

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1258 of 2010

[Against the Judgment of conviction and order of sentence dated 24.8.2010/27.8.2010 passed by the Additional Sessions judge, F.T.C.-IV, Begusarai, in connection with Sessions Trial No. 1197 of 2009 arising out of Sahebpur Kamal P.S. Case No.31 of 2009 corresponding to G.R. No. 487 of 2009.]

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Md. Mahbud @ Md. Mahmud, son of Md. Akhtar, resident of village - Fulmalik, P.S. - Sahebpur Kamal, District - Begusarai.

..... Appellant/s

Versus

The State of Bihar.

..... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.
Ms. Anita Kumari, Adv.

For the State : Mr. A.K. Singh, Adv.

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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: 17-05-2016

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

2. The case of the Informant PW 3 (Md. Ilyas) is that he married his daughter i.e. the deceased Sabrun Khatoon with the present Appellant about eight years ago and she always complained about the physical torture at the hands of her in-laws. On 20.2.2009 at 7:00 A.M., he learnt that his daughter had died due to drowning in the Pond, so he went to village Fulmalik to find out, where he learnt that his daughter had been buried. He suspected that the in-laws had

committed her murder and, therefore, buried her. This written informant was given to the Police on the same day i.e. 12:30 P.M.

3 During Trial, the Prosecution examined 12 witnesses out of whom it appears that PW 5 (Jaso Devi), PW 6 (Md. Asfaq), PW 7 (Asgari Begum) and PW 8 (Nand Kishore Kumar Yadav) have not supported the case of the Prosecution and have been declared hostile.

4. PW 4 (Md. Kalim) is a formal witness on the point of being signatory on the Inquest Report along with PW 9 (Ali Hussain) who was also a Signatory to the Panchnama of the dead body.

5. PW 1 (Md. Sattar), PW 2 (Md. Naim) and PW 3 (Md. Ilyas) are on the factum of occurrence. PW 1 (Md. Sattar) stated that the deceased had been married with the Appellant about nine years ago who had been murdered by her in-laws and about Complaints of demand of dowry which was not the initial case of the Prosecution. He further stated that on the morning of 20.2.2009, the Appellant came to the house of the Informant and told him that his daughter had disappeared and soon thereafter Md. Kalim (PW 4) uncle of the Appellant came and said that the dead body was recovered from the pond and they had kept the dead body. At this all of them went to the village Fulmalik but they did not find the dead

body there. They learnt that the dead body had been buried. Soon thereafter, they went to the Police Station and returned with the Police and the Judicial Magistrate and the dead body was ex-humed from the grave. An Inquest Report was prepared on which he was a signatory. He proves the same as Ext. 1.

In cross-examination, he asserted that it was the Appellant who had informed them about the disappearance of the deceased and later PW 4 had come and told them about recovery of the dead body. He also stated that the Appellant had been detained in the house of the Sarpanch and that they had crossed the Police Station while going to village Fulmalik but, they did not inform the Police Officer and it was only later that they had given information. He further stated that they had reached along with the Police at 3:45 P.M. Whereafter, the dead body was recovered and sent for postmortem examination.

Surprisingly, he stated that the Police never took them to village Fulmalik where the dead body was recovered.

6. PW 2 (Md. Naim) also a co-villager of the Informant stated about the factum of occurrence and that the Appellant had come to inform the disappearance of the deceased and soon thereafter they received information from PW 1 (Md. Sattar) that the dead body had been recovered from the Pond. However, when

they reached the village, they did not find the dead body because the dead body had been cremated with usual rites. The dead body was exhumed from the grave. He explained the manner in which the dead body had taken out from the grave. At the end of his cross-examination, he stated that he never been examined during investigation.

7. PW 3 (Md. Iliyas) the Informant stated that the in-laws used to torture his daughter who had been married to the Appellant nine years ago for ends of dowry and the Appellant had come to inform that the deceased had disappeared. Soon thereafter, he came and told them that the deceased died on account of drowning so, he went to the village. In the meanwhile, the Appellant was kept detained in the house. When they reached the village, they found that the dead body had been buried. He then proved the written statement as Ext. 2.

Surprisingly, he does not say anything about the exhumation of dead body in his examination-in-chief.

In cross-examination, he stated that his daughter used to always come to their house and she never complained about the actions of the Appellant since both of them were on good terms. Fact of the matter is that the deceased had died having slipped into the water which fact he found out later, but by then in a misconception, he

had instituted the present case.

In such circumstances, it appears that the Informant has also not supported the factum of Appellant having caused the death of the deceased.

8. PW 4 (Md. Kalim) has stated about the marriage of Sabrun Khatoon with the Appellant and recognized the inquest report as also the dead body having been recovered from the pond. He proves the inquest report as Ext. 1/2. He had no knowledge as to how the inquest was prepared.

In cross examination, he stated that the dead body had been buried properly and there was no Complaint against the Appellant in regard to relationship with the deceased.

We, thus find that this witness has not supported the PW 6, PW 2 and PW 3, about the dead body having been recovered from the Pond nor does he says that it was recovered in his presence.

9. PW 5 (Jaso Devi), PW 8 (Nand Kishore Kumar Yadav), PW 6 (Md. Afaque) and PW 7 (Asgari Begum) as mentioned earlier, did not support the case of the prosecution. PW 9 (Ali Hussain) is merely a witness to the Panchnama and stated that in fact the dead body was recovered from the Pond and it was completely bloated with water and, thereafter, the dead body was ex-humed from the grave.

10. PW 10 (Dr. Binod Kumar Sharma) who performed the postmortem examination of the deceased, the next day i.e. on 21.2.2009, found the following antimortem on her person:

- (1) *Blood with froth were coming out from both nostril and mouth. Both eyes were congested. Whose body was covered with dry dust particles*
- ii) *Neck – Both sides of neck has abrasion mark of different length.*
- 2) *On dissection brain was congested and filled with black coloured blood*
- i) *Neck – Neck muscles in front were torn and blood (black colour) were oozing out. Trachial cartilages were torn and fractured.*
- ii) *Chest – Both lungs were congested and filled with black coloured blood.*
- iii) *Heart – All chambers were filled with black coloured blood*
- iv) *Abdomen – All sold viscera's including liver, spleen, both kidneys were congested. Stomach was empty. Uterus small non gravid. Bladder was empty. Rigor mortis was present in all four limbs.*
- v) *Time elapsed in death within 12 to 14 hours.*
- vi) **Cause of death**
In his opinion cause of death is asphyxia due to strangulation or throttling.
- vii) *It after death, some body puts hands over the neck of the deceased with a view to shift the dead body from one place to another. Such ante mortem injury can not occur.*
- ix) *It may be possible that immediately before her death, she might have urinated. Stomach was found empty, so she might have taken the meal six hours before her death.*

He proves the postmortem examination report as Ext.3.

According to him, the deceased had died on account of asphyxia.

11. PW 11 (Punya Deo Singh) stated that he was posted at Sahebpur Kamal P.S. on the date of occurrence when he received the written report of PW 3, upon which he instituted the case and started investigation. He proves the handwriting of his colleague on the First Information Report and marked the same as Ext. 2/2A and endorsement on the First Information Report as Ext. 2/A. He stated that he recorded further statement of the Informant of requisition of the services of the Judicial Magistrate and, thereafter, ex-humed the dead body from the grave and, he, thereafter, prepared the inquest report which was marked as (Ext. 4). He inspected the place of occurrence being the house of the Appellant of which there is no relevance. The dead body was allegedly found without a shroud.

In cross-examination, he stated that the graveyard inside the Basti which was bounded on three sides houses.

12. PW 12 (Uma Kant Mishra) is an Advocate Clerk who proves the letter of requisition of S.D.O., Balia, as Ext. 5.

13. On a fair assessment of the evidence, we find the following notable points:

(i) There is no mention of any demand of dowry by the accused persons in the written report. The story was

developed later on, by the PW 1, PW 2 and PW 3. PW 1 and PW 2 did not seem to have any personal knowledge or interaction with the deceased and, therefore, there was no occasion for her to have narrated about the ill treatment at the hands of her in-laws.

(ii) The marriage had taken place more than nine year ago and, therefore, the case would not fall under the Provision of Section 304B

(iii) The Informant himself has stated that the relation of the Appellant with his daughter was good and, therefore, there does not appear any reason for him to have committed her murder.

(iv) The postmortem examination report is incriminating in the sense that the Doctor had found death to have been caused on account of throttling. However, the postmortem examination report does not fit in with the rest of the Prosecution case.

(v) We find that the only suspicious piece of evidence against the Appellant is the postmortem examination report which by itself cannot incriminate the Appellant. It may give rise to a strong suspicion as to the circumstances under which the deceased had died but it cannot conclusively prove the complicity of the Appellant.

14. For the reasons as discussed above, we allow the Appeal. The Judgment of conviction and order of sentence dated 24.8.2010/27.8.2010 passed by the Additional Sessions judge, F.T.C.- IV, Begusarai, in connection with Sessions Trial No. 1197 of 2009 arising out of Sahebpur Kamal P.S. Case No. 31 of 2009 corresponding to G.R. No. 487 of 2009, is hereby, set aside.

15. The Appellant who is in jail custody, is acquitted of the charges and is directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

AFR/NAFR	NAFR
CAV DATE	N/A.
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