination that the Appellant and the deceased had got married because of warm feeling towards each other and had not seen the deceased being murdered. She stated that she did see any external injuries on the person of the deceased and the Appellant had not stated anything when he came to their house.

5. PW 2, Rasmal Devi, who also happens to be the sister of the deceased, stated that in the night of occurrence at about 8.00 PM, the Appellant had come to their house and after taking food they had gone and the couple had also gone to sleep in the room. At about 4.00AM, suddenly they heard the child crying at which the mother called out and then discovered that the daughter was dead. She alleged that the Appellant had murdered the deceased and run away. She stated that the deceased and the Appellant had married in a temple on account of love relations between them. She also conceded that the Appellant used to come to meet the deceased and she had objected to their marriage because the Appellant was previously married with five children. She also stated that the

Appellant had shown proper respect to her and rest of the family members when he came. She also stated that no injury was found on the persons of the deceased. She stated that the Appellant was wearing white trouser/shirt and black *chappal*.

6. PW 3, Godo Devi, is the Informant and mother of the deceased, who repeated her version given in the First Information Report. In her cross-examination, she indicates that the deceased and the Appellant had good relations between them and they used to go *Satsang* together. When questioned, she stated that she did not know as to why the deceased had been murdered by the Appellant. It was only he, who could say this. At no point in time had the daughter ever complained that the first wife of the Appellant used to ever assault her or the Appellant had ever assaulted the deceased in front of her. She stated that at the night of occurrence when the Appellant came and food was cooked, they all ate and then the couple went to sleep together thereafter she was discovered dead. She stated that the people, who used to attend *Satsang* were against the marriage. In cross-examination, she stated that she did not see the Appellant murdering his daughter. According to this witness, Appellant was wearing white trouser, red shirt and black *Chappal*.

7. PW 4, Birendra Paswan, stated that the deceased had earlier been married to Burhwa, who had gone to Delhi but never



returned after which the deceased had strated going to *Satsang* where she met the Appellant. They started living together in his house. The appellant had five children from the previous marriage. They all used to live together. About five days back, the deceased came to maternal home and in the night before the occurrence the Appellant had come at about 8.00 PM and he had also met him after which he had gone to his own house, whereas, the Appellant and others had eaten and slept together. At 4.00 AM, his mother-in-law got up when she heard the child crying and discovered her daughter dead. He alleged that the Appellant had murdered his sister-in-law and run away. He conceded in cross-examination that he did not see actual murder. When his attention was drawn as to the clothes that the Appellant was wearing, he stated that he was seen in *Paijama* and *Kurta* with *Chappal* but could not remember further details. From cross-examination, it is indicated that the deceased and the Appellant had a normal married life and they used to go *Satsang* together. He also did not find any injury on the person of the deceased. There was normal relationship between them since the Appellant on his arrival paid respect as is traditionally done. He stated that the police had taken away the *Chappal* of the deceased.

8. PW 5, Gambhir Paswan, stated that on the night of occurrence he had seen the Appellant at about 8.30 PM near the



house of the deceased. At about 4.00 AM, he heard the cries and thereafter went and discovered the dead body. He stated that near the dead body was *Ganjee* and *Chappal* which he had earlier seen the Appellant wearing. Same was seized by the Investigating Officer and seizure list was prepared at which he put his signature. He stated that the Appellant was wearing red short *Kurta* and white full pant like *Paijama*. He also stated that the Appellant had given proper respect to him when he had arrived.

9. PW 6, Ram Kumar Choudhary, is the part Investigating Officer, who proved the First Information Report (Ext.1) and stated that viscera had been sent to the Laboratory but the report had not been received and he had submitted charge-sheet.

10. PW 7, Dr. Arun Kumar Verma, was posted at Sub-Divisional Hospital as Medical Officer, who had conducted Post Mortem Examination and found no external injuries on the person of the deceased on account of which viscera was preserved and sent to the Laboratory.

11. PW 8, Suresh Paswan, was the Technical Officer at Forensic Science Laboratory, Patna, who proved the report of the Forensic Science Laboratory (Ext.2) according to which Aluminium Phosphide called as Celphos, which is grain preservative and highly poisonous substance, was found in viscera. He had been cross-

examined as to the state of the viscera which was preserved for such a long time.

12. The defence has examined two witnesses; DW 1, Jai Prakash Paswan, and DW 2, Upendra Mukhia, with regard to normal relationship between the Appellant and the deceased and there was no reason as to why he would murder his wife.

13. On going through the evidence, one finds that there is no direct material which would connect materially the Appellant to the deceased apart from their relationship and vague statement that the deceased and Appellant had gone together to sleep together on the fateful night and that subsequently the deceased was found dead on account of poisoning.

14. It is a well known principle of law that in a case of circumstantial evidence, motive is important. In this case, we find that all materials indicate that the deceased and the Appellant had good relations from before the marriage which was maintained till death. There was no reason as to why the Appellant would have murdered the deceased at her maternal home when the deceased used to normally live with him at his house. Also, when the witnesses have given contradictory description of the clothes the Appellant was wearing on the fateful night, which creates a reasonable doubt as to whether the Appellant was indeed present at the house of the

Informant on the night of occurrence. Further, witnesses have confirmed good relations even between them and the Appellant which further weakens the prosecution case.

15. As for the evidence of the Technician, who proved the Viscera Report, we find that even though the occurrence is of 30.07.2007, it was tested only on 23.03.2010. We have no expert opinion as to whether the Viscera was fit to be tested on the date of testing and had not spoilt even after a lapse of 2½ years. In such circumstances, we are not inclined to rely on the report certifying death on account of poisoning. From the Post Mortem Examination Report, we find that the Doctor did not find any external injury which further rules out forcible administration of poison.

16. We are conscious that suspicion, no matter how grave, is not a substitute for positive evidence and unless all circumstances complete the links of the chain which points conclusively to the guilt and nothing else, an accused cannot be held guilty.

17. In such circumstances, we allow the appeal giving benefit of doubt to the Appellant and acquit him of the charges levelled against him. The judgment and order of conviction passed by the learned Court below is hereby set aside.

18. Since the Appellant is in custody, he is directed to

be released forthwith if not wanted in any other case.

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

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

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J.Alam/-

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