

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.466 of 2017

Arising Out of PS.Case No. -78 Year- 2014 Thana -CHANAN District- LAKHISARAI

=====

Juli Devi, Wife of Late Gopal Singh @ Karu Singh, Resident of Village-
Baltarampur, P.S. - Chanan, District- Lakhisarai.

.... Appellant/s

Versus

1. The State of Bihar.
2. Pappu Singh, Son of Late Shiv Balak Singh, Resident of Village-
Baltarampur, P.S. Chanan, District- Lakhisarai.

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ambika Bhagat

For the Respondent/s : Sri Abhimanyu Sharma

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

- 5 03-07-2017 1. Sri Ambika Bhagat, learned counsel for the appellant,

in presence of Sri Abhimanyu Sharma, learned Additional Public

Prosecutor , at the very outset requests for allowing him to make

correction regarding the provision of law in the interlocutory

application i.e. I.A. (Cri.) No. 1290 of 2017. He is permitted to

make correction in course of the day.
2. Heard Sri Ambika Bhagat, learned counsel for the

appellant and Sri Abhianyu Sharma, learned Additional Public

Prosecutor.
3. The present Appeal has been preferred by the wife of

deceased /informant against the order and judgment of acquittal



dated 28.01.2017 passed in Session Trial No. 138 of 2015 (arising out of Chanan P.S. Case No. 78 of 2014) registered for the offence under section 302 / 34 of the Indian Penal Code . By the said judgment, the sole accused /respondent no. 2 was acquitted from the charges .

4. Short fact of the case is that on 22.09.2014 after recovery of dead body of the husband of the informant, which was recovered in the morning at about 4.00 A.M. , on the basis of written report of the informant an F.I.R. vide Chanan P.S. Case No. 78 of 2014 was registered for the offence under section 302/ 34 /120(B) of the Indian Penal Code against the respondent no. 2, one Shailesh Singh and unknown. After investigation, charge-sheet was submitted against respondent no. 2 and thereafter, on 20.03.2015 cognizance order was passed for offence under section 302/ 34 of the Indian Penal Code and case was committed on 08.06.2015 to the learned Sessions Court. Finally, on 02.07.2015 charges were framed. Since the respondent no. 2 denied charges he was put on trial. During trial to prove the case , prosecution examined altogether eleven (11) witnesses, out of whom the appellant/ informant was examined as P.W. 5 whereas, Dr. Vijay Kumar , who had conducted autopsy on the dead body of the husband of the informant was examined as P.W. 11. The



prosecution case is that on 21.09.2014 at about 11.30 A.M. the respondent no. 2/ Pappu Singh arrived at the house of the informant and called her husband namely, Gopal Singh @ Karu Singh and thereafter, on motorcycle of the accused/ respondent no. 2 /Pappu Singh , her husband went somewhere. Since till 4.00 P.M. her husband did not return and the informant was in need of some money, she gave mobile call to her husband then her husband informed that he was at the house of Shailesh Singh in village Sondhi and asked the informant to manage the work after taking money from someone else. It was disclosed by the informant that subsequently after 45 minutes she again rang her husband , but his husband did not pick up the mobile. Thereafter, the informant from her mobile phone gave call to accused Pappu Singh, which was not replied. Subsequently from the mobile phone of her neighbor the informant again gave call on mobile of Pappu Singh and this time he picked up the phone and he told the informant that he has murdered her husband and thrown his dead body in river Kiul. As per informant, thereafter she went to the river Kiul along with villagers and tried to search the body. However , at about 1.00 A.M. without the body she with others returned back. Again, in the same night at about 3.00 A.M. she reached the river Kiul and tried to search the body of her husband



and at about 4.00 in the morning dead body of her husband was recovered from the Kiul river by the villagers. It was disclosed that after recovery of the body she stayed near the river and started waiting for arrival of Police and after arrival of Police a written report was submitted to the Police. On the basis of written report an F.I.R. was prepared, an inquest report was also prepared and the dead body was sent for post- mortem examination. During trial the informant /wife has been examined as P.W. 5 and in her examination –in- chief she reiterated the story, but on cross-examination she was not in a position to explain even the no. of her mobile, nor any plausible explanation was given regarding non -informing the Police.

5. Sri Ambika Bhagat, learned counsel for the appellant submits that it was specific case of the informant that her husband was taken away by the accused and on telephone/mobile the accused himself had informed that he has murdered her husband and thrown the dead body in the river Kiul . He further submits that other witnesses have also supported the prosecution case, but incorrectly the learned trial judge has acquitted the accused whereas, Sri Abhimanyu Sharma, learned Additional Public Prosecutor opposing the prayer submits that in the present case there is vital evidence of the doctor , who conducted autopsy



on the dead body of the deceased. By way of referring to paragraph no. 19 of the judgment, which discusses the evidence of Dr. Vijay Kumar, he submits that during post- mortem examination no external injury was found on the person of the deceased and it was a case of death due to *asphyxia* caused by drowning. He submits that had it been a case of murder, thereafter throwing the dead body in the river, there must have been some injury on the person of the deceased. According to Sri Sharma, absence of any external injury on the body of the deceased is sufficient to show that it was not a case of throwing the husband of the informant after murder. He further submits that it was hardly a case of last seen, however duration of last seen and recovery of dead body was enough to draw an inference that there was some suspicion in the prosecution case. Moreover, he has highlighted that once the informant in her examination- in- chief had made categorical statement that she after non- receipt of her husband, firstly made telephone call by her mobile on the mobile of her husband and thereafter, she again tried to contact her husband over phone, which was not received. Subsequently, it was stated by the informant that she gave call on mobile of accused Pappu Singh. Once she was sure regarding her mobile no., her husband mobile no. as well as mobile no. of the accused



in her *fardbyan* or deposition; there was no reason to say in her cross -examination that she was not aware about the no. of any of the mobiles.

6. Besides hearing learned counsel for the parties, we have perused the materials available on record particularly the judgment under challenge. After going through the evidence of P.W. 3/ Kunti Devi (mother of the deceased) as well as the evidence of informant /P.W. 5 it is evident that both of them categorically stated that there was no animosity in between the deceased and the accused, nor during trial any material was brought on record to show any motive to commit such crime. Moreover, it was hardly a case of last seen and it can be said that it was a case of circumstantial evidence. It is settled that in a case of circumstantial evidence all the chain must be shown completed. In absence of any chain, there is no reason to hold anyone guilty. The learned Trial Judge after discussing entire evidence on record has found that it was not a case for conviction since no plausible evidence was brought on record to show involvement of the respondent no. 2 save and except suspicion.

7. Considering the judgment and well reason assigned by the court below , we are of the opinion that it is not a fit case for grant of leave. Accordingly, the leave petition i.e.



I.A. (Cri.) No. 1290 of 2017 (D.B.) filed under Section 378 (3) of the Code of Criminal Procedure, 1973 is hereby rejected. Consequently, the Appeal too stands dismissed.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

Praful/-

U		T	
---	--	---	--

