

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (DB) No.796 of 2013**

Arising Out of PS.Case No. -252 Year- 2012 Thana -SHEKHPURA District- SEKHPURA

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1. Manoj Halwai S/O Late Raj Halwai Resident Of Marwari Tola, Nathnagar, P.O.
And P.S.- Nathnagar, District- Bhagalpur

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

Appearance :

For the Appellant : MISS. NICKEY SINGH, AMICUS CURIAE

For the Respondent/s : MR. DILIP KUMAR SINHA, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
and
HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI)**Date: 13-06-2016**

As none appears on behalf of sole appellant, at the request of Court, Miss Nickey Singh, learned counsel volunteered herself to assist the Court as an Amicus Curiae and is being appreciated accordingly.

2. The sole appellant Manoj Halwai who has been found guilty for an offence punishable under Sections 302, 201, 498A of the IPC vide judgment dated 30.10.2013 and has been sentenced to undergo RI for life, RI for five years, RI for three years respectively vide order of sentence dated 03.08.2013 by Additional Sessions Judge, Sheikhpura in Sessions Trial No. 883/2012 challenged the verdict under present appeal.

3. PW-1 Naresh Halwai gave his written report on 21.06.2012 stating therein that his daughter Anita Devi @ Gudia



(deceased) was married to Manoj Halwai about eight years ago. She was subjected to cruelty after marriage by the accused forcing her to bring money, fridge and other items from her *Naiher* and during said course, the brothers and sisters of Manoj Halwai were provoking. At about six years ago, he had handed over Rs. 15,000/- and in the aforesaid background, his daughter was allowed to live peacefully for a year. Again, she was being tortured and to ward off the same, he had paid Rs. 20,000/-. Now-a-days, she was being regularly tortured. She was forced to leave her Sasural. He had also gone there and a Panchayat was held wherein accused had undertaken not to torture. However, his activities continued. He had demanded money to purchase land over which he had paid Rs. 1 Lakh after selling ornaments of his daughter.

4. Furthermore, it has also been disclosed that on 20.06.2012, Manoj and his daughter came at about 10:00 A.M. Manoj told him either to pay Rs. 20,000/- or to keep his daughter. There was altercation amongst them. Manoj had assaulted his daughter in his presence. He had stated that for the present he is not in a position to pay the same. They have slept in the night. When he awoken in the morning, he found both of them absent from the house, whereupon he began to search. During said course, he found Manoj coming from the market. On query, Manoj declined to divulge.

During midst thereof, some persons whispered that a dead body was lying near Jakhraj Asthan whereupon they had gone and identified the dead body that of his daughter.

5. On the basis of the aforesaid written report Sheikhpura PS Case No. 252/2012 was registered under Section 302, 201, 328/34 of the IPC whereupon investigation commenced and concluded by way of submitting charge-sheet. After taking cognizance, thereupon the case was committed and ultimately trial commenced and concluded in a manner, subject matter of instant appeal.

6. The defence of appellant/accused as per mode of cross-examination as well as statement recorded under Section 313 of Cr.P.C is that of complete denial as well as of false implication. To substantiate the same had also examined one witness, Sunita Saw, sister of accused as DW-1.

7. In order to substantiate its case, the prosecution had examined altogether nine PWs out of whom PW-1 Naresh Halwai, Informant, PW-2, Ishwar Yadav, witness of inquest, PW-3 Mala Devi, mother of deceased, PW-4, Karu Halwai, brother of deceased, PW-5, Manti Devi, Bhabhi of deceased, PW-6, Pritam Kumar, PW-7, Munna Halwai, brother of deceased, PW-8 Dr. Y.K. Diwakar who had conducted the postmortem and PW-9, Ravi Kant Kumar, I.O. Side by

side had also exhibited Ext-1, written report, Ext-2, Postmortem Report, Ext-3, Formal FIR Ext-4, Inquest Report, Ext-5, FSL Report.

8. From Ext-2, Postmortem Report, it is apparent that deceased Anita Devi @ Gudia had died without having any kind of ante-mortem external or internal injuries and further as per finding of the PW-8 inconsonance with the Ext-2, the time elapsed since death happens to be within 36 hours. Furthermore, from Ext-5, FSL report, it is apparent that deceased died by sulphas, a poisonous substance and so by the aforesaid evidence, it is evident that deceased died of an unnatural death on account of consumption of poisonous substance.

9. Now the only question remains to be answered is whether the appellant happens to be responsible for causing death of deceased, Anita Devi @ Gudia by means of poison. As is evident from the evidence available on the record, none is an eyewitness to the occurrence. The prosecution, as is evident, had tried to substantiate the allegation against appellant by way of producing a theme of circumstantial evidence that too, on the theory of last seen.

10. As stated PW-1, informant, during course of filing of written report had not clarified his status whether he happens to be an eyewitness to occurrence but during course of evidence in his examination-in-chief alone at para-2 had stated that he was not present at his house in between night of 20-21/06/2012. When he returned

back on 21.06.2012, then he came to know.

11. PW-2 being an outsider and being a witness of inquest is not at all found relevant on that very score.

12. PW-3 is the mother of deceased who in para-2 of her examination-in-chief had stated that Manoj took away Anita about 7-8 months ago. She inquired over which, he disclosed that they are going to their house. In the morning, she came to know on rumour that she is dead. She had gone Jakhraj Asthan where she found the dead body. During cross-examination at para-11, she had stated that at about 10 O'Clock in the night they had gone to sleep. She was sleeping on the ground floor while deceased along with accused were sleeping over upper floor. She came to know regarding death of her daughter at about 6:00 a.m. She had further stated that she is unable to disclose the exact time when she met with her daughter and son-in-law after awakening in the morning. She had further disclosed that at about 1:00-2:00 a.m. in the night, she had inquired from her son-in-law where he was going. She had not awoken other family members at that very moment. In para-12, she had stated that she found the main door opened after awakening in the morning whereupon she inquired from Manoj (accused) over which he disclosed that Anita had gone to bring medicine from Barbigha. In para-13, she had disclosed that she had found her daughter as well as son-in-law

accompanying each other.

13. PW-4 is brother of deceased who in course of examination-in-chief had stated that in the night while his sister and brother-in-law were going over which his mother inquired. His sister had disclosed that she was going to her Sasural. Then thereafter, they slept. In the morning, he found his brother-in-law in the house who on query had disclosed that Anita had gone Barbigha for medicine. During cross-examination at para-6, he had stated that his sister and brother-in-law had proceeded at about 10-11 P.M. They had not gone to see them off. They had closed the door by fixing latches. At about 5:00 a.m., his brother-in-law returned back. When he returned back, then his mother had awoken him. At that very time, his brother-in-law and sister were going from his house. He had seen his brother-in-law sitting over cot at his house. He had further stated that after sale of ornaments belonging to his sister money was given to his brother-in-law.

14. PW-5, Manti Devi, Bhabhi of deceased, in para-2, had stated that her Nanad and Nandosi had come to her house before the occurrence. At about 2:00 a.m., they had gone. None had seen. She resides at different house. In the morning, her mother-in-law had divulged the same.

15. PW-6 is another witness not connected therewith.



16. PW-7 is another brother of deceased who had stated that on hue and cry he came to know that his sister has been murdered and her dead body has been thrown near Jakhraj Asthan. He had further stated that his brother-in-law had taken away his sister at about 2:00 a.m. and then murdered her. His brother-in-law returned back and then slept at his house. On query he had disclosed that she had gone to Barbigha. In para-4, he had stated that there was scuffle amongst them before the occurrence at his house. During cross-examination, he had stated that he resides away from the house separately since last four years. In para-9 he had further stated that whatever stated by him was based upon the disclosure from his mother, brother and sister.

17. PW-9 is the I.O. Apart from his evidence corroborating registration of case on the basis of written report filed by Naresh Halwai regarding death of his daughter, Anita Devi @ Gudia and further proceeding with the investigation, visiting the place of occurrence, submission of charge-sheet after completing the investigation, it is evident from para-5 of his examination-in-chief alone that while he had gone to the place of deceased, he found accused person there, who was taken into custody therefrom.

18. After analyzing the evidence as referred above of all the PWs, it is apparent that apart from other PWs, PW-1, the



informant who claimed to be an eyewitness at an initial stage had also changed his status by identifying himself as a hearsay witness. PW-3, mother of the deceased who also claimed to be an eyewitness relating to last seen is found inconsistent with the evidence of PW-4, her son. Not only this, her evidence is found unreliable in the background of improbability coming out from para-11 as well as para-12 of her deposition. At para-11 she had stated that at 1:00-2:00 A.M. her son-in-law with her daughter got out from her house saying that they are going to their house, while in morning, she found the main door open. On query, Manoj said that Anita had gone to Barbigha for bringing medicine. When accused and deceased both left house at 1:00-2:00 A.M. then, how the accused case inside house having maid gate open, is a circumstance which neither been explained, nor inspire confidence. Therefore, evidence of sole witness over last seen could not be relied upon. Apart from this, the abnormal conduct of the accused as suggested by the prosecution is also to be taken note of. When in the dead of night, the accused had gone along with deceased and further having committed murder of deceased by administering poison, accepting the prosecution version for a moment, there was no need for the accused to have his presence at the Sasural and further keeping him till presence of police, allowing him to be apprehended. Not only this, when the evidence of PW-3 is taken together with the



evident of PW-4, it is apparent that they had gone to sleep after closing the main door fixing latch, then in that event, whether there was any occasion for the accused to break open the latch and then came inside the house, allowing him to sleep and further remaining there to facilitate his apprehension.

19. Moreover, there happens to be no case of the prosecution that after breaking latch, the accused has come inside nor there happens to be any sort of claim at the end of any of the witnesses that he had opened the door allowing the accused to come inside. Moreover, if such situation is perceived by the postmortem report whereunder the death of the deceased has been found within 36 hours and further having the postmortem being conducted on 21.06.2012 at 3:00 P.M. is indicative of the fact that the prosecution version as flashed during course of trial is found suspicious one. After giving minute observation, it is evident that except PW-3, none is an eyewitness on last seen. So far evidence of PW-3 is concerned, as referred above, is found full of embellishment.

20. That being so, a genuine suspicion has arisen with regard to prosecution version whereupon, the conviction and sentence recorded by the learned lower court would not sustain. Accordingly, the same is set aside. The appeal is allowed.

21. Since the appellant is under custody, he is directed to

be released forthwith if not wanted in any other case.

22. We highly appreciate the assistance rendered by the learned Amicus Curiae. The first and the last page of the instant judgment be handed over to her in order to receive appropriate fee.

(Gopal Prasad, J)

Patna High Court
June 13th 2016
Perwez/AFR

(Aditya Kumar Trivedi, J)

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