

IN THE HIGH COURT OF JUDICATURE AT PATNA

(Against the judgment of conviction dated 19.09.1994 and order of sentence dated 21.09.1994 passed by Sri Manohar Prasad, learned 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 238 of 1990, arising out of Sabour P.S. Case No. 196 of 1989)

Criminal Appeal (DB) No.483 of 1994

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Jhanak Yadav @ Jhanak Lal Yadav, son of Bujhawan Yadav, resident of Village- English, P.S. – Sabour, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (DB) No. 561 of 1994

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Manju Devi, wife of Late Badri Yadav, resident of Village- English, P.S. – Sabour, District- Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY)

Date: 03-02-2018

Both the appeal arises out of common judgment of conviction dated 19.09.1994 and order of sentence dated 21.09.1994 passed by learned 1st Additional Sessions Judge, Bhagalpur in Sessions Trial No. 238 of 1990, arising out of Sabour P.S. Case No. 196 of 1989, whereby both the appellants have been convicted. The



appellant Jhanak Yadav of Criminal Appeal (DB) No. 483 of 1994 has been convicted and sentenced to undergo R.I. for life under Section 109 read with Section 302 of the Indian Penal Code and the appellant Manju Devi of Criminal Appeal (DB) No. 561 of 1994 has been convicted and sentenced to undergo R.I. for life under Section 302 of the Indian Penal Code.

2. Vide order dated 06.01.2018 Mr. Amish Kumar, learned advocate, was appointed as Amicus Curiae, as no one was appearing on behalf of the appellants.

3. The prosecution case in brief is that one Naresh Yadav gave his frdbeyan at his house on 13.11.1989 at 10.30 A.M. before the S.I. L.P. Singh of Sabour police station that his daughter-in-law narrated him that some one has killed her husband. On this information, he went inside the room and found that head of his son was beheaded from his body. On halla, several persons came who noticed that there was blood stain on the Sari of his daughter-in-law and blood stain Garasa was lying under the cot. The daughter-in-law had illicit relation with Jhanak Yadav, which was not tolerable to his son.

4. On the basis of the fardbeyan, Formal F.I.R. was drawn as Sabour P.S. case no. 196 of 1989 under Section 302 of the



Indian Penal Code.

5. The police after investigation submitted charge-sheet against the two appellants under Section 302/34 of the Indian Penal Code. Thereafter the learned Magistrate took cognizance of the offence and the case was committed to the Court of Sessions, where the Sessions Court framed charge against the accused persons under Section 302 read with Section 34 of the Indian Penal Code. The appellants have pleaded not guilty and they have denied the manner of occurrence as alleged by the informant. They have also pleaded that in fact the death was committed by Ram Pravesh Yadav, as his son used to tease the accused Manju Devi and Manju Devi used to object and as such they committed murder of her husband and falsely implicated Manju Devi and Jhanak Yadav and, as such, the trial court conducted the trial.

6. On behalf of the prosecution 12 witnesses were examined as well as certain documents were marked as Exhibit. P.W.1 Geeta Kumari is the sister of the deceased. P.W.2 Atma Yadav and P.W.3 Gobind Yadav are the full brothers of the deceased. P. W. 4 is Sujit Kumar Guha, P.W.5 Kamla Devi is the mother of the deceased. P.W.6 Ram Pravesh Yadav is the cousin of the deceased, P.W.7 Ramashish Yadav is a co-villager of the deceased. P.W. 8 is



Ram Pravesh Yadav, P.W.9 is Dr. N. N. Bhagat who conducted post-mortem on the dead body of the deceased, P.W.10 Ram Naresh Yadav, the father of the deceased and the informant of the case. P.W.11 Md. Azimuddin is the witness of seizure of clothe of accused Manju Devi. The investigating officer of this was not examined.

7. The trial court on the basis of scrutiny of evidence convicted the appellants for commission of brutal murder of the deceased.

8. Mr. Amish Kumar, learned Amicus Curiae submitted that the instant case is a peculiar case where the brutal murder of deceased Badri Yadav was committed inside the room where the appellant Manju Devi was also sleeping with the deceased. He submitted that from the prosecution case it appears that Manju Devi has illicit relationship with Jhanak Yadav and Manju Devi was not willing to stay with Badri Yadav and out of the said illicit relation Badri Yadav was killed, since Jhanak Yadav has illicit relationship with Manju Deiv and witnesses have deposed that they were seen talking with Manju Devi before the occurrence and, as such, they suspected involvement of Jhanak in the commission of brutal murder of deceased Badri Yadav.

9. Referring to the entire material available on record, he



submitted that the deceased was killed in the house in the dead night and in fact there is no eye witness to the occurrence. There is only circumstantial evidence of the entire occurrence. The witnesses are consistent on the point that the deceased was killed by axe blow at neck in the dead night, in view of the illicit relation of Manju Devi with Jhanak Yadav, who is the brother-in-law of Manju Devi. The informant and others have suspected his role in killing Badri Yadav. Referring to the deposition of P.W.1, the sister of the deceased, Gita Devi, learned Amicus Curiae submitted that except P.W.1, no one has seen Jhanak Yadav entering the house or entering the room where Manju and Badri were sleeping and on the basis of deposition of P.W.1 that she has seen Jhanak Yadav, the appellant Jhanak Yadav was convicted in this case. He submitted that in the present case, the investigating officer was not examined. The weapon used in the crime, namely, axe (kulhari) was not produced before the court. He submitted that the blood stained clothe of the accused Manju Devi was collected by the investigating officer and it was sent to FSL for laboratory test, but no such report was placed in the court.

10. Referring to the entire facts and circumstances of the case, he submitted that in a case like present, when the crime is committed inside the room in the dead night and no one has seen the actual commission of crime and only circumstantial evidence are



available and as such the court has to consider the circumstantial evidence available in the case for deciding the culpability of appellants Manju Devi and Jhanak Yadav. He submitted that in the case of circumstantial evidence, there should be a conclusive chain of event to indicate that the accused persons alone could have committed the crime and if any of the chain is missing then the accused persons deserve benefit of doubt, particularly, when there is no corroborative evidence including the scientific evidence on the point of use of weapon, manner of commission of crime, the court has to evaluate the chain of events with utmost care and circumspection. He has drawn the attention of the court that in the instant case when the prosecution has setup the case that the motive behind killing the deceased is illicit relation of Manju Devi with Jhanak Yadav and they suspected involvement of Jhanak Yadav in the commission of crime only on the ground that he was seen talking with Manju Devi before the occurrence, then the deposition of P.W.1 has to be examined with utmost care and caution. Referring to deposition of P.W.1 he submitted that this witness deposed in this case and claimed that she has stated that she has not seen the actual killing of Badri, but she saw the dead body of deceased tied with rope from chest to leg and Garasa was lying beneath the cot containing blood and she saw the neck of the deceased completely cut and blood was lying on the bed and



below the cot. This witness has stated that on that night the deceased and Manju Devi were sleeping in the room and no one was sleeping in that room. She claimed that she was sleeping along with her mother and when she woke up in the night she saw Jhanak Yadav entering in the house where Manju Devi and her brother were sleeping. However, she has admitted in her cross-examination that she has not awoken her mother nor she raised alarm calling her father or brother about entering of Jhanak Yada.

11. Referring to the aforesaid circumstance, Mr. Amish Kumar submitted that in view of the hostile relationship with the informant and Jhanak Yadav on account of illicit relation of Jhanak Yadav with Manju Devi, it is most unnatural on the part of P.W.1 to keep quite despite seeing Jhanak Yadav entering the room of Manju Devi and the deceased. Such conduct of keeping mum by P.W.1 so far as seeing Jhanak Yadav entering the room where the deceased was killed is not trustworthy. He submitted with reference to the entire attending circumstance that the deceased and Manju Devi were sleeping along with in the room. The body of the deceased was tied with rope inside the room, where the deceased and Manju Devi alone were sleeping, the deceased was killed by Gadasa blow is indicative of the fact that Manju Devi has either killed the deceased or she was in the know of the actual assailant. The chain of events that Manju



Devi has illicit relationship with Jhanak Yadav and she was not willing to stay with deceased Badri Yadav, the entry of Manju Devi and deceased in the room and they slept inside the room, none was sleeping in the room except Manju Devi and deceased. The deceased was tied with rope from chest to leg. The deceased was killed by Gadasa blow on neck, no one has seen any other person killing the deceased nor any one has seen either anyone entering the room and fleeing away from the room after killing the deceased. The unnatural conduct of P.W.1 that she alleges that she has seen Jhanak Yadav entering the room, but not awakening her mother and alarming her father and brother and there is no evidence that any other persons have seen entering Jhanak in the room and there is no evidence including P.W.1 that she has seen Jhanak Yadav fleeing away after killing the deceased nor any material was found including the weapon used in the murder from the possession of Jhanak Yadav. In fact the weapon used in killing the deceased was recovered beneath the cot of the deceased and blood stained clothe of Manju Devi was seized by the police are the chain of events, which indicate Manju Devi's involvement in the commission of crime is beyond reasonable doubt.

12. So far as Jhanak Yadav is concerned, the feeble statement of P.W.1 does not inspire confidence to convict him under



the circumstances, which have not completed.

13. Ms. S. B. Verma, learned APP appearing on behalf of the State submitted that under the facts and circumstances of this case killing of the deceased by Gadasa alone by Manju Devi does not appear to be convincing. Tying the deceased with rope from chest to leg and killing in the night is not possible for only Manju Devi and in the commission of crime she must be associated by other person including Jhanak Yadav, with whom she has illicit relation, and as such under the aforesaid circumstance, the conviction of Manju Devi as well as Jhanak Yadav is well founded and the trial court has committed no error.

14. We have gone through the entire materials on record and on scrutiny of the evidence available on record, we find that the present case is based on circumstantial evidence. We find substance in the submission of the learned Amicus Curiae so far as Manju Devi is concerned, there is conclusive chain of events about the involvement of Manju Devi in the commission of crime. Firstly; her conduct that she was not willing to stay with her husband Badri Yadav and has illicit relation with Jhanak Yadav. (ii) another circumstance that on the night of occurrence she alone was sleeping in the room, where the deceased was killed. The neck of the deceased was cut by Gadasa



after tying the deceased with rope from chest to leg is another circumstance that when the deceased was fast a sleep, deceased was tied with rope and only after tying the deceased from chest to leg the deceased was killed by Gadasa. The aforesaid circumstances suggest that Manju Devi alone has committed the crime. All aforesaid circumstances are clinching that the deceased was killed in the room where the appellant Manju Devi was also sleeping. The Gadasa used for killing the deceased was lying beneath the cot. The dead body was found tied with rope on the cot. There is no material that anyone, other than the appellant Manju Devi, has killed the deceased. There is very strong circumstance that Manju Devi alone has committed the murder of Badri Yadav.

15. Since there is no evidence except feeble statement of P.W.1 that she saw appellant Jhanak Yadav entering the room, there is no other chain of circumstance to connect Jhanak with the commission of crime and his suspicious involvement in the crime due to illicit relationship of Jhanak Yadav with Manju Devi is not safe to convict the appellant Jhanak Yadav.

16. Under the aforesaid circumstance, we are of the considered view that the conviction of Jhanak Yadav of Criminal Appeal (DB) No. 483 of 1994 is based on the circumstance that he has



illicit relation with Manju Devi and was seen talking with Manju Devi before the occurrence and the uncorroborated statement and unnatural conduct of P.W.1 that she saw Jhanak Yadav entering in the room but not awakening any member of the family, despite the fact that the family were opposed to the illicit relation with Manju Devi with Jhanak Yadav is most unnatural and does not inspire confidence. Such statement is untrustworthy and cannot be taken as conclusive circumstance for conviction of appellant Jhanak Yadav.

17. Accordingly, in the totality of the facts situation, we are constrained to allow the appeal of appellant Jhanka Yadav [Cr. Appeal (DB) No. 483 of 1994] and set aside the judgment of conviction passed against the appellant Jhanak Yadav.

18. However, in the totality of the facts of this case and appreciation of entire chain of events, we do not find any infirmity in the judgment of conviction of the trial court so far as conviction and sentence of appellant Manju Devi of Cr. Appeal (DB) No. 561 of 1994 is concerned.

19. Accordingly, Cr. Appeal (DB) No. 561 of 1994 preferred by Manju Devi is dismissed. Cr. Appeal (DB) No. 483 of 1994 preferred by Jhanak Yadav is allowed.

20. The appellant Jhanak Yadav of Cr. Appeal (DB) No.



483 of 1994 is on bail and, as such, he is discharged from the liabilities of his bail bonds.

21. The appellant of Cr. Appeal (DB) No. 483 of 1994, namely, Manju Devi is on bail, her bail bonds is cancelled and she is directed to surrender before the court below within a period of one month and if not surrendered, the police officers are directed to ensure her arrest so that she may serve the remaining part of the sentence in terms of the judgment of conviction dated 19.09.1994 and order of sentence dated 21.09.1994.

22. Before we part with, we record our sincere appreciation for the able assistance of Mr. Amish Kumar, learned Amicus Curiae.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Uday/-

AFR/NAFR	NAFR
CAV DATE	NA
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