

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.196 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- GOPALGANJ

- =====
1. Galmuni Ram, son of Mangar Ram
 2. Hari Narayan Ram @ Hari Narayan, son of Galmuni Ram, both resident of village Dubawalia, P.S. & District Gopalganj

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Anjani Parashar with Mr. Vishwajeet Kumar Mishra, Advocates

For the Respondent : Mr. Dilip Kumar Sinha, 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 AJAY KUMAR TRIPATHI)

Date: 11-11-2017

The appeal has been preferred by two appellants, who are father and son, against the judgment and order dated 24.2.1994 passed by 3rd Additional Sessions Judge, Gopalganj in Sessions Trial No. 114 of 1991/121 of 1991. The appellants have been convicted under Section 302 read with Section 34 and 201 of the Indian Penal Code to undergo rigorous imprisonment for life.

2. The prosecution case is that appellants, who are father and son, went to the informant's village, Basudewa on 14.11.1990 in the morning and inquired from him about the whereabouts of the informant's daughter Eatwaria, whether she had come to the house. They informed that the daughter-in-law had fled and they were



searching for her. Eetwaria was daughter-in-law of appellant No.1 and wife of appellant No.2. The informant informed them that the deceased had not come to their house and subsequently when on 15.11.1990 informant along with some other villagers went to the village Dubawalia and searched for her daughter, he was informed by villagers that the deceased had been buried on the bank of the river. The dead body was thereafter discovered, which was identified to be that of the daughter.

3. The prosecution produced nine witnesses. The defence was that the deceased had gone to the field to cut grass and her dead body was discovered along with some grass, *khurpi*, basket and at instance and advise of the villagers, appellants supposedly helped bury the body near the river bank.

4. It is made clear that there are no eye-witnesses and whatsoever is the cause of death. The post mortem indicates that the death happened due to strangulation but there has been no evidence to link the two appellants with the death of Eatwaria, who no doubt happened to be daughter-in-law of the family.

5. Even the prosecution witness, specially witness No.5 has stated that dead body of the deceased was found in the field and it was at the instance of suggestion of the villagers that the dead body was buried on the bank of the river. The conviction of the two appellants is based on the ground that the death had happened within three years of



the marriage and since she happened to be daughter-in-law of appellant No.1 as well as wife of appellant No.2, onus was upon them as per Section 106 of the Indian Evidence Act to explain the same.

6. The death had happened in the field not in the house of the two appellants. Anything could have happened which led to the murder of Eatwaria. Even the so-called investigation could not link the two appellants directly with the crime. It is a case of circumstantial evidence but the circumstances are not strong enough to lead to the only conclusion that the two appellants alone would be responsible for the death of Eatwaria.

7.It is significant that even the I.O. in this case was never examined and merely on the basis of the fact that daughter-in-law of appellant No.1 and wife of appellant No.2 had died and post mortem indicated that it is a case of strangulation, the suspicion formed the only basis of the conviction. No motive as such has been attributed for proved.

8. The case is based on circumstantial evidence and conviction is based on circumstance that no explanation for death of deceased was given by the appellants and death is due to throttling. How those circumstances have not been put to the appellants in their statements under Section 313 Cr.P.C., which is mandatory and Hon'ble Apex Court has also held so in judgment of **Manu Sao vs. State of Bihar**, reported in (2010) 12 SCC 310. Hence, defence has



failed to get a chance to explain the circumstances.

9. Thus, we find that the circumstances do not add up to convict the appellants for life by holding them guilty.

10. The appeal, therefore, is allowed. The two appellants stand acquitted. The bail bonds executed by them stand discharged. The judgment and order dated 24.2.1994 passed by 3rd Additional Sessions Judge, Gopalganj stands set aside.

(Ajay Kumar Tripathi, J)

spal/-

(Vinod Kumar Sinha, J)

AFR/NAFR	
CAV DATE	
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