

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.568 of 2013

(Against the Judgment of conviction dated 23.04.2013 and Order of sentence dated 25.04.2013 passed by the Adhoc Additional Sessions Judge-IV, Katihar, in Sessions Trial No.171 of 2011).

Prakash Sharma, son of Ram Kishan Sharma, resident of village- Kursanda, P.S-Pranpur, District- Katihar.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

Appearance :

For the Appellant : M/s. Ramesh Chandra Sinha, Suresh Prasad Sah alias Barnwarl and Sunil Kumar, Advocates.

For the State : Mr. Ashwani Kumar Sinha, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 16-02-2016

Appellant has been convicted alongwith Sumati Devi for an offence under Sections 302/34 of the Indian Penal Code and sentenced to rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, further rigorous imprisonment for one year vide Judgment of conviction dated 23.04.2013 and Order of sentence dated 25.04.2013 passed by the Adhoc Additional Sessions Judge-IV, Katihar, in Sessions Trial No.171 of 2011.

2. The case of the prosecution, according to Fardbeyan of the Informant Most. Kankati Devi (P.W.7) is that her son the deceased

Prakash Mandal used to live separately and her daughter-in-law co-convict Sumati Devi about two and half years before had run away with the Appellant Prakash Sharma and had been brought back from Ranchi. Even after that the Appellant used to keep visiting her and the lady was declared as a person of bad character. On 17.12.2010 while her son Prakash Mandal was with his wife and the children were in the other house, she learnt that in the morning at 06.00 O'clock her son had been assaulted and strangled to death. At this, she reached the house and found her son hanging from a plastic rope and injuries on his body. She suspected that the Appellant in conspiracy with the wife of the deceased had committed his murder.

3. During trial, the prosecution examined altogether 10 witnesses.

4. P.W.1 Arvind Prasad Mandal stated that he was a witness to the confession of the Appellant while in police custody and he had signed on the same which he proves as Ext.1

Evidently, his evidence is of no value since confession was before the police.

5. P.W.2 Radhey Shyam Mandal stated that on the date of occurrence he learnt that the deceased was hanging from a rope at which on information police had come. The police had questioned to co-convict Sumati Devi at which she confessed her guilt. He signed on the

confessional statement which is Ext.1/B and 1/C which was the seizure of the plastic rope.

He, thus, is a formal witness on the factum of the deceased having been found hanging with a plastic rope and the confession which is inadmissible.

6. P.W.3 Lakhi Mandal is also merely on the factum of the death of the deceased. He further stated that the deceased used to always fight with his wife Sumati Devi and she had threatened him of dire consequences.

7. P.W.4 Kapildeo Mandal is the brother of the deceased and also the on the factum of the death of the deceased. He further stated that some injury was found on his person when his dead body was brought down and the police prepared the inquest and seized the plastic rope. In cross examination, there is nothing which is of note except that he conceded that he had not seen anyone murdering his brother.

8. P.W.5 Beda Nand Mandal stated that on the date of occurrence, he learnt that the deceased had been found hanging at which his dead body was brought down and the statement to the two accused was recorded by the police. He also stated, in his cross examination, that he did not know as to how the deceased had died.

9. P.W.6 Lakshmi Devi is merely on the factum of the death of the deceased and the confession of co-convict Sumati Devi before the

police on which she had signed and proved as Ext.1/E as also the confession of the Appellant before the police to which she was the signatory which she proves as Ext.1/F. We, thus, find her evidence is also of no value.

10. P.W.7 Kankati Devi is the Informant who repeated the Fardbeyan and that the husband and wife used to always have fight. She reiterates the motive of the occurrence. In cross examination, there is nothing which is of note.

11. P.W.8 Dr. Upendra Prasad Choudhary conducted the post-mortem examination of the dead body of the deceased and found the following injuries on his person:

- (i) Rounded ligature mark 1/4" deep brown black colour breath of ligature around the neck.
- (ii) Tongue protruded.
- (iii) Swelling on left eye.
- (iv) 1" vertical cut below left eye with blood clots.
- (v) Area depressed between mandible and thyroid cartilage.
- (vi) 1/2" deep front of the neck.
- (vii) Abrasions on both knees region size 1½" X 1/2" scrotal swelling on right side.
- (viii) Pin like pricked over left cheek 7 areas.

He found the cause of death due to asphyxia followed by strangulation and haemorrhage shock due to cut of sharp instrument over face.



12. P.W.9 Sujit Kumar Chaudhary is the Investigating Officer who stated that on 18.12.2010 he had assumed the charge of the investigation and inspected the place of occurrence which was a small house, however, he did not find any mark of violence at the place of occurrence. He further stated that he sent the dead body for post-mortem examination and recorded the Fardbeyan which is Ext.5 and the First Information Report which was Ext.6. He also stated that he seized the plastic rope from there and arrested the co-convict Sumati Devi and the Appellant and recorded their confessions. However, he stated that he did not know as to who recorded his confessional statement. In cross examination, there is nothing which is of note.

13. P.W.10 Deepak Kumar alias Sadanand Mandal is the son of the deceased who stated that on 17.12.2010 her mother told him that she would sleep in the new house and he would have to sleep in the old house. In the morning at 04.00 O'clock co-convict Sumati Devi came and told him to go to see in the new house as to whether his father is awake and when he went there he found him hanging from the ceiling. The police came there and brought the dead body down. He also stated that his mother had run away with the Appellant and had been brought back from Ranchi and she had threatened her father of dire consequences. He also stated about the confession of the co-convict before the police. In cross examination, he stated that he used to live

with his grand mother and had come from there to give evidence. There is nothing else to be noted down from his evidence.

14. From the analysis of the evidence of the witnesses, we find that apart from the vague allegation that the Appellant had run away with the wife of the deceased which had caused friction between them and they had earlier threatened the deceased of dire consequences, which makes out a motive, there is no circumstantial evidence which links the appellant to the death of the deceased. Admittedly, the confessions were before the police which are not admissible in law and worthless. Thus, it appears that it is a case of no evidence which makes the conviction of the Appellant and co-convict Sumati Devi unsustainable.

15. In the facts and circumstances of the case, this Appeal is allowed. The Judgment of conviction and order of sentence passed against the Appellant, above named, and co-convict Sumati Devi, are set aside. They are acquitted of the charges. Since they are in jail custody, they are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/Bhardwaj/
N.A.F.R.**

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