

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.586 of 1994

Sessions trial no. 156 of 1988/ T.R. no. 123 of 1993 arising out of Sikty P.S.
case no. 36/1985 District- BHOJPUR

=====

Jageshwar Mandal son of Late Mit Lal Mandal resident of village Dhumgarh P.S.
Bardaha District Araria

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Najmul Hoda, Advocate

For the Respondent/s : Mr. Shiwesh Chandra Mishra, APP

=====

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 19-04-2018

1. This criminal appeal has been preferred against the impugned judgment of conviction and sentence order dated 16.11.1994 passed by the Addl. Sessions Judge I, Araria in Sessions trial no. 156 of 1988/ T.R. no. 123 of 1993 by which and whereunder he convicted the appellant for the offences punishable under sections 302 and 201 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for the offence under section 302 of the Indian Penal Code and to undergo rigorous imprisonment for three years under section 201 of the Indian Penal Code. However, both the sentences were ordered to run



concurrently.

2. Two accused, namely, Nageshwar Mandal and Gosai Mandal @ Ganga Mandal were acquitted of the charges by the impugned judgment.

3. PW1, Deo Lal Sardar gave his written report to the officer-in-charge of Bardaha police station on 13.8.1985 mentioning therein that marriage of his daughter was solemnized with appellant four years ago and after marriage, his daughter went to her in-laws house several times but the appellant used to make demand of dowry as well as used to torture his daughter. He further mentioned in his written report that on 13.8.1985 at about 8 a.m. his maternal nephew (PW2) Bahadur Khan came at his home and said that his daughter, namely, Meera Devi was being assaulted by the appellant at 11 p.m. on 12.8.1985 and having heard noise, he as well as Rajendra Prasad Mandal (PW3) and Sone Lal Mandal (PW4) and others went to the house of the appellant and saw that the appellant was assaulting his wife by means of **lathi** after tying her hands. The aforesaid persons stopped the appellant from doing so and, any how, pacified the matter but on 13.8.1985 at about 6 a.m. while he was going to attend call of nature, he saw dead body of Meera Devi in a pond. He



also informed that the villagers assembled and they found that Meera Devi had already died. PW1 has further mentioned in his written report that having got the aforesaid information, he along with PW2 came at village Dhumgarh and went near the aforesaid **Pokhra** where he saw the dead body of his daughter lying on the ridge of the aforesaid pokhra. He noticed injuries as well as black mark on her neck and other part of body. He also noticed that blood was coming from nostril and mouth of the deceased. He also disclosed in his written report that his son-in-law, his elder brother Gagoi Mandal and his younger brother Nageshwar Mandal were not present at home and he learnt that they had fled away after committing the alleged crime. PW1 in his written report expressed his suspicion against one Gayanand Mandal also.

4. On the basis of written report, Sikty P.S. case no. 36/1985 was registered for the offences punishable under sections 302/34 and 120B of the Indian Penal Code. Formal FIR was drawn up against the appellant and two others. Charge of the investigation was taken by the police and after investigation, police submitted charge sheet against the appellant and two others. Cognizance of the offences was taken and the case was committed to the court of sessions.



5. Appellant and two others were put on trial and accordingly, they stood charged for the offences punishable under sections 302 and 201 of the Indian Penal Code to which they denied charges.

6. In course of trial, prosecution examined, altogether, five witnesses and also got exhibited bond as exhibit 1 and written report as exhibit 2.

7. No evidence was adduced by the appellant as well as other accused in support of their defence but from perusal of the trends of the cross-examination as well as statements recorded under section 313 of the Code of Criminal Procedure, it would appear that the defence of the appellant and other accused was total denial of the prosecution story. The learned court below, having scrutinized the evidences available on record, convicted the appellant basing his finding on the testimonies of PW1, PW2, exhibit 1 and exhibit 2.

8. Learned counsel appearing for the appellant assailed the impugned judgment of conviction and sentence order arguing that the learned trial court based his finding only on the basis of conjecture and surmises and failed to take notice of this fact that so-called bond, said to be executed by the appellant, had not been legally proved because PW1 had



only proved the signature of the appellant and contents of the bond had not been proved by the prosecution. He, further, submitted that admittedly, none had seen the actual killing of the deceased and PWs 3, 4 and 5 very clearly stated in their cross-examination that the deceased was mentally ill and, therefore, the impugned judgment of conviction is based only on the ground of suspicion. He, further, submitted that neither doctor nor I.O has been examined in this case and non-examination of the doctor as well as non-production of post mortem report in evidence was fatal to the prosecution case because the prosecution could not succeed to prove cause of death of the deceased and, therefore, the impugned judgment of conviction and sentence order can not stand in the eye of law.

9. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that exhibit 1 goes to show that prior to recovery of dead body of the deceased relationship of the deceased with appellant was strained and it has also come in evidence that dead body of the deceased was recovered near a pond and she died in a mysterious circumstance and, therefore, it was the duty of the



appellant being husband of the deceased to explain the circumstance under which deceased died and, therefore, trial court rightly convicted and sentenced the appellant.

10. Having heard the contentions of both parties, we went through the record.

11. Admittedly, out of five prosecution witnesses, three prosecution witnesses have been declared hostile as they have not supported the prosecution case. So far as PW1 Deo Lal Sardar is concerned, he is the informant of the case and stated that he came to know about death of his daughter from PW2. This witness stated that prior to alleged occurrence, his daughter had come to his home due to strained relation with appellant but subsequently, appellant came to his home to take his daughter back and on execution of bond, he permitted the deceased to go along with the appellant and the aforesaid bond had been executed in presence of Panch Munilal Singh Mukhiya, Sarpanch Devi Prasad Singh, Deandayal Mandal, Abhishek Mandal and others.

12. Admittedly, PW1 only proved the signature of the appellant on the said bond as exhibit 1 and contents of the aforesaid bond had not been proved by the prosecution. PW1



admitted that the above stated bond was not in the writing of the appellant rather the aforesaid bond had only contain the signature of the appellant. Admittedly, Mukhiya Munilal Singh, Sarpanch Devi Prasad Singh, Deandayal Mandal and Abhishek Mandal were not examined by the prosecution to prove the execution of the aforesaid bond.

13. However, this witness also failed to disclose as to in which year and date his daughter was ousted from her matrimonial home by the appellant. He also admitted that he had not lodged any case against the appellant in respect of so-called previous torturing on the deceased. He, further, stated that he had mentioned factum of execution of bond in his written report but from perusal of written report, we find that PW1 had not disclosed the factum of execution of bond in his written report and for the first time, he disclosed the execution of bond in his deposition when he was examined before the trial court on 8.8.1990.

14. PW2 Bahadur Khan is maternal nephew of PW1. This witness stated that on 12.8.1985 while he was at his home, he heard noise and went to the house of the appellant where he saw that the appellant was chiding his wife and both the appellant and his wife were quarreling with each others.



He, further, stated that he pacified the aforesaid quarrel and returned to his home and on the next morning while he was going to his field, he saw the dead body of wife of the appellant on the ridge of the Pokhra and after that he went to the village of PW1 and gave information regarding death of the deceased. This witness admitted that he had not disclosed before the police on 12.8.1985 that he had seen the appellant beating his wife.

15. After careful examination of evidences available on record, we find that not a single prosecution witness claimed to have seen the actual killing of the deceased. Furthermore, we find that PW2 had only stated regarding quarrel between husband and wife. PW2 has, no where, stated that prior to recovery of dead body, deceased was beaten by the appellant. Doctor has not been examined nor post mortem report has been brought on record and, therefore, the prosecution could not succeed to establish this fact as to how deceased died. So far as bond is concerned, the same has not been proved in accordance with law and except PW1 not a single witness has come forward to say about execution of bond by the appellant. Therefore, in our view, prosecution could not succeed to prove its case beyond all shadows of



reasonable doubt and the impugned judgment of conviction and sentence order in respect of appellant can not sustain in the eye of law.

16. On the basis of the aforesaid discussions, this criminal appeal is allowed and accordingly, the impugned judgment of conviction and sentence order are, hereby, set aside and accordingly, appellant is acquitted of the charges. Appellant is on bail. He is discharged from the liability of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Shahid

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.4.2018
Transmission Date	27.4.2018

