

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.516 of 2013

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Against the judgment of conviction and order of sentence dated 30th and 31st January, 2013 respectively, passed by Sri Man Mohan Sharan Lal, 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 836 of 2006

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Wazir Mansuri @ Md. Wazir S/O Jumarati Mansuri Resident Of Village- Lalmanian, P.S.- Lalmanian (Laukaha), District-Madhubani.... Appellant

Versus

The State Of Bihar Respondent

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Appearance :

For the Appellant/s : Mr. Ravi Ranjan, Advocate

Mr. Amit Kumar, Advocate

For the Respondent/s : Mr. S.C. Mishra, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 21-01-2016

The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and a fine of Rs. 10,000/- and in default further rigorous imprisonment for three months by the 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 836 of 2006 vide judgment dated 30/31.01.2013

2. The case of the prosecution, according to Md. Wali Hassan (PW 5), is that the Appellant was married to Makina Khatoon, daughter of Md. Ismail, about six years ago and had a child of about four years Md. Muzibul. Since the last few months there was some dispute between the husband and wife. About a



month back the Appellant had come home and had assaulted her and thereafter, gone away to Delhi saying that he would remarry and not keep the deceased. Once again, on 25.07.2006, at night he came and told his wife that a lot of luggage had been brought from Delhi which was to be picked up from Piprahi Chouk and they were to go early morning to pick it up. In the morning of 26.07.2006, while he was at home, Arun Sharma (PW 2) came to his house and informed him that while he was going to Piprahi, near Munahra bridge about 500 yards west and east of Piprahi village at a deserted place, he saw a child crying. He along with Bhulla Paswan (PW 1) went there and saw the child crying and a girl unconscious, who, they recognized, being the deceased. Just then, number of villagers started gathering including Md. Ismail (PW 4). The injured was then given water to drink. She on inquiry said that her husband had told her to get the articles from Piprahi Chauk and while they were going, in the way, he started assaulting her with fist and slaps and attempted to strangle her due to which she became unconscious. The Appellant thought that she had died and he ran away. The injured was then removed to the clinic of Dr. Ram Janam Sah at Kutauna where she was treated the whole night. In the morning, at 5:30 am, when her condition deteriorated, they attempted to take her to the Government Hospital but in way she died so she was taken to home and then to Police Station where the

fardbeyan was given.

3. During trial the prosecution examined seven witnesses. PW 1, Bhullar Paswan, who is named as a witness in the first information report, stated that while he was going, he heard a child crying and the deceased in unconscious state. There were injuries on her body. He then brought her near the temple and informed Ismail (PW 4), Taslim (not examined) and another person. They then, reached there and gave the deceased water. She disclosed that the Appellant had assaulted her. The child also stated that the father had assaulted. The injured was then taken to the hospital but she died. In cross-examination he stated that his house was about 1 and $\frac{1}{4}$ kilometer at a distance from where the injured was found and when he reached nobody else was there. He stated that he remained for about 15-20 minutes, in which period PW 2, Arun Sharma, came. He did not remember as to whether the deceased had said anything and the child was also not in a position to speak properly. So long as he was there the deceased remained unconscious.

4. PW 2, Arun Sharma, also named in the first information report, stated that when he reached near the bridge, he found one child crying and the deceased groaning. Then, a number of other persons came. The injured was then given water. She disclosed that the Appellant had assaulted her and

run away. No body turned up to cross-examine this witness.

5. PW 3, Amna Khatoon, is the mother of the deceased who stated about the factum of marriage between the Appellant and the deceased and the child having been born out of the wedlock. She stated that the Appellant used to work in Delhi and had come and told his wife that they were to go to Piprahi Chouk. They then went together. PW 2, Arun Sharma, came and informed that the deceased had been assaulted by the Appellant and she had fallen near the Bandh. She then went there along with others and saw PW 1 and PW 2 have brought her near the temple. The daughter disclosed that the Appellant had assaulted her and left her near the Bandh. In cross-examination, she stated when the Appellant came from Delhi he stayed in his own house. She stated that she informed the Police about this occurrence but evidently, there is no report. She stated that PW 1 and PW 2 were well known to the deceased as they all resided close by. There is nothing else which is of any relevance in the cross-examination.

6. PW 4, Md. Ismail, is the father of the deceased who stated that he was informed by PW 3 that the Appellant had assaulted his daughter who died subsequently. In cross-examination he stated that the daughter had complained about the conduct of the Appellant. There is nothing else which is to be noted.



7. PW 5, Md. Wali Hassan, is the informant who has repeated his statement as given in the fardbeyan that on information he went to see the injured who was administered water and who disclosed that the Appellant had come the previous day and assaulted her on way to Piprahi Chouk. In cross-examination, he stated that he used to live close by and a number of villagers had gone along with him to see the injured who was lying near the Bandh. There is nothing else which is worth noting in his cross-examination.

8. PW 6, Dr. Nirmal Kumar Chaudhary, performed the post mortem on the deceased on 29.07.2006 and found the following ante mortem injuries :

“External injury:

(i) Abrasion on neck both side. On right side it was 2” x ½” on left side 3” x ½”

Internal Examination

On dissection of skull nothing abnormal finding.

On neck dissection every structure was intact.

On chest dissection all ribs on both sides was intact.

Lungs Pale

Heart. Pale and all chambers are empty.

On Dissection of Abdomen

Liver was found intact and pale. Stomach, intestine, both were intact. Spleen:- Ruptured and cavity of Abdomen was full of blood.

Kidney of both sides were intact and pale

Urinary bladder: empty.

Uterus- Empty and normal size.

Time since death was 48 hours.

Cause of death:- was due to hemorrhagic shock caused by rupture of spleen."

9. PW 7, Deo Raj Chaudhary, is the Investigating Officer who stated that on 27.07.2006 he recorded the fardbeyan of PW 5 which he proves as Ext. 1 and 1/3. The First Information Report is marked as Ext. 4. He further stated that he examined the injured and inspected the place of occurrence which was near the canal and a deserted place. As others had stated that the distance between the place of occurrence and the Police Station was 7 kilometer as also that he did not collect any medical reports in regard to the treatment of the deceased from the private doctor. He also stated that the Appellant surrendered on 05.08.2006 in the present case.

10. The defence examined one witness Md. Hasan on its behalf on the point that the Appellant used to work in Bombay and even on the relevant day he was there.

11. On going through the evidence of the witnesses, we find that there is a consistent story that the deceased had disclosed the factum of the Appellant assaulting her generally. From the Post Mortem examination report, we find that even though the doctor found three abrasions on both sides of neck, which are minor in nature, death was on account of injury on the spleen. This fully corroborates the prosecution story inasmuch as it states that the Appellant had given fist blows to the deceased. However, we are inclined to hold that in the facts of the case,



the Appellant did not intend to cause murder of the deceased and at best it is a case which would fall under Section 304 Part I of the Indian Penal Code. For this reason, we are inclined to convert the conviction of the Appellant from one Under Section 302 IPC to one under Section 304 Part I IPC and reduce the sentence to the period already undergone.

12. In the result, the appeal is dismissed with modification in conviction and sentence.

(Anjana Prakash, J)

(Jitendra Mohan Sharma, J)

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