

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.631 of 2016

Arising Out of PS. Case No.-199 Year-2010 Thana- BRAHMPUR District- Buxar

Yogendra Thakur @ Ashami Thakur, son of Lalan Thakur, resident of village-
Aarigaon, P.S.-Krishnabhram, District- Buxar. Appellant/s

Versus

The State Of Bihar Respondent/s

Appearance :

For the Appellant/s : Mrs. Soni Shrivastava, Amicus Curiae
For the Respondent/s : Mr. Ashwani Kumar Sinha, A.P.P.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 16-09-2017

We have heard parties and have perused the records of this case.

The appellant has filed this jail appeal assailing the judgment of conviction and order of sentence dated 11.04.2016 passed by Additional Sessions Judge-VI, Buxar in Sessions Trial No. 136 of 2011 by which the appellant has been convicted for the offence punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life and fine of Rs.10000/- and in default of payment of fine, he would have to further undergo imprisonment for two months.

The prosecution case, in brief, is that, the informant Bhikhari Yadav (Chaukidar) got an information on 19.06.2010 at about 2.00 P.M. that Yogendra Thakur, son of Lalan Thakur of his village had committed murder of his wife with sharp edged weapon. Upon that



information, when the informant reached at the house of Yogendra Thakur then he saw that his wife Guriya Devi, aged about 26 years was lying on the ground and villagers were assembled there. Her throat was found cut and blood was oozing out and she was in wringing condition. Thereafter, she was brought to Dumraon hospital with the help of villagers for her treatment. After some time, he got information that the injured Guriya Devi had died in Dumraon Hospital and her dead body was there. All the family members fled away. It has come into knowledge that the occurrence took place due to the dispute between husband and the wife.

On the basis of aforesaid fardbeyan, the police registered Brahmpur P.S. Case No. 199/2010 against the appellant for the offence punishable under Section 302/34 of the Indian Penal Code.

After investigation, the police submitted charge sheet against the appellant for the offence punishable under Section 302 of the Indian Penal Code. Thereafter, the Chief Judicial Magistrate, Buxar had taken cognizance of the offence against the appellant under Section 302 of the Indian Penal Code. The case was committed to the court of sessions, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started.



During trial, the prosecution has examined altogether ten witnesses in support of its case. P.W.1 is Shiv Shankar Singh, P.W. 2 is Param Hans Upadhaya, P.W. 3 is Vakil Thakur, P.W.4 is Dharmendra Kumar, P.W.5 is Satyendra Thakur, P.W. 6 is Bhikari Yadav, P.W.7 is Ramchandra Ram, P.W. 8 is Dr. Anil Kumar Singh, P.W. 9 is Uday Bahadur and P.W.10 is Kanchan Singh.

The defence has also examined Vindhyachal Yadav (D.W.1) on his behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charges against the appellant.

This is a case of circumstantial evidence as none of the witnesses have said that they have seen the appellant killing his wife. Now, it has to be seen as to whether there can be conviction on appreciation of the evidence which has been led during the course of trial. However, the witnesses including the Chaukidar, who has been examined as P.W.6, have said in their deposition that they heard that Yogendra Thakur (appellant) had killed his wife. Undoubtedly, the dead body was found in the house of the appellant but no bloodstains was recovered from anywhere. The first Investigating Officer, who has been examined as P.W.7 has



stated in his cross-examination that the statement of the persons whose houses were situated on the boundary of the place of occurrence were not recorded and further that during the course of investigation not a single witness came up who had seen the occurrence. The weapon of murder was also not recovered. Vindhyanchal Yadav, who has been examined as D.W.1 on behalf of defence, has only stated that Yogendra Thakur (appellant) was working at Delhi five years back and he used to come to his village occasionally. Obviously, defence was trying to make out a case that the appellant was not present at the place of occurrence on the date of occurrence.

However, the P.W. 2 Param Hans Upadhyay has stated that he has seen the appellant on the date of occurrence at about 4.00 P.M while he was sitting in his house. On alarm having been raised, he came out and saw that the appellant was passing through. He was keeping a bag and his clothes were bloodstained. Now it has to be seen whether his statement inspires confidence or not? The FIR says that the Chaukidar Bhikhari Yadav (informant) came to know at about 2.00 P.M. that Yogendra Thakur had killed his wife and dead body of his wife was lying in his house. That means death had occurred prior to 2.00 P.M. Nobody was found in the house. No other witnesses of the locality except P.W.2 has seen the



appellant. P.W. 2 also seen him at 4.00 P.M. from the door of his house. Now, the question is whether the appellant was waiting to be seen for about two hours and where was he in between time of occurrence and 4.00 P.M? Nobody has seen him during that period.

That apart, even if the deposition of P.W. 2 is assumed to be correct whether that would be sufficient evidence to hold that the appellant had killed his wife? Everybody has said that they heard the appellant had killed his wife but nobody has seen him.

The evidence of P.W. 2 also does not inspire confidence for the reason that he has said that he was sitting in his house and, when alarm was raised at 4.00 P.M, he came out of that house and saw the appellant passing through front of his house, whereas, the fact is that the death had occurred prior to 2.00 P.M and the Chaukidar had already reached there at about 2.00 P.M. and the further fact is that alarm was already raised by several persons at that point of time. Thus, there was no occasion for alarm being raised again at about 4.00 P.M.,i.e., after about 2 hours of occurrence.

The father and brother of the deceased have also been examined. The father has been examined as P.W.3. He has stated that her daughter was not having any issue and after marriage, she



was living at her matrimonial house but when no child was born after 2-3 years, the accused persons and their parents started torturing. On such occasion, he used to take her back to his house and, thereafter, he again used to send her at the matrimonial house. On the fateful day, he came to know that her daughter has been killed. He has stated that he came to know that the appellant and his family members have killed her daughter. In his cross-examination, he has said that he had never seen his son-in-law assaulting her daughter from his own eyes.

The brother has been examined as P.W. 5. He has stated that the appellant used to demand motorcycle as dowry and he had threatened that, if the demand was not meted with, he would kill her and marry another girl. However, this does not inspire confidence as the father has nowhere stated that all the family members are guilty but charge sheet was submitted only against Yogendra Thakur and charges were also framed against him. That apart he did not say anything regarding demand of motorcycle which puts a question mark upon the version of P.W.5.

Thus, in our considered view, the prosecution has failed to establish the case beyond all reasonable doubts. This is a case of circumstantial evidence and the prosecution case is porous. Several links are missing. It is not at all established that the



appellant was present on the fateful date of occurrence and he killed his wife as doubt has been created by D.W.1 that he used to go to Delhi and for the reasons stated above, the evidence of P.W. 2 does not inspire confidence.

Accordingly, this appeal is allowed. The judgment of conviction and order of sentence passed against the appellant are set aside. He is acquitted of the charge. The appellant is in jail custody, he is directed to be released forthwith, if not wanted in any other case.

Mrs. Soni Srivastava, Advocate, was appointed to appear on behalf of appellant as Amicus Curiae vide order dated 13.07.2017.

The Legal Services Authority shall make payment to her as per schedule.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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