

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.495 of 2016

Arising Out of PS.Case No. -175 Year- 1999 Thana -DIGHA District- PATNA

Mishrilal, son of Late Murat Lal, resident of Mariam Colony, near Xavier Teachers Training School, Police Station- Digha, District Patna-11

.... Appellant/s

Versus

1. The State of Bihar
2. Augustine Ronald alias Kalicharan, son of Rumald.
3. Mery Augustine, wife of Augustine Ronald.
4. Subhash Augustine alias Raja, son of Augustine Ronald.

Sl. Nos. 2 to 4 are residents of Mariam Colony, Police Station Digha, District Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjay Kumar Verma, Advocate

For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 21-09-2016

The instant appeal is preferred against the judgment of acquittal, dated 04.03.2015, passed by the Additional Sessions Judge-X, Patna, in Sessions Trial No. 530 of 2001, arising out of Digha P.S. Case No. 175 of 1999, whereby, the learned trial Court has acquitted the Opposite Party Nos. 2, 3 and 4 of the charge under Section 305 of the Indian Penal Code.

The informant in his *fardbeyan*, made on 06.12.1999, stated that the opposite parties Nos. 2 to 4 came and assaulted him on 05.12.1999, when he protested against their evil designs



towards his daughter. The informant reported the matter to the Police and he was taken to hospital for treatment. When he returned from hospital, he learnt that the accused have, again, held out threats to his daughter against marrying any other person. The informant further stated that on 06.12.1999, when he was reading newspaper and his wife was engaged in the kitchen, he began to look for his daughter, who was not seen around. On search, he found that his daughter had hanged herself from ceiling of her room. With the help of neighbours, the door was broken and the deceased was brought down, who had hanged herself from the ceiling. The informant alleges that his daughter had committed suicide, because of torture meted out by the accused persons.

On the basis of the *fardbeyan* of the informant, the Police registered Digha P.S. Case No. 175 of 1999, dated 06.12.1999, under Sections 305/504 read with Section 34 of the IPC. The Magistrate, after taking cognizance, committed the case to the Court of Sessions where charge was framed under Section 305 IPC.

The accused, in their statements, under Section 313 Cr. P.C., denied the charges and claimed to be tried.

The learned trial Court, on consideration of materials on record, acquitted the accused persons, observing that the prosecution has not been able to establish the time of occurrence as

well as the manner of occurrence beyond all reasonable doubts and medical report also does not support the prosecution's case.

Being aggrieved, the informant, by preferring the present appeal, has assailed the impugned judgment. He submits that PW 1, Lalti Devi, mother of the deceased, and PW 7, the informant, father of the deceased, have fully supported the prosecution's case. Further-more, PWs 3 and 5, who are tenants of the informant, have also corroborated the prosecution's case that the deceased died due to hanging.

We have heard learned counsel for the appellant as well as the State and have also perused the materials on record.

The prosecution, in support of its case, has examined altogether nine witnesses. PW 7, Mishrilal, is the informant and father of the deceased. PW 4, Girija Devi, is the '*Phua*' of the deceased. PWs 3 and 5 are tenants of the informant. PW 1, Lalti Devi, is the mother of the deceased. PW 9, Dr. Ashok Kumar Yadav, is the doctor who conducted autopsy of the dead body. The Investigating Officer has not been examined in this case.

It is true that the informant (PW 7) in his evidence before the Court has supported the prosecution's case; but it is equally noticeable that he has also tried to develop the case before the learned trial Court. In his evidence, PW 7 has deposed that in the morning of 06.12.1999, when her daughter had gone to bring



books from her friend's house, the accused persons held her and teased her. The aspect is conspicuously missing in the First Information Report, wherein the informant does not whisper a word that his daughter had gone out in the morning to collect books. The omission is vital and creates an impression that the informant is trying to build up a case that her daughter committed suicide, because of the teasing by the accused, in the morning, on 06.12.2009. Further-more, the informant has not disclosed the name of the friend from whom his daughter had gone to collect her book. The informant has also not brought on record any injury report in support of his case that he sustained injuries on 05.12.2009 and was treated by a doctor on 05.12.1999.

The evidence of PW 4, Girija Devi, who is the sister of the informant, cuts at the roots of the prosecution's case. She has deposed that in the night of 05.12.1999, she learnt the news of death of her niece and came to Patna from Dhanbad by Ganga-Damodar Train. Further-more, the doctor, who has conducted the post mortem on the dead body of the deceased, has found that rigor mortis had fully set in on the person of the deceased. If the time of death is accepted to be 09:00 A.M. on 06.12.1999, as reported by the informant, the rigor mortis could have not been complete by 02:20 P.M., as it will take about 12 hours for rigor mortis to be set in. The evidence of the doctor and PW 4, sister of the informant,

demonstrates the that the occurrence did not take place in the morning of 06.12.1999 at 09:00 A.M. Further-more, the medical evidence and Ext. 3, *Autopsy Report*, would corroborate the evidence of PW 4, sister of the informant, that the death took place in the night of 05.12.1999. PWs 3 and 5, on whom the prosecution relied for corroboration, were not specific, in their evidence, with respect to the date and time of alleged occurrence.

Situated thus, we are of the considered view that the prosecution has failed to prove its case beyond all reasonable doubt and, as such, we find no infirmity in the judgment of the learned trial Court acquitting the accused persons of the charge framed under Section 305 of the Indian Penal Code.

The appeal is not admitted and accordingly dismissed.

(Samarendra Pratap Singh, J.)

I. A. Ansari, C.J. - I agree.

(I. A. Ansari, C.J.)

kunal/-

AFR/NAFR	NAFR
CAV DATE	21-09-2016
Uploading Date	22-09-2016
Transmission Date	22-09-2016