

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1048 of 2015

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Ram Babu Sahni S/o Late Khokha Sahni, R/o Mohalla- Sikandarpur Kundal, P.S.-
Town, District- Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

---with---

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Criminal Appeal (DB) No. 613 of 2010

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Rajdeo Sahni S/o Kapildeo Sahni R/o Vill. Sahila Patti, P.S. Saraiya, Distt.
Muzaffarpur

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

(In CR. APP (DB) No.1048 of 2015)

For the Appellant/s : Mr. Sanjay Kumar @ S.K.

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

(In CR. APP (DB) No.613 of 2010)

For the Appellant/s : Mr. Sanjay Kumar @ S.K.

For the Respondent/s : Mr. S.N. Prasad, 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: 04-07-2016

Heard learned counsel for the Appellants and learned
counsel for the Additional Public Prosecutor.

2. All the above Appellants have been convicted under
section 302 read with section 34 I.P.C. and sentenced to undergo

Rigorous Imprisonment for life vide Judgment dated 30.04.2010 and 05.05.2010 respectively by the District and Sessions Judge, Muzaffarpur in Sessions Trial No. 504 of 2008 arising out of Saraiya P.S. Case No. 59 of 2008.

3. The case of the prosecution, according to Informant Phoolwanti Devi (P.W. 6), is that her daughter Laxmi Devi was married to the Appellant Rambabu Sahni about 3 years ago but she was tortured. She did not have any children. On account of this, she came to her maternal home about 10 days back after which her husband Ram Babu Sahni also came. On the date of occurrence, i.e. 20.03.2008, her son-in-law and brother-in-law Appellant Rajdeo Sahni, who belonged to the same village, came and both of them started talking to each other in whispers. Thereafter, at about 10:00 am. she left for work and when she returned at 4:00 pm., she saw her door locked from outside. She then broke open the door with the help of villagers and found her daughter Laxmi Devi strangulated to death. On *hulla*, several persons came. When she inquired from the neighbour, she came to know that her son-in-law Ram Babu Sahni and his brother-in-law, Rajdeo Sahni had come to her house and killed her daughter and fled away after locking the door, but none of them were found anywhere around. She alleged that her daughter had been murdered by the aforesaid two persons in her absence.

4. During trial, the prosecution examined 9 witnesses whereas the Defence examined 5 witnesses. The case of the defence was that the deceased had committed suicide in her maternal home when the Appellants were not present there.

5. However, contrary to the defence Dr. Vipin Kumar (P.W. 9), who proved the Postmortem Examination Report found the following injuries on her persons :

(i) One abrasion over left side of chin 1½" below left side ear 2"x .75".

(ii) Multiple nail scratches was found over front of right and left side of neck. Scattered over an area 6" x 1 1/2" more on right side.

On dissection:-

Sub tutorial tissues of neck was congested and lacerated with fracture of tracheal rings with blood clot. Stomach mucus membrane was normal contains water fluid. Intestine having gas and faces. All the abdominal viscera were congested. Urinary bladder was empty.

In his opinion, death was on account of asphyxia as a result of strangulation. He had proved the Postmortem Report as Exhibit-6.

6. In such circumstances, evidently the objective

evidence adduced on behalf of the prosecution does not match with the defence of the Appellants.

7. Be that as it may, we find that the case is based on circumstantial evidence of at best the Appellants having been last seen in the house of the Informant with the deceased and of the dissatisfaction between the spouses. In this background, we would like to discuss the evidence of the material witnesses.

8. P.W.1 Ajay, who is the son of the Informant and brother of the deceased, stated that on 20.03.2008 at about 9.00 A.M., the Appellants Ram Babu Sahni and Rajdeo as also brother of the Appellant Raj Kishore came to his house, when his mother, the Informant and sister were present. He had his lunch and left for school whereas his mother left for work. When he returned at 1:00 pm. from School, he saw the Appellant Ram Babu locking up the door whereas Rajkishore and Rajdeo were also standing outside. When he asked the Appellant Ram Babu where his sister was, he replied that she must be somewhere. He himself started looking for his sister but he could not find her and when he returned, he saw the aforesaid three persons missing. After locking the door, the Appellant Ram Babu did not give him key. When her mother returned at 4:00 pm., she searched for her daughter, but did not find her. When her mother peeped through the window, she saw her

lying, at which she created a *hulla*. Then several co-villagers came and broke upon the door and he found his sister dead. He gave his statement recorded under Section 164 Cr.P.C., which he proves as Exhibit-01.

In cross-examination, he stated that his sister had come home because there had been a fight between the spouses. Her husband Ram Babu Sahni promised that there would be no more fights and she should accompany him. He described that the house of Raj Kishore Sahni (P.W.2) was adjacent to his house. It was suggested to him that in fact, the deceased had committed suicide on account of differences between the spouses, which he denied.

9. P.W. 2 Raj Kishore Sahni, who happens to be cousin of the Informant and next door neighbour, had stated that the deceased could not live peacefully in her matrimonial home, so she came 10 days back and about 5 days back her husband Ram Babu Sahni also came there and on the date of occurrence his brother-in-law Appellant Rajdeo Sahni and brother Raj Kishore Sahni also came there. The Informant and her brother left for their respective destinations while the deceased stayed with Appellants, who allegedly strangled her to death and locked up the house and fled away. He allegedly saw them fleeing from the place of occurrence. When the Informant returned, she peeped through the window and

thought that the daughter was sleeping. When she did not wake up, the door was broken open with the help of villagers and then the dead body was recovered. He wrote out a written report on the dictation of the Informant, which he proves as Exhibit-2 as also was signatory to the Inquest Report, which he proves as Exhibit-3/1.

In cross-examination, he stated that on *hulla*, he had gone to the place of occurrence and seen the deceased dead. He also stated that the deceased did not have any children so she used to remain sad. His attention was drawn to the earlier statement that he had not said that he had seen the accused persons fleeing away or that he had seen the Appellant Rajdeo Sahni and Raj Kishore in the village on the said date.

We, thus, find that even though in the Examination in Chief, this witness has given a description as though he was an eye witness but subsequently stated that he had seen the Appellant fleeing away from the house after locking up the door. Still later in cross-examination, he stated that it was on *hulla* that he had come there, meaning thereby that he had not seen anything before a *hulla* was raised by the Informant.

10. P.W. 3 Sheela Devi is the next door neighbour, who stated that on the date of occurrence, Appellant Ram Babu was in the house of the Informant where Appellant Rajdeo Sahni and

accused Raj Kishore Sahni also came. They were eating in the court-yard. The Informant instructing the deceased to feed them, left for work and she also left soon after. At about 4-5 pm., she suddenly heard *hulla* that the deceased was dead so she came and saw the dead body with injuries on her neck. She did not find the Appellants at home. She explained whereas Appellant Rajdeo Sahni was a co-villager and brother-in-law of Appellant Ram Babu Sahni.

In cross-examination, her attention was drawn to the earlier statement that she had not said about the Appellants being present in the house and eating in the court-yard.

11. P.W. 4 Raj Kumar is a formal witness on the point of preparation of Inquest Report and he proved his signature as Exhibit-3/1.

12. P.W. 5 Arvind Sahni stated that when he returned home, he saw both Appellants with co-villager Raj Kishore coming out of the house of the Informant and they left towards the house of Rajdeo Sahni. He then stated that the deceased and the Appellant Ram Babu Sahni were married about 4 years back but there was no child born out of the wedlock and about 10 days back, the deceased had come home.

In cross-examination, he stated he reached the house only in the evening and heard several villagers saying that the

deceased has been killed at which he went there.

13. We, thus, find that there is disparity about the timing in him having seen the Appellants coming out of the house of the Informant and whereas once he says it was at about 1:00 pm. as in cross-examination, he states that it was in the evening he had gone towards the house of the Informant.

14. P.W. 6 Phoolwanti Devi is the Informant, who stated that she had married her daughter Laxmi Devi with the Appellant Ram Babu Sahni but he used to assault her. She came about 10 days back and her husband Appellant Ram Babu Sahni also came to her house about 4-5 days back and was staying with them. On the date of occurrence, Appellant Rajdeo Sahni came to her house and then started talking to each other. She instructed her daughter to feed them and left for work. When she returned, she found her house locked at which she started crying and on *hulla*, several persons came and broke open the house. She then saw the deceased having sustained injuries on her neck. She dictated the written statement upon which she signed.

In cross-examination, she described the topography and that she had herself broken the lock with a piece of stone. Her attention was drawn to the earlier statement that she had not stated about Raj Kishore, brother of Appellant Ram Babu Sahni, being

present in the village and about the broken lock.

15. P.W. 7 Surendra Dubey is the Investigating Officer, who stated that on 20.03.2008, on the basis of the written report of the Informant, First Information Report was instituted, which he proved as Exhibit-4. He inspected the place of occurrence, which was a room with a door and on the *chowki* the dead body was found. He mentions about the preparation of Inquest Report, which is marked as Exhibit-3/2 and also about the dead body being sent for Postmortem and recording of the statements of the witnesses under Section 164 Cr. P.C.

Importantly, he states that no lock was produced before him nor does he mention about finding any mark of violence on the door.

16. P.W. 8 Lal Bahadur was the Judicial Magistrate, who had recorded the statements of the witnesses Under Section 164 Cr. P.C., which he proves as Exhibit-5 series.

17. On going through the evidence, we find that in the First Information Report, the Informant firstly stated about the presence of the two Appellants in the house, while she was present there but in Court, she says that it was after she had left that the two Appellants had come to her house, meaning thereby that she does not confirm the presence of the two Appellants at the place of

occurrence with certitude, as required in a criminal case.

18. We further find that P.W. 1 has given a story that the Appellants had locked the house in his presence and gone away, but the Investigating Officer says no broken lock was produced before him, which could have pointed to the complicity of the accused persons with some reasonableness. Further P.W. 3 has stated the two Appellants were present in the morning of the occurrence in the house of the informant, but the informant does not say about this in her *fardbeyan* or in her statement in Court. In these circumstances, because of *inter se* contradiction, the evidence of P.W.3 has to be rejected.

19. As discussed earlier, P.W.5 has contradicted himself on the point as to when he had seen the Appellants coming out of the house of the Informant and hence, his evidence is also not reliable on the point of the Appellants having been seen anywhere near the house of the Informant on the fateful day. Thus, on account of complete paucity of evidence in respect to the Appellants having even been last seen with the deceased, we are inclined to give benefit of doubt to them.

20. In the result, the Appeals are allowed. The Judgment of conviction dated 30.04.2010 and order of sentence dated 05.05.2010 passed by the District and Sessions Judge,

Muzaffarpur in connection with Sessions Trial No. 504 of 2008 arising out of Saraiya P.S. Case No. 59 of 2008 against the Appellants is set aside. They are acquitted of the charges. The Appellant Ram Babu Sahni is in jail custody. Therefore, he is directed to be released forthwith, if not wanted in any other case. The Appellant Rajdeo Sahni is on bail. He is discharged from the liabilities of his bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Shailendra/Manish

AFR/NAFR	NAFR
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