

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.415 of 2006

Arising Out of PS.Case No. -667Year- 1985 Thana –Katihar Town, District- KATIHAR

- =====
1. Janak Mallik son of Late Kishun Malik &
 2. Golabi Devi wife of Late Kishun Malik,
Both resident of Mohalla-Driver Tola, Quarter No.26(C), P.S- Katihar, District-
Katihar.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Md. Musowir, Advocate.

For the Respondent : Shri Dilip Kumar Sinha, APP

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 07-04-2015

Appellant Gulabi Devi was the mother of appellant no.1 Janak Mallik, both of them were put on trial by the learned Presiding Officer, F.T.C.II, Katihar in Sessions Trial No.452/1988 by being charged with commission of offences under Sections 302, 201/34 of the Indian Penal Code. By judgment dated 26.04.2006, both the appellants were held guilty for committing the offence and after being heard on sentence on the same day, the two were directed to suffer rigorous imprisonment for life under Section 302 Indian Penal Code as also rigorous imprisonment for seven years under Sections 201/34 Indian Penal Code. The sentences passed upon the appellants were directed to run concurrently. The appellants have preferred the present

appeal to challenge the judgment of conviction and order of sentence passed against them.

2 Some of the undisputed facts may be noticed :-

3. Deceased Rani Devi was married to appellant Janak Mallik 10 months prior to the occurrence. It appears that she had come to the house of the appellant Janak Mallik ten days ago and it also does not appear disputed that she died an unnatural death or rather she was killed there. Undisputedly, appellants Janak Mallik or Gulabi Devi did not inform either to the police or Sahdeo Mallik, father of the deceased Rani Devi, who was examined as P.W.1 and the dead body of Rani Devi was buried into the cremation ground. Undisputedly, the dead body was bearing injuries.

4. It was alleged that P.W.1 Sahdeo Mallik received a letter on 30.11.1985 written by some unknown persons informing him that his daughter had committed suicide by hanging and further that her last rites had been performed. The informant P.W.1 came to Katihar from Purnea and started gathering information about the reality behind the death of his daughter, but could not find any satisfactory reasons and lastly, went back to Katihar, but he had filed an application before the police to the above facts.

5. The complaint of P.W.1 Sahdeo Mallik was investigated by S.I Yogendra Prasad of Katihar Police Station and



during that course, he learnt that the dead body of deceased Rani Devi had been buried in Koshi Ghat in Katihar and on verification, it was found that indeed the cremation had been made at the place as indicated above. Mohan Dom, who was the in-charge of the cremation ground, pointed out that the dead body had been buried near the electric pole in the cremation ground. It was also informed by the said Mohan Dom that the lady hailed from the driver tola, i.e, place of residence of the appellants.

6. An Executive Magistrate Sri S.A. Numani (not examined) was deputed for holding inquest after exhumation of the dead body and accordingly, the dead body was exhumed and the same was identified by P.W.1 and uncle of the deceased as that of deceased Rani Devi and it was sent for post mortem examination. It was noticed during the inquest proceeding that there was a blackish mark in front of the neck and there was injury on the anus of the deceased. Accordingly, inquest proceeding was held by the police and the dead body was sent for post mortem examination. However, the doctor did not find any real cause of death of deceased Rani Devi after holding post mortem examination but keeping in view of allegation of P.W.1 that his daughter was hail and hearty and did not suffer from any ailment, the police registered the case on its motion and investigated the same.

7. No police officer has been examined and, as such, it is not known to us as to how the investigation was conducted and what materials were collected by him. However, the two appellants were sent up for trial which ultimately ended in their conviction.

8. During the trial of the appellants, four witnesses were examined. P.W.1 Sahdeo Mallik was the father of the deceased Rani Devi and he had filed the information before the police after he had come to know that his daughter had been murdered which led to the exhumation of the dead body in presence of the Executive Magistrate, held upon the inquest and sent the same for holding the post mortem which was held by P.W.3 Dr. Thakur Krishna Kumar Singh. P.W.2 Chamak Lal did not support the prosecution story and he was declared hostile. P.W.4 Gopal Lal was an Advocate's Clerk who gave evidence on being acquainted with the writings of S.I. Bintus Kiro who was the Officer-in-Charge of Katihar police station on 10.11.1985 and who had filed the written report on the basis of which the FIR of the case was drawn up.

9. On considering the evidence of mainly P.Ws.1 and 3, the court below held that the prosecution had succeeded in bringing home the charge against the accused and passed the impugned judgment of conviction and order of sentence as noted earlier.

10. Md. Musowir, learned counsel appearing on behalf



of the two appellants and has submitted that there was no direct evidence and there was no eye witness which fact was recognized by the trial court also in its judgment in paragraph-8 but still the trial court went on to convict the appellants and sentenced them. Submission also was that P.W.3 Dr. Thakur Krishna Kumar Singh, who was one of the doctors, who had overseen the holding of the post mortem examination as also the document, post mortem examination report (Ext-1) did not give any cause of death of the deceased but still the trial court was of the opinion that it was an intentional murder committed by the appellants and convicted them accordingly.

11. We also find that there was absolutely no evidence coming as eye witness account from any one. P.W.2 Chamak Lal had been declared hostile and P.W.1 Sahdeo Mallik as may appear from his evidence was not an eye witness to the occurrence. However, he has stated that he received an unanimous letter written by some one in Purnea about the commission of suicide by his daughter and accordingly, he came and filed the report before the police. P.W.1 also stated that the dead body of his daughter was exhumed in his presence on 01.12.1985 or some times after. A magistrate had also been deputed and he had accompanied the police and the Magistrate up to the burial ground and on the dead body being exhumed, he had identified the same along with his brother (not examined) as that of



his daughter Rani Devi. P.W.1 stated that there was injury on the anus of the deceased which appeared caused by some sharp cutting weapon and that the dead body was sent to Purnea hospital for post mortem examination. Before having stated the above facts, P.W.1 had stated that the deceased Rani Devi was married to the appellant Janak Mallik ten months prior to the incident and that she was murdered by the two appellants. His evidence also indicates in paragraph-3 that she was hail and hearty and she had definitely been killed by the accused persons. It appears further from his evidence that she had come to the house of the appellants only ten days prior to the incident (P.W.1 paragraph-7) and in paragraph-6, he stated that she used to live in her *Sasural* most of the time and had not indeed complain about any ill-treatment by any one. During cross-examination, P.W.1 stated that he had been informed by his other son-in-law Chunnu who died during the pendency of the trial and could not be examined. P.W.1 stated that he had informed the police on the second day of lodging the information that the dead body had been exhumed and post mortem examination had been held.

12. Thus, what appears from the evidence of P.W.1 is that the deceased being married only ten months back to appellant Janak Mallik had come to reside in his house only ten days prior to the occurrence and she was residing there. It also appears that she was

hail and hearty and she had no ailment nor she had complained of any ill-treatment on any part of the accused persons.

13. As regards the death of deceased Rani Devi P.W.1 was stating that she had been killed by the appellants. The evidence of P.W.3 Dr. Thakur Krishna Kumar Singh, who was one of the two doctors, who had been requested to hold post mortem examination by the Civil Surgeon, testified that there was a cut injury extending to 2” posterior from the anal canal. The wound was telling and its margins were regular and intestinal was protruding through the cut injury. There was no other injury detected on her person. The trachea was not congested nor there was any congestion or noticeable systems as regards the other organs of the body of the deceased. However, the doctor was stating that the body was partially decomposed and no cause of death could be ascertained and as a result of that, the viscera had been preserved.

14. While perusing the evidence of P.W.3, who was one of the doctors, who had been deputed to conduct the post mortem examination, we could not persuade ourselves to accept the opinion of P.W.3 that no cause of death could be ascertained. The body was swollen, it had decomposed so much so that eye balls had completely decomposed but there was no maggots present on the dead body and in the opinion of P.W.3, death had occurred more than three days



prior to holding the post mortem examination. Medical science informs that the decomposition of the dead body causes swelling of the muscles and thereby the depth, length and width of the injury are destroyed. Still the doctors had found a cut injury extending 2” posterior to the anal canal and it was further telling. The damage caused by the injury was as severe and deep as to destroy the muscular and other structures winded or connected with the anal canal and as a result of which the large intestine will be protruded through. In our opinion, the injury could be as serious as to cause the death of the lady. However, the doctors were still not as sure as ourselves to say that the above injury could be fatal to a person. We do not see any reason as to why the doctors were noting down such a vague and medically unacceptable opinion as regards the cause of death and were rather suggesting the police to send the viscera preserved by them for chemical analysis. We are further of the opinion that the two doctors who had performed the post mortem examination including P.W.3 had indeed been very insensitive to their duty and they had not even taken care to correctly measure the dimensions of the injuries and had merely stated that the wound was telling. We would have appreciated, had the doctors proved the wound to measure the depth and length of the injury and put the dimensions in their report. The very statement made by P.W.3 that the wound was telling which fact



also appears recorded in Ext-1. The post mortem report itself indicates that after answering the sharp cutting weapon which had caused the injury, it was ensured by the perpetrators of the offence that structures and muscles were cut and, as such, the wound was telling so much so to create sufficient space and opening for the large intestine led to come out through it. We are confirmed that the death of deceased Rani Devi aged about 17 years resulted by that injury and the injury could have been fatal in the ordinary course of nature.

15. The circumstance which we have just noticed after considering the evidence of P.W.1 further gets reinforced by other circumstances, like, the deceased had been killed while she was residing in the house of the appellants. The appellants and especially appellant no.1 Janak Mallik who was married to the deceased did not send any information to P.W.1 that the deceased had been killed or that she had died. As may appear from the every evidence of P.W.3, she had been definitely inflicted with an injury which, in our opinion, was fatal and if the injury had been inflicted by someone else, other than the appellants, then it was expected from them that they ought to have informed to the police about the incident besides informing the father of the deceased. It is yet another circumstance against the appellants that they did not inform the police. P.W.1 was informed by someone else from Purnea while the incident had occurred in Katihar



and that information moved P.W.1 to come to Katihar to assess the real facts and then filed an information with the police which information led the police to act to exhume the body. The body was bearing an injury which we have just described. The police might have noted in its report that there was a dark blackish mark in front of the neck, but there was no such mark was found by the doctor. The defence plea of the appellants was that the deceased had committed suicide and as appears from the very evidence of P.W.3 that plea was out and out a false plea. Thus, summarizing the circumstances, we find the following circumstance appearing against the appellants as incriminating circumstances :-

(i) The deceased had been married to the appellant Janak Mallik ten months prior to the incident and that she was residing in his house on account of having joined him ten days prior to the incident.

(ii) The deceased happened to have the injury which was fatal to her while she was residing in the house of the appellants.

(iii) She died of the injuries in the very house of the appellants.

(iv) The appellants did not inform either to the police if the lady had been attacked by someone other than the appellants or P.W.1, her father not only about being attacked and injured but also about having died on account of any reason.

(v) The appellants appeared buried the dead body stealthily in the cremation ground.

16. The defence plea of the appellants was palpably false.

17. These chains, in our opinion, formed a complete link which unfailing point out towards the guilt of the appellants and does not leave any room available to attempt of any explanation which could be inconsonance with the innocence of the two appellants. The further inference which we draw at the strength of these circumstances is that the above incidents or attending circumstances on commission of the offence were very much within the special knowledge of appellant Janak Mallik who was not only the husband of the deceased but had the deceased in his custody. We have already noted that the plea of the appellants that the deceased had committed suicide gets falsified from the evidence of doctor. We are aware with the falsity of the defence plea could not by itself prove the charges to the hilt but if there are circumstances which unfailing point out towards the guilty of the appellants then the falsity of the defence plea could also be yet another circumstance on the culpability of the accused. The lady was definitely inflicted with the injury in the house of the appellants while she was residing with them. The appellant no.1 may have the special knowledge as to how his wife happened to be inflicted with the fatal



injury on the part of the body as was found by the doctor holding the post mortem examination and it was legitimate for him not only to inform the police but also to inform the parents of the deceased regarding the manner in which the deceased had been inflicted with injuries. The complete silence of the appellant no.1 Janak Mallik and his behaviour or action of not lodging an information either with the police or informing the father of the deceased further raises an inference that the facts within the special knowledge of the informant were as clear as to pointing out to unfailing towards the culpability and involvement in committing the murder of his wife that he was choosing to keep a silence and silently buried the dead body. The circumstances required that the appellant no.1 Janak Mallik ought to have offered explanation as to how his wife happened to have that particular injury which ultimately proved fatal. The appellant having not offered with explanation further appears legitimately requiring to us to raise an inference of his culpability in commission of the offence. However, appellant no.2 Gulabi Devi, who was aged about 80 years on the day of occurrence or on the day her examination under Section 313 Cr.P.C. was recorded. She could be infirm as a lady as to assist any one in commission of such a heinous crime only because appellant Gulabi Devi was the mother of appellant no.1 Janak Mallik. The police appears roping her in the commission of the offence. In our

opinion, by virtue of her age as also by virtue of the position of being the mother who was so ripe as to 80 years of her age. We do not suppose her to participate in any manner in the commission of the offence. Her case appears of doubtful participation as a result of which, we acquit appellant Gulabi Devi by extending the benefit of doubt which we entertain in our mind as regards her participation.

So far as appellant no.1 Janak Mallik is concerned, we are very much confirmed in our view about his participation in killing his wife and we dismiss his appeal as it stands on his behalf.

18. In the result, the judgment of conviction and order of sentence passed against appellant no.1 Janak Mallik is upheld. So far as appellant no.2 Gulabi Devi is concerned, we acquit her of the charges she had been held guilty of by setting aside the part of the judgment in her context. Appellant no.2 Gulabi Devi appears to be on bail, she stands discharged from the liabilities of her bail bond.

19. With the above modification in the judgment of conviction and order of sentence, we dismiss the appeal.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

Brajesh Kr./V.K.Pandey.

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