

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.321 of 1994

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Nazar Alam

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Pramod Kumar Sinha, Advocate
Mr. Abdul Wadood, Advocate
Mr. Chetan Kumar, Advocate
For the Respondent/s : Mr. S.N. Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA)

Date: 11-11-2017

This appeal has been preferred by the appellant against the judgment and order dated 31.05.1994, passed by Shri A.K. Ojha, 02nd Additional Sessions Judge, Katihar, in S.T. No. 237 of 1993, whereby the appellant was convicted for the offence punishable under Sections 302/201 of the Indian Penal Code and was sentenced to undergo life imprisonment under Section 302 of the Indian Penal Code and further rigorous imprisonment for two years under Section 201 of the Indian Penal Code. Both the sentences were directed to run concurrently. By the said Judgment, learned Trial Court acquitted the appellant under Section 376, 120B and 34 of the Indian Penal Code. The trial court also acquitted other three accused persons from all the charges levelled against them.

2. Brief facts as per the fardbeyan of SK Matiur Rahman is that his second daughter, namely, Manzula Khatoon was married to



appellant Mazhar Alam and was living with her for last one year. Some days prior to the occurrence brother of the deceased had brought her to her maik and, thereafter, appellant came to the house of informant and took his wife (deceased) with himself on 22.03.1993. It has further been stated that on 23.03.1993 son of the informant went to the “*sasural*” of his sister to call the appellant for marketing purpose and enquired about her sister but mother of the appellant told him that Manjula was not there and asked him to go back. On which, son of informant returned to his house and told the said fact to his father. Thereafter, they started searching Manjula Khatoon and at 4.00 P.M. they came to know from the villagers that dead body of the Manjula Khatoon was lying in the field of one Karmuddin. The informant claimed that the appellant with his friends committed gang rape on the deceased Manjula Khatoon and killed her in conspiracy with other family members.

3. On the basis of above, Abadpur P.S. Case No. 22 of 93 under Sections 302, 376, 120B, 201/34 of the Indian Penal Code was registered against the appellant and other three accused persons. Police after investigation submitted charge-sheet against the appellant under Section 302, 376, 120B, 201/34 of the Indian Penal Code.

4. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately traveled to the file of learned Shri A.K. Ojha, 02nd Additional Sessions Judge, Katihar, for trial and disposal. The trial court after conclusion of trial



convicted the appellant under Section 302 and 201 of the Indian Penal Code and sentenced him to undergo life imprisonment and rigorous imprisonment for two years under each section respectively. Further trial court acquitted the appellant under Sections 376, 120B and 34 of the Indian Penal Code and also acquitted all other accused from all the charges levelled against them.

5. It appears from perusal of the records that neither any oral nor any documentary evidence has been adduced on behalf of the defence and it appears from the statement of the appellant recorded under Section 313 Cr.P.C that defence is of complete denial of occurrence and of false implication.

6. Aggrieved by the said judgment, the appellant preferred the present appeal.

7. Learned counsel for the appellant submitted that the judgment of trial court convicting the appellant under Section 302 and 201 of Indian Penal Code suffers from serious infirmities as there is absolutely nothing to prove that appellant had any role to play in the murder of the deceased though he had taken the deceased with himself to her matrimonial house. It has also been submitted that the injuries found on the person of the deceased suggest some different story as it appears that the deceased was first subjected to rape and was strangled to death and a charge has also been framed in this case under Section 376 of the Indian Penal Code, however, all the accused persons including appellant, have been acquitted from the charge



alleged under this Section. Further submission of learned counsel for the appellant is that there is no eye-witness of the case and save and except suspicion that the appellant had taken the deceased with himself one day prior to the occurrence, there is no other circumstance against the appellant and as such conviction of appellant under Section 302 and 201 of Indian Penal Code is not sustainable.

8. Learned counsel for the State has submitted that there is strong suspicion against the appellant that he took the appellant with himself and with the help of others, he had killed the deceased and, therefore, there is no illegality in the impugned judgment and conviction of appellant under Section 302 and 201 has rightly been passed.

9. On perusal of the evidence available on record, it appears that P.W. -19 is the informant in this case and he is also father of the deceased. Appellant is the husband of the deceased and his evidence shows that the deceased was taken to her sasural by appellant on Monday and on Tuesday, he sent his son to the house of appellant, who enquired about her sister and the mother of appellant told him that she is not in her sasural. His evidence in chief also shows that at 4.00 clock in the evening, there was a *hulla* that dead body of the deceased was found in a field, which was identified by him. This is the earliest version as stated in F.I.R also. On perusal of entire evidence of the prosecution, it appears that it is the consistent case of the prosecution that the deceased was taken by the appellant, who happens to be her husband and later, on enquiry it came to knowledge



that she was not in her sasural and her dead body was recovered from wheat field. Post mortem report shows that her death was due to throttling and post mortem report also shows that multiple abrasion all around vulva with reddish discharge was found during post mortem.

10. Earlier the prosecution has been lodged against the three other accused persons for charge under Section 302, 376, 120B , 201/34 of the Indian Penal Code, however, all the accused person including the appellant were acquitted from charge under Section 376, 120B Indian Penal Code and other accused persons have also been acquitted from charge under Section 302 and 201/34 of the Indian Penal Code. The trial court has based its conviction on the circumstance that deceased Manjula Khatoon was taken away by the appellant Najar Alam prior to the occurrence. Further on the circumstance that there are ample evidence to show that Manjula Khatoon was found missing from her Sasural and thirdly that the dead body of Manjula Khatoon was found lying in a field and further on the circumstance that relationship with the deceased and the appellant was not normal and he did not like his wife. Considering the aforesaid circumstance as strong circumstance against the appellant, learned trial court has convicted the appellant under Section 302 and 201 of the Indian Penal Code.

11. As I have discussed above, there is no direct evidence available on record to show that she was killed and thrown in the wheat field rather the case appears to be based on circumstantial evidence and the trial court has also held the appellant guilty on the basis of



circumstantial evidence as stated above. It is well established that all the circumstances on which the court based its conviction has to be put under Section 313 Cr.P.C to the accused person so that he may explain the circumstances available against him. However, from perusal of the record, it appears appellant has been asked the following questions that he along with other accused persons committed rape upon the deceased (ii) that in conspiracy with other accused persons, the deceased was killed by you and others. No circumstances as has been relied by the learned trial court has been put to the appellant.

12. Hon'ble Supreme Court in a decision in the case of Mannu Sao vs. State of Bihar reported in [2010] SC 540 has observed with regard to essential features of examination of accused under Section 313 of Cr.P.C in para – 8, of its judgment and on perusal of the same, it appears that ratio decided by the Hon'ble Apex Court appears to be as follows:-

“Let us examine the essential features of this Section 313 Cr.P.C. and the principles of law as enunciated by judgments, which are the guiding factors for proper application and consequences which shall flow from the provisions of Section 313 of the Code. As already noticed, the object of recording the statement of the accused under Section 313 of the Code is to put all incriminating evidence against the accused so as to provide him an opportunity to explain such incriminating circumstances appearing against him in the evidence of the



prosecution. At the same time, also to permit him to put forward his own version or reasons, if he so chooses, in relation to his involvement or otherwise in the crime. The Court has been empowered to examine the accused but only after the prosecution evidence has been concluded. It is a mandatory obligation upon the Court and besides ensuring the compliance thereof the Court has to keep in mind that the accused gets a fair chance to explain his conduct.”

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13. In view of the settled principle and law laid down by Hon'ble Apex Court, it appears that mandatory provisions under Section 313 Cr.P.C. has not been complied with, in this case.

14. Apart from the above fact even if the circumstances which has come against the appellant and relied by the learned court is believed to be true, the prosecution story is that dead body of the deceased was not recovered from the house of the appellant, rather the same was found from a wheat field. There is no evidence to show the presence of the appellant near the place of occurrence. Further no undigested food was found in the post mortem and that shows that the abdomen was empty and it further appears from the post mortem report that there were injuries around her private parts, hence, the possibility that an attempt might have been made to commit rape on the deceased prior to her murder, cannot be ruled out and we find that an argument has been advanced by the defence that in view of the stomach being



empty and injury around her private parts a possibility cannot be ruled out that she might have gone to ease out and after easing out, there was some attempt to commit rape on her and in course of that she has been killed. Appellant is the husband and it is not expected from him that he will attempt to commit rape with his own wife and that too in a field.

15. On entire discussions made above, it appears that the chain of circumstances are not so conclusive so as to lead to only one conclusion i.e. towards the guilt of the appellant.

16. Accordingly, this appeal is allowed conviction and sentence of the appellant is set aside.

17. As appellant is on bail, he is discharged from the liabilities of bail bonds.

(Ajay Kumar Tripathi, J)

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(Vinod Kumar Sinha, J)

AFR/NAFR	AFR
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