

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 1403 of 2010

Arising out of P.S. Case No. -15 Year- 1992 Thana -Amnour
District- SARAN

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Chandra Shekhar Bharti, S/o Late Mahabir Bharti, Resident of
Village-Jagdeo Sirisiya, Police Station-Amnour, District-Saran at
Chapra. Appellant/s

Versus

The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Rajendra Naraian, Sr. Adv.
Mr. Uday Shankar Singh, Adv.

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

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 02-12-2015

01. The Appellant has been convicted under
Section 302 IPC and sentenced to RI for life by the 3rd
Additional Sessions Judge, Saran at Chapra by
judgment and order dated 29.09.2010 in S.Tr. No. 08 of
1994 arising out of Amnour P.S. Case No. 115 of 1992
(G.R. No. 2548 of 1992).

02. The case of the prosecution according to
P.W. 1, Mannan Khan who was a Police Official is that
on the date of occurrence he had taken the deceased for
her medical examination since she was a victim of
kidnapping of Amnour P.S. Case No. 17 of 1992. After
the examination, when he returned and was sitting
within the premises of the Police Station on the



verandah he went to wash his mouth her mother and uncle came to sitting with her and then suddenly the uncle i.e. the Appellant took out a knife from his pocket and started to assault her. The Appellant was caught by the Police Officials who were present at the Police Station and the deceased was taken to the hospital where she died.

03. During trial the prosecution examined seven witnesses.

04. P.W. 1, Mannan Khan is the Informant who stated that he was a Havildar at the Amnour Police Station and on the date of occurrence she had taken the deceased who was a victim of Amnour P.S. Case No. 17 of 1992 for medical examination. After the medical examination when he returned to the Police Station her mother-in-law, brother-in-law, Chowkidar, Shambhu Ram and another came to meet her when he was washing his mouth beyond the steps of the Police Station. Suddenly, the Appellant took out his knife and started assault her variously. He was caught by the Police Officials who were present and sent behind the bars. His cross-examination was conducted only by co-accused, Shail Kumari Devi, who is no more (dead).

05. P.W. 2, Ramprit Raut is a seizure witness but has stated that the documents were not prepared in his presence. Similar is the statement of P.W. 3, Prem

Shankar Singh and P.W. 4, Ramayan Manjhi,

06. P.W. 4, Ramayan Manjhi is a hearsay witness but only on the question of kidnapping and murder of the deceased but no names have been disclosed by him and, hence, his evidence is irrelevant.

07. P.W. 5, Shri Narayan Kumar is the brother-in-law of the deceased who stated that on the date of occurrence while he was sitting at the chowki of the verandah of Police Station the mother and the Appellant came there and asked them to move away since they wanted to talk separately. Suddenly, the Appellant was seen assaulting the deceased with "Chhura" on account of which she died. The Appellant was caught there and then. In cross-examination he stated that his brother and the sister-in-law, victim (deceased) had married out of her own sweet-will and she was a major and there were differences because they belonged to different castes.

08. P.W. 6, Sugiya Devi is the mother-in-law of the deceased who stated that on the date of occurrence while she was sitting at the verandah along with the deceased the accused persons came there and asked them to move away since they wanted to talk privately. When they do so Appellant took out a knife and assaulted her daughter-in-law variously on account of which she was injured and then she was taken to the



hospital where she was declared dead. The reason for the occurrence was that there was an inter-caste marriage between the deceased and her son.

09. P.W. 7, Binod Kumar Singh is a formal witness who proved the Post-mortem Examination Report Exhibits-3 & 4, Inquest Report Exhibit-5, FIR Exhibits-6 & 7. The case diary which is marked as Annexure-8. In cross-examination, he conceded that no part of the investigation or documents were prepared in his presence.

10. The submission of the Appellant is that great prejudice has been caused to him since the P.W. 1, Mannan Khan and P.W. 6, Sugiya Devi were not cross-examined on behalf of the Appellant. These two witnesses did not appear before the Court for cross-examination despite the orders of the Court and, hence, in such circumstances, we should discard the evidence of P.W. 1 and P.W. 6.

11. The further submission of the Appellant is that since the Post-mortem Examination Report has not proved the cause of death is not conclusively proved and, hence, it would not be in the interest of justice to rely on the sole testimony of the eye-witness on the point of injuries on mere allegations that the Appellant had caused the death of the deceased. In the alternative the argument is also that at best it could be a case under



Section 304 Part (I) since there was admittedly differences between the family and based on account of inter-caste marriage and the occurrence took place in a fit of emotion.

12. To meet the arguments, we find that P.W. 1 and P.W. 6 were indeed not cross-examined by the Appellant but it is not known as to why they were not cross-examined. It has been noted by the Court that despite repeated calls no one had come to cross-examine the witnesses and, hence, the belated attempt to procure justice is meaningless.

13. As for the non-examination of relevant witnesses, we find that the occurrence is of the year 1992 and the case was committed to the Court of Sessions in the year 1994 and the first witness was examined on 22.11.1994. Thereafter, the trial continued for the next two years and the prosecution was able to produce only six witnesses in this period. P.W. 6 was examined on 09.10.1996. Thereafter next witnesses were examined on 02.06.2010. It thus appears that the trial was evidently protracted for about six years without any plausible reason. In such circumstances, we do not expect witnesses to appear since they must have lost interest in trial.

14. We also find that all witnesses only supported the case where the assault by the Appellant is



concerned. No doubt the Doctor has not been examined but this Court can look into the Post-mortem Examination Report which has been exhibited for our assistance and we find that indeed death has been caused on account of the injuries.

15. However, in the facts of the case, we are inclined to accept the alternative submission that the manner of occurrence suggests that at best the Appellant had knowledge of causing serious injuries which would result in death without intending to do so. For this reason, we convert the conviction of the Appellant from Section 302 IPC to one under Section 304 Part (I) IPC and reduce the sentence to the period of about eleven years already undergone by the Appellant.

16. In the result, the Appeal is dismissed with modification in conviction and sentence.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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