

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.285 of 1995

Arising out of Judgment dated 28th day of August 1995 passed by learned 4th Additional
Sessions Judge, Purnea in Session Case No. 643/1994

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Md. Kasim Ansari, son of Abdul Razzak Ansari alias Abdul Razzak,
resident of village Begumpur, P.S. – Jalal Garh, District – Purnea.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Sufiyan, Advocate
Mr. Thakur Brajesh Singh, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 17-04-2018

Heard learned counsel for the petitioner and
learned Additional Public Prosecutor representing the State.

1. The present criminal appeal has been preferred
by the sole appellant for setting aside the judgment dated
28th day of August 1995 passed by learned 4th Additional
Sessions Judge, Purnea (hereinafter referred to as the
“learned Trial Court”) in Session Case No. 643/1994 by which
the learned Trial Court has been pleased to hold that the sole
appellant had caused the death of Mairun Khatoon and for



that he has been held guilty of the offence under Section 302 of the I.P.C. He has been sentenced to undergo rigorous imprisonment for life.

2. The prosecution case is based on the fardbeyan of two persons namely Md. Shamim @ Munna, son of Md. Habib and Chowkidar Sikkim Paswan who was attached to Jalalgarh Police Station. According to the prosecution case while the Chowkidar was at his local bazaar on 05.09.1993, at about 9.00 a.m. he came to know from the general public that a dead body of an old woman was lying in the open field near the Jalalgarh Fort. On such information, the Chowkidar visited the place with Kalanand Paswan and found a dead body lying in the field of one Parmanand Yadav of village Mahiyarpur. The matter was reported to the Officer Incharge of Jalalgarh Police Station, it appears that on information Md. Shamim son of the deceased came. The fardbeyan of Md. Shamim, the son of the deceased, was recorded by the Officer Incharge of Jalalgarh Police Station on 05.09.1993 at 7.00 p.m. According to his fardbeyan the informant had a sister named Rajiya Khatoon who was in jail in connection with a murder case of her Sautan. It is alleged that the deceased Mairun Khatoon



who happened to be the mother of the informant had given a sum of Rs. 850/- to one Razzak Mian, the father of the accused-appellant for doing pairvy in the said case. Razzak Mian is said to be the Mause of the deceased Mairun Khatoon. As per allegation, Razzak Mian misappropriated the money and did not do the pairvy at all in the said case. Deceased Mairun Khatoon and her daughter Rajiya Khatoon were insisting for the return of the amount from Md. Razzak Mian, the betrayal of Razzak had soured the relationship between Razzak and the family of the deceased. The informant alleged that the accused Md. Kasim Ansari, son of Md. Razzak, had visited the house of the deceased on 02.09.1993 at 10.00 a.m. and stayed over the night in his house. Md. Kasim talked to the mother of informant. On the next date i.e. on Friday the mother of the informant told that she was going to the place of her sister along with the son of Md. Razzak. The informant and others tried to persuade her not to go with Md. Kasim because the family of the informant had been quarrelling with Md. Razzak but the mother of the informant did not stop and at about 5.30 p.m. on 03.09.1993 she left with Kasim on a Rickshaw to the bus stand for Purnea.



The informant further stated that his mother had gone with cloths and some eatables. On 04.09.1993 the informant Md. Shamim and other family members including Nazima were informed by Md. Kalam, a neighbour, that Md. Kasim had met him at Khoskibag at about 3.00 p.m. and had disclosed that the deceased Mairun went to Siliguri by a Bus in place of Rauta. Md. Kasim helped her in boarding the Bus of Siliguri. Nazima Khatoon, the daughter of the deceased was going to market Purnea City Bazaar on 05.09.1993, she saw the dead body being carried on Thela and from the hand of the dead body which was unveiled Nazima Khatoon identified the dead body because the deceased was wearing a Tabiz around her arm. Nazima Khatoon stopped the Thela and identified the dead body to be that of her mother. She learned from the escort party that the dead body was being carried to Purnea Hospital for post mortem. She informed this to the other family members and neighbours that her mother was done to death by someone and the dead body was thrown away and it was carried to the hospital for post mortem.

3. On the basis of the fardbeyan (Exhibit-1) a formal first information (in short the "F.I.R.") report giving rise



to Jalalgarh (Kasba) P.S. Case No. 160/1993 was registered against unknown under Section 302 of the I.P.C.

4. After investigation, the I.O. submitted a charge-sheet against two persons namely, Md. Kasim Ansari and Md. Razzak Ansari. Md. Razzak Ansari was shown as absconder in the charge-sheet, later on he surrendered before the learned C.J.M. Investigation against Md. Razzak was continued. After cognizance by the learned C.J.M. the case was committed to the court of Sessions only against Md. Kasim Ansari (appellant) vide order dated 23.08.1994. The case of Md. Razzak was separated and was kept pending in the court.

5. On receipt of the records before the learned Sessions Judge it was transferred to the court of 4th Additional Sessions Judge, Purnea, where the charge was framed against the accused under Section 302 of the I.P.C. The accused pleaded not guilty and claimed to be tried.

6. In course of trial the prosecution examined as many as 13 witnesses and proved the Fardbeyan (Exhibit-1), carbon copy of inquest report (Exhibit-2), the original seizure list (Exhibit-3) and the post mortem report (Exhibit-4).

7. The defence case was that the accused has



been falsely implicated in this case. The main defence of the accused was that the deceased was a women of adulterous character and therefore she was divorced by her husband Md. Habib, it is Md. Habib who, being fed up with the lechery of his wife managed her done to death by some unknown hands. The defence submitted that only because of enmity with Md. Razzak the prosecution got a suitable chance to implicate his son in this murder case.

8. The learned Trial Court went through the evidence of the prosecution witnesses. P.W.1 Ram Bilash Sah is a man who was running hotel. It was the case of the prosecution that Md. Kasim had murdered the deceased near the Jalalgarh Fort in the open field of one Pamanand Yadav of village Mahiyarpur at early night and thereafter he had taken the meal in the said hotel. P.W.1 had in course of investigation supported the fact that accused Kasim Ansari, a Home Guard Jawan had taken his meal (rice and meat) in his hotel in the night of 03.09.1993, but in course of his evidence in trial he denied to have said this to the investigating officer. P.W.1 declined to acknowledge the statements made by him before the I.O., thus declared hostile.



9. Arun Kumar Yadav (P.W.2) was tendered by the prosecution. In his cross examination he has declined to recognize the accused standing in the dock. Pheku Chouhan (P.W.3) is a local person who had seen the dead body near the Jalalgarh Fort. The dead body was lying only in petticoat and blouse. He had seen the dead body in course of his return after giving a round of his field. Sikkim Paswan (P.W.4) is the Chowkidar who had got recorded his fardbeyan. He has stated that his fardbeyan was recorded by Sri Mohan Jee Mishra, the then Officer Incharge of Jalalgarh. He had proved his signature and the signature of the witnesses on the fardbeyan namely, Surendra Jha and Ram Kumar Singh. The fardbeyan of P.W.4 was proved as Exhibit-1. Arjun Rishi (P.W.5) is a cultivator who has proved the inquest report (Exhibit-2). He and Sobhanand have proved their signature on the inquest report. P.W.6 Md. Shamim has stated that in want of pairvy of his case his sister had remained in jail for three years. According to him Kasim who was his Mama in relationship had come to his house and stayed during the night period, talked to his mother and on the next day in morning his mother was ready to go with him. The informant



tried to persuade her mother not to go with Kasim but his mother did not stop and left the house at 5.30 p.m. He has stated that on the next day in morning his neighbour Kalam disclosed that there was quarrel between Kasim and his mother at the Bus Stand and thereafter his mother did not go to Rauta. Md. Kasim had got her boarded in a Bus bound to Siliguri but thereafter where did she go was not known to Kalam. This witness has further stated that on 05.05.1993 when his sister Nazima Khatoon went to do some marketing work she found a dead body on a thela which she identified as that of her mother. In course of his cross examination this witness said that he did not remember when Md. Razzak had taken money from his mother. He has stated that his father had given money to Md. Razzak and once or twice had demanded back the same. He has further stated that his mother was also reminding Kasim for money. He has further stated in his cross examination that before the I.O. he had not said about his father pursuing for refund of money. His father had no talk with Kasim during the stay of Kasim in his house. He has stated that he did not know as to whether his father had also stopped his mother from going. He has stated that



there is distance of 6 k.m. from Bus Stand to Purnea City but he had not go to see off his mother. He further stated in paragraph 4 of his cross examination that after receiving information from Kalam he had not gone to the house of Kasim to enquire about the matter. He has stated that he had searched for his mother at Purnea in the house of the relatives but had not gone to Siliguri. His mother had not told him that she was going with a sum of Rs. 1500/-. He has further stated that he had not gone on work on 05.09.1993, he had met Kalam on 04.09.1993 during evening hour and had gone out on search of his mother on 05.09.1993 during morning hour and continued search up to 2-2.30 p.m.. He denied the suggestion that Kasim had not visited his house and his mother had not gone with him. He also denied the suggestion that Kasim was falsely implicated.

10. P.W.7 Nazima Khatoon has also supported the statement of her brother. In her cross examination she has stated that her father had asked her mother not to go. She has also stated that nobody from the family had gone to see of her mother to the Bus Stand. Her brother Md. Shamim was in the house only. Her father was also in the house, later on



her father left for Patna and came back after four days. P.W.8 Md. Kalam has deposed as a prosecution witness who has stated that on 04.09.1993 he had gone to Gulab Bagh by a rickshaw and after purchasing cement he was returning to his house. He has further stated in Khoskibagh he sat in a hotel for lunch and there in the hotel itself he met Kasim. Kasim told him to inform Azim that his mother-in-law instead of going to Rauta with Kasim had left for Siliguri after quarrelling with him. P.W.8 has stated that he told this message to Azim. In his cross examination he has stated that he met Azim at about 2.30 p.m. at Purnea City Bus Stand where he told this message to Azim. On Sunday at about 9-10 p.m. he came to know that the mother-in-law of Azim has been murdered but he had not gone to see the dead body of the deceased. He did not remember who told him about the murder of the mother-in-law. In his cross examination he has stated that the date and month of occurrence was told to him by Azim and his father-in-law and he was making a statement in his examination in chief based on that information. He has denied the defence suggestion that Kasim was falsely implicated.



11. Md. Shahid (P.W.9) is a younger brother of the deceased Mairun Khatoon. He has stated that on 04.03.1993 his Bhagini Nazma Khatoon had informed him that her mother had not gone to Rauta rather she had gone to Siliguri. He told his Bhagini Nazma Khatoon not to worry about it as he would go to Rauta and shall find out. On 05.09.1993 at about 3.00 p.m. he got information from his Bhagini Nazma Khatoon that she had seen the dead body of her mother, thereafter P.W.9 had gone to the hospital along with his Bhagini and Bhagina and had identified the dead body of the deceased. In his cross examination this witness has stated that husband of Mairun was a Rickshaw Puller. His Bhagini Rajiya had first marriage at about 8-10 years back but her husband had given her divorce. Her second marriage was also broken, thereafter third marriage had taken place in Purnea City with one Israil. In the murder case of first wife of Israil, Rajiya and Israil were accused. Rajiya had been in jail for about two years. The pairvy of the case was earlier being done by Md. Habib (father of Rajiya) but later on Israil was himself doing the pairvy of the case. Israil had later on given Talaq to Rajiya and thereafter had married with Munsu @



Anwar. Munsif was doing pairvy in the murder case. Later on Rajiya had gone to Haryana with Anandi @ Anwar. Mairun wanted to go to Haryana but her sons were not allowing her to go there. He had seen the dead body of Mairun but had not seen any injury thereon. He had denied that there was any strange relationship between his sister and brother-in-law. He had denied that his brother-in-law had given Talaq to his sister. In his cross examination this witness has stated that his sister had not given money to father of Kasim for doing pairvy of the case. He denied suggestion that Mairun was going to Haryana to meet Rajiya and had purchased the cloths for her children.

12. Md. Azim (P.W.10) is the son-in-law of the deceased Mairun. He has stated that Md. Kalim (Rickshaw Puller) had told him about his meeting with Kasim who had informed him that Mairun had not gone to Rauta and after quarrelling she had gone to Siliguri. In his cross examination he has stated that when Mairun had left with Kasim for Rauta, there was no dispute. He has further stated that about 6-7 months back some disputes had taken place and for about two months there had been some distance between the two



families but later on relationship of Habib, Shamim, his wife had become good with Razzak. He has also stated that his father-in-law had not gone to receive the dead body. He has further stated that at the time of occurrence Rajiya was living with her husband at Haryana and only after 1 to 1/2 month she came with Anwar from Haryana.

13. P.W.11 Chukandar Yadav was tendered by the prosecution. Dr. Nilamber Singh (P.W.12) a retired medical practitioner had deposed saying that on 05.09.1993 he was a medical officer at Purnea and had performed the post mortem examination on the dead body of the deceased. He had found the following injuries: -

(1) Achymosis face left side

(2) Swelling in Achymosis left temporal region 3"x2"

(3) Fracture clavicle left side

(4) Fracture of cervical vertebrae

(5) Echymosis irregular margin around the neck anterior surface 3"x5". Face cyanosed & glue. Tongue protruded outside

On dissection hemorrhage underneath the left temporal region – menses lacerated on left side. Blood clot in the left hemisphere of cerebrum. Fracture of sternum. Fracture of rib of right side third to fifth. Lungs – lacerated torn & fractured and strangulation. Time elapsed since death



within 36 to 48 hrs.”

14. He has opined that he did not find any cut injury, puncturing injury or bullet injury on the person of the deceased. According to him the injuries found on the body can be caused by strangulation. The death was due to shock and hemorrhage and asphyxia.

15. Mohan Jee Mishra (P.W.13) is the officer-Incharge of Jalalgarh Police Station who was posted on 05.09.1993 and had received the information about the dead body of a women lying in the field. He had recorded the fardbeyan of Sikkim Paswan, the Chowkidar, and had prepared the inquest report of the dead body. He had also prepared the seizure list of the articles which were found near the dead body of the deceased. There were 11 articles which were seized. He has stated about the prosecution witness Shamim saying him that his mother had gone to Purnea with Kasim. He has also stated tha ton 04.09.1993, Md. Kalam a Rickshaw Puller had come to him and told his sister that Kasim met him and told him that his mother had gone to Siliguri.

16. The learned Trial Court in paragraph 20 of the



impugned judgment held that there was no direct evidence on record about the murder of the deceased by the accused persons. The learned Trial Court came to form an opinion that the case is based out and out on the circumstantial evidence. According to learned Trial Court the accused was seen last with the deceased, thereafter the dead body was only found. In between the time of last seen and the recovery of the dead body, there was evidence on the record to show that the accused was at Purnea and out of his frenzy and mental imbalance he got the message sent to Nazima Khatoon, Shamim and Azim through Kalam that the deceased did not go to Rauta, rather she went to Siliguri and she had no programme to come back.

17. The learned Trial Court thereafter proceeded to examine the circumstantial evidence in the case taking note of the judgment of the Hon'ble Supreme Court in the case of **Kashmira Singh Vs. State of M.P.** reported in **AIR 1952 SC 159** The learned Trial Court ultimately came to a conclusion that the death of Mairun Kathoon had been caused knowingly and intentionally by accused Md. Kasim.

18. The learned Trial Court rejected the plea of the



defence that the prosecution witnesses were interested witnesses and further plea of the defence that there was no independent witness was also rejected by the learned Trial Court.

19. Learned counsel representing the sole appellant in the present case has assailed the impugned judgment of learned Trial Court on the grounds inter alia that the learned Trial Court has not been able to appreciate the prosecution evidence in the light of statement of the son, daughter and the son-in-law of the deceased who have all stated in their deposition that Md. Kalam had told all these witnesses that Md. Kasim had told him to inform the daughter-in-law of the deceased that deceased Mairun had not gone to Rauta rather she had gone to Siliguri.

20. Learned counsel submits that prosecution witnesses are not able to explain as to why they did not inform the police about the occurrence if they had any doubt over Md. Kasim and they are further unable to explain as to what steps they took after getting information that Mairun had gone to Siliguri. The deposition of son-in-law says that the daughter of the deceased was in Haryana at the time of



occurrence and she had come back after 1 and 1/2 month from the alleged occurrence. Further fact that none of the family members went to see off the deceased to Bus Stand, which was at a distance of 6 k.m. and the husband of the deceased did not go to receive the dead body, are all indicating towards the conduct of the victim as to how she was adamant and was going outside her house against the will of the other family members.

21. Learned counsel submits that the son-in-law of the deceased has also deposed that good relationship had prevailed in the family. Moreover, the learned Trial Court had itself recorded that there is no direct evidence against the accused. It is submitted that the circumstantial evidence as shown and appreciated by the learned Trial Court is not free from doubt.

22. On the other hand, learned Additional Public Prosecutor representing the State supports the impugned judgment and submits that the deceased was lastly seen in the company of the appellant and thereafter her dead body was found, therefore the circumstantial evidence has rightly been appreciated by the learned Trial Court.



Consideration

23. Having heard learned counsel for the appellant and learned Additional Public Prosecutor for the State, we find that the learned Trial Court has rightly come to a conclusion that there is no direct evidence in the case so as to prove the guilt of the accused-appellant beyond all reasonable doubt. The police had not been able to complete investigation against Md. Razzak about whom it is stated that he had taken money for doing pairvy of the case in which the daughter of the deceased was involved. In the entire prosecution evidence, however, there is nothing to show that Md. Kasim (appellant) had any grudge or enmity with the deceased. The appellant visited the house of the deceased and the fact that he took his meal in the house of the deceased in presence of the other family members and stayed overnight in the house with them lead us to take a view that the relationship between the family of the deceased and this appellant was good and the deceased or the appellant were not having any doubt against each other, otherwise the appellant would not have taken the risk of staying in the house of the deceased during the night hours.



The evidence on record also show that the deceased had left the house with not only her own cloths but also with the cloths of small children and a cash of Rs. 1500/- during the evening hour at 5.30 p.m. The son-in-law of the deceased had deposed that she wanted to go to Haryana to meet her daughter but the family members were stopping her from going there. In course of cross examination of the prosecution witnesses, the defence has suggested that the deceased had left for Haryana to meet her daughter and for that she had purchased cloths for small children which were seized from near the dead body. The fact that Md. Kalam had informed the daughter-in-law of the deceased that her mother-in-law had gone to Siliguri after quarrelling with Md. Kasim at the Bus Stand, but still Md. Shamim, who happened to be the son of the deceased, did not think it fit and proper to enquire about it from Md. Kasim who was very much available there and did not report this to the police station further lead us to believe that at that point of time because he was not aware of the death of the deceased and he had not thought of implicating Md. Kasim, he had no reason to visit the house of Md. Kasim to enquire about where the informant's mother



had gone or what had happened at the Bus Stand.

24. We understand that the natural conduct of a person on getting information about the fact that his mother had gone to Siliguri alone has not been shown by the prosecution witnesses who are family members of the deceased. If the deceased had gone with Md. Kasim and the fact that she had left for Siliguri came to the knowledge of Md. Shamim who happened to be the son of the deceased on 04.09.1993 itself then he would have definitely gone to the place of Md. Kasim if his mother had gone to the Bus Stand with Kasim to enquire about her mother. This lead us to believe that only after the dead body of the mother was found by the Chowkidar and the family members came to know about it later on, due to inimical relationship with Md. Razzak, his son (the present appellant) was also named as an accused with Md. Razzak in this case. The prosecution witnesses on whose evidence reliance has been placed by the learned Trial Court are all family members and they are related as well as interested witnesses in the sense that all of them wanted to ensure that Md. Kasim who is son of Md. Razzak is convicted. The chain of circumstances in order to



bring this case within the ambit of circumstantial evidence is not established beyond all reasonable doubt.

25. We, therefore, find that in the totality of the circumstances and the evidences placed on the record, the conviction of the appellant cannot be sustained. In result, the impugned judgment is hereby set aside. The appellant is on bail. He is discharged from the liability of the bail bond.

26. This appeal is, accordingly, allowed.

(Rajendra Menon, CJ.)

(Rajeev Ranjan Prasad, J.)

Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
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