

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 260 of 2011

Arising out of P.S. Case No. -121 Year- 2007 Thana -Barhara
District- PURNIA

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Jhabhu Hembrem Son of Late Karee Hembrem Resident of Village -
Sirsiya, P.S. - Barhara, District - Purnea.

.... Appellant/s

Versus

The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kuamr Mallick, Adv.

For the Respondent/s: Mr. A.K. Sinha, APP.

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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: 22-02-2016

01. The Appellant has been convicted under Section 302/34 of the Indian Penal Code and sentenced to RI for life and a fine of Rs. 5,000/- and in default of which RI for six months by the Additional District and Sessions Judge, F.T.C.-VII, Purnea in S.Tr. No. 411 of 2008 arising out of Barhara P.S. Case No. 121 of 207 (G.R. No. 2191 of 2007) by judgment of conviction and sentence dated 21/22.12.2010.

02. The case of the prosecution according to the Informant, Tala Tudu, P.W. 1 is that on 20.09.1997 when his wife returned from the fields the accused person came to her house and pointed to her wife accusing to a witch and started compelling her to cure his child. When she protested she was

abused and assaulted. The Informant went to intervene but he was also chased and assaulted but somehow he saved himself. His brother was also sought to be assaulted when he intervened. The next day information was given to the police who arrived and in the presence of the dead body in the courtyard of the Appellant fardbeyan was given.

03. After having gone through the evidence on record, we find there is complete paucity of any evidence and, hence, decided to acquit the Appellant. In order to justify having reached such a conclusion we would briefly discuss the evidence of the following witnesses:-

04. P.W. 1, Tala Tuddu is the Informant who had given an eye-witness account in the fardbeyan but stated in Court that when he returned from the fields he learnt from his children that five accused persons had pulled away his wife on the pretext of being a witch and had assaulted her. However, when he went to the house of the Appellant he was also assaulted. In cross-examination, he stated that he had not seen the occurrence. He learnt about the incident from the children but there is no supporting evidence in this regard.

05. P.W. 2, Balli Tuddu stated that on the date of occurrence he heard that the accused persons had pulled away the deceased into their courtyard and assaulted her on the pretext of being a witch. At night when he went to the house of the Appellant he stated that he would not leave her

and would assault her. The next day he learnt that the deceased had died. In cross-examination, he stated that he had not seen the occurrence but had been informed by his brother.

06. P.W. 3, Rasik Lal Tuddu is another brother of the Informant who stated that on the date of occurrence the accused persons had killed the deceased in the courtyard of the Appellant. In cross-examination, he also stated that he had not seen the occurrence.

07. P.W. 4, Nagendra Singh, the Investigating Officer had recorded the fardbeyan of the Informant, Tala Tuddu which is exhibited as Exhibit-1 and the Inquest Report as Exhibit-3. The dead body was lying in the courtyard of the Appellant wrapped in a "Chattai". He stated that the Appellant had admitted his guilt whereafter he was arrested and forwarded to judicial custody. In cross-examination, he stated that he reached the place of occurrence the next day at about 3.15 P.M. and that no incriminating article was recovered from the house of the Appellant.

08. P.W. 5, Dilip Paswan is a formal witness who proved the Inquest Report as Exhibit-3.

09. P.W. 6, Dr. Mahadev Dubey who has performed the post-mortem of the deceased and found the following injuries on her person:-

*"(i) Rigor mortis present
in lower limits.
(ii) Antemortem finding*



(a) Abrasion $\frac{1}{4}$ "x $\frac{1}{4}$ " over lateral portion of right eye.

(b) Abrasion $\frac{1}{4}$ "x $\frac{1}{4}$ " over antral face head.

(c) Abrasion $\frac{1}{4}$ "x $\frac{1}{4}$ " below left eye.

(d) Abrasion $\frac{1}{4}$ "x $\frac{1}{4}$ " on back.

On dissection blood clots present underneath above noted injuries.

C.N.S.-Fracture right frontal and left temporal bone, brain matters lacerated blood clots.

Neck—N.A.D.

Chest—Lungs-N.A.D., Heart-right chamber full and left chamber empty.

Abdomen---Stomach contains watery liquid material about 250 M.L.

Uterus—small and non gravid.

Urinary bladder---empty, abdominal viscerae and intestine-N.A.D.

Cause of death—In my opinion death occurred due to head injury mentioned above.

All injuries have been caused hand and blunt substance.

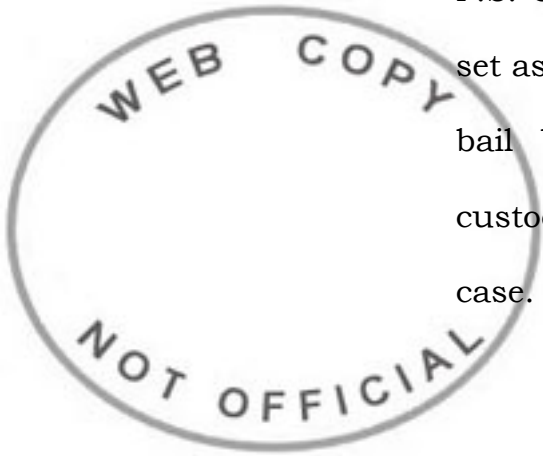
Time elapsed since death-within 36 hours."

He proved the post-mortem as Exhibit-4.

10. We, thus, find that apart from the circumstance that the dead body was found in the house of the Appellant there is no further material to justify his conviction.

11. In view of such, the Appeal is allowed and the judgment of conviction and sentence dated 21/22.12.2010 passed by the Additional District and Sessions Judge, F.T.C.-

VII, Purnea in S.Tr. No. 411 of 2008 arising out of Barhara P.S. Case No. 121 of 2007 (G.R. No. 2191 of 2007) is, hereby, set aside. The Appellant is discharged from the liabilities of his bail bond. The Appellant, Jhabhu Hembrem, who is in custody, shall be released forthwith, if not wanted in any other case.



(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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