

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.638 of 2015

Arising Out of PS.Case No. -14 Year- 2004 Thana -SAKARPUR District- DARBHANGA

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Bhola Chaudhary S/o Late Mohan Chaudhary Resident of Village Aawam, P.S.
Sakatpur, District Darbhanga.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. R.K. Sinha-2, Adv.
Mr. G.N. Ojha,
Mr. Samir Kumar Sinha.

For the State : Mr. A.K. Sinha (A.P.P.)

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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: 19-01-2016

Heard learned counsel for the Appellant and
learned counsel for the Additional Public Prosecutor.

2. The Appellant has been convicted under section 302 of the India Penal Code by the Additional District and Sessions Judge-cum-Fast Track Court- 4th, Darbhanga in Sessions Trial No. 309 of 2004 (G.R. No. 521 of 2004) arising out of Sakatpur P.S. Case No. 14 of 2004, by a Judgment dated 08.03.2007 and sentenced him to undergo rigorous imprisonment for life and fine of Rs. 10,000/-, in default of which, further rigorous imprisonment for 2 years.

3. The case of the informant, Ram Punit Kamat, is



that his daughter, Binita Devi, was married to the Appellant two years back in the year 2002, but they did not have any children. About 6 days back, the Appellant had taken her to the matrimonial home. The Appellant used to always assault her because he suspected her to be having illicit relationship with others, but the fact was that he himself having illicit relation with other women. Whenever the wife of the Appellant used to protest, he would threaten her of dire consequences. On the date of occurrence, he received information that the Appellant strangled his daughter so he left for the place of occurrence and saw his daughter laid on a *Chatai*. Those present there told him that the Appellant had committed her murder. This information was given on 29.03.2004 at 3.30 pm. i.e. within three and half hours of the occurrence.

4. During trial, the prosecution examined 7 witnesses, whereas the defence examined one witness. P.W.1, Urmila Devi, is the mother of the Appellant, who has been declared hostile. Her attention was drawn to the earlier statement that she had stated that at about 12.00 noon the Appellant committed murder of her daughter-in-law.

5. P.W.2, Sunita Kumari, has also been declared hostile. Her attention was drawn to the earlier statement that she has stated that the Appellant had strangled the deceased in the

after noon.

6. P.W.3, Ramu Kamati, is the uncle of the deceased. He stated about the marriage of the Appellant with the deceased in the year 2002 and that whenever she came to her matrimonial home, she used to complain about the conduct of the Appellant. About 6 days back, the deceased had been taken to the matrimonial home by the Appellant and on 29.03.2004, she was strangled to death. They had received information at the S.T.D. Booth regarding this fact. He then took Ram Punit Kamat (P.W.4), his brother, to the place of occurrence where the Police came and arrested the Appellant. He stated that the *fardbeyan* of P.W.4 was recorded as also that the Appellant confessed before the villagers when the Police started questioning him. In cross-examination, he stated that the Police had examined him 10 to 12 days after the occurrence and in fact, he was not an eye witness and he had given the version as had been disclosed by others. He, however, does not disclose the source of his information. He also stated that whenever his niece came home, she used to complain that the Appellant was characterless. His own village is about 6 kilometers from the place of occurrence. In cross-examination, he stated that when he reached the place of occurrence, the Appellant was present in the house and did not even run when the Police came.

Despite an opportunity, he did not disclose as to from whom he had learnt that it was the Appellant, who had strangled the deceased.

7. P.W.4, Ram Punit Kamat, is the informant, who stated that the deceased had been married to the Appellant about two years ago and he used to always assault her, which she retold to him every time when she came home. She complained that the Appellant was having illicit relationship with Manju Devi and threatened her for dire consequences. She was with them since last six months and six days ago, the Appellant had taken her to the matrimonial home. On the date of occurrence, a phone call was received by Damodar Kamat that the Appellant had strangled his daughter at which they all left for village and found her lying on the *Chatai* with scratches on the neck. There was blood even near the vaginal area. Villagers told them that the appellant had committed the murder of his wife. The Police then caught the Appellant and took him. The Appellant is also said to have confessed before the villagers that it was he who had committed murder. He confirms that a *fardbeyan* was recorded on his statement. In cross-examination, he stated that the Appellant used to work in Aligarh and often in his own village. He had never assaulted his daughter in front of him and she used to disclose this

fact when he used to ask her about it. He also stated that the Police was already in the house of Bhola Chaudhary before he had reached and he had confessed to the Police about his complicity.

8. P.W.5, Upendra Kumar, was the Officer-in-Charge of Sakatpur Police Station. He stated that on 29.03.2004 at about 1.30 pm. the Appellant came to the Police Station and confessed that he had strangled his wife and she was lying at home. He then made Station Diary Entry No. 338 of 2004 and proceeded to the place of occurrence. The Appellant showed that the dead body of his wife at 2.00 pm of which he made an Inquest Report in presence of the villagers, namely, Amrit Lal Chaudhary, Saryu Kamat and Md. Shamis, none of whom have been examined marked for identification. He found that there was scratch on the neck and also blood in the vaginal area. While he was preparing the Inquest Report, the father and uncle Ramu Kamat reached there and on the statement of the father, Ram Punit Kamat (P.W.4), *fardbeyan* was recorded, which he proves as Exhibit-1. On the inspection of the place of occurrence, he found a mud built thatched room, which had a thick wooden beam in the center and a wooden door. One of the door planks was found kept on the floor. Adjacent were other thatched houses. He then arrested the Appellant, who confessed his guilt for reasons that the deceased

had illicit relationship with some others and she was caught in the act. In cross-examination, his attention was drawn to the statements of P.W.1 and P.W.2, who had been declared hostile and that they stated the Appellant had committed murder of his wife. In cross-examination, he conceded that he had not got the statement of the Appellant recorded under Section 164 Cr. P.C.

9. P.W.6, Dr. P.K. Das, was posted at Darbhanga Medical College. On 30.03.2004 at about 2.30 pm., he had conducted the Postmortem of the deceased. He found that the dead body was of average built. *Rigour Mortis* had passed off and the body was in moderate condition of decomposition. He found the following Ante Mortem injuries :

Both eyes were found deeply congested with multiple small petichial hemorrhage varying in size from pin head to lentil over face and upper part of the chest.

One abrasion 1" x ½" was found over left side of neck by the side of supra-external notch. Bruising was seen over middle part of the neck in 6" x 4" area with darkening of the skin. It was brown in colour, soft tissues and neck muscles in these areas were found deeply contused. Trachea



and larynx were found deeply congested with fracture of trachea/rings thyroid cartilage and bloody froth in the lumen. Left cornea of the hyoid bone were found fracture with infiltration of blood and blood clots at the fracture site. Both lungs were found deeply congested with petichial hemorrhages and emphysematous bullac over the surface. Brain and meninges were found congested. All the internal organs in general were found congested. Right side of heart contains small amount of blood and left empty. Bladder was found empty. Petticote was stained with urinal luconal discharges.

Above noted Anti-mortem injuries were dangerous to life in ordinary course of nature and were caused by some hard and blunt objected including the respiratory passes. Death was due to asphyxia as a result of strangulation. Time since death is within 24 to 36 hours from the time of Postmortem.

10. He proves the Postmortem as Exhibit-4. From his statement, it appears that the death had been opined to be

caused on account of asphyxia.

11. P.W.7, Dev Sundar Singh, is the formal witness, who proves the Station Diary Entry Nos. 338 and 343 dated 29.03.2004, as Exhibits 5 and 6. However, he stated that the Station Diary Entries had not been written in his presence.

12. D.W. 1, Bihari Chaudhary, co-villager of the Appellant, stated that on the date of occurrence, he heard that the deceased committed suicide since she had been caught in a compromising position with another person by her husband and had been scolded by them. However, in cross-examination, he had stated that he had not been examined by the Police.

13. On going through the evidence of the prosecution, we find that it is not a case under Section 304B of the Indian Penal Code, which would entitle the prosecution to raise a presumption against the husband rather it is a case under Section 302 of the Indian Penal Code simplicitor and the case is based on circumstantial evidence.

14. The circumstances in the present case are :-

- i) The Appellant reportedly had illicit relationship with other women.
- ii) He used to often assault his wife on account of resistance to it.

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- iii) On the date of occurrence, information was received by the informant that the deceased had been strangled to death.
 - iv) On reaching the place of occurrence, she was found lying on the *Chatai* with bruises on the neck and some marks of violence in the vaginal area.
 - v) The Appellant is said to have confessed his guilt before the Investigating Officer in presence of witnesses.
 - vi) The Appellant himself had gone to the Police Station and confessed his guilt, which was noted in the Station Diary Entry.
 - vii) The Postmortem reveals that the death was on account of asphyxia.

15. On bare perusal of the above circumstances, it is apparent that there can be no denial that the deceased had died

on account of asphyxia but as to who has caused such death is not known.

16. The confession of the Appellant cannot be relied upon for the simple reason that it was before the Police Officer and also probably while in custody. No witness has supported fact of confession. Even in the *fardbeyan*, there is no mention with regard to confession of the Appellant at any stage. The Station Diary Entry appears to be highly suspicious for the reason that the Officer-in-Charge, in such circumstances, should have instituted a case on such statement instead of just recording it as Station Diary Entry.

17. Moreover, when the very same Investigating Officer reached to the place of occurrence, he found one of the door planks on the floor suggesting that there had been an attempt to open the door from the outside. He had also found a thick beam in the centre of the room but omits to mention that there was any other objective sign to suggest that it was a case of suicide.

18. The Doctor surprisingly on the very next day finds the dead body in a decomposed stage, which is not explained by the prosecution. It is not expected that in the month of March, weather would be so hot that the dead body would decompose within 24 hours.

19. There is no explanation by the prosecution as to why the dead body was not sent for Postmortem, right after the *fardbeyan* was recorded at 3.30 pm. The Investigating Officer has not explained as to when he sent the dead body for Postmortem.

20. Under such circumstances, we are inclined to give benefit of doubt to the Appellant. Hence, the appeal is allowed. The Judgment and Order of conviction dated 08.03.2007 passed by the Additional District and Sessions Judge-cum-Fast Track Court-4th, Darbhanga in Sessions Trial No. 309 of 2004 is hereby set aside. The Appellant, namely Bhola Chaudhary, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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