

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.339 of 2012

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Against the judgment of conviction dated 28.02.2012 and the order of sentence dated 01.03.2012, passed by Mr. Housila Prasad Tripathi, the learned Additional Session Judge, F.T.C.-II, Katihar, in Sessions Trial No.115 of 2010, arising out of Kursela P.S. Case No.31 of 2009.

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Sunil Mandal, Son of Birju Mandal, resident of Village Maliniya, P.S. Kursela, District Katihar.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Baxi S.R.P. Sinha, Senior Advocate
Md. Musowir, Advocate

For the State : Mr. A.K. Sinha, APP

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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: 17-04-2017

The sole appellant Sunil Mandal is convicted under Sections 302/201/328 of the Indian Penal Code by the learned Additional Sessions Judge, F.T.C.-II, Katihar in Sessions Trial No.115 of 2010. For the offence under Section 302 of the Indian Penal Code, the appellant has been sentenced to undergo imprisonment for life along with fine of Rs.5000/- and in default of payment of fine, to undergo further imprisonment for six months, for the offence under Section 201 of the Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for seven years and to pay fine of Rs.2000/- and in default of payment



of fine to undergo further imprisonment for two months, for the offence under Section 328 of the Indian Penal Code, the appellant has been sentenced to undergo rigorous imprisonment for ten years and to pay fine of Rs.3000/- and in default of payment of fine to undergo further imprisonment for three months. However, all the sentences were directed to run concurrently.

2. The prosecution case, as made out in the written information of Kailash Mandal, Son of late Bechan Mandal, Resident of Village+Post+P.S. Ekchari Diyara (Pirpainti), District Bhagalpur, father of deceased Sita Devi, made to Officer In-charge, Kursela Police Station on 15.05.2009, in short is as follows:

3. The informant Stated that he married his daughter Sita Devi in June, 2008 with the appellant Sunil Mandal, Resident of Village Malaniya, P.S. Kursela. Prior to *Holi*, her daughter came along with her husband to her paternal house. She informed him and her mother that her husband, father-in-law, Birju Mandal and mother-in-law, Buchiya Devi have always been torturing her for a motorcycle or a sum of Rs.50,000/- in lieu of it. The informant tried to pacify the appellant by stating that he is a poor person and as such, it is difficult for him either to fulfill the demand of motorcycle or a sum of Rs.50,000/-. After *Holi* the appellant along with informant's daughter went back to his house. The daughter of the



informant time and again used to inform telephonically that the accused persons are continuing to torture for motorcycle or in lieu of it for a sum of Rs.50,000/-. On 14.05.2009 at about 8.00 A.M., her daughter informed telephonically to come emergently with a sum of Rs.50,000/- otherwise the accused persons would kill her. On hearing the news, the informant proceeded for the *sasural* of his daughter. However, no one was present at the *sasural* of his daughter. On enquiry some of the villagers informed that the informant's daughter has been taken to Dr. S.K. Singh of Kursela for treatment. In the meantime, the informant learnt from a co-villager Raju Mandal that the accused persons had assaulted her daughter for money and had also administered poison to her. The informant thereafter proceeded for the clinic of Dr. S.K. Singh at Kursela. On query, Dr. S.K. Singh informed that her daughter was dead and the appellant and others had taken her dead body away from his clinic. The informant thereafter went to the *sasural* of her daughter and again did not find either the dead body or any of the accused there. The informant believed that the accused persons had tried to conceal the dead body. Consequently, the informant informed the local police station telephonically. On receipt of the information, the police officials searched a number of places including *Diyara*. In course of search, the police went to the other side of *Diyara* where



they found the dead body of deceased Sita Devi kept in a boat. The informant believes that his daughter has been killed by the appellant Sunil Mandal and his parents. He further alleged that her daughter, who was carrying a four months' fetus was assaulted and administered poison by the accused persons as the demand for motorcycle was not fulfilled.

4. On basis of *fardbeyan* of the informant, Kursela P.S. Case No.0031 of 2009, dated 15.05.2009 was registered under Sections 328/304(B)/302/349 of the Indian Penal Code by PW6 who proved the formal First Information Report. The investigation of the case was carried out by Ram Bachan Pandey (PW7) who took the restatement of the informant and statement of other witnesses under Section 161 Cr.P.C. He inspected the house of the appellant as well as the place from where the dead body was recovered. The police obtained viscera report of the deceased. The police also obtained post-mortem report of the deceased and finding the case to be true against this appellant, submitted charge sheet against him under Sections 328/304-B/302/349/34 of the Indian Penal Code. It is also relevant to state here that the post-mortem report indicated that the deceased died of poisoning.

5. The case of the defence as appearing from the mode of cross-examination and statement under Section 313 Cr.P.C. is that



the deceased committed suicide and that the accused-appellant is innocent.

6. The trial court on consideration of materials on record framed charge under Sections 302/201/120(B) and not under Section 304-B of the Indian Penal Code. The appellant has challenged the judgment of conviction on a number of grounds.

7. The prosecution has examined seven witnesses in support of its case. Out of these seven witnesses, Dr. Ram Rekha Suman (PW1) has conducted the post-mortem of the deceased Sita Devi on 15.05.2009 at 11.45 A.M. in Sadar Hospital, Katihar. Rupan Mandal (PW2) is the own uncle of the deceased. Kailash Mandal (PW4) is the father of the deceased and informant of this case. He has supported the prosecution case stated in First Information Report. He stated that his daughter was married to appellant Sunil Mandal of Village Malaniya, P.S. Kursela, District Katihar. After marriage she went to her matrimonial home and her in-laws kept her well. After one year of her marriage, his daughter called her mother on phone and asked her to send his father and brother as she is not feeling well. On receipt of the information, the informant along with Yogendra Mandal and Rupan Mandal went to the matrimonial home of Sita Devi. However, they did not find any person in the house. The villagers informed that her daughter was taken to the local



doctor at Kursela for treatment. The informant thereafter proceeded to Kursela where the doctor informed him that his daughter was brought dead and her in-laws have taken her dead body away. The informant thereafter went to the police station and informed the police about the incident. After a prolonged search, the dead body of her daughter was found on the other side of the bank of river Ganga and none was present there. There was no *kafan* on the dead body. She was in a *sari* and blouse. The police prepared inquest report and brought the dead body to the police station whereafter he filed his written report on which his son Raj Kumar Mandal and Sajan Mandal also signed as attesting witnesses.

8. Rupan Mandal (PW2) is the uncle of the deceased. He has too reiterated the prosecution case as stated by the informant in his evidence in court. He stated that Sita Devi was married to Sunil Mandal about a year before her death. After marriage, she lived well there and did not have any problem in the matrimonial house. About seven months back, her husband Sunil Mandal informed his brother-in-law Raj Kumar Mandal (PW3) that his sister is ill. Thereafter he along with Raj Kumar Mandal proceeded for matrimonial house of Sita Devi at Malaniya where they reached in the evening. But, they did not find any family member in the house. The police was informed about the incident and dead body of Sita



Devi was found lying in *Diyara* in an abandoned condition.

9. Raj Kumar Mandal (PW3) is the own brother of Sita Devi. He stated that his sister was married a year before her death with Sunil Mandal. His sister did not have any problem with her in-laws and they kept her well. He stated that on the fateful day, her sister called him on his mobile and informed him that she is not well. This witness expressed his ignorance regarding the nature of illness complained by her. She also had a talk with her mother. Thereafter he along with his father and Yogendra Mandal proceeded for the matrimonial home of Sita Devi where they reached about 2.00 P.M. However, they did not find any family member in the house. The villagers informed that she had been taken to a local doctor. When this witness along with his father and Yogendra Mandal reached the clinic of Dr. S.K. Singh at Kursela, they were informed that Sita Devi is dead and she has been taken to Malaniya Ghat. Thereafter they went to Malaniya Ghat and informed the police. The police subsequently found the dead body of Sita Devi lying on the other side of Malaniya Ghat on the sand at the bank of the river.

10. Yogendra Mandal (PW5) is the uncle of the deceased. He stated that Sita Devi was married about two years before her death. On the fateful day, she called her brother and



mother and informed that she was not well. Thereafter they went to her matrimonial house. However, no one was present at the house. The villagers informed that Sita Devi has been taken to a local doctor at Kursela for treatment who informed that Sita Devi was brought dead and her family members have taken her back. Thereafter they went to the police station and informed the police about the incident. The police found the dead body lying on the other side of Malaniya Ghat on the bank of the river. He stated that he could not notice any injury on the person of Sita Devi.

11. Pradeep Kumar Paswan (PW6) is the police officer who recovered the dead body in the morning of 15.05.2009 at 5.45 A.M. on the other side of Malaniya Ghat. He prepared the inquest report and also drew formal First Information Report on the written report of Kailash Mandal (PW4). Thereafter he handed over the investigation to Ram Bachan Pandey (PW7). He was also a member of the search party. He took the restatement of the informant as well as statement of other witnesses under 161 Cr.P.C.

12. Dr. Ram Rekha Suman (PW1) conducted post-mortem on the dead body of the deceased and opined that the deceased died on account of poisoning. He also noticed bruises on the neck, wrist and face. It is relevant to mention that the prosecution during the trial had given a go bye to the story of demand of dowry



and as such, the trial court had convicted the appellant under Section 302 of the Indian Penal Code.

13. Mr. Baxi S.R.P. Sinha, the learned senior counsel appearing for the appellant submits that there is no eye-witness to the occurrence and the case at the best could be said to be based on circumstantial evidence. He submits that the circumstances produced by the prosecution are not sufficient to bring home the charge under Section 302 of the Indian Penal Code. Elaborating his submission, learned counsel submits that it has come in the evidence that in fact the deceased mistakenly took poison 'thimet' which is kept ordinarily in the house of farmers for protection of pests. The deceased on account of effect of poison fell at the hand-pump in the premises of the house and ultimately died. He further submits that the parents of the deceased were informed and the dead body was taken to the other side of Malaniya Ghat for performing last rites. Had they any ulterior intention or a motive to conceal the dead body, they could have thrown the same in the Ganga or could have burnt the same in order to hide the evidence. He further submits that no injury was noticed by the informant's side. With equal emphasis, he argued that the First Information Report on which the case has been registered is in fact not the First Information Report, rather the First Information Report is the telephonic information, which was given to the police



on 14.05.2009. Learned counsel next contended that Pradeep Kumar Paswan (PW6) in his evidence has stated that he telephonically received the information of death of a woman in village Malaniya and her dead body was being taken for disposal. The learned counsel thus submits that the information was specific and exhaustive enough to come within the ambit of First Information Report. In support of his submission, learned counsel relies upon a Division Bench judgment of this Court in the case of *State of Bihar vs. Rajendra Mahalda*, reported in 2015 (2) PLJR 79, paragraph-15, which is quoted hereinbelow:

"15. It was, therefore, imperative, on the part of the learned trial Court, to bring on record as to what 'information' had brought the police from Falka Police Station to the place of occurrence, when and where the 'information', with regard to alleged occurrence, had been received by the police and whether the 'information' so received, constituted, in law, First Information Report or not. If the 'information', so received by the police, was the First Information Report, then, the police investigation had already commenced before the statement of Pathli Rishi (PW 7) was recorded and treated as *fardbayan*."

14. On the other hand, Mr. A.K. Sinha, learned counsel appearing on behalf of the State has defended the impugned judgment of conviction and sentence against the appellant. He submits that the deceased died within one year of her marriage in a suspicious circumstance. He next submits that the death of the deceased was not normal as she died on account of poisoning. He further submits that the inquest report and the post-mortem report



also demonstrate that the deceased had sustained injuries on her face, wrist and neck.

15. We have heard counsel for the parties. We would agree with the submission of learned counsel for the appellant that there is no eye-witness to the occurrence and the case is based on circumstantial evidence. The issue for consideration is whether the prosecution has been able to produce a chain of circumstances to hold the appellant guilty under Section 302 of the Indian Penal Code. In order to prove a guilt based on circumstantial evidence has been stated in the case of *Sharad Birdhichand Sarda v. State of Maharashtra*, reported in *A.I.R. 1984 SC 1622*, paragraph-152. The relevant extract of paragraph-152 of the judgment is quoted hereinbelow:-

"152. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned 'must or should' and not 'may be' established. There is not only a grammatical but a legal distinction between 'may be proved' and 'must be or should be proved' as was held by this Court in *Shivaji Sahebrao Bobade v. State of Maharashtra*, (1973) 2 SCC 793 : (AIR 1973 SC 2622) where the following observations were made :

"certainly, it is a primary principle that the accused must be and not merely may be guilty before a Court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and



tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) 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 and must show that in all human probability the act must have been done by the accused."

16. In light of principles laid down by the Hon'ble Apex Court, we would now examine whether the prosecution has been able to produce necessary evidence for holding the appellant guilty under Section 302 of the Indian Penal Code. We find that admittedly death of Sita Devi had taken place within a year of the marriage. Though the prosecution has given go-bye to the story of demand of dowry, the informant (father of the deceased) consistently stated that relationship between the appellant and her daughter was strained. The informant and other family members reached the matrimonial house of Sita Devi on learning about her illness. No one including Sita Devi was found in the house. On the other hand, the dead body of Sita Devi was found on the following day, i.e., 15.05.2009 at 5.45 A.M. on the other side of Malaniya Ghat. Her body had no *kafan* wrapped around her. Besides this, both the inquest report and the post-mortem report state that the deceased had sustained injuries on the face, neck, both sides of cheek and left wrist. The post-mortem as well as the FSL report show that the deceased died on account of 'thimet', which is a poisonous substance. The case of the defence that the deceased by mistake took



the poisonous substance is not found mentioned in his statement under Section 313 Cr.P.C. and is not supported by any corroborative evidence. The injuries on the person of the deceased would be indicative of the fact that she was administered the same forcibly. Furthermore, no information of death was given to the police or to the informant's side. Furthermore, it is very difficult to believe that a woman carrying four months' fetus would commit suicide. Situated thus, we find that the prosecution has been able to produce a chain of circumstances which points to the guilt of the appellant murdering the victim. As such, we do not find any infirmity in the judgment of trial court convicting the appellant under Section 302 of the Indian Penal Code.

17. In the result, the appeal fails and the same is dismissed. The appellant is in custody. He would remain in jail so as to serve the balance part of sentence with admissible remissions.

(Samarendra Pratap Singh, J.)

(Arun Kumar, J.)

S.Kumar/-

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