

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.225 of 2014

(Against the judgment of conviction dated 25.02.2012 and order of sentence dated 28.02.2012 passed by Shri Surendra Prasad Panday, Additional Sessions Judge, Fast Track Court No.1, S.T. No. 529 of 2010 arising out of Mansahi P.S. Case No. 57 of 2009)

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Panchlal Uraon, son of late Mohra Uraon, resident of village-Baraiya, P.S.-
Mansahi, District-Katihar.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dinu Kumar, Amicus Curiae

For the Respondent/s : Ms. S.B. Veena, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOUR MR. JUSTICE ANIL KUMAR UPADHYAY

Date: 14-11-2017

The present jail appeal has been filed on behalf of the appellant Panchlal Uraon against the judgment of conviction passed by Additional Sessions Judge, Fast Track Court No.1, Katihar dated 28.2.2012 in Sessions Trial No. 529 of 2010, arising out of Mansahi P.S. Case No. 57 of 2009 for committing murder of his wife.

1. The prosecution case, in short, is that as per Fard-beyan of daughter of the victim and the present appellant that on 16.09.2009 at after 7 P.M. her father (appellant) started quarreling with her mother (deceased). In the meanwhile, his father took Garasha and Hasua and cut neck of her mother and on raising alarm, the neighbour and other villagers assembled there and found her mother



dead. She further stated in her Fard-beyan that after killing her mother her father also attempted to commit suicide. On the basis of Fard-beyan recorded at 3 A.M. on 7.9.2009, a formal FIR was drawn as Mansahi P.S. Case No. 57 of 2009 against the sole appellant for committing murder and attempting to committing suicide.

2. On behalf of the prosecution 11 witnesses were examined. Out of 11 witnesses, P.W.1 Sarfu Uraon, P.W.2 Dayanand Rai is the Doctor who conducted post-mortem of the deceased, P.W.3 Sohara Devi is the witness who reached the spot on hearing hulla of the informant and others that her mother was killed by her father. This witness deposed that she reached the place of occurrence and saw the dead body of Meera Devi and at her instance the husband of Sarpanch and others were informed about the occurrence and police was informed. P.W.4 Gaura Oraon, P.W.5 Lakhi Chand Uraon, P.W.6 is Vishwanath Uroan P.W.7 is Chhatthu Sah, P.W. 8 is Punam Kumari, P.W.9 Laxminia, P.W.10 Santlal Uroan who deposed that inquest report was prepared in his presence. He also deposed in the court that he reached place of occurrence and on receiving information on telephone from the Mukhia about killing of deceased by the appellant (husband). P.W.11 Krishana Choudhary is the I.O. of the case.

3. P.W.2 is the Doctor who conducted post-mortem. The doctor found 15 ante-mortem injuries on the deceased or the injuries caused by sharp-cutting weapon. This witness has opined that the



cause of death is due to the ante-mortem injuries on the deceased.

4. P.W. 3 Soharo Uraon is the witness of hearing hulla of the occurrence at around 11 in the night.

5. P.W.-4 Gaira Uraon who on hearing hulla of murder of Meera Devi reached the place of occurrence and saw the dead body of Meera Devi who was killed by the appellant.

6. P.W.-5 Lakhi Chand Uraon who is brother of the deceased who only deposed as to the information he gathered about killing of his sister by the appellant.

7. P.W. 6 Vishwanath Uraon who has deposed that he has informed the police station on telephone and on his information, the police arrived at the place of occurrence.

8. P.W.-7 Chhatthu Sah is the witness who deposed on the point of seeing the dead body of the deceased.

9. P.W.-8 Poonam Kumri is the informant of the case who deposed before the court and narrated the entire incident of killing of her mother by the appellant (father). This witness is the eye-witness occurrence and was subjected to cross-examination during the course of examination nothing was obtained by the defence to discard her deposition before the court.

10. P.W.-9 Laxminia has expressed her ignorance as the incident.

11. P.W.10 Santlal Uraon who deposed that inquest



report was prepared in his presence. He also deposed in the court that he reached the place of occurrence on receiving information from the telephone of the Mukhiya about killing of the deceased by appellant (husband).

12. P.W.-11 is the I.O. of the case who stated in the court about recording of the Fard-beyan of the informant and prepared inquest report and the materials collected during the course of investigation as to the involvement of this appellant in the commission of murder of his wife.

13. During the course of hearing, Mr. Dinu Kumar, appearing as Amicus Curiae has submitted that appellant deserves consideration of his case under section 85 of the Indian Penal Code.

Section 85 reads as follows:-

“Act of a person incapable of judgment by reason of intoxication caused against his will-Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law; provided that the thing which intoxicated him was administered to him without his knowledge or against his will”.

14. He submitted that from the Fard-beyan itself, it is evident that this appellant was intoxicated and as such he was incapable of consequences of his act and as such his case deserves to be considered in accordance with the provisions of section 85 of the



Indian Penal Code.

15. We have gone through the materials available on record, the appellant was convicted by the trial court for committing murder of his wife. The informant of the case is the daughter of the appellant who has seen the occurrence and there is absolutely no reason to disbelieve her evidence which finds corroborated by the medical evidence and the manner of commission of crime is fully supported by the post-mortem report. Adverting to the submission of Mr. Dinu Kumar that the appellant was under the influence of liquor and as such he was incapable of understanding consequence of the act and as such he should be granted benefit of under section 85 of the Indian Penal Code.

16. The court finds it difficult to accept the submission of Dinu Kumar as it was not salutary act of assault which can be said to be committed by the appellant under the influence of liquor without understanding the consequence of his act.

17. From the post-mortem report, it is evidently clear that as many as 15 sharp cutting injuries were found on the dead body of the deceased which is indicative of the fact that the appellant was not under such intoxication condition that he was incapable of understanding the consequence of his brutal act of committing murder of his wife.

18. In the totality of the facts situation, We are of the



considered view that the appellant has committed brutal murder of his wife by inflicting as many as 15 sharp cutting injuries on the deceased and as such the appellant does not deserve consideration of his case under section 85 of the Indian Penal Code. We have no manner of doubt that the appellant has committed murder and his conduct of inflicting 15 injuries by sharp cutting weapon like Garasa and Hasua are the indicative of the facts that he committed murder with intention to kill his wife with full understanding of consequence of his brutal act and as such we are not persuaded by the submission of Mr. Dinu Kumar that the appellant deserves consideration of his case under section 85 of the Indian Penal Code.

19. Accordingly, the appeal is dismissed. The judgment of conviction and order of sentence passed by the trial court dated 28.2.2012 in Sessions Trial No. 529 of 2010, arising out of Mansahi P.S. Case No. 57 of 2009 stands affirmed.

12. Since the appellant is in jail, he is directed to serve remaining part of the sentence as ordered by the trial court.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Ravi/-

AFR/NAFR	NAFR
CAV DATE	N/A
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