

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.786 of 2013

(Against the Judgment of conviction dated 21.06.2013 and Order of sentence dated 27.06.2013 passed by the 3rd Additional Sessions Judge, Bagaha, West Champaran, in Sessions Trial No.26 of 2009).

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Dudh Nath Guru, S/O Lakh Mani Guru, Resident of Village- Daruabari, P.S- Valmiki Nagar, District- West Champaran.

.... Appellant.

Versus

The State of Bihar

.... Respondent.

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Appearance :

For the Appellant : M/s. Basudeo Pandey & Prithvi Nath Mishra, Advocates.

For the State : 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: 16-03-2016

Appellant has been convicted under Sections 302 and 504 of the Indian Penal Code and sentenced to rigorous imprisonment for life for the offence under Section 302 of the Indian Penal Code and simple imprisonment for one month for the offence under Section 504 of the Indian Penal Code and fine of Rs.5000/-, in default of which, further simple imprisonment for one year vide Judgment of conviction dated 21.06.2013 and Order of sentence dated 27.06.2013 passed by the 3rd Additional Sessions Judge, Bagaha, West Champaran, in Sessions Trial No.26 of 2009.



2. The case of the prosecution, according to the Fardbeyan of the deceased Lalita Devi, is that on 21.06.2008 when she was returning home from the forest, the Appellant met her on the way and started to make overtures but she resisted. In this course, the Appellant took out a knife from his pocket and assaulted her twice on her belly on account of which she was injured. Somehow, she came out from the forest and then she was removed to the hospital where she gave the present statement in presence of her husband (P.W.1).

3. It appears that the deceased died five days later and the Post-Mortem Examination Report, which is Ext.5, proved by P.W.6 Gokul Sharma, shows that the cause of the death of the deceased was on account of Septicaemia and shock due to perforation of intestine leading to peritonitis and gangrene of intestine due to sharp incised wound of abdomen.

4. During Trial, the prosecution examined six witnesses.

5. P.W.2 Somal Mehta and P.W.3 Sudama Tiwari are the witnesses of the Inquest Report (Ext.4) and proved their signature on the same as Exts.1/2 and 1 and the subsequent Fardbeyan of P.W.1 which was given on 24.06.2008 is Ext.1/1.

6. P.W.6 Gokul Sharma proved the Post-Mortem Examination Report as Ext.5, the result of which we have already reproduced above.

7. P.W.5 is Dr. Kaushal Kumar Mishra, who examined the injured/deceased on 21.06.2008 at 05.15 P.M. and found the following injuries on her person:

(I) Two sharp cut wounds of nearly 2" long x ½" width, found over middle portion of abdomen either side of a line drawn from Xiphi externum to mid supra pubic ridge. More margin are inverted the maximum wideness of the wound is in minor central part. All four layers of abdominal wall are cut of both wounds. The end omentum in coming from abdomen through both wounds.

(II) The general condition of the patient is indicative of some intestinal injuries also.

He stated that the patient was conscious while she was at the hospital and was referred to Bettiah Hospital for better treatment. He proved the Injury Report (Ext.3).

8. P.W.1 Rogahi Mahto is the husband of the deceased. He tried to exaggerate the prosecution case by saying his wife has declared that she had been raped by the Appellant which was not the case of the injured herself. In cross examination, he stated that his wife was not admitted in any hospital even though she was taken to Gorakhpur but she was returned from there and she died at home

which is evident from the Inquest Report (Ext.4). He further admitted in cross examination that there was no enmity between the Appellant and himself or his wife.

9. P.W.4 Nageshwar Ram is the Investigating Officer, who stated that on 21.06.2008, he recorded the Fardbeyan of the deceased Lalita Devi, which he proved as Ext.1 and the First Information Report as Ext.2. He inspected the place of occurrence which was a dense forest but did not find any incriminating article there and he was informed that the deceased had been taken to Gorakhpur for better treatment whereafter she died and, hence, he prepared the dead body challan (Ext.4). at the house of the deceased. He had not recorded or given any fitness certificate of the deceased before recording the statement.

10. On going through the evidence of the prosecution witnesses, we find that when the deceased was accosted by the Appellant who made some unsavory demands, she resisted, then Appellant gave two knife blows on her belly on account of which she succumbed to death five days later. The manner of occurrence suggests the intent of the Appellant was not to cause the death of the deceased but to merely as a reaction to the deceased's refusal. Death occurred after five days of the occurrence on account of septicaemia and gangrene. It is not known whether the deceased was ever given

any treatment after the initial first aid since there is no medical report in its regard. Death could have been caused on account of sheer negligence as the opinion of the Doctor suggests in the Post-Mortem Report. In such circumstances, we are inclined to convert the conviction of the Appellant into one under Section 304 Part-I of the Indian Penal Code from Section 302 of the Indian Penal Code and his sentence is reduced which he has already undergone. He has further been convicted under Section 504 of the Indian Penal Code but no separate sentence is awarded for the same.

11. In the result, with the aforesaid modification in the Judgment of conviction and Order of sentence passed against the Appellant, this appeal is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

**Pradeep Srivastava/A.B. Bhardwaj/
A.F.R.**

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