

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 742 of 2014

Arising Out of PS. Case No.-83 Year-2008 Thana- Jagdishpur District- Bhagalpur

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Pramod Tanti @ Pagla @ Baglu Tanti S/o Late Nago Tanti @ Nageshwar
Tanti, Resident of Village - Dhari, P.S. - Jagdishpur, District – Bhagalpur.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Singh, Adv. Mr. Rajeev Ranjan Singh, Adv.
For the Respondent/s	:	Mr. Maya Nand Jha (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 03-04-2018

The present appeal was filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as “Cr.P.C.”) against the judgment of conviction and sentence of the appellant passed in Sessions Trial No. 1009 of 2008/T.R. No. 376 of 2013 (arising out of Jagdishpur P.S. Case No. 83 of 2008) by Sri Vinod Kumar, learned Ist Additional Sessions Judge, Bhagalpur (hereinafter referred to as the ‘Trial Judge’). The sole appellant was convicted on 01-07-2014 for commission of offence under Section 302 of the Indian Penal Code, 1860 (for short “I.P.C.”) and by order of sentence dated



04-07-2014, he was directed to undergo imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In default of payment of fine, he was directed to further undergo simple imprisonment for six months.

2. Short fact of the case is that on 15-04-2008 at about 9:30 AM, *fardbeyan* of Prem Tanti/P.W.5, brother of the deceased was recorded by Sub-Inspector of Police, Jagdishpur Police Station. In the *fardbeyan*, the informant disclosed that on the preceding date at 7-8 hrs. (morning), his sister Jhalo Devi (deceased) aged about 22 years telephonically informed her mother that she was in great trouble. On getting this information, the informant on 14-04-2008 at about 12.00 noon visited to her sister's place at village Dhari and asked his brother-in-law (appellant) as to why repeatedly he was troubling his sister. He asked that if she was not being liked by him, he can call 2 to 4 villagers for taking appropriate decision. In the same night, after taking meal, he slept at another place and his brother-in-law (appellant) and sister (deceased) both slept in their house. He clarified that except husband and wife (deceased), there were none in the house. In the morning at 6-7 hrs., he proposed to call one or two person from his in-laws place i.e. village – Sonodih and he tried to inform his sister,



however; after visiting there, he found that his sister had not awoken. Thereafter, he requested wife of Bindeshwari to go at his sister's residence and awake her, who went there and immediately returned back. The wife of Bindeshwari, after returning from there, informed him that neck of his sister was already cut down and she was lying dead. Thereafter, the informant went to the place of his sister, where he found that neck of his sister from back side was slitted with some sharp cutting weapon and she was lying dead in north-western room. The informant further disclosed that he got some information that his brother-in-law Pramod @ Paglu Tanti (appellant) was having illicit relation with his own aunt namely Jhuna Devi, wife of Ram Swarth Tanti. He disclosed that due to said affair, his brother-in-law in connivance with his aunt Jhuna Devi had killed sister of the informant in preceding night i.e. 14-04-2008. He further stated that the appellant had thrown his cloth stained with the blood, which he was wearing in the night. The appellant with his aunt Jhuna Devi had fled away immediately after the occurrence. The informant further stated that his deceased sister was regularly complaining about illicit relation of her husband (appellant) with his own aunt Jhuna Devi. He claimed that his brother-in-law Pramod Tanti @ Paglu



(appellant) aged about 25/26 years with his lover aunti Jhuna Devi aged about 28 years conspiring with each other in a pre-planned manner with some sharp cutting weapon had slitted the neck of his sister and thereafter, both the accused had fled away. The informant after recording *fardbeyan* put his signature on the *fardbeyan*.

3. Thereafter, on 15-05-2008 at about 13 hrs. (1:00 PM), a formal F.I.R., vide Jagdishpur P.S. Case No. 83 of 2008, was registered under Section 302/34 of the I.P.C. against appellant Pramod Tanti and Jhuna Devi, wife of Ram Swarth Tanti. During investigation, accusation against both the F.I.R. named accused persons was found true and as such, on 29-07-2008, chargesheet was submitted and on 09-08-2008, the learned Chief Judicial Magistrate took cognizance of the offence and the case was committed to the court of sessions on 30-08-2008 and thereafter, it was numbered as Sessions Trial No. 1009 of 2008. In the case, on 15-11-2008, joint charge was framed. To prove its case from the prosecution side, altogether following six witnesses were examined:-

“P.W.1 Ganesh Tanti was examined as formal witness and he stated that he had put his



L.T.I. on inquest report, which was prepared on the dead body of the deceased.

P.W.2 Ramchandra Mandal is also one of the inquest witness, who put his L.T.I. on the inquest report.

P.W.3 Jayant Choudhary is a hearsay witness, who stated about the occurrence, however; he did not name any of the accused person.

P.W.4 Jamun Tanti is a witness to the seizure list.

P.W.5 Prem Tanti is the informant, and

P.W.6 Md. Nishar, who had proved *fardbeyan*, which was marked as **Ext. 2**, Formal F.I.R. as **Ext.3**, Seizure List as **Ext. 4** and Inquest report as **Ext. 5**.”

4. During trial, from the prosecution side, *fardbeyan* was got exhibited as **Ext.1**, writing on *fardbeyan* as **Ext. 2**, formal F.I.R. as **Ext.3**, seizure list as **Ext.4**, inquest report as **Ext.5**, post-mortem examination report as **Ext.6**, F.S.L. report dated 17-06-2014 and another F.S.L. report were marked as **Ext.7** and **7/1**. After conclusion of the prosecution evidence, statement of the appellant under Section 313 of the Cr.P.C. was recorded on 09-05-2014. Thereafter, from the defence side, one witness was examined, who is D.W.1 Md. Munna.



5. Sri Rajesh Kumar Singh, learned counsel who was assisted by Sri Rajeev Ranjan Singh, learned counsel for the appellant, after placing entire evidence, has argued that it was a case of 'No Evidence' nor anyone has come forward claiming to be eye-witness and as such, the learned Trial Judge has committed serious error in passing the judgment of conviction and sentence. He submits that ofcourse, P.W.5/informant had alleged something, but P.W.5 had not seen the occurrence and case is completely based on circumstantial evidence without proof of connection of any chain. During trial, neither investigating officer nor doctor, who conducted *post-mortem* on the dead body of the deceased, was examined and as such, according to him, it was a fit case for acquittal. Sri Singh has also argued that even with the aid of Section 106 of the Indian Evidence Act, 1872 (hereinafter referred to as 'Evidence Act'), there was no reason to come to the conclusion regarding complicity of the appellant in the crime. Sri Rajesh Kumar Singh, learned counsel for the appellant has also argued that it is a peculiar case that on the same evidence, the learned Trial Judge has passed order of acquittal in respect of one accused namely Jhuna Devi, however; on the same evidence, the learned Trial Judge has convicted the appellant, which is apparently



perverse. On aforesaid ground, it has been prayed to set aside the impugned judgment of conviction and sentence.

6. Sri Mayanand Jha, learned Addl. Public Prosecutor submits that it is consistent case of the prosecution that deceased was lastly seen in the house of the appellant, who was none else but husband of the deceased, in the night i.e. prior to recovery of the dead body in the morning. He submits that the informant has taken same stand, which he had taken in the *fardbeyan*, during the trial. It has been argued that it is case of the prosecution that appellant was having illicit relation with his own aunt namely Jhuna Devi and this was the reason that appellant alongwith Jhuna Devi were arrayed as accused in the F.I.R. However, he submits that since prosecution had failed to prove that lastly i.e. in the night, on which, occurrence had taken place, Jhuna Devi was also present, the accused Jhuna Devi was given benefit of doubt and she was acquitted. Otherwise there was consistent evidence that appellant was seen with the deceased in the appellant's house. In the morning, dead body of the deceased was found having neck cut injury. He further submits that though appellant had gone to sleep with the deceased, while dead body was found in the room of the appellant, the appellant was absent and he remained absconding



thereafter. According to Sri Jha, in view of Section 106 of the Evidence Act, the fact regarding the occurrence was within the knowledge of the appellant and as such, onus was on the appellant to disapprove the circumstances, which were brought against him, during the trial. He further submits that though from the defence side, one witness namely Md. Munna was examined as D.W.1, on examination of evidence of D.W.1 itself, it is evident that the defence side had also accepted the fact that the appellant was having illicit relation with his own aunt namely Jhuna Devi, who was arrayed as F.I.R. named accused. He further submits that defence witness has also stated that dead body of the deceased was found in the house of the appellant himself. According to Sri Jha, in view of the prosecution evidence as well as evidence of defence witness, it is established that in the case, there was none to commit murder of the sister of the informant than the appellant. Accordingly, it has been argued that learned Trial Judge has rightly passed the judgment of conviction and sentence, which requires no interference.

7. Besides hearing learned counsel for the parties, we have minutely examined entire evidence and after examining the prosecution evidence as well as evidence of defence



witness, we are of the considered opinion that the learned Trial Judge has rightly passed the judgment of conviction and sentence. However, before approving the judgment of the trial court, it would be necessary to cursorily refer the evidences, which were brought on record.

8. In the case, informant was examined as P.W.5. In his evidence, he stated same thing, which fact was reflected in the *fardbeyan*. P.W.5 Prem Tanti in his evidence has stated that occurrence had taken place in the night on 14-04-2008. His sister Jhalo Devi (deceased) was in the in-laws' house and from there, she telephonically informed that she was in trouble and in-laws member were assaulting her. She also apprehended that she may be done to death. On 14-04-2008, when P.W.5 reached to the house of his sister, he asked his brother-in-law Pramod Tanti (appellant) as to why he was quarreling and what was the difficulty and he said that he will call 2-4 persons for settling the dispute. Thereafter, the appellant gave his approval that if 2-4 persons come and give any decision, he would follow the same. P.W.5 further said that he would go to the village of his in-laws and call some person and he slept in the house of one Bindeshwari. In the morning, when he woke up and called his sister from her in-laws' house, he did not receive any answer,



then he returned back to the house of Bindeshwari. He asked wife of Bindeshwari to go and awake his sister. Thereafter, wife of Bindeshwari went and saw that his sister was lying dead and her neck was cut. This information was immediately given by her to him (informant). Thereafter, P.W.5 went to the house of his sister and saw that neck of his sister was slitted. In the room of his sister, blood stained cloth of Pramod Tanti (appellant) was lying. He disclosed that he got information that Pramod Tanti (appellant) and Jhuna Devi both had killed his sister. Jhuna Devi was aunt of the appellant, with whom, appellant was having illicit relation. After arrival of the police, he gave his *fardbeyan* to the police and on his *fardbeyan*, he put his signature. In the court, he identified his signature, which was marked as **Ext. 1**. In paragraph 3 of his cross-examination, P.W.5 stated that Bindeshwari in relation was his brother-in-law and his house was in the village Dhauri and in the night, he stayed in the house of Bindeshwari. He further stated that house of Bindeshwari was after one or two house in the eastern side of Pramod (appellant). In paragraph 12, he denied the suggestion that he had come prepared with intent to kill Jhuna Devi and due to darkness, instead of Jhuna Devi, he had killed Jhalo Devi.



9. P.W.1 Ganesh Tanti, who has put his L.T.I. on the inquest report, has deposed that the dead body of deceased was recovered from the house of her husband. When dead body was recovered in the house, there was none.

10. P.W.3 Jayant Chaudhary, in his evidence, has stated that Jhalo Devi (deceased) was married with Pramod Tanti (appellant). He stated that he had heard the rumour that wife of appellant was killed, however; he did not say about name of anyone. This witness was also resident of same village i.e. Dhauri and in cross-examination, he stated that Pramod Tanti (appellant) was also his own villager and this was the reason that he was identifying the appellant.

11. Similarly, P.W.4 Jamun Tanti was co-villager of the appellant and he also had said that he heard about the murder of wife of the appellant.

12. On examination of aforesaid evidence, the place of occurrence has already been established, which was none else but the house of the appellant, where dead body was found. Ofcourse, this Court could not have placed much reliance on the defence witness, but since defence witness i.e. D.W.1 himself has accepted that the appellant was having illicit relation with his own aunt, who was co-accused, certainly such evidence may not



be ignored. In his evidence, D.W.1 in paragraph 2 has stated that husband of Jhalo Devi namely Pramod Tanti (appellant) was having illicit relation with his aunt Jhuna Devi. He further in paragraph 5 has stated that in the morning at 7 hrs., he heard that Jhalo Devi was murdered in the night. The dead body of Jhalo Devi was lying in her in-laws house i.e. house of Pramod Tanti (appellant).

13. On examination of the evidence of D.W.1, two facts have been established. Firstly, the appellant was in illicit relation with his own aunt, who was co-accused and secondly, the dead body of sister of the informant/P.W.5 was found in her in-laws house i.e. in the house of the appellant.

14. On examination of entire evidence, it is evident that the prosecution has established its case that just prior to the occurrence in the night, appellant alongwith deceased were seen in the house of the appellant and in the morning, dead body of deceased was found in the house of the appellant, whereas, the appellant had already fled away. Even had it been a case of 'Last Seen', it was purely a case for holding the appellant guilty. The motive in the case was already established that appellant was in illicit relation with another lady and evidence in the case has come that this was the reason that appellant had committed



the crime. Moreover, we are in agreement with the submission of Sri Mayanand Jha, learned Addl. Public Prosecutor that in view of Section 106 of the Evidence Act, such evidence may not be ignored, which was within the knowledge of appellant himself and he failed to disprove it.

15. After going through the entire evidence and examining the judgment impugned, we are of the considered opinion that learned Trial Judge has committed no error in passing the judgment of conviction and sentence warranting any interference.

16. Accordingly, the appeal stands dismissed.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

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