

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.378 of 1994

Arising Out of PS.Case No. -540 Year- 1992 Thana –K.Hat District- Purnia.

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Ganga Devi, wife of late Shivji Mandal, resident of Village Bhatta, P.S. K.Hat,
Dist-Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (DB) No. 385 of 1994

Arising Out of PS.Case No. -540 Year- 1992 Thana - K.Hat District- Purnia.

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1.Umesh Kahar @ Umesh Ram, son of Sudarshan Ram.
2.Shankar Mandal @ Ram Shankar Mandal son of Asarfi Mandal.
All residents of Bhatta Bazar, P.S. K.Hat, District-Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (DB) No.378 of 1994)

For the Appellant/s : Mr.Vijay Anand, Adv.
Mrs.Sarita Kumar, Adv.

For the Respondent/s : Mrs. Sashi Bala Verma, A.P.P
(In CR. APP (DB) No.385 of 1994)

For the Appellant/s : Mr. Pramod Kr Thakur,Adv.

For the Respondent/s : Mr.

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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: 31-07-2018

These two Criminal Appeals have been preferred for
setting-aside the judgment dated 5th day of July, 1994 passed by the
5th Additional Sessions Judge, Purnia (hereinafter referred to as ‘the
trial Court’) in Sessions Trial No. 169 of 1993 by which the learned
trial Court has been pleased to hold the appellants in both the appeals



guilty of the offences committed under Section 302 read with Section 34 of the Indian Penal Code and they have been sentenced to undergo imprisonment for life and to pay a fine of Rs.100/- each to be paid to P.W.6 and in default it has been ordered that the appellants shall undergo simple imprisonment for one month.

2. Even though, one of the appellants, Shankar Mandal has not appeared in this case after issuance of warrant by this Court, we have heard Mr. Vijay Anand, learned counsel representing the appellants, Ganga Devi in Criminal Appeal (DB) No.378 of 1994 and Umesh Kahar @ Umesh in Criminal Appeal (DB) No.385 of 1994. Considering the submissions of Mr. Vijay Anand, Advocate, taking him as *amicus curiae* on behalf of the appellant Shankar Mandal @ Ram Shankar Mandal in the interest of justice, we proceed to decide both the criminal appeals.

3. The prosecution case is based on the statement of Gauri Devi (P.W.6) who is mother of the deceased Shivji Mandal. P.W.6 has alleged in her Fardbeyan (Ext.4) that her son, Shivji Mandal aged about 22 years was leaving with his wife in a rented house, his wife was not having good conduct and this fact was known to her husband. According to the informant (P.W.6) her son had told her that his wife Ganga Devi (appellant) has established physical relationship with the neighbour Umesh Kahar (appellant). P.W.6 further alleged while recording her Fardbeyan that because of this illicit relationship, her son and daughter-in-law were quarreling and



had developed indifferences. It is alleged that while her son wanted to shift his residence to another place, his wife was not ready to leave the house. The informant further alleged that at about 05:00 P.M. the neighbour, Bathnu Rai (P.W.5) came to the house of the informant and informed her that her son and daughter-in-law are fighting, on this the informant claimed to have reached the house of her son with an intention to convince them but when she reached there, the door was found locked from outside. The informant claimed that along with her one Sushila Devi (P.W.4) her neighbour and Kamta Mandal (not examined) also reached there with an intention to cool down her son and daughter-in-law. It is alleged that on finding that the door was locked when she enquired from the neighbour Jhabari Devi (not examined) she was told that her daughter-in-law had locked the door and had gone to the house of the house owner. The daughter-in-law came back, the informant left the place when she was told by her daughter-in-law that her son had gone outside. As the informant reached at some distance, from behind Sushila came running after her and said that the son of the informant was dead. On hearing this from Sushila Devi when the informant came there, she found that her son was lying dead and his face was covered by a blanket. She also found ligation mark around the neck of her son. The informant claimed that in presence of persons who assembled near the dead body of her son, the daughter-in-law of the informant, on query disclosed in presence of the people named in the Fardbeyan that her husband was unable to



give birth to a child, therefore, she had developed relationship with Umesh Kahar and her Nandoshi, Shankar Mandal as she wanted to give birth to a child by establishing relationship with them. The informant further alleged that the daughter-in-law also disclosed that because her husband had come to know about this relationship, he used to beat her. The daughter-in-law was told by her Nandoshi, Shankar Mandal that he would marry her after killing Shivji Mandal. It is stated that her daughter-in-law, Umesh Kahar and Shankar Mandal caught hold of Shivji Mandal and by putting ropes around his neck, they killed Shivji Mandal.

4. On the basis of the Fardbeyan of P.W.6, a formal First Information Report (Ext.6) was lodged giving rise to the present case. After investigation, cognizance was taken and, thereafter, the records were committed to the Court of Sessions. In course of trial, the prosecution examined as many as 10 witnesses out of whom P.W.2, P.W.3, P.W.5 and P.W.8 were declared hostile as they did not support the prosecution case.

5. The defence examined some witnesses including Usha Devi daughter of the informant as D.W.1. The plea of the defence was that the deceased Shivji Mandal had solemnized two marriages. He had left his first wife and because of that her brothers were inimical to him. The defence case was that Shivji Mandal had committed suicide. The learned trial Court having examined the evidences of the prosecution and the defence witnesses came to a



conclusion that the death of Shivji Mandal was caused by the accused persons in furtherance of common intention. The charge under Section 302 of the Indian Penal Code was proved beyond all reasonable doubts against them. The accused persons were also charged for the offences under Section 201 read with Section 34 of the Indian Penal Code but the learned trial Court found that there is no evidence at all on the point of the prosecution to establish that any attempt was made on behalf of the accused to cause disappearance of the dead body of the deceased Shivji Mandal. No specific evidence has been led by the prosecution on this point. Thus, the charge under Section 201 read with Section 34 of the Indian Penal Code was not proved.

6. While assailing the impugned judgment, Mr. Vijay Anand, learned counsel representing the appellants submits that it is the case of no evidence. Learned counsel submits that there is no independent eye-witness or materials to corroborate the allegations made by the informant that Ganga Devi had got illicit relationship with Umesh Kahar and Shankar Mandal. Learned counsel submits that P.W.6 is the mother of the deceased and apparently she was not happy with the second marriage solemnized by her son with the appellant, Ganga Devi.

7. Attention of this Court has been drawn towards the evidence of P.W.5 Bathnu Roy who is the neighbour of the deceased Shivji Mandal. P.W.5 has stated in his deposition that he was not



aware of any quarrel taking place regularly between the deceased and his wife. He has also stated that he was not aware of any illicit relationship between the appellant Ganga Devi and Umesh Kahar. This witness was declared hostile and the prosecution was called upon to cross-examine this witness. In his cross-examination, he has stated that he had not made any statement before police that the conduct of Ganga Devi was bad and that she was having illicit relationship with Umesh Kahar and Shankar Mandal. He has further stated that he had never seen Shankar Mandal, Umesh Kahar and Ganga Devi talking to each other at one place and he had not made any such statement before police. He has also denied that he had gone to inform the mother of Shivji Mandal.

8. Further, learned counsel submits that the deposition of P.W.7, Bindehswar Roy would show that this witness had not seen Ganga Devi and Shivji Mandal (deceased) fighting with each other. This witness has clearly stated that he had no information about any illicit relationship between Umesh Kahar and Shankar Mandal with Ganga Devi. He has stated that he had never told to the Investigating Officer that there were regular quarrel between Ganga Devi and Shivji Mandal. He has also denied to have stated before police that Ganga Devi had confessed that she murdered Shivji Mandal by putting rope around his neck with the help of Shankar Mandal and Umesh Kahar. P.W.7 was not declared hostile by the prosecution. Attention of this Court has also been drawn towards the deposition of P.W.8 Uttimlal



Roy, who was one of the tenants in the house of Banke Lal where Shivji Mandal was also residing. He has also denied the prosecution case and has been declared hostile.

9. So far as, Dr. Amarendra Jha, (P.W.9) is concerned, he had conducted the postmortem on the dead body and had found a ligation mark around the upper part of the neck. In his cross-examination he has stated that generally the injury found on the body of the deceased is caused in case of hanging but P.W.9 was unable to say as to whether this is a case of suicide by hanging.

10. Awadh Nath Singh (P.W.10) is the Investigating Officer of the case who had recorded the Fardbeyan of P.W.6 and had conducted the investigation. P.W.10 had prepared the inquest report in presence of Rajkumar Mandal (P.W.1) and Bindeshwar Roy (P.W.7) who have signed as a witness in the inquest report (Ext.5). P.W.10 had found ligation mark around the neck and some blood clot was found at the lower part of the cheek. He had found nylon rope and other materials which were seized by him. P.W.10 has stated that the witness, Raj Kumar Mandal (P.W.1) had told him about the illicit relationship of Ganga Devi with Umesh Kahar and Shankar Mandal because of which the deceased Shiviji Mandal was beating her. Learned counsel representing the appellants from the deposition of P.W.1 states that this witness had categorically stated that Ganga Devi had been maintaining good conduct and she had no illicit relationship with Shankar Mandal and Umesh Kahar. This witness had seen the



deceased, Shivji Mandal hanging with the bamboo inside the room and he had seen it when the neighbour, Jhabari Devi (not examined) opened the door with one 'Dibiya' (a kind of household item used for lighting in villages). Although, this witness has at one place stated that Shivji Mandal and his wife were fighting with each other for 4-5 days but in his cross-examination in Paragraph No.5 he has categorically stated that he had not made any statement before the police that Ganga Devi was not maintaining good conduct or that she had got illicit relationship with Umesh Kahar and Shankar Mandal. She had not made any statement before the police that on the alleged date of occurrence the appellant, Ganga Devi, Umesh Kahar and Shankar Mandal were seen talking to each other. He had also not stated that because of the illicit relationship the deceased was beating Ganga Devi.

11. Learned counsel for the appellant has stated that the statements of P.W.10 are highly contradictory when compared with the evidence of P.W.1, P.W.5, P.W.7 as well as P.W.8. It is his submission that in a case where there is no eye-witness and the whole case is dependant upon the related as well as the interested witness such as P.W.6, the trial Court should have proceeded with more circumspection and care in analyzing the evidence of P.W.6.

12. Learned counsel has also drawn our attention of D.W.1 who is non-else but own daughter of the informant (P.W.6) and is wife of Shankar Mandal. Usha Devi (D.W.1) has not supported



the prosecution case and has categorically stated that her husband was not having any illicit relationship with the appellant Ganga Devi. D.W.1 was not investigated by the police and her statement was not recorded. This witness has stated that Shivji Mandal had married to Ganga Devi on his own will and volition and because of the second marriage his first wife Rajni was not happy. The brothers of his first wife were quarreling with Shivji Mandal after he solemnized second marriage. D.W.1 has further stated that her brother Shivji Mandal had no quarrel with the appellant Ganga Devi. Learned counsel for the appellants submits that in a case of circumstantial evidence, the learned trial Court should have considered as to whether the chain of circumstances are clearly indicating towards the guilt of the accused. It is submitted that the learned trial Court has clearly erred in appreciating the evidence available on record.

13. On the other hand, learned Additional Public Prosecutor representing the State has submitted the impugned judgment but in course of hearing, when this Court called upon her to show as to whether there is any independent witness or material to corroborate the evidence of P.W.6 as to illicit relationship of the appellant Ganga Devi with Umesh Kahar and Shankar Mandal, no material at all could be brought to the notice of this Court to corroborate the evidence of D.W.6.

14. Having heard learned counsel for the appellants and learned Additional Public Prosecutor for the State, we find that the



whole prosecution case is based on the Fardbeyan of P.W.6 who is the mother of the deceased. She is not an eye-witness to the prosecution case. According to her, Shivji Mandal was killed by Ganga Devi, Umesh Kahar and Shankar Mandal because the deceased Shivji Mandal had come to know about the illicit relationship of his wife Ganga Devi with those two persons.

15. On going through the entire evidences led on behalf of the prosecution, we find that there is no independent witness in this case to support the prosecution story as stated by P.W.6. The daughter of P.W.6 has come in the dock to say that her brother Shivji Mandal was not having any quarrel with his wife Ganga Devi. There are other witnesses whose statements have been referred by learned counsel for the appellants and we have taken note of the same hereinabove. We also find that P.W.6 is the mother of the deceased and apparently the deceased was not living with his mother. He was living separately with his wife Ganga Devi in a rented house which also indicates that the informant may not be happy with the solemnization of second marriage by Shivji Mandal. D.W.1 has come forward to say that after solemnization of second marriage by Shivji Mandal his first wife was not happy and the brothers of the first wife were quarreling with Shivji Mandal. The neighbour Bathnu Roy and other witnesses such as P.W.1 and P.W.7 who are the inquest report witnesses have also not supported the prosecution case. So far as P.W.6 is concerned, she is definitely a related as well as an interested



witness in this case.

16. In a case of conviction based on circumstantial evidence, the Hon'ble Supreme Court has in a series of cases such as **Subhash Chand versus State of Rajasthan of Haryana** reported in **2015(11) SCC 43**, **Kirti Pal Versus State of West Bengal** reported in **2015 (11) SCC 178** and **Vijay Shankar Versus State of Haryana** reported in **(2015) 12 SCC 644** categorically held that in the cases in which the conviction of the accused is based on circumstantial evidence, the court must come to a conclusion that the chain of evidence is complete and there is no reasonable doubt/ground consistent with innocence of the accused. In a recent judgment in the case of **Dev Kanya Tiwari v. State of U.P.** reported in **A.I.R. 2018 SC 1377** the Hon'ble Supreme Court while referring the previous judgment in the case of **Govind Nargundkar & Anr. V. State of Madhya Pradesh** reported in **1953 Cr. L. Journal 129** discussed as to how the circumstantial evidences would be evaluated. The Hon'ble Apex Court reiterated that the circumstantial evidences must be fully established.

17. We are conscious of the judgments of the Hon'ble Apex Court that merely because a witness is a family member, his/her evidence cannot be discarded but at the same time, we have to keep in mind that where the family member is not an eye witness to the alleged occurrence and the evidence of the family member is in the nature of a circumstantial evidence not supported by any independent



witness and where there is no corroboration of the evidence of the family member, it would not be safe to convict an accused for offence under Section 302/34 of the Indian Penal Code. In the present case, as we do not find any independent evidence on the point of illicit relationship and for that reason quarrel between the deceased and the appellant Ganga Devi, we are unable to sustain the findings of the learned trial Court. In our considered opinion the learned trial Court has erred in appreciation of evidence available on record. The benefit of doubt goes to the appellants.

18. In the result the conviction as well as the sentence of the appellants is set-aside and the appeal is allowed. The appellants are on bail, hence they are discharged from the liabilities of their bail bonds. The warrant of arrest against Shankar Mandal @ Ram Shankar Mandal (appellant no.2 in Criminal Appeal (DB) No.385 of 1994) is recalled.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha.

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