

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Appeal (DB) No.451 of 1994**

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**Against the Judgment of conviction and order of sentence dated 02<sup>nd</sup> of July, 1994 passed in Sessions Case No.253 of 1992 by 2<sup>nd</sup> Additional Sessions Judge, Katihar.**

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Paras Mandal s/o Lakkhi Narain Mandal, resident of Village- Chharramari Chama, P.S. Amdabad, District Katihar

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Dr Mayanand Jha, Amicus Curiae

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI**  
**and**  
**HONOURABLE MR. JUSTICE SANJAY PRIYA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)**

**Date : 06-01-2018**

Nobody appears for the appellant. Dr Mayanand Jha, Advocate is requested to appear as Amicus Curiae to assist the Court. Heard Amicus Curiae representing the appellant as well as the learned APP representing the State.

2. The appeal has been preferred against the judgment of conviction dated 02.07.1994 passed by the 2<sup>nd</sup> Additional Sessions Judge, Katihar in Sessions Case No.253 of 1992 wherein the sole appellant has been convicted for murder of his wife and sentenced to undergo R.I. for life under Section 302 IPC.



3. As per the prosecution, one Naresh Mandal informed Dhiren Mandal that his sister Oshto Devi has been murdered by her husband Paras Mandal, the appellant, and mother-in-law Kamini Devi. On this information, Dhiren Mandal along with his mother Purni Devi and Bahnoi (Brother-in-law) Naresh Mandal went to the sister's village and it is alleged that they saw the dead body lying on the ground. Another sister of the deceased Mina Devi was weeping there by the side of the dead body and on enquiry, Mina Devi disclosed that Paras Mandal and Kamini Devi had murdered Oshto Devi by assaulting her.

4. There are six prosecution witnesses, out of which Dhiren Mandal (PW 6), Mina Devi (PW 1), Purni Devi (PW 2) and Naresh Mandal (PW 3) are all related to each other. PW 3 is supposed to be the son-in-law of PW 2. PW 6 and PW 1 are son and daughter of PW 2. All these witnesses are closely related to each other and none of them can be said to be eye witness to the occurrence. The only witness, who can be said to be some kind of an eye witness, is the sister of the deceased i.e. Mina Devi (PW 1), who says that she lives in the same village as the deceased and that she heard her sister crying, she went to the house and saw the appellant assaulting the deceased. Next morning, it is said that she learnt that her sister is dead, she went to the house and found the



dead body lying on the ground. In other words, she is only a witness with regard to the assault and not with regard to the murder, which is supposed to have taken place. Her evidence, therefore, cannot be taken to be an eye witness account of the incident, which caused the death.

5. Rest of the prosecution witnesses are basically hearsay witnesses. What is of significance is that though initially an allegation was made even against the mother-in-law Kamini Devi but nothing emerges with regard to her any overt act with regard to the commission of the crime.

6. What is of significance, therefore, is the postmortem report and the opinion given by the Doctor with regard to the reason for death. In the postmortem report, the Doctor says that there were certain ligature mark on the neck and he opines that the death happened because of hanging. If this is so, even according to the counsel appearing for the appellant, it is his contention that the story of death having been caused because of assault stands belied because of the medical opinion and even in the medical opinion, there seems to be serious doubt as to the correctness of the reason of death. The Amicus Curiae submits that if the death was because of strangulation and not hanging, there cannot be ligature mark as such and injury with regard to the neck would be



feasible if it was a case of hanging. There is no opinion that the death was caused because of strangulation.

7. In totality, therefore, there is wide gaping hole as to how the death had happened. The maximum which one of the witnesses Mina Devi could establish is that her sister was assaulted physically as she says so but no death had happened in presence of any of the eye witnesses and even the reasons for the death are variable and is not established in absolute term.

8. In view of the above, giving benefit of doubt to the appellant, the appeal is allowed. The conviction is set aside. The appellant is acquitted of the charges levelled against him. He is discharged from the liability of his bail bond. Let the lower court records be returned forthwith.

**(Ajay Kumar Tripathi, J)**

**( Sanjay Priya, J)**

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