

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1038 of 2012

(Against the Judgment of conviction dated 22.08.2012 and Order of sentence dated 28.08.2012 passed by the 1st Additional Sessions Judge, Rohtas, Sasaram, in Sessions Trial No.122 of 2011/177 of 2011).

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Mojammil Hussain, son of Ummat Ali, resident of village- Johni, Police Station- Bikramganj, District- Rohtas.

..... Appellant.

Versus

The State of Bihar

..... Respondent.

with

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Criminal Appeal (DB) No. 937 of 2012

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1. Ummat Ali, son of Late Samsuddin Ansari.
 2. Jamiran Khatoon, wife of Ummat Ali.
- Both are resident of village-Johni, P.S.-Bikramganj, District-Rohtas.

..... Appellants.

Versus

The State of Bihar

..... Respondent.

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Appearance :

(In CR. APP (DB) No. 1038 of 2012):

For the Appellant : M/s. Ajay Kumar Thakur & Jitendra Prasad Singh, Advocates.

For the State : M/s. A.K. Sinha & S.C. Mishra, A.P.Ps.

(In CR. APP (DB) No. 937 of 2012):

For the Appellants : M/s. Ajay Kumar Thakur & Jitendra Prasad Singh, Advocates.

For the State : M/s. A.K. Sinha & S.C. Mishra, A.P.Ps.

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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: 02-05-2016

All the, above named, Appellants have been convicted



under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.20,000/-, in default of which, to undergo further imprisonment for two years vide Judgment of conviction dated 22.08.2012 and Order of sentence dated 28.08.2012 passed by the 1st Additional Sessions Judge, Rohtas, Sasaram, in Sessions Trial No.122 of 2011/177 of 2011.

2. The case of the Informant Nasim Ahmad (P.W.4) is that he had married his sister to Appellant Mojammil Hussain in the year 2001 but her in-laws used to demand Dowry and torture her for non fulfillment of the same. In the year 2002, he had instituted a 'Sanaha' whereafter, the accused persons had taken her back but continued to torture her. On 12.04.2009 at 04.00 P.M., somebody informed him that his sister had been killed on 11.04.2009 by her in-laws and buried her dead body. On this information, he alongwith his co-villager went to village-Jonhi and found that her sister had been buried, so he went and gave written report to the Officer Incharge of Bikramganj Police Station to take action in the matter.

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

4. P.W.1 Md. Sakir Hussain is the nephew of the deceased, who stated that on 11.04.2009, he had learnt that the deceased, who had been married to the Appellant Mojammil Hussain



and was tortured for demand of dowry by her in-laws, had been killed for non fulfillment of the dowry demand. For this reason, his father, the Informant, had instituted a 'Sanaha' in Ara Court. On 12.04.2009, somebody informed them that his aunt had been killed and buried at which they went to village-Jonhi where they saw a burst gas cylinder in the court-yard of which Darogaji prepared a seizure list on which he also signed. He proves the same as Ext.1.

In cross examination, he stated that no occurrence had taken place in his presence and the deceased had two children, one aged about 5-6 years and other aged about 2½ years but he did not know whether the children were burnt. He also did not know as to who from the village-Jonhi had informed him. In cross examination, he also asserted that burst cylinder was found in the house of the deceased.

5. P.W.2 Md. Sahadat Hussain is the cousin brother of the deceased, who stated about the fact of marriage of the deceased with Appellant Mojammil Hussain and demands of dowry by her in-laws and torture on account of non fulfillment of the same. He also gave a hearsay account in regard to the murder of his sister as also when he went to the place of occurrence, he found a burst cylinder in the court-yard. He signed on the seizure list, which he proves as Ext.2 He also stated that the dead body was exhumed by the Investigating Officer.

In cross examination, he stated that the children of the deceased were still with their paternal grand parents and the husband was still in the Army. It was suggested to him about the inherent improbability of the in-laws demanding dowry since they themselves were well off.

There is nothing else in his cross examination which is of note except he denied the suggestion that, in fact, the deceased had died when she was cooking meal for her children and the cylinder had burst.

6. P.W.3 Khurshida Bano is the niece of the deceased, who stated that on 16.03.2009, she had gone to village-Jonhi and was sleeping with her aunt, the deceased. On 11.04.2009, Appellant Mojammil Hussain came and told her to sleep on the terrace so she slept there. At night, she, suddenly, heard a loud noise at which she sat up and then Appellant Mojammil Hussain came and told her to come down since her aunt had died. She saw the dead body of her aunt completely black and 2-3 more persons there and they sprinkled water on her dead body and changed her clothes and took her. Two days earlier, the Appellant Mojammil Hussain had badly assaulted her aunt for reasons of dowry.

In cross examination, she stated that because her aunt was pregnant, so she had gone to help her and the child was born on

01.11.2009 but he later died and when child was 11 days old, the mother died. She further stated that her aunt, the deceased, used to cook the meal at home whereas her mother-in-law did nothing. She also stated that when she came down, her uncle, namely, Appellant Mojammil Hussain went to call the neighbours.

From her cross examination, it appears that the family members of both sides were attending the functions of each other and only recently the grand mother of the deceased had come for a few days to attend a function in her house. From her statement, it appears that apart from the allegation of assault, she supports the fact to some extent that the deceased had died on account of bursting of the cylinder.

7. P.W.4 Nasim Ahmad is the Informant, who had stated that he had married his sister in the year 2001 but her in-laws used to demand dowry and torture her at which he gave a 'Sanha' against the husband in Ara Court. Later, she was taken to the matrimonial home and every time she used to come to her parental home she would speak about the misbehaviour of her in-laws. On 12.04.2009 in the evening at about 04.00 P.M., he was informed by somebody of the village of the deceased that she had been murdered so he alongwith rest of the family members went there and when they made inquiries about the deceased, they were informed that she had been buried. He

then gave his written report which he proves as Ext.3. He further stated that the deceased had two children and recently she had given birth to a child who was about 10-12 days old.

In cross examination, he stated that the deceased was the second wife of the Appellant Mojammil Hussain and he used to work in the Army. It was suggested to him that, in fact, the deceased used to stay at the place of posting of her husband and he had not made queries from the villagers of the deceased in regard to the occurrence. He had also supported the fact that he had found a burst cylinder in the court-yard of the house of the deceased but he denied the preparation of the seizure list in respect to it.

8. P.W.5 is Dr. Sri Bhagwan Singh. He conducted the Post-Mortem Examination of the dead body of the deceased and found the dead body of the deceased in a state of decomposition as also both the legs had been cut and the signs of burning on her person which supports the circumstances that, in fact, the deceased had died on bursting of gas cylinder.

9. P.W.6 Ramjee Prasad is the Investigating Officer, who stated that on 13.04.2009, he had instituted a case on the written report of the Informant. He proves the formal First Information Report as Ext.5. He further stated that he had examined the witnesses and also inspected the place of occurrence where he found a kitchen in

the courtyard as also the burst cylinder and all the surrounding area completely damaged. He had heard that the deceased is said to have met an accidental death. He exhumed the dead body from a buried place and obtained the Post-Mortem Examination Report as also seized the Gas 'Chulha' and the remains of the gas cylinder which he proves as Ext.2. He also proves the Inquest Report as Ext.7.

In cross examination, he stated that he learnt that, in fact, the deceased had gone to boil the milk for her children and, subsequently, the gas cylinder burst and he had not examined the parents of the deceased during investigation. He had also learnt that the husband of the deceased used to work in the Army and the deceased was the only daughter-in-law.

10. From the evidence of the witnesses, we find that there is complete paucity of any direct evidence that, in fact, it were the Appellants who had caused the death of the deceased. In fact there are circumstances to indicate the deceased had died on accidental death when the gas cylinder burst while she was cooking. The Postmortem examination report also suggests the same.

11. Hence, in the facts and circumstances of the case, these appeals are allowed. The Judgment of conviction and order of sentence passed against the Appellants, above named, is set aside. They are acquitted of the charges. Appellant Mojammil Hussain {in

Criminal Appeal (DB) No.1038 of 2012} is in jail custody, so he is directed to be released forthwith, if not wanted in any other case. Appellants Ummat Ali and Jamiran Khatoon {in Criminal Appeal (DB) No.937 of 2012} are on bail. Therefore, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

A.B. Bhardwaj/Pradeep Srivastava.

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