

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.568 of 2011

(Against the Judgment of conviction dated 11.3.2011 and order of sentence dated 14.3.2011, passed by the learned Additional Sessions Judge-IV, Banka in Sessions Trial No. 1308 of 2008, Tr.No.148 of 2011, arising out of Banka Police Station case no. 405/2008, GR Case no. 1355 of 2008).

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Karu Yadav @ Karu @ Kailash Yadav S/O Jharu Yadav Resident Of Village
Likhni Kojhi, P.S. + District Banka Appellant

Versus

The State Of Bihar Respondent

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Appearance :

For the Appellant : None

Amicus curiae Mr. Neeraj Kumar @ Sanidh, Advocate

For the Respondent : Mr. A.K.Sinha, Additional Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 16-03-2017

Heard Mr. Neeraj Kumar @ Sanidh, learned *amicus curiae* as well as Mr. Ashiwini Kumar Sinha, learned Additional Public Prosecutor for the State.

2. The appeal is filed against judgment of conviction dated 11.3.2011, passed by the learned Additional Sessions Judge-cum-Fast Track Court-IV, Banka in Sessions Trial No. 1308 of 2008, Trial No.148 of 2011, arising out of Banka Police station Case No. 405 of 2008, GR Case No. 1355 of 2008, whereby the sole appellant has been sentenced to under go RI for life under section 302 of the IPC vide order dated 14.3.2011.



3. The prosecution's case as made out in the *fard beyan* of Chhatish Yadav, aged 50 years s/o Sukhdeo Yadav, village Duboni, Police Station Amarpur, District Banka, recorded by the SI Ashok Kumar Sinha of Banka Police Station on 12.9.2008 at about 10 PM at village Likhani Kojhi at the house of Jharo Yadav, is as follows:-

4. The informant stated that he married his daughter Laxmi Devi with the accused Karu Yadav some 10 years ago. They were blessed with 2 sons and 1 daughter. Since last 2 years the relationship between Laxmi Devi and her husband had estranged as he frequently demanded money for liquor to which she used to object and also used to inform her father about it. The informant on 12.9.2008 visited his daughter's *Sasural* and after pacifying her husband returned to his village Duboni at about 4 PM. The following morning at about 7.30 PM, he got information that his daughter has been killed by her husband Karu Yadav and her father-in-law Jharu Yadav. He stated that in fact he wanted to bring his daughter back with him but his *Samadhi* Jharu Yadav stopped him from taking his daughter along with him as a lot of work was to be done in the field.

5. On getting information, he reached his daughter's *Sasural* where he found his daughter lying dead on the cot. Her face was badly bruised by his son-in-law Karu Yadav @ Kailash Yadav by back portion of the Spade. Karu Yadav was not found at house



having fled after killing her.

6. On the basis of the *fard beyan*, police registered Banka Police station Case No. 405 of 2008, dated 12.9.2008 under sections 302/34 of the IPC.

7. The investigating officer (IO) after recording the *fard beyan* prepared inquest report of the deceased at the house of the appellant. He also visited the place of occurrence and took the statement of witnesses including re-statement of the informant. He sent the dead body for *post mortem* and obtained the post mortem report. As per the post mortem report, six injuries were found on the face of the deceased. Finding the allegations to be true, police submitted charge sheet against the appellant Karu Yadav and his father Jharu Yadav under sections 302/34 of the IPC. On receipt of the charge sheet, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions for trial, which framed charge under sections 302/34 of the IPC to which the appellant pleaded not guilty and claimed to be tried. The trial court on consideration of materials on record, acquitted Jharu Yadav and convicted the appellant under section 302 of the IPC.

8. The prosecution, in order to substantiate its case examined 8 witnesses. Out of these 8 witnesses, PW 1 Kebu Yadav, PW 4 Yugal Yadav and PW 5 Rakesh Kumar are hearsay witness.



PW 2 Santosh Kumar is the witness to the inquest and also has claimed to be an eye witness. PW 7 Chatish Yadav is the informant and PW 3 Pramila Devi and PW 9 Ramdeo Yadav have turned hostile. PW 6 Dr. U.K.Niraj conducted the post mortem on the dead body of the deceased which has been marked as exhibit 2. PW 8 Ashok Kumar Sinha is the I.O. It would thus appear from the prosecution case that there are only 2 eye witnesses to the occurrence, namely, PW 2 Santosh Kumar and PW 3 Pramila Devi. However, Pramila Devi turned hostile. As such, PW 2 remains the only eye witness.

9. PW 2 Santosh Singh resides close to the house of the appellant. He stated that on 12.8.2009 at 7 PM, he heard quarreling sound emanating from the appellant's house. He saw the appellant assaulting his wife with spade. She had sustained injuries on her nose and head. Police came and prepared inquest report on which he had put his signature which has been marked as *exhibit* 1. In his cross examination, he stated that there are other houses in the surrounding of the house of the appellant. He denied the suggestion that he was on inimical terms with the family of the informant. However, in the cross examination he stated that he had gone to the place of occurrence along with PW 5 Rakesh Kumar. Soon thereafter PW 1 Kebu Yadav, PW 4 Yugal Yadav (not examined) also came who saw



the occurrence. He stated that the assault took place for 10 to 15 minutes and there was no one else apart from them. In paragraph 14, he stated that he did not raise *hulla*. However police came in the night itself on the information of PW 5 Rakesh Kumar. Though this witness PW 2 (Santosh Singh) stated that he came along with Rakesh Kumar (PW 5) followed by other witnesses, namely, PW 1 Kebu Yadav and PW 4 Yugal Yadav, but none of these witnesses in their evidence have claimed to have seen the occurrence. They all stated that they reached the place of occurrence much after the death of Laxmi Devi. Besides this, the evidence of these witnesses contradicts the claim of PW 2 Santosh Kumar that all of them had seen the occurrence along with him and hence his evidence is unreliable. Besides, this witness has admitted that a case under section 307 of the IPC was going on between him and the family of the appellant. In the backdrop of the circumstances above, we are of the considered view that it would not be safe to place reliance on the evidence of PW 2 Santosh Singh.

10. The only other important witness left to be considered is PW 7, the informant Chatish Yadav. He is father of the deceased. In his evidence, he has supported the prosecution case as in the FIR. He stated that his daughter was married about 10 to 14 years ago. For quite some times, he kept her well. The relationship got strained in



the last two years as he used to demand money for wine. He also started torturing and abusing her on trivial issues. On the date of occurrence, he had gone to his daughter's *Sasural* and wanted to bring her back. However, her father-in-law did not agree to sending her with him on the ground that there was enough work in the field to be done. He stated that he learnt about the death of her daughter on the following morning from the local *Chaukidar*. Thereafter, he went to his daughter's *Sasural*, where he found her dead. The face and head of her daughter were bruised by the back portion of a spade. He further stated that after sometime, the police came to his daughter's *Sasural*. Then he went to Thana to lodge a case.

11. The I.O. in his evidence stated that he took the statement of witness on the next day in the morning at the police station itself.

12. There appears a discrepancy with respect to the time as to when the informant made his first statement before the police. As per the FIR, the informant made his *fard beyan* on 12.9.2008 at 10 PM at his daughter's *Sasural* in Likhni Kojhi. However, the informant in paragraph 10 stated that he lodged the case in police station. In any view of the matter, the informant is not an eye witness to the occurrence and there is no allegation of dowry demand.

13. Apart from this, there is one more material discrepancy



in the prosecution case. As per the evidence of the doctor, the post mortem was conducted on 13.9.2008 at 1.15 PM, whereas the time of occurrence is 7 PM on 12.9.2008. The doctor opined that the death was caused within 24 to 48 hours, whereas according to the prosecution case, the time elapsed since the post mortem examination of the dead body and the death was only 18 hours. There is no eye witness in the case which is based on circumstantial evidence. We are constrained to hold that the prosecution has not been able to establish a complete chain of circumstances to point to the guilt of accused. The prosecution has not been able to prove even the motive for the appellant to kill his wife. The Hon'ble Apex Court in case of **Sharad Birdhichand Sarda Vs. State of Maharashtra**, reported in **AIR 1984 Supreme Court 1622** has observed that even if the case is not based on direct evidence, still accused can be convicted on basis of circumstantial evidence, provided there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused. The Hon'ble Apex Court observed that if two views are possible on the culpability of the accused, one pointing to the guilt of the accused and the other his innocence, the accused is entitled to have the benefit of one which is favourable to him.

14. The prosecution has not been able to prove even the



motive against the accused for killing his wife beyond all reasonable doubt, as such we are constrained to hold that the appellant is at least entitled to benefit of doubt.

15. In the result, the appeal is allowed and the impugned Judgment of conviction, dated 11.3.2011 and order of sentence, dated 14.3.2011, passed by the learned Additional Sessions Judge-IV, Banka in Sessions Trial No. 1308 of 2008, Tr.No.148 of 2011, arising out of Banka Police Station case no. 405/2008, GR Case no. 1355 of 2008 against the appellant is set aside. The appellant, namely, Karu Yadav @ Karu @ Kailash Yadav is in custody. Hence he is directed to be released forthwith, if not wanted in any other case.

16. Let the first page and the last page of the judgment be handed over to Mr. Neeraj Kumar @ Sanidh, learned Amicus curiae to facilitate payment of requisite remuneration by the Bihar State Legal Aid Committee.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Shashi.

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Uploaded on 10.4.2017	Transmitted on 10.4.2017
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