

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.206 of 2013

Arising Out of PS.Case No. -26 Year- 1988 Thana -MARAUNA District- -SUPAUL

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1. Buchai Yadav S/O Late Khushi Lal Yadav Resident Of Village- Khushiyali, P.S-
Marauna, District- Supaul.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Amrit Abhijat & Mr. Manoj Kr. Gupta
Advocates.

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 10-04-2017

The sole appellant has filed the present appeal to assail the judgment of conviction dated 28.02.2013 and order of sentence dated 04.03.2013 passed by the *Ad hoc* Additional Sessions Judge- IV, Supaul, in Sessions Trial No. 124 of 1990 whereby the appellant has been held guilty under Sections 302, 201 and 494 of the IPC and sentenced to undergo R.I. for life, R.I. for 03 years and R.I. for 05 years with fine having default clause respectively. All the sentences were directed to run concurrently.

2. The prosecution case as unfolded in the 'fardbeyan' (Ext. ½) on 12.10.1988 at 9.30 AM by the brother of the deceased (PW-5) and recorded by the Station House Officer, Marauna Police Station, in brief, is that in the morning of 12.10.1988



few persons from the village of the 'sasural' of his sister came and informed about the suspicious death of his sister at the hands of the accused persons in the 'sasural'. Promptly, he along with other witnesses which includes PWs 1,3 and 4 proceeded to the village where he could find that the accused persons were burning the dead body. Seeing the informant, the accused persons escaped. The dead body was exhumed from the pyre and taken to the Police Station where the FIR was lodged. Promptly, a death-inquest proceeding (Ext.1) was carried out at about 9.30 PM in presence of PW-3 and other witness and the dead body was dispatched for post-mortem examination. Dr. Bal Mukund Lal who was then posted as the Medical Officer, Sub Divisional Hospital, Supaul held autopsy on the dead body on 13.10.1988 and submitted the report (Ext.3). The doctor found the following ante mortem injuries on her person:-

“(i) One transverse ligature mark-encircling the whole neck in the upper region. The base of ligature mark is pale with reddish & ecchymosed margin. The groove was dry, hard and parchment like. On dissection, he found adjacent tissue under neath were found highly congested and lacerated. The hyoid bone was found fractured. The trachea and larynx were found congested. Both lungs were congested. Emphysematic bullae were present on the surface of both lungs.

The above injury was ante mortem in nature, cause of death was due to asphyxia as a result of strangulation. Time since death within 72 hours.”

3. According to the doctor, the cause of death was



Asphyxia as transverse ligature mark encircling the whole neck in the upper region of the body was found. On conclusion of investigation, the charge sheet was filed whereon cognizance was taken and the case was committed to the Court of sessions for trial where charges were framed and read over to the appellant to which he pleaded not guilty and claimed to be tried. To put the record straight, it may be noted here that the father of the appellant who was also a co-accused died during trial and his case was dropped.

4. To bring home the guilt of the appellant the prosecution examined 07 witnesses. PW-1 Sukheo Yadav, PW-3 Ram Bilash Yadav, PW-4 Siyaram Yadav and PW-5 informant are the witnesses who supported the prosecution case. PW-6 is a formal witness who has proved the writings of the Station House Officer in the FIR/ 'Farbeyan'. PW-7 is the autopsy surgeon. It may further be pointed out that PWs-1, 3 and 4 are the witnesses cited in the 'fardbeyan' who had accompanied the informant to the village where the sister of the informant was married. They had gone along with the informant to the matrimonial home first and thereafter to the place where the dead body was being cremated. PW-2 is the neighbour of the appellant. During trial PWs 1 and 3 were declared hostile. PW-2 Laxmi Yadav and PW-4 Siyaram Yadav were tendered. The defence also adduced oral evidence and examined DWs 1, 2 and 3. The learned trial Court, on a critical analysis of the solitary evidence of the



informant and the findings of the doctor in the post mortem report (Ext.3), held the appellant guilty and sentenced in the manner noted above.

5. We have heard Mr. Amrit Abhijat in support of the appeal and Mr. S.N. Prasad APP for the State.

6. It has been submitted that the prosecution hinges on the solitary evidence of PW-5. Even accepting the prosecution case, it is a case based on circumstantial evidence. The chain of circumstances is not complete to conclusively hold the appellant guilty even though the doctor found ligature mark encircling the upper neck of the deceased which caused asphyxia as in course of his evidence he has stated that strangulation might be accidental. In order to support his contention, he has relied on the following cases:

(1) 2002 CRI.L. J. 4676 (Ashish Batham v. State of Madhya Pradesh)

(2) (2006) 11 SCC 323 (Bhimapa Chandappa Hosamani & Ors. versus State of Karnataka)

7. Arguing further the counsel for the appellant draws attention of the Court to the evidence of DWs and submitted that the defence has explained the circumstances in which the deceased died. A small silo (kothi) had accidentally fallen on her which was, in fact, removed by one of the DWs. It was an accidental death.

8. Mr. S.N.Prasad, counsel for the State, on the other



hand, submits that the death had occurred within four walls of the house (sasural). It was a fact especially known to the accused persons. The prosecution has led evidence in the shape of PW-5 informant and PW-7 which conclusively prove that the deceased was done to death. It was homicidal death. The appellant had hurriedly attempted to dispose of the dead body. The legal duty, in such case, cast on the prosecution has adequately been discharged. The defence was to explain the circumstances under which the death had occurred. The explanations given by the defence for her death in the shape of evidence of DWs is self contradictory. They do not even reasonably explain how the deceased received ligature mark around her upper neck. He relies heavily in support of his contention on **(2006) 10 SCC 681 (Trimukh Maroti Kirkan versus State of Maharashtra).**

9. The informant is the brother of the deceased. He resides at a distance of 2-3 kms from the village where his sister was married. It has come in evidence that the deceased was the second wife of the appellant. It is stated by the informant in his deposition that on the morning of 12.10.1988 Sukan Yadav (DW3) informed him about the unnatural death of his sister. Immediately he along with other PWs proceeded to the village where the deceased was not found inside the house. He immediately rushed to the nearby place where the deceased was being cremated. The dead body was exhumed and was brought to the Police Station where the FIR was lodged. As



noticed above PWs 1, 3 and 4 had accompanied him to the house of the appellant and thereafter the place where the deceased was being cremated. They had helped the informant in exhuming the dead body and carrying the cadaver to the Police Station. However, at trial, the prosecution did not rely on their evidence.

10. It is thus a case where only the evidence of PW-5 survives for our consideration besides the evidence of the doctor (PW-7) to find out whether charges have been proved to the hilt or not. It has been argued with much vehemence that the case being one of the circumstantial evidence the prosecution was duty bound to prove each and every link of the chain of the circumstances to conclusively prove the guilt of the appellant. Based on the solitary evidence of PW-5 who himself is not an eye-witness the guilt of the appellant has not conclusively been proved.

11. As reliance has been placed by the appellant on Bhimapa Chandappa Hosamani (supra) we would examine the same. In the said case there were four eye-witnesses. Two of them had turned hostile. The Trial Court, on a critical analysis of their evidence, did not rely on these two witnesses as they were not found truthful. Accordingly, the accused was acquitted. On an appeal filed thereagainst the Appellate Court, on reappraisal of the evidence concluded those two eye-witnesses were truthful and held the accused guilty. Aggrieved thereby the accused approached the Hon'ble



Supreme Court. On scrutinizing their evidence, the Apex Court did not find one of them truthful. It thus remained a case of sole eye-witness. In that context in para 24 of the report the Apex Court observed as under:-

“24. We have undertaken a very close and critical scrutiny of the evidence of PW1 and the other evidence on record only with a view to assess whether the evidence of PW1 is of such quality that a conviction for the offence of murder can be safely rested on her sole testimony. This Court has repeatedly observed that on the basis of the testimony of a single eyewitness a conviction may be recorded, but it has also cautioned that while doing so the court must be satisfied that the testimony of the solitary eyewitness is of such sterling quality that the court finds it safe to base a conviction solely on the testimony of that witness. In doing so the court must test the credibility of the witness by reference to the quality of his evidence. The evidence must be free of any blemish or suspicion, must impress the court as wholly truthful, must appear to be natural and so convincing that the court has no hesitation in recording a conviction solely on the basis of the testimony of a single witness.”

12. The prosecution, on the other hand, has relied on Section 106 of the Evidence Act which obligates, in such situation, the defence to discharge the legal obligation in relation to a fact especially within the knowledge of the defence (or accused). We are mindful that the deceased had sustained the injury and died while she was at the ‘sasural’. The appellant being her husband, would be reasonably attributed special knowledge of how she sustained the injury which caused her death.



13. Considering the facts and the circumstances emerging from the record it is a case where the said provision of law would be applicable. The cloud is cleared on going through the observation of the Hon'ble Supreme Court in Trimukh Maroti Kirkan (supra) on which strong reliance has been placed by the prosecution. Before we notice the relevant observation laying down the legal principle by the Apex Court in the said case the following facts would again be highlighted which have strongly illuminated at the trial. The deceased, according to the prosecution, was done to death in the matrimonial home. The post mortem report (Ext. 3) and the evidence of the doctor (PW-7) clearly indicate that she was strangled to death. Her hyoid bone was found fractured. The trachea and larynx were congested. The doctor found ligature mark around her upper neck. The defence has come up with an explanation through the evidence of DWs which completely run contrary to the findings of the doctor. The Apex Court in para 14 and 15 of the said report explained the legal position as under:-

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficulty for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not



escape. Both are public duties. (see Stirland v. Director of Public Prosecutions- quoted with approval by Arijit Pasayat, j. in State of Punjab v. Karnail Singh.) The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficulty to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it read:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

14. In a case like this, where the murder is committed in secret manner inside the house, the burden is on the prosecution to prove only that it was a case of homicidal death when the appellant



being husband of the deceased was present in the house. The prosecution has proved the same as also the motive. The death inquest report (Ext.1) show that the deceased was black skinned. The informant has stated in para 7 of his deposition that only recently the deceased had conveyed to him that the appellants were torturing her for fulfillment of demand of dowry. In view of the position of law explained, the defence has to explain the circumstances under which the injury was sustained and death caused. The defence has come up with a story but, as noticed above, they are far from being satisfactory besides being contrary to the proved facts. In these circumstances, the Hon'ble Apex Court in the said case in para 22 of the report observed as under:-

“22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In Nika Ram v. State of H.P. it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with “ khukhri” and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In Ganeshlal v. State of Maharashtra the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in



his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under Section 313 CrPC. The mere denial of the prosecution case coupled with absence of any explanation was held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In State of U.P. v. Dr. Ravindra Prakash Mittal the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that the wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under Section 302 IPC. In State of T.N. v. Rajendran the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

15. The evidence of PW-5 is natural and reliable.

Nothing has been shown to us to discredit him. It has been argued



that the doctor (PW-7), in his deposition at para 3, has stated that strangulation might be accidental. Harping on the aforesaid, it has been submitted that it was a case of accidental death. We do not find much substance in the said submission of the appellant. The opinion of the doctor in the said part of his evidence shall not cut much ice in view of his findings in the Ext. 3 and what he stated in his earlier part of deposition.

16. The defence has come up with specific plea that the death had occurred due to fall of kothi on her. We are unable to speculate as to how fall of kothi will cause ligature mark on upper neck of the deceased. If an explanation is offered by the defence which is found improbable and not acceptable, it shall be yet another circumstance against the appellant.

17. Before the case is closed and the verdict is pronounced on the charge levelled against the appellant, we shall notice the submission of the appellant that it is a case of circumstantial evidence and the prosecution has to prove every link of the chain of the circumstances before the guilt can be fastened on him. He has relied on **Ashish Batham (supra)**. It is only noted that the said case was decided on entirely different factual background. It was not a case where the death was caused secretly inside the house. The facts of the present case are entirely different. The ratio laid down therein does not help the appellant.



18. To conclude on the point, it is held that the prosecution has been able to prove the charge against the appellant beyond shadow of reasonable doubts. The conviction of the appellant and sentence imposed on him under Sections 302, 201 and 494 of the IPC is/are upheld with a modification that in default of payment of fine on each head(s) he shall undergo S.I. for one month only. All the sentences, as ordered, shall run concurrently.

(Kishore Kumar Mandal, J)

Shyam/-

(Sanjay Kumar, J)

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