

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.61 of 2013

Arising Out of PS.Case No. -464 Year- 1989 Thana -CHANDI District- Nalanda

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Krishna Kewat, S/o Bodhi Kewat resident of village- Dharampur Bigha P.S.
Chandi, District-Nalanda

.... Appellant

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (DB) No. 18 of 2013

Arising Out of PS.Case No. -464 Year- 1989 Thana -CHANDI District- Nalanda

- =====
1. Bodhi Kewat S/O Late Ganauri Kewat Resident Of Village- Dharampur Bigha,
P.S.- Chandi, District- Nalanda
 2. Jageshwari Devi D/O Bodhi Kewat Resident Of Village- Dharampur Bigha,
P.S.- Chandi, District- Nalanda

.... Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance :

(In CR. APP (DB) No.61 of 2013)

For the Appellant/s : Mr. Rajendra Prasad, Sr. Advocate
Mr. Ram Prasad Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No.18 of 2013)

For the Appellant/s : Mr. Rajendra Prasad, Sr. Advocate
Mr. Ram Prasad Singh, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY KUMAR)

Date: 18 -04-2017

The appellant Krishna Kewat in Cr. Appeal No. 61 of
2013 and appellants Bodhi Kewat and Jageshwari Devi in Cr.



Appeal No. 18 of 2013 have filed these appeals to assail the judgment of conviction dated 05.12.2012 and the order of sentence dated 06.12.2012 passed by the learned 2nd Additional Sessions Judge, Hilsa (Nalanda) in Sessions Trial No. 126/1991/ 04/ 1991. All of them have been held guilty under Section 302/34 of the IPC and sentenced to undergo R.I. for life.

2. PW-3 Sita Kewat lodged the 'fardbeyan' (Ext.3) on 22.09.1989 at 19.00 hours recorded by PW-5 Babulal Prasad S.H.O. of Chandi P.S. camp village Dharampur Bigha alleging that her daughter deceased Shiv Kumari Devi was married to appellant Krishna Kewat about 03 years ago. Since the date of marriage she was being tortured as she was ugly. She was also threatened to be killed. On 22.09.1989 PW-1 Hare Kishun Kewat, who is the resident of the village where the deceased was married, came to his house and informed that appellants have killed the deceased and had concealed the dead body in the house. He immediately went to the 'sasural' of his daughter and found her dead kept locked in a room. When asked about her daughter they did not give any satisfactory reply. An enquiry was made with the villagers when Phulwa Devi (not examined) disclosed that the in-laws of the deceased had fought with her earlier in the day and subsequently she was killed. PW-5 is the SI of Chandi P.S., who, on getting



information about the unnatural death of the deceased, reached the village at about 7 pm on the same day and recorded the 'fardbeyan' of the informant which gave rise to a formal FIR (Ext.4). Vide endorsement (Ext.6) he was made Investigating Officer of the case (I.O.). On the same day at about 8 pm, he conducted the death-inquest proceeding witnessed by PW-1 Hare Kishun Kewat and dispatched the dead body for post mortem. PW-4, who was posted at the Sadar hospital, Biharsharif, as Civil Assistant Surgeon, conducted the post mortem on the dead body of the deceased on 23.09.1989 at 4.45 pm and submitted the post mortem report (Ext.2). According to the Doctor, the death had occurred due to asphyxia. He found ligature mark over the neck. The trachea was found congested. On conclusion of investigation, PW-5 laid the charge sheet against the appellants whereon cognizance was taken and the case, on commitment, came on the file of the learned Trial Judge where charges were framed and read over to the appellants and the appellants pleaded their innocence.

3. To bring home the charge, the prosecution examined 05 witnesses besides, proving some documents, such as, fardbeyan (Ext.1), post-mortem report (Ext.2), formal FIR (Ext.4), inquest report (Ext.7) and seizure list (Ext.8). On conclusion of evidence, the statements of the appellants were recorded under Section 313



Cr. P.C. The defence of the prosecution is complete denial of their involvement in the case. The learned Trial Court, on appraisal of the evidence, found the charges proved beyond reasonable doubts and convicted the appellants and sentenced them in the manner noted above.

4. We have heard Mr. Rajendra Prasad, Sr. Advocate in support of both the appeals as well as Mr. S.N. Prasad APP for the State.

5. While criticizing the judgment, it has been submitted on behalf of the appellants that there is sharp contradiction in the evidence of PWs-1 and 3. Both of them are related and thus partisan. PW-1 claims to have derived information from his wife who, in turn, derived information about the commission of crime from another co villager, namely, Phulwa Devi whereafter he went to the village of the informant to apprise him of the incident. Phulwa has not been examined. PW-2 Phulki Devi was declared hostile and was permitted to be cross-examined. This witness was cross-examined by the prosecution but thereafter she did not appear for her cross-examination by the defence. It is submitted that no part of her evidence, in view of the above, can be looked into by the Court. To support his contention, he has relied on AIR



1989 SC 1141. He next submits that the 3 ft. long plastic rope which was seized by the I.O. vide (Ext. 8) in presence of PW-1 was not produced as material Exhibit in Court. The prosecution case should suffer on account of these lacunae. Referring to the post mortem report as well as the deposition of Doctor (PW-4), it is submitted that the case of causing death by strangulation is ruled out. The prosecution has thus failed to demonstrate the manner in which the deceased was done to death besides the complicity of the appellants in the crime. It has also been submitted that the facts proved at the trial do not prove the charge against the appellant Jageshwari Devi as she was very much present in the 'Angan'. She being a married daughter would have no commanding role in the decision of the family.

6. Mr. Prasad, representing the State, has, however, supported the impugned judgment of conviction. He would urge that the unnatural death of the deceased had occurred within the four walls of her 'sasural'. The dead body was also recovered from one of the rooms of her 'sasural'. The defence was required to explain as to how she was done to death as the prosecution proved the unnatural death of the deceased while living in 'sasural' and the motive of the crime. In this connection, he relied on the testimony of the PW-1, PW-3 informant as well as the I.O. (PW-



5). Mr. Prasad would further urge that the evidence with regard to the passing of the information of the unnatural death of the deceased in her 'sasural' by Phulwa to PW-2 Phulki and thereafter Phulki to her husband (PW1) would pale into insignificance as upon receiving the information from PW-1 who is a relative of deceased both of them went to the 'sasural' of the deceased where the I.O. (PW-5) also arrived and the dead body kept in one of the rooms of her 'sasural' was recovered along with the plastic rope which were seized under a seizure memo (Ext.8) in respect of both the dead body and the plastic rope and immediately death inquest proceeding was carried out by the I.O. in presence of PW-1 who had accompanied the informant.

7. We shall now scan the relevant evidence in the light of the submission made at Bar to find out whether the prosecution has been able to prove the charge against the appellants. PW-2 is the wife of Hare Krishna Kumar who, in turn, is the cousin brother-in-law of the informant. She is the witness who got information about the crime from another lady, namely, Phulwa and disclosed the same to her husband. However, we find from the prosecution too did not rely much on her evidence and declared her hostile and cross-examined. However, she did not appear for her cross-examination by the defence. In AIR 1989 SC 1141 on which



reliance has been placed by the defence a witness if not presented for cross-examination, the Court, is prevented from considering any part of the evidence of the witness for the purpose to corroborate or contradict the prosecution case. We thus exclude her testimony from our consideration. It has been urged with all vehemence that co-villager Phulwa having not been examined and the evidence of PW-2 having been excluded from consideration the source of information about the unnatural death of the deceased in her 'sasural' is not proved. What made PW-1 to travel around 7 km to reach the village of the informant to inform about the death of his daughter is not proved by any evidence. This is a fatal blow to the prosecution case. Considering the evidence before us we do not agree with the said contention of the appellant. It is found from the deposition of PW-1 as well as the informant (PW-3) that on 22.09.1989 at about 5 pm both of them proceeded to the village of the appellants and reached the 'sasural' of the deceased on or about 7 pm where, within a short while, the I.O. on getting information about the crime reached there. The I.O., in his deposition has explained as to how he got one of the rooms in her 'sasural' opened to find out the dead body of the deceased lying on the floor. On search, plastic rope was found in another room which was seized by him and immediately the 'fardbeyan' was



recorded whereafter the death inquest proceeding was carried out in which he found that apparently the death had caused by strangulation. These facts having been proved through the evidence adduced by the prosecution, in our opinion, completely underscores the significance or relevancy of the facts as to who gave such information to him.

8. Adverting to the testimony of the I.O. PW-5, it is seen that he received an information about the unnatural death of the deceased about 7 pm on 22.9.1989 and immediately proceeded to the place of occurrence, recovered the dead body as well as plastic rope which was seized under a seizure memo, copy whereof was given to appellant Bodhi Kewat under his LTI and recorded the 'fardbeyan' at the 'sasural' itself. In para-6, he has narrated the topography of the house. The dead body was found in a room facing north lying on the floor. The I.O. has further stated that appellant Jageshwari Devi was present in the 'Angan' engaged in cooking food. She was arrested there. In para 11 he has stated that except the appellant Jageshwari Devi no other inmate of the house was present. The room had clay tiled roof. However, in para 14 he has stated that the bed found in the room was not trampled. The defence has harped heavily on this to urge that the aforesaid objective finding of the I.O. would show that no resistance was



offered by the victim. It is not expected that the deceased would not offer resistance. There is a basic flaw in the said submission. Nothing has come on record that the deceased was on her bed when the accused made attempt to strangle her. The prosecution case is that the deceased was ugly in look and was not providing helping hand in the daily affairs of the house, and as such, the in-laws were completely dissatisfied and wanted to do away with her life. The colour of the skin of the deceased was found black by the I.O. in course of the death inquest proceeding.

9. We have examined the evidence of all the witnesses carefully. P.W. 1 is related as brother-in-law of informant (P.W.1) and P.W. 2 is his wife. Both these witnesses are the residents of place of occurrence. Both the witnesses are hearsay. Out of them we have discarded the evidence of P.W.2 as she did not appear for cross-examination. P.W. 1 is hearsay witness. He has stated that he got information about the murder of deceased from his wife. He has stated at paragraph no. 4 that Rokasadi of deceased was performed one year ago of occurrence and the marriage had taken two years before that. The parents'-in-laws used to say that the deceased was ugly and they would not allow to remain her. There was a quarrel in between the parents'-in-laws and deceased just a day before the occurrence and when the deceased was going to



Naihar, her husband caught hold of her and had threatened that he would not spare and will kill her. Her husband used to say that she does not perform the daily affairs of the house and her appearance was ugly also.

10. The appellant Jageshwari Devi and Krishna Kewat in their statement given under Section 313 Cr. P.C. have disclosed their age as 40 years and 35 years. On calculation, the age of Jageshwari Devi comes to 20 years. Being elder sister she must be married prior to the marriage of her brother Krishna Kewat. In the evidence of informant, we do not find any specific allegation of assault or torture on any occasion at the instance of appellant Jageshwari Devi. She was supposed to be resident of her husband's place. The Investigating Officer (P.W. 5) at paragraph no. 11 has stated that when he reached at the house of appellants, there was none except the appellant Jageshwari Devi. At that time she was cooking meal. The informant and the Investigating Officer have stated that when they reached at the place of occurrence, they saw the room chained (locked) from out side. The Investigating Officer got the door opened and seized the dead body. Appellant Jageshwari Devi was then cooking meal in the courtyard and she appeared normal in appearance. It appears that she might not be aware of the death of deceased kept concealed / locked in the



room. Had she been aware of the homicidal death of deceased, she would have also left the house like other two appellants. It appears us just a chance that she was at her father's place. Appellant Jageshwari Devi (a married lady) cannot be supposed to be in dominating position in presence of her parents and brother. The mother-in-law of deceased was then alive. She died during trial as it appears from order dated 12.09.2012. In the evidence on record we do not find any incriminating material against Jageshwari Devi showing any ill treatment, or assault meted out to the deceased at her instance and so the circumstantial evidences adduced on behalf of prosecution do not inspire us to sustain the finding of trial court as regards conviction of appellant Jageshwari Devi.

11. So far remaining two appellants are concerned, we find consistent evidence of P.Ws. 1 and 3 against them. They were found absconding from their house. They have not offered any explanation as regards homicidal death of deceased in their house. These appellants being husband and father-in-law of deceased are supposed to be conscious keeper and protectors of the deceased.

12. Thus from the evidence on record we find that the following circumstances emerge against these two appellants.



- (i) The deceased was married with appellant for about 3 years ago from the date of occurrence.
- (ii) She was a black skinned lady.
- (iii) Both the appellants used to hurl threat that she would be done to death as she was ugly and not performing the domestic work.
- (iv) On the preceding day of occurrence, the appellants had quarreled and out of annoyance she had left the house also to go at her parents place (paragraph no. 4 of P.W.1).
- (v) Her husband caught and brought her to the house and hurled threat to do away with her life (paragraph no. 4 of P.W. 1).
- (vi) Both the appellants absconded from their residence after the death of deceased.
- (vii) There is no explanation from their side as regards homicidal death of the deceased in their house in their statement given under Section 313 Cr.P.C. or by adducing any evidence.



(viii) These two appellants were residing with the deceased in the house from where the dead body was recovered.

13. The above chain of circumstances suggest and establish the fact that it was none else than the aforesaid two appellants namely Bodhi Kewat and Krishna Kewat who in furtherance of their common intention committed murder of the deceased. In this regard, we would like to refer the rulings of the Hon'ble Apex Court reported in *Jagdish Vs. State of Haryana (2010) 1 S.C.C. (Cri.) 21* wherein it has been observed “..... the appellant and the deceased were in their house and so, it was incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt.”

14. Both the aforesaid appellants were present in the house. There was no other except the deceased and her Nanad. So, the burden lies on these two appellants to explain the circumstances leading to her homicidal death in view of Section 106 of Evidence Act. In such type of case like the present one, the Apex Court in *Trimukh Maroti Kirkan Vs. State of Maharashtra, 2006 (10) S.C.C. 681* has held as under:-

“Where an offence like murder is committed in



secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act, there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quit and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation.”

15. On consideration of submissions made on behalf of both sides and after analyzing the evidence on record, we find that the prosecution has established the chain of circumstances against the appellants Bodhi Kewat and Krishna Kewat and proved their guilt beyond shadow of doubt.

16. For the reasons stated above, the conviction and



sentence passed against the appellants Bodhi Kewat and Krishna Kewat are sustained and their appeals are dismissed. The bail bonds of Bodhi Kewat is cancelled and he is directed to surrender before the court below to serve the sentence. The conviction and sentence passed against the appellant Jageshwari Devi, is set aside and her appeal is allowed. She is discharged from the liabilities of her bail bonds.

(Sanjay Kumar, J)

I agree/-

(Kishore Kumar Mandal, J)

ajaypd./-

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