

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.383 of 2009

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Washim Akram @ Md.Akram, S/o Md. Yunus, R/o Vill. Jagir Tola, Ward No. 13,
P.S. and District – Araria.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Udit Narayan Singh
Mr. Rajnish Kumar
Mr. Sanjay Kumar Singh
For the Respondent/s : Mr. A.K. Sinha, A.P.P.

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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: 11-05-2016

Heard learned counsel for the Appellant and
learned counsel appearing on behalf of the Additional Public
Prosecutor.

2. The Appellant has been convicted under
Section 304B I.P.C. and sentenced to undergo Rigorous
Imprisonment for life vide Judgment dated 30.03.2009 passed by
the 1st Additional Sessions Judge, Araria in Sessions Trial No.
460 of 2006/52 of 2006 arising out of Araria P.S. Case No.155
of 2003.

3. The case of the Informant Md. Iname
Choudhary Khan (P.W. 4) is that his daughter Guddi had been
married with the Appellant Washim Akram about 10 months ago

where she was tortured for ends of dowry and on the date of occurrence at about 1:30 pm., he learnt that his daughter had been poisoned to death. He immediately went to the door of the Appellant and found her dead. This *fardbeyan* was given at 2:30 pm. on the same day i.e. on 15.05.2003.

4. During trial, the prosecution examined 12 witnesses whereas the defence examined 9 witnesses. P.W. 1 Pesengar @ Guddu is brother of the deceased. From his evidence, it appears that the Appellant and the Informant used to live in the same village only the Tola was different. He stated that the on the date of occurrence he had gone to bring kerosene oil from the house of the Appellant where he had seen the Appellant assaulting his sister and thereafter, he learnt that his sister had died and seen her dead.

In cross-examination, it was suggested to him that the marriage of the deceased and the Appellant was a love marriage so there was no question of any demand of dowry. He asserted that he had seen injuries on the person of the deceased.

5. P.W. 2 Husne Ara is the mother of the deceased, who confirmed that in fact, the marriage of the Appellant and the Deceased was love marriage and they were not happy with the marriage because the daughter (deceased) was

very young. On the date of occurrence, she had dispatched her son P.W. 1 Pessengar @ Guddu to the house of the Appellant who had reported to her that the Appellant had severely assaulted his daughter and given poison as also seen crowd at his house so they all went there. On reaching there, she saw the deceased dead on the Veranda.

She asserted that the deceased had been throttled to death and her death was not natural.

6. P.W. 3 Jahan Ara is the sister of the deceased who also confirmed about the marriage of the Appellant with the deceased after the Appellant had kidnapped the deceased. At about 12:00 noon suddenly she heard *hulla* from the house of the Appellant, which was about 100 yards away from her house so she sent her brother P.W. 1 to his sister's house and he came back saying that the Appellant was severely assaulting the deceased. They then went there and found her sister dead and the Appellant tried to escape and within 10 minutes the Police reached the house of the Appellant.

In cross-examination, she denied that the deceased did not love the Appellant and in fact, she had been kidnapped against her wishes. She had seen a cut mark on her left hand but no bleeding and within minutes they had reached

the place of occurrence where she saw 25-30 persons already gathered. It was suggested to her, in fact, the deceased had died a natural death and they being aggrieved with the love marriage had implicated the Appellant falsely.

7. P.W. 4 Iname Choudhary Khan is the Informant, who stated that his daughter, the deceased, was married with the Appellant 10 months ago from the date of occurrence. He learnt from his son Guddu (P.W. 1) that the Appellant was severely assaulting his sister. A little later, they learnt that the entire village gathered there and he had seen the dead body on the Veranda with cut marks on her neck. Seeing them, the Appellant ran away from there. He stated that the Appellant used to demand dowry and cash of Rs. 20,000/- and threatened the deceased that he would kill her if the demand was not fulfilled. He stated that her daughter was married with the Appellant on 31.08.2002 but he could not attend the marriage because he was ill and ever since the Appellant used to demand Rs. 20,000/- and assault the deceased.

He asserted in the cross-examination that he had seen injuries on the person of the deceased and denied that in fact, the marriage of the deceased and the Appellant was love marriage. He also denied the suggestion that in fact, they were

aggrieved with the love marriage and hence, falsely implicated the Appellant.

8. P.W. 5 Dr. Rajesh Kumar conducted the Postmortem of the dead body of the deceased. He identified the hand writing of Dr. Anil Kumar Srivastava in which he was also an observer and he signed the said report as Exhibit-1. He stated that there was no external or internal injury found on the person of the deceased.

9. P.W. 6 Kamrul Islam Khan, A.S.I. at Araria Town Police Station, recorded the *fardbeyan* of the Informant (P.W. 4) Iname Choudhary Khan. He proves the same Exhibit-2 as also Inquest Report of the deceased Guddi. He stated that he did not know as to who had informed about the occurrence nor did he produce the *Sanha*. Further he stated that he do not find any blood on the person of the deceased or around her.

10. P.W. 7 Bishwanath Sharma was also posted at Town Police Station, Araria on the date of occurrence and took over the investigation and thereafter, he was transferred. He proves the same paragraph-3 of the case diary as Exhibit-3. He explained that he had not examined any witness.

11. P.W. 8 Md. Urfan, has been declared hostile.

12. P.W. 9 Nawab Raja is a formal witness in



regard to the being a witness on the Inquest Report, which he proves as Exhibit-4 is also a signatory to the *fardbeyan*, and proves his signature as Exhibit-2/1. He describes the place of occurrence and that he learnt about the occurrence at 12:00 - 1:00 noon that deceased Guddi had died. He also stated that when he reached the place of occurrence, everyone was there and there were some injuries on her face, hand and neck.

13. P.W. 10 Sahjadi had also been declared hostile.

14. P.W. 11 Mojbur Rahman stated that on the date of occurrence, there was a *hulla* that a girl had died at which he went to the house of the Appellant and saw the dead body of the daughter of the deceased. He also saw Police personnel. There is nothing which is notable in his statement.

15. P.W. 12 Ramanand Ram is also a formal witness in regard to Inquest Report, which is marked as Exhibit-4/1.

16. On behalf of the Defence D.W. 1(Ashmad Ali Ansari) who was the next door neighbour of the Appellant stated on hearing that the deceased had died, he had gone to the place of occurrence and seen the dead body. He stated that the Appellant and the deceased had no dispute between themselves. He confirms that the marriage was a love marriage.



17. D.W. 2 Mir Juber Alam also the next door neighbour of the deceased stated that on the date of occurrence, the Appellant was not at home and he was in Delhi whereas the deceased used to live alone and ran a small *kirana* shop. Suddenly there was a *hulla* and all went there and found the dead body. He did not know about the dispute between the Appellant and the deceased and in fact, theirs was a love marriage and the parents of the deceased were unhappy with the same.

18. D.W. 3 Abdul Wahab is also next door neighbour, who also gave exactly the same statement as D.W. 2 Mir Juber Alam.

19. D.W. 4 Mir Kamaluddin, D.W. 5 Md. Kalim, D.W. 6 Md. Rashid, D.W. 7 Md. Arshad, D.W. 8 Md. Karim and D.W. 9 Mahmud Alam have given identical statement that they were neighbour of the deceased and the Appellant used to live in Delhi and on the date of occurrence they had heard *hulla* and they went there and saw the dead body. They also confirmed that theirs was a love marriage and the parents of the deceased were aggrieved with the marriage. In fact, the case was still going on.

20. On going through the Viscera Report, we find that the date of occurrence is 15.05.2003. The Viscera was received at the Forensic Science Laboratory on 28.10.2004 and

which was tested on 13.10.2009 i.e. about 6 years later. The Viscera Report confirmed the presence of *Sulfas*. We are unable to satisfy ourselves that after a lapse of almost 6 years, the Viscera would have remained intact for testing and hence, we do not intend to place any reliance upon the same.

21. We also find that the defence witnesses have given a very different account of the occurrence which in fact matches with the prosecution evidence as also fits in with the story that the deceased and the Appellant had married of love and with which marriage the family members of the deceased were not happy. The deceased died for some unknown reason. Even though the immediate family members of the deceased stated that the Appellant had severely assaulted the deceased but the Doctor did not find any external or internal injury on the person of the deceased and hence, the Prosecution failed to prove the manner of occurrence. Further, even the prosecution witnesses have conceded that the Appellant had married the deceased and it was a love marriage. Demand of dowry in such circumstances does not seem probable in the facts of the case and hence, we are inclined to allow the Appeal giving benefit of doubt to the Appellant.

22. Thus, the Appeal is allowed. The Judgment

of conviction and order of sentence dated 30.03.2009 passed by the 1st Additional Sessions Judge, Araria in connection with Sessions Trial No. 460 of 2006/52 of 2006 arising out of Araria P.S. Case No. 155 of 2003 against the Appellant is set aside. He is acquitted of the charges. The Appellant, Washim Akram @ Md. Akram is in jail custody. Therefore, he is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

Shailendra /-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	