

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.288 of 2008

AGAINST THE JUDGMENT OF CONVICTION, DATED 07TH FEBRUARY, 2008, AND THE ORDER OF SENTENCE, DATED 14TH FEBRUARY, 2008, PASSED BY SHRI VIJAY KUMAR JAIN, ADDITIONAL SESSIONS JUDGE, FAST TRACK COURT NO. III, GAYA, IN SESSIONS TRIAL NO. 285 OF 2005/623 OF 2005, ARISING OUT OF SHERGHATI (DOBHI) POLICE STATION CASE NO. 208 OF 2004

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Jai Ram Parjapat, son of Mahabir Parjapat, resident of village Mungeshwarpur, police station Dobhi, district gaya

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : NONE

For the Respondent : Mr. D. K. Sinha, A.P.P.

MR. RAVINDRA KUMAR, ADVOCATE : AMICUS CURIAE

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

AND

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 10-03-2015

Under the judgment, dated 07.02.2008, passed in Sessions Trial No. 285 of 2005/623 of 2005, by learned Additional Sessions Judge, Fast Track Court No. III, Gaya, the appellant, Jai Ram Prajapat, stand convicted under Section 302 of the Indian Penal Code. Following his conviction, the accused-appellant has been sentenced, by order, dated 14.02.2008, to suffer imprisonment for life.

2. The prosecution's case, as unfurled by the

fardbayan of Sushma Devi (PW 9), wife of the accused-appellant, Jai Ram Prajapat, leading to the death of her one year five months old daughter, Reshma Kumari, may, in brief, be described as under:

(i) Marriage between the informant, Sushma Devi, and the accused-appellant, Jai Ram Prajapat, was solemnized about 09 or 10 years before the death of their only female child, Reshma Kumari, which had allegedly taken place on 23.12.2004. Soon after her marriage, the informant had been subjected to beating and abuses hurled on her by her husband, her mother-in-law and sister-in-law. A *panchayat* was held to resolve the issue and the accused and the members of his family assured the members of the *panchayat* that they would no longer ill-treat the informant. However, soon thereafter, the accused resorted to beating and abusing the informant.

(ii) On 23.12.2004, at about 12 noon, accused Jai Ram Prajapat, his sister, Usha Devi, and mother, Sabita Devi, assaulted the informant and did not even provide her food. Wholly disgusted with the state of affairs prevailing at her matrimonial house, the informant decided to return to her parental house and while leaving her matrimonial house, though the informant requested her husband and other members of his family to allow her to take her only daughter,



Reshma, with her, the accused and the members of his family did not relent ; rather, they threatened the informant that if she brought any member of her parent's family to her matrimonial house, they would kill Reshma. Unable to persuade her husband and his relatives to allow her to take her said daughter, the informant came to her parental house and narrated to her parents and others as to what had transpired at her matrimonial house, whereupon her father, Ram Charitar Prajapat (PW 8), and her cousin, Kishori Prajapat (PW 4), took the informant, on 23.12.2004, at about 04:30 PM, to her matrimonial house and, on seeing them coming, informant's husband, accused Jai Ram Prajapat, and his relatives started abusing the informant, her father and her cousin and when the informant pleaded that her daughter be allowed to be taken by her, accused Jai Ram Prajapat's mother, Sabita Devi, asked the informant's husband to kill his daughter and, on being so instigated by his mother, accused Jai Ram Prajapat strangulated his daughter and threw her on the ground. Informant's daughter, Reshma, having been strangulated and thrown on the ground, died.

(iii) On 23.12.2004 itself, accused Jai Ram Prajapat went, with the dead body of his daughter, Reshma, to Sherghati Police Station and lodged some information with the police. Thereafter, the police, on the following day, arrived at



the residence of the accused, where the informant (PW 9), too, appeared and gave an oral statement to the police. Her statement was recorded as *fardbayan* and treating the same as First Information Report, Sherghati Police Station Case No. 208 of 2004 was registered, under Sections 302/120(B) of the Indian Penal Code, against three accused persons, namely, (i) Sabita Devi, (ii) Jai Ram Prajapat and (iii) Sumitra Devi @ Usha Devi.

3. During investigation, inquest was held over Reshma Kumari's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, *charge sheet* was laid, under Sections 498A/302/120B of the Indian Penal Code, against the said three accused persons, namely, (i) Sabita Devi (ii) Jai Ram Prajapat and (iii) Usha Devi.

4. At the trial, *charges* were framed under Sections 302, 498A and 120B of the Indian Penal Code against the present appellant, Jai Ram Prajapat, his mother, Sabita Devi, and his sister, Usha Devi. To the *charges* so framed, all the three accused pleaded not guilty.

5. In support of their case, prosecution examined altogether 10 (ten) witnesses including the doctor (PW 10), who had conducted the *post mortem* examination. However, the Investigating Officer was not examined.



6. The accused persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, all the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

7. Having, however, arrived at the finding that accused-appellant, Jai Ram Prajapat, had been proved guilty of the *charge* under Section 302 of the Indian Penal Code, the learned trial Court convicted him accordingly. Having, however, found that the *charges* against the other two co-accused, namely, (i) Sabita Devi and (ii) Usha Devi, under Sections 302, 498A and 120B of the Indian Penal Code had not been proved, they were accordingly acquitted. Following the conviction, sentence has been passed against the convict, Jai Ram Prajapat, as mentioned above.

8. Aggrieved by his conviction and the sentence passed against him, the convict, Jai Ram Prajapat, has preferred this appeal.

9. We have heard Mr. Ravindra Kumar, learned Counsel, appearing as Amicus Curiae, and Mr. D. K. Sinha, learned Additional Public Prosecutor, appearing on behalf of the State.

10. While considering the present appeal, we may pause to take note of the findings of the doctor (PW 10) and his opinion with regard to the cause of death of Reshma Kumari, daughter of the accused-appellant and the informant. According to the evidence of the doctor (PW 10), the *post mortem* examination conducted, on 24.12.2004, at 01:25 PM, revealed following *ante mortem* injuries on the dead body of Reshma Kumari.

"(i) Swelling with echymosis over left temporo parietal region with hematoma under scalp. Linear fracture of underlying bone was present with massive intracranial hemorrhage.

(ii) Abrasion 1" x 1" over left clavicle."

11. In the opinion of the doctor (PW 10), the death was caused due to shock and hemorrhage as a result of the injuries sustained by the said child on her head, the injuries having been caused by hard blunt substance. It is the specific evidence of the doctor (PW 10) that no injury was found on the neck of the said child.

12. Amazingly enough, prosecution did not dispute the correctness of the findings of the doctor and/or his opinion with regard to the nature of the injuries, which had been found on the said dead body, the cause of death or the nature of weapon, which might have been used. Even the defence did not dispute the evidence given by the doctor (PW

10). This Court, too, does not find anything inherently incorrect or improbable in the evidence given by the doctor (PW 10).

13. Thus, the medical evidence on record clearly shows that the said deceased had sustained a fracture near her left ear leading to massive intracranial hemorrhage and the shock and hemorrhage, which resulted from the fracture so sustained, caused the death of the said child. It is also crystal clear from the medical evidence on record that the said child had not been strangled and as no injury was found on her neck, it can be safely concluded that no force was applied on her neck by the accused-appellant or by anyone else.

14. Coupled with the above, what can also not be ignored is that the alleged occurrence of the killing of the informant's daughter, Reshma Kumari, took place, according to the informant herself, on 23.12.2004, at about 04:30 PM, in the presence of the informant (PW 9), her father (PW 8) and her cousin (PW 4). No information was, however, given to the police immediately after the occurrence had taken place. In fact, the informant gave her oral statement to the police on the following day at about 12 noon, when the police arrived at the house of the accused. It has also emerged from the evidence on record that the accused was the one, who had, on the day of the alleged occurrence itself, carried the dead body



of his child to the police station. What he had reported to the police was, however, not revealed at the trial and even the learned trial Judge made no effort to find out what the information given by the husband of the informant was, when her husband carried the dead body of his child, Reshma Kumari, to the police station. Noticeably, in her statement, which has been treated as the First Information Report, the informant alleged that it was in the presence of her father (PW 8) and her cousin (PW 4) that the accused-appellant, Jai Ram Prajapat, had strangled his daughter, Reshma Kumari, and also thrown her on the ground leading to her death.

15. Curiously enough, however, no explanation has been offered as to why no information was given to the police till the next day until the time the police visited the house of the accused-appellant. No explanation is discernable, in this regard, from the materials on record.

16. In fact, as already indicated above, it has also surfaced from the evidence on record that it was the accused-appellant himself, who had taken his daughter's dead body to the police station. What he had reported to the police has, however, remained a mystery inasmuch as prosecution has not taken care to bring, at the trial, any material to show as to what information the accused-appellant had given to the police. The learned trial Judge also remained a mute spectator



and a mere recording machine and showed no participation as a trial Judge at the trial inasmuch as no query is found to have been made by the learned trial Judge from the witnesses examined as to how the police had arrived at the house of the accused-appellant on the following day, i.e., on 24.12.2004, or who had informed the police about the death of Reshma Kumari and what information had made the police visit the house of the accused-appellant.

17. Bearing in mind the above infirmities with which suffer the prosecution's case, when we turn to the evidence of the informant (PW 9), wife of the accused-appellant, we notice that according to her evidence, her marriage was solemnized with the accused-appellant in the year 1995 and soon after her marriage, she was subjected to beating by her husband by raising demand for money and that she gave birth to a female child and that even after the baby was delivered, her beating, at the hands of her husband and in-laws, continued. Unable to bear the torture, which she had been subjected to, when she was leaving her matrimonial house, she requested her husband and her in-laws to let her take her daughter to her parental house, but they did not allow her to do so.

18. What is, now, of utmost importance to note is that the informant (PW 9) has deposed, in no uncertain



words, in the examination-in-chief itself, that she had heard that her daughter was strangled to death and it was the Chowkidar, who had called her, and, then, she went to the Police Station and lodged the case meaning thereby that the informant was not a witness to the occurrence. It, therefore, becomes abundantly clear that whatever allegations the informant had made in the First Information Report to the effect that it was her husband, who had strangled her daughter, and, then, threw her on the ground, were not based on her own knowledge.

19. In fact, in tune with his daughter's evidence, informant's father, Ram Charitar Prajapat (PW 8), has also, in categorical terms, deposed that he came to learnt that Jai Ram Prajapat, i.e., the accused-appellant, had strangled Reshma Kumari to death after throwing her on the ground. This clearly shows that PW 8 had not witnessed the occurrence contrary to what the First Information Report, lodged by the daughter of PW 8, had alleged.

20. When the evidence of PW 8 and PW 9 are read together, it leaves the Court with no option, but to hold that the whole case lodged against the accused-appellant, with regard to the alleged strangulation of Reshma Kumari at the hands of her father and her being dashed against hard substance or her being thrown on the ground, are nothing but

falsehood.

21. Our quest to determine if there is any other evidence on record, which can fasten the accused-appellant, or can be described to have fastened the accused-appellant, with the offence of murder of his own daughter, when we turn to the remaining evidence on record, we find that prosecution has not been able to muster even one witness, who could depose that Reshma Kumari had been put to death by her father. In fact, the witnesses, examined by the prosecution, could not say as to how Reshma Kumari died except that they had learnt that she had been strangled to death by her father; whereas the medical evidence on record speaks loud and clear that Reshma Kumari had not been strangled. In fact, far from being strangled, she had not even sustained any injury on her neck.

22. Situated thus, we are clearly of the view that the prosecution had miserably failed to bring home the *charges*, which the accused-appellant stands convicted of, and the learned trial Court ought to have acquitted the accused-appellant of the *charge* under Section 302 of the Indian Penal Code, while acquitting the two other co-accused.

23. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentence passed against him by the

judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same.

24. Since the accused-appellant is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

25. Let the Amicus Curiae be paid a fee of Rs.5,000/-.

26. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Gopal Prasad, J.)

Prabhakar Anand/-

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