

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.73 of 2015

Arising Out of PS.Case No. -39 Year- 2011 Thana -MADHEPURA District- MADHEPURA

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1. Bisho Yadav S/o Late Mungalal Yadav
2. Anmol Yadav S/o Bisho Yadav Both residents of Village - Bhatrandha, P.S. -
Madhepura Parmanand O.P. District Madhepura.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Shekhar, Adv.

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 11-10-2017

Challenge in this appeal is the judgment of conviction dated 15.12.2014 and order of sentence dated 18.12.2014 passed by Additional Sessions Judge-2nd, Madhepura in Sessions Trial No. 151 of 2011 whereby and whereunder both the appellants, namely, Bisho Yadav and Anmol Yadav have been found guilty for an offence punishable under Sections 306/34 of the IPC and each one has been sentenced to undergo RI for 6 years as well as to pay fine of Rs. 5000/- in default thereof, to undergo SI for six months additionally.

2. Informant, Harilal Yadav (PW 10) who happens to be grandfather of deceased, Priyanka Devi gave his Fard-e-beyan on 01.02.2011 disclosing therein that Priyanka, his grand-daughter was married in his village about 12-13 year ago while she was minor. About a year ago, her Gauna effected. After staying for two months at



her Sasural, she came back to her Maika where she disclosed to her mother that her husband was not discharging his marital obligation. He was insisting upon to get herself remarried as he was also adamant to remarry. During her stay at her Maika, none of the members of her Sasuralwala visited whereupon Panchayati was convened. In Panchyati, father of his son-in-law, namely, Bisho Yadav had disclosed that Anmol, his son-in-law has developed affection, intimacy with the daughter of Laxman Yadav and will marry with her. Therefore, Priyanka should also be remarried and for that, he is ready to return back dowry items which he had received at the time of marriage of Anmol, (husband of deceased). Panches rejected the offer by saying that custom did not permit, whereupon, Bidai was effected and at that very time, gift items appertaining to Rs. 60,000/- was provided. For about a month, she live in a congenial atmosphere but then thereafter, her husband, father-in-law, mother-in-law began to pressurize her to leave the place and get herself remarried, whereupon he along with his son had gone there and got matter pacified.

3. Today at 3:00 AM, his co-villager, Mahendra Yadav came and informed that his grand-daughter is crying that her Sasuralwala has administered poison. On this information, he along with his sons, Chandeshwari Yadav, Bindeshwari Yadav, Chand Kishore Yadav, Mantun along with family members, Mantun, Sanjay



rushed over a tempo of Sukhdeo Thakur in order to provide medical facility to Priyanka without any delay but, till their arrival she was already dead.

4. On the basis of the aforesaid Fard-e-beyan, Madhepura PS Case No. 39/2011 was registered followed with investigation and during course thereof, on account of apprehension of appellant, Anmol Yadav, charge-sheet was submitted against him keeping investigation pending against the remaining accused and in due course of time, co-accused Bisho Yadav was also apprehended against whom, supplementary charge-sheet was submitted keeping the investigation pending against remaining and that happens to be the reason behind pendency of two sessions trial, namely, S.Tr. No. 151/2011 relating to Anmol Yadav and 151A/2011 relating to Bisho Yadav. It is also evident from the order-sheet that vide order dated 22.02.2012 Sessions Trial No. 151A/2011 was amalgamated with parent Sessions Trial No. 151/2011 and subsequently thereof, trial commenced and continued meeting with ultimate result subject matter of challenge under the present appeal.

5. Defence case as is evident from the mode of cross-examination as well as pleaded during course of statement under Section 313 of the CrPC is that of complete denial. Neither any ocular nor documentary evidence has been adduced on behalf of appellants.



6. It is evident from the record that altogether 12 witnesses have been examined on behalf of prosecution namely, PW-1, Surya Narayan Prasad PW-2, Chandra Kishore Yadav, PW-3, Jhugia Devi, PW-4, Mantun Yadav, PW-5, Bindeshwari Yadav, PW-6, Fuhi Devi, PW-7, Chotkan Sharma, PW-8, Raghunath Pd. Yadav, PW-9, Tribhuwan Yadav, PW-10, Hari Lal Yadav, PW-11, Parmeshwari Yadav, PW-12 Suman Kumar Jha, as well as had also exhibited Ext-1, signature of attesting witness over Fard-e-beyan, Ext-2, PM report, Ext-3, Viscera Report, Ext-4, Fard-e-beyan, Ext-5, Forwarding report, Ext-5/1, endorsement having over Fard-e-beyan. It is also evident that two witnesses namely, Poonam Devi as well as Srikant Mishra have been examined as CW-1 and CW-2 respectively. As observed, appellants have not examined ocular or documentary evidence in their defence.

7. Learned counsel for the appellants while assailing the judgment impugned has submitted that as the learned lower court failed to appreciate the materials available on the record in its right perspective, on account thereof, happens to be wrong, erroneous as well as suffers from surmises. It has further been submitted that it is an admitted fact of the prosecution that none happens to be an eyewitness to the occurrence. It happens to be an admitted case of the prosecution that the deceased was never tortured, nor there was



demand. Whatever allegation happens to be, that would not attract applicability of Section 306 of the IPC on account of non recognition of appellants as an abettor compelling deceased to commit suicide in the background of the fact that the conduct of the appellants was very much fair whereunder they have suggested the victim and her Naiharwala to get herself remarried in order to preserve harmonious relationship being co-villager as the marriage having been solemnized during course of minority was not found to be fruitful after attaining majority. That being so, the aforesaid activity in any way did not allow to identify appellants to be abettors whereupon, conviction and sentence under Section 306/34 IPC is not at all found permissible.

8. It has also been submitted that from the evidence adduced on behalf of prosecution speaks probability of suicide by the decease on her own without having influence at the end of appellant. That being so, it could not be said that appellants were responsible for the same.

9. On the other hand, refuting the submissions made on behalf of appellants, it has been submitted on behalf of learned APP that the judgment impugned is fit to be set aside in the background of the fact that the learned lower court had failed to appreciate that the deceased met with death at her Sasural, death was on account of poisoning, then in that event, as per Section 106 of the



Evidence Act, it was incumbent upon the appellants to have explained the death and having been failed on that very score, appellants would have been convicted for committing murder instead of abetment of suicide. As such, the matter is fit to be remitted back to the learned lower court for reconsideration after setting aside the judgment impugned.

10. From the evidence of doctor (PW 12), it is evident that during conduction of postmortem over the dead body of Priyanka, he made following observations:-

No external injury on her body.

On dissection. All viscera and organs intact and pale & N.A.D.

Time since death within 24 hours since examination.

Cause of death could not be ascertained. So following viscera were preserved for forensic and toxicological examination (kidney, heart, liver, spleen, lungs, stomach's content)

11. Because of the fact that he failed to trace out imminent cause of death whereupon, preserved viscera and the FSL report is available on the record (Ext-4) from perusal of which, it is evident that the deceased died of poison, having presence of Sulphas. From the inquest report as well as evidence of CW-2, I.O inconsonance with other witnesses, it is evident that the dead body was found inside the house of appellants and none of the family members were present. Absence of family members is a circumstance



admissible in terms of Section 6 of the Evidence Act. It is also evident from the cross-examination of all the witnesses that appellants have not suggested to any of them that it was a case of suicide or homicide. Even during course of statement recorded under Section 313 of the CrPC, they kept silence.

12. From the evidences of the PWs who are consistent to each other that about a year ago, Gauna was effected. After staying for two months when Priyanka came to her Naihar, she disclosed to her mother (PW 6) that her husband was not willing to consummate marriage, he was not willing to sleep with her and was saying to get herself remarried as he was adamant to marry with other over which Panchayati was convened as none of her Sasuralwala visited during stay of Priyanka at her Naihar and at Panchayati, appellant, Bisho Yadav, father of Anmol divulged that his son, Anmol has developed relationship with the daughter of Laxman Yadav with whom he was adamant to marry, therefore, he offered to return back all the articles which was gifted at the time of marriage of his son with Priyanka and further, said that Priyanka should also got remarried. As aforesaid event was rejected by the Punches being against social norms whereupon, Priyanka was taken to Sasural and during course of her stay, unfortunately, met with death.

13. Section 101 of the Evidence Act casts obligation



upon the party to substantiate its case to the hilt in order to get adjudication in his favour with certain exception and Section 106 apart from others is one of the same which cast obligation upon the adversary to explain to the satisfaction the event which happens to be within the exclusive knowledge or expected to but, before application of Section 106 of the Evidence Act, the prosecution is not exonerated from the primary obligation which it comes to prove its case.

14. In ***Shambhu Nath Mehra v. State of Ajmer*** as reported in ***AIR 1956 SC 404***, it has been observed by the Apex Court that “*Section is not intended to shift a burden of proof on the accused what the prosecution carries in terms of Section 101 of the Evidence Act but in case, the fact known only to the accused and it is virtually impossible or extremely difficult for the prosecution to prove the fact, then in that event, these facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.*”

15. In ***Ganeshlal v. State of Maharashtra*** reported in ***(1992)3 SCC 106***, it has been held by the Apex Court that “*since death of his wife had occurred in the custody of the accused (husband), he was under obligation to give an explanation for the cause of death at least under the statement recorded under Section 313 CrPC. A denial of the prosecution case coupled with absence of*



any explanation from the side of the accused as to how his wife was throttled to death in the courtyard of their house is a circumstance inconsistent with his innocence but consistent with the hypothesis that it was the accused alone who committed the murder of his wife. There is not evidence that any third person had access in the courtyard and had committed murder. It is also not the case of the accused that he was elsewhere at the time of occurrence. No such plea of alibi has been set up by the accused”.

16. In ***Trimukh Maruti Kirkan v. State of Maharashtra Reported*** in (2006) 10 SCC 681, it has been held by the Apex Court that “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 the crime they were seen together or the offence takes place in the dwelling house where the husband also normally resided with his wife, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which found to be false, it is a strong circumstance which indicates that he is responsible for the commission of the crime.

17. In ***State of Rajasthan v. Thakur Singh*** as reported in 2014 CrLJ 4047 it has been held under para-22 which is as follows:-



“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

18. In ***Sarvan Singh v. State of Punjab*** reported in **(2003) 1 SCC 240**, it has been held by the Apex Court that “ *it is a rule of essential justice that whenever opponent has declined to avail himself of the opportunity to put his case in cross-examination, it must follow that the evidence tendered on that issue ought to be accepted*”.

19. From the evidence having available on the record, it is apparent that (1) Priyanka was staying at her Sasural, (2) She died at her Sasural, (3) Her dead body was recovered therefrom, (4) she was found dead on account of poisoning, (5) when the prosecution party as well as police officials visited the place, all the family members were found absent. So death of Priyanka at her Sasural on account of poisoning gone out of controversy. Because of the fact that poison was found and so event of poisoning whether it happens to be homicidal or suicidal was to be explained and for that, appellants were the only person to explain as the aforesaid event materialized within four walls of the house. During cross-examination it is evident that neither the witnesses were cross-examined on that



very direction nor were suggested, more particularly, the parents, PW-6 (mother), PW-5 (father) and PW-10 (Grandfather/informant) nor pleaded during course of statement recorded under Section 313 of the CrPC.

20. From the judgment impugned, more particularly, paragraphs-21, 22, 23 and 24 it is evident that learned lower court had not considered the evidence, obligation on the accused in terms of Section 106 of the Evidence Act contrary to it, formed its own illusion in pre-determined manner to be a case of suicide identifying the appellants to be abettor for the same without having substance visualizing from the record.

21. That being so, the judgment of conviction and sentence is not at all found to be in accordance with law whereupon, the same is set aside. Appeal is allowed.

22. The matter is remitted back to the learned lower court to hear the argument on behalf of the respective parties and pass judgment afresh in accordance with law.

23. Both the appellants are on bail which is extended for further four weeks, during midst thereof, both the appellants will surrender before the learned lower court and will pray which the learned lower court will consider in accordance with law. In case of failure at the end of appellants to surrender before the learned lower



court within aforesaid stipulated period then, in that event, after expiry of the aforesaid tenure of four weeks, the learned lower court will proceed in accordance with law, as after expiry of the same, the bail having been granted to the appellants will be deemed to be cancelled.

(Aditya Kumar Trivedi, J)

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