

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1190 of 2010

[Against the judgment and order of conviction dated 24.09.2010 and 27.09.2010 respectively passed by the Additional Sessions Judge (Fast Track Court No.2), Araria, in Sessions Trial No.1004 of 2008/Trial No.55 of 2009 arising out of Forbesganj P.S. Case No.153 of 2005]

1. Zubeda Khatoon, wife of late Safique, &
2. Bibi Husna, wife of Azimuddin, both resident of village-Dumaria, P.S.-Forbesganj, District- Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1284 of 2010

[Against the judgment and order of conviction dated 24.09.2010 and 27.09.2010 respectively passed by the Additional Sessions Judge (Fast Track Court No.2), Araria, in Sessions Trial No.1004 of 2008/Trial No.55 of 2009 arising out of Forbesganj P.S. Case No.153 of 2005]

1. Mustaque @ Mustofa, son of late Safique @ Safid, &
2. Yasin @ Md. Yasin Alam, son of late Safique @ Safid, both resident of village-Dumaria, P.S.-Forbesganj, District- Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 1312 of 2010

[Against the judgment and order of conviction dated 24.09.2010 and 27.09.2010 respectively passed by the Additional Sessions Judge (Fast Track Court No.2), Araria, in Sessions Trial No.1004 of 2008/Trial No.55 of 2009 arising out of Forbesganj P.S. Case No.153 of 2005]

Idris @ Md. Idrish, son of Safid @ Safique, resident of village-Rampur Dumaria, P.S.-Forbesganj, District- Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

(In CR. APP (DB) No. 1190 of 2010)

For the Appellant/s : M/s Vikram Deo Singh, Advocate
Ramesh Kumar Singh, Advocate
Sudish Kumar, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

(In CR. APP (DB) No. 1284 of 2010)

For the Appellant/s : M/s Vikram Deo Singh, Advocate
Ramesh Kumar Singh, Advocate
Sudish Kumar, Advocate

For the Respondent/s : Mr. Satya Narain Pd., APP

(In CR. APP (DB) No. 1312 of 2010)

For the Appellant/s : M/s Vikram Deo Singh, Advocate
Ramesh Kumar Singh, Advocate
Sudish Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 23-11-2015

1. All the five Appellants have been convicted under Section 302/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of ₹5,000/- each in default of which they have to further undergo imprisonment for six months by judgment and order of conviction dated 24.09.2010 and 27.09.2010 respectively passed by the Additional Sessions Judge, Fast Track Court No.2, Araria, in Sessions Trial No.1004 of 2008/T.R.No.55 of 2009.

2. The case of the prosecution, according to Md. Shahid, brother of the deceased is that his sister, Bibi Ajra Khatoon, was married to the Appellant, Md. Idris, about seven years back, who used to demand dowry even after birth of three children. On a

certain date, they got information that his sister had died at which they went to the house of the Appellants where they found the deceased in naked condition with injury on her person. They suspected that the in-laws had killed her for reasons of non-fulfillment of demand of dowry.

3. During trial, the prosecution examined thirteen witnesses.

4. PW 1, Basudev Pd. Yadav, is a formal witness, who proved the First Information Report (Ext.1).

5. PW 2, Akil Ahmad, who is the cousin brother of the deceased, stated that he learnt about the occurrence from the Informant at which he along with other family members went to the house of the Appellants and found the deceased dead with injury on her dead body. They suspected that the Appellants had killed the deceased for reasons of dowry. In cross-examination, his attention was drawn to the earlier statement where he stated that they had been informed that the deceased had committed suicide. In cross-examination, he stated that no information was ever given about the demand of dowry by the in-laws.

6. PW 3, Md. Mobin, was the uncle of the deceased, who stated that on the date of occurrence when they learnt about the death of the deceased, they went to the place of occurrence and



found her dead with injuries on her body. He further stated that demand of dowry used to be made before the death and, therefore, on account of non-fulfillment of demands she had been murdered. In cross-examination, he stated that on the date of occurrence he had been informed by the Informant that they had received information on phone about the death of the deceased. His attention was drawn to the earlier statement that he had stated before the police that, in fact, they had received information that the deceased had committed suicide. He also stated that the deceased had three children. He had speculated that the deceased had been murdered on account of her physical condition.

7. PW 4, Md. Helal, also uncle of the deceased, stated that on the information he went to the house of the Appellants and found the dead body of the deceased on the verandah with injuries on her person. He further stated that the in-laws used to demand dowry. In fact, this occurrence took place on account of non-fulfillment of such demand. Inquest was prepared by carbon process on which he also signed. In cross-examination, he described the nature of injuries which had been found on the person of the deceased. He could not say as to when exactly the demands were made. His attention was drawn to the fact of filing a petition in the Court to the effect that the deceased had not been murdered and the

accused persons were innocent.

8. PW 5, Md. Nizam, has been declared hostile.

9. PW 6, Md. Shahid, is the Informant, who stated that on the date of occurrence about 5.00 AM, he learnt that his sister had been killed by her in-laws at which he went to the place of occurrence. He stated that the deceased was married about seven years ago and demand of dowry used to be made consistently and the murder had taken place on account of non-fulfillment of such demand. He proved his signature on the *fard-e-bayan* which is Ext.3. In cross-examination, when asked about the details of the marriage of the deceased, he expressed his inability to give a confirmed date. He conceded that the deceased had been married earlier in 1990 with another person against whom the deceased had filed a case under Section 498-A Indian Penal Code which was compromised later. It was subsequently that the deceased was married to present Appellant-Md. Idrish. His attention was drawn to an application filed before the Chief Judicial Magistrate with regard to innocence of the accused persons in the present case. It was suggested to him that, in fact, the deceased was suffering from epilepsy and her death had occurred on account of having fallen in a fit of the same.

10. PW 7, Abdul Rashid, stated with regard to death

of the deceased on account of epilepsy and he was declared hostile in regard to his earlier statement about the story circulated by the Appellants that the deceased had committed suicide.

11. Similar is the statement of PW 8, Md. Iliyash, and PW 9, Md. Sajjad.

12. PW 10, Nurool, is also a witness on the Inquest Report, who was cross-examined with regard to the nature of injuries mentioned in the Inquest Report.

13. PW 11, Dr. Satya Bardhan, conducted Post Mortem Examination and found following injuries on her person:

- I. Bleeding from mouth and nose.
- II. Bruises (multiple) both sides of front of neck, middle of neck and upper part of neck.
- III. A cut mark of size 1½" x ¼" x 1/6" on right forearm near wrist joint.
- IV. One bruise of size 2" x 2" on anterior part of neck.
- V. Bruises and swelling 4"x2"-front of the chest.

He stated that such injuries could not have been caused on account of falling in a fit of epilepsy. He surprisingly further stated that the injuries were post mortem. He has also stated that Injury No.V was not mentioned in the Inquest Report.

14. PW 12, Dipanker Srigyan, is a formal Investigating Officer, who neither recorded the statement of the

witnesses nor inspected the place of occurrence.

15. Similarly, PW 13, Awadhesh Yadav, is also a formal witness.

16. The defence has also examined four witnesses; where DW 1, Md. Gaffar, and DW 2, Md. Ziyaul, are concerned, they stated that the deceased was suffering from epilepsy and had fallen in a fit of epilepsy on account of which she died.

17. DW 3, Dr. Md. Juned Ahmad Danish @ Dr. Danish Ahmad, stated that he had examined the deceased at one point in time and diagnosed her with epilepsy.

18. DW 4, Saldev Yadav, stated with regard to the application having been filed by the prosecution (Ext. C) declaring the innocence of the accused persons.

19. On going through the record, we find that even though the prosecution had initiated the case with regard to an offence punishable under Section 304-B Indian Penal Code but since there was no positive evidence with regard to date of marriage and death within seven years of the same, the charge failed and the Appellants were eventually convicted under Section 302/34 Indian Penal Code.

20. In such circumstance, we will have to consider the nature of evidence in support of this charge.

21. On a fair analysis of evidence, we find the following circumstances appearing in the case:

- (i) The homicidal death of the deceased in the house of the Appellants.
- (ii) Relationship of the Appellants with the deceased.

22. We also find that in the Doctor's opinion the injuries were *post mortem* and one of the injuries i.e. on the chest was not mentioned in the Inquest Report.

23. Since there is no direct evidence as to which of the accused caused the injuries on the person of the deceased, it would be unsafe to speculate that it was the Appellants, who did so, especially when there is no evidence that the Appellants were present on the scene of the crime on the day concerned. Further, the motive which was alleged has not been substantiated for which reason the Appellants were acquitted under Section 304-B Indian Penal Code.

24. It would also not serve the course of justice to count the Appellants just by virtue of their relationship with deceased.

25. Hence, in view of complete paucity of any evidence in support of the charge of murder against the Appellants, we allow the appeal and acquit all the Appellants of the charge

under Section 302/34 Indian Penal Code. The judgment and order of conviction dated 24.09.2010 and 27.09.2010 respectively passed by the Additional Sessions Judge (Fast Track Court No.2), Araria, in Sessions Trial No.1004 of 2008/Trial No.55 of 2009 arising out of Forbesganj P.S. Case No.153 of 2005, is hereby set aside.

26. The Appellant, Idris @ Md. Idrish (Cr. Appeal (DB) No.1312 of 2010), who is in jail, is directed to be released forthwith, if not wanted in any other case and rest of the Appellants, who are on bail, are discharged from the liabilities of their respective bail bonds.

27. In the result, the appeals are **allowed**.

(Anjana Prakash, J)

(Gopal Prasad, J)

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J.Alam/-

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