

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.852 of 2011

[Against the judgment and order of conviction dated 13th July, 2011 and 19th July, 2011, passed by the Additional Sessions Judge, Fast Track Court No.IV, Banka, in Sessions Trial No.1018 of 2007 arising out of Belhar P.S. Case No.155 of 2006]

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1. Lakshmi Thakur, S/O Mahendra Thakur, resident of village-Chaura, P.S. Belhar, District- Banka (Bihar)
 2. Santosh Thakur, S/O Mahendra Thakur, resident of village-Chaura, P.S. Belhar, District- Banka (Bihar)

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Subodh Kumar Jha, Advocate
Mr. Pranav Kumar Jha, Advocate

For the Respondent/s: Mr. Ashwani Kumar Sinha, Addl. P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH
&
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 21-01-2016

1. Both the Appellants have been convicted under Sections 302, 201/34 and 120 Indian Penal Code and sentenced to undergo rigorous imprisonment for life with a fine of ₹25,000/- each under Section 302 Indian Penal Code, rigorous imprisonment seven years with a fine of ₹5,000/- each for the offence under Section 201 Indian Penal Code and in default of payment of fine to further



undergo rigorous imprisonment for two years and six months respectively as also rigorous imprisonment for life under Section 120-B Indian Penal Code by judgment and order of conviction dated 13th July, 2011, and 19th July, 2011, respectively passed by the Additional Sessions Judge, Fast Track Court No. IV, Banka, in Sessions Trial No.1018 of 2007 arising out of Belhar P.S. Case No.155 of 2006.

2. Case of the prosecution according to Bhola Paswan (PW1), who was *Chaukidar* of the village, is that on 06.12.2006 he received information that the Appellant, Santosh Thakur, who had illicit relationship with his sister-in-law since last 2½ years along with the co-accused had killed his wife, Kundan Devi, and child after there was a fight between them in the night of 01.12.2006 and buried them. On this, the *Chaukidar* gave information on 06.12.2006 at 10.30 AM before the S.I. R. N. Singh, Officer-in-Charge, Belhar Police Station.

3. During trial, the prosecution examined nine witnesses. PW 1 (Bhola Paswan) during trial was declared hostile as was PW 2 (Sadho Yadav), and PW 3 (Ramu Yadav).

4. PW 4 (Dr. Ashok Kumar Chaudhary) performed the Post Mortem Examination of Kundan Devi and Neha Kumari and found following injuries on the person of Kundan Devi:



“There was no external injury found on her body because skin of whole body was peel out and swollen. Only one liaison mark on the deep tissue around the neck. Eye ball protruded and congested and tongue was also protruded. Pupil dilated and fresh sand were present in mouth and nostril.

On dissection: Black in colour blood found in the trachea, tracheal rings were torn, fractured, dislocation of 2nd and 3rd cervical vertebra, lacerated cervical spinal cord. Lungs congested, heart empty, liver, spleen and kidney were congested. Stomach-satoo, large and small gut- gas and faecal matter were present. Urinary bladder- empty, Cause of death-Asphyxia due to strangulation.

Time since death- within 4 to 5 days.

Following injuries were found on the person of Neha Kumari:

“Skin of face peel out. Both hands and face appeared like washermans hand and feet. No any external injury was found on her body.

On dissection: Neck, tracheal rings ruptured and full of clotted blood and froth, fracture of 1st and 2nd cervical vertebra and spinal cord was lacerated. Lungs congested, hearth empty, liver, spleen and kidney were congested. Stomach empty. Large and small guts were full of gas and faecal matter. Bladder and stomach empty.

Cause of death-Asphyxia and shock.

Time since death- within 3 to 4 days.

5. PW5 (Tarni Mandal) is a hearsay witness, who stated that Jamadar Saheb had brought the dead bodies from under the bed of the river. He had heard that the Appellant Santosh Thakur along with his sister-in-law had committed the murder. He also

signed on the Inquest Report. He identified his signature and that of Sadhu Yadav on the Inquest Report as Ext. 3 and 3/1.

6. PW 6 (Pradeep Rajak) stated that he heard *halla* that Appellant, Santosh Thakur, and the wife of Lakshmi Thakur had committed murder of the wife of Santosh Thakur and his child. Jamadar Saheb had caught the Appellant and Lakshmi Thakur and beaten them then Santosh and Lakshmi had shown the place where the dead bodies were buried. The same was recovered from under the sand. He stated that large number of co-villagers had seen this occurrence. He also stated that the Appellant, Santosh Thakur, was entangled with his sister-in-law which his wife used to oppose. His attention was drawn to the earlier statement that he had not stated that on the questioning of Jamadar Saheb, Santosh and Lakshmi had pointed out the place where the dead bodies were buried and it was on their pointing that the dead bodies were recovered.

7. PW 7 (Chandrakala @ Chandramala Devi) is the mother of the deceased, who stated that about a year before the death the deceased Kundan Kumari was married to the Appellant-Santosh Thakur and there was a child born out of the wedlock. When she came from the matrimonial home, she stated that the Appellant was entangled with his sister-in-law, Lila Devi, and used to assault her on account of this. Some four years back, she received



information that the Appellant, his brother and sister-in-law had committed murder of his daughter and grand-daughter at which she went there and did not find the two. The villagers told them that the Appellant had killed them and buried them under the sand. The dead bodies were recovered and sent for Post Mortem Examination. She stated that she did not see her daughter and she was told by her mother-in-law that her daughter had been thrown in the river and the grand-daughter had also died. When the police came, the dead bodies were recovered from the river. She stated that she herself had never seen any assault and her daughter had never stated that the Appellants used to assault her and had merely told that he was entangled with his sister-in-law.

8. PW 8 (Sudarshan Thakur) is the brother of the deceased, who also stated that two years before the death his sister had been married to the Appellant- Santosh Thakur and a child was born out of the wedlock. When she returned to the village from the matrimonial home, she stated that her husband was entangled with sister-in-law and used to assault her. Four years back, the Appellant, Santosh Thakur, called him up and said that his sister was dead. He and his family went there and did not find the sister or niece. The neighbours stated that the Appellants and his sister-in-law had killed and buried them under the sand. When the police came, dead bodies

were recovered and sent for Post Mortem Examination. In cross-examination, he stated that his sister had good relation with her husband-Santosh Thakur.

9. PW 9 (Satya Narain Thakur) is the father of the deceased, who also stated about the factum of marriage and that he had gone to intervene in the matter. However, when he went to the house of the Appellant, he did not find his daughter. The Appellant, Santosh Thakur, reported that his daughter had gone somewhere and he did not find out the daughter. When the police came, they recovered the dead bodies from under the sand about which he heard. He found out in the village that the Appellant Santosh, Lakshmi and his wife had strangled the two deceased and buried them under the sand. In cross-examination, he stated that his daughter always used to say that Appellant-Santosh Thakur was entangled with his sister-in-law as also she was assaulted by the Appellants. He stated that it was Appellant-Santosh Thakur, who had informed him about the death of his daughter and when he reached, he found them missing. He also stated that the police had recovered the dead bodies and he himself had not seen.

10. From the evidence discussed above, we find that there is no eye witness to the actual murder. There is a vague motive attributed to the Appellant-Santosh Thakur for having killed his

wife but it does not seem probable that for this reason he would also kill his daughter. Hence, apart from the fact that the two dead bodies were related to the present Appellants, there appears to be complete paucity of any direct, circumstantial and cogent evidence to connect them to the murder.

11. So far conviction under Section 201 Indian Penal Code, we find that even though there is one witness i.e. PW 6 (Pradeep Rajak) that the dead bodies were recovered at the instance of the Appellant Santosh but his attention was drawn to the earlier statement that he had not stated so before the Investigating Officer and hence, we cannot sustain the conviction of the Appellants on this score.

12. Hence, the Appellants are acquitted of the charges leveled against them and the impugned judgment and order of conviction dated 13th July, 2011 and 19th July, 2011, respectively passed by the Additional Sessions Judge, Fast Track Court No. IV, Banka, in Sessions Trial No.1018 of 2007 arising out of Belhar P.S. Case No.155 of 2006 is hereby set aside.

13. The Appellant No.1-Lakshmi Thakur, who is on bail, is discharged from the liabilities of his bail bond.

14. The Appellant No.2-Santosh Thakur, who is in jail, is directed to be released forthwith, if not required in any other

case.

15. In the result, the appeal stands **allowed**.

(Anjana Prakash, J)

(Jitendra Mohan Sharma, J)

NAFR
J.Alam/-

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