

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.398 of 2012

Arising Out of PS.Case No. -24 Year- 2009 Thana -Guthani District- SIWAN

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Shima Devi D/O Ramjee Gore @ Ramjee Gond, R/o Village - Jataur, P.S. Guthani,
District - Siwan

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Amit Kumar Mishra, Advocate.
Mr. Ravi Prakash Dwivedi, Advocate.
For the Respondent/s : Mr. S. N. Prasad, APP.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 12-01-2018

The sole appellant being the wife of the deceased stands convicted under Sections 302 and 328 of the Indian Penal Code vide judgment of conviction dated 18.02.2012 passed by learned Additional District and Sessions Judge (FTC No.IV), Siwan in S.T. No. 115 of 2011. The present appeal assails the aforesaid judgment of conviction.

2. Short facts leading to the trial are as follows:

The appellant Shima Devi was married to the deceased around 12 years ago. The deceased had gone to the foreign country for earning his livelihood. On 07.04.2009, he came back his home in village Jathaur as his sister was going to be married. On the following day i.e. on 08.04.2009, he left his house for staying with the appellant



at his Sasural which was located 4-5 Kms away where his wife-appellant was residing. On 10.04.2009, a telephonic conversation had taken place between the family members of the deceased and his wife. Both of them i.e. the deceased and his wife (appellant) had assured them to come to the matrimonial home of the deceased in connection with the marriage. In the same evening, a call was received from the Sasural of the deceased about serious condition of the deceased at his sasural with a request to come forthwith to the Sasural. PW-1 (Own brother of the deceased), PW-2 (grand-father of the deceased) and PW-3 (father of the deceased) left in the night and drove to the Sasural of the deceased only to find him lying on the floor of the inner Varandah of the house. Froth was seen coming out of his mouth and nostril by them. Soon thereafter the husband of the appellant died. An information was sent to the officer-in-charge of the Guthani Police Station. Next morning at about 10:15 AM, the officer-in-charge (PW-6) arrived at the place of occurrence and recorded the fardbeyan (Exhibit-3) of PW-2. A death inquest proceeding was carried over the dead body whereafter the inquest report (Exhibit-5) was drawn. The dead body was sent under Challan for autopsy. PW-4 Dr. Asar Ahmad Gunny was then posted as Medical Officer, Sadar Hospital, Siwan. He conducted the autopsy on 11.04.2009 at 01:30 PM and provided the post mortem report (Exhibit-1). The place of occurrence was inspected and statements of witnesses present there were recorded.



PW-6, however, made over the investigation to PW-7 who only took steps to receive the FSL report (Exhibit-2) whereafter it was again made over to PW-5, the another SHO of the Guthani police station who concluded the investigation and laid the charge sheet against the appellant and two other accused being the father and mother of the appellant whereon cognizance was taken and the case was later committed to the court of sessions which, on transfer, came on the file of learned Trial Judge for hearing and disposal.

3. Charges were framed and read over/explained to the appellant to which she pleaded not guilty and claimed to be tried.

4. In order to substantiate the charge, the prosecution examined altogether seven witnesses. PW-1 Hira Lal Gond, PW-2 Ram Chij Gond and PW-3 Manbodh Gond are the family members of the deceased. On getting information about serious condition of the victim, they had gone to the sasural of the victim on the relevant night. PW-4 is the doctor who held the autopsy of the deceased. PWs-5, 6 and 7 are the three investigating officers who were involved in the investigation.

5. Heard both sides.

6. It has been argued before us by the learned counsel for the appellant that the present case rests on circumstantial evidence. No one had actually seen the commission of the crime. The trial court has also examined the case on the same premise. The



counsel for the appellant has further submitted that except the death having occurred in the Sasural of the deceased while living with the appellant, no further circumstance incriminating the appellant in the crime has been established by the prosecution. The witnesses have admitted that after the marriage and Gauna of the appellant initially, strained relation had occurred which led to filing of criminal litigation by the appellant against her husband (deceased) and his family members, but subsequently a settlement was arrived between both the families and since then cordial relation had been restored between the appellant and her husband (deceased). In so much so the deceased used to visit and stay with the appellant whenever he used to come to his home from his place of work abroad. There is nothing on record that any scuffle or strained relationship had occurred immediately prior to the incident. The prosecution through the evidence of some of the witnesses has accepted that after the restoration of good relation between the husband and the wife, the deceased was remitting amount from the place of his work outside the country to the appellant on regular basis. On the date of occurrence, nothing unusual had happened which could have compelled the appellant to poison him to death. On the basis of the aforesaid submission, it has been argued that the circumstances proved at the trial do not unerringly prove the guilt of the appellant and she deserves to be acquitted of the charges.



7. The counsel for the State, in contra, supported the findings of the guilt recorded by the learned Trial Court against the appellant. He would urge that the deceased had lodged a criminal case against her husband and other family members. The evidence on record further indicates that she was not putting up in her matrimonial home. There was also constrained relationship as the appellant had acquired higher educational qualification whereas the deceased was only non-matric. Placing the evidence of PWs-1, 2 and 3, it is argued that the appellant had also developed some soft corner for a co-villager. Relying on **Trimukh Maroti Kirkan Vs. State of Maharashtra** reported in (2006) 10 SCC 681, he submits that if the death had occurred at the place where the deceased was living with his wife and the explanations leading to his death given by the accused is found false then the same should be considered as an additional circumstance proving the guilt of the appellant. Our attention was drawn to the statement made by the appellant under Section 313 of the Code of Criminal Procedure as well as her evidence as DW-3. In her statement under Section 313 of the Code of Criminal Procedure, the appellant had offered no explanation. However, in her deposition as DW-3, she has taken the plea that the deceased had picked up habit of habitual drinking of wine/toddy. On the date of occurrence, he had gone out and got himself drunk in which poison might have been administered to him. It has been



submitted by the State that the I.O. while drawing Panchnama of the body and the Doctor while performing autopsy did not find foul smell of wine/toddy. The explanation given by her is explicitly false which again is a circumstance that incriminates the appellant in the crime.

8. From the evidence of PW-1 (brother of the deceased), PW-2 (grand-father of the deceased and the informant of the case) and PW-3 (father of the deceased) read along with the evidence of DWs-1, 2 and 3, it is established that the deceased after coming from the foreign country on 07.04.2009 had gone to his sasural on the following day i.e. on 08.04.2009 and since then he was staying with his wife at his sasural where ultimately he met with homicidal death. The death was homicidal in nature is well proved from the evidence of the doctor (PW-4) and the chemical examination of viscera (FSL report) produced as Exhibit-2. For better appreciation, the findings in the post mortem report (Exhibit-1) conducted on the cadaver of the deceased is extracted below:

“External: No external injury found anywhere on the body. Froth coming out from both the nostrils.

Dissection: All Viscera were found congested in the thoracic and abdominal cavity.

Following viscerae were preserved for chemical examination.

(1) a piece of heart (2) A piece of lung (3) A piece of liver (4) A piece of Rt kidney (5) A piece of Spleen (6) a piece of stomach with its content (7) A piece of small intestine with its content.

U.B. – Full of urine.

Brain – NAD.



Cause of death – Opinion reserved till gets the chemical report of preserved viscera.

Time since death to PM examination – 6 to 24 hours.”

The result of the examination of the viscera found in the FSL report (Exhibit-2) is as under:

“THIMET was detected in the dark brown fluid described above. Thimet is an organo-phosphorous pesticide which is commonly used in agriculture for killing pests and is highly poisonous.”

9. We would further note here that the homicidal death of the victim at his sasural is not a bone of contention between the parties. In a case based on circumstantial evidence, the general principle is that the circumstances from which an inference of guilt is sought to be drawn must be cogently and firmly established; that those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused; that the circumstances taken cumulatively should form a chain so complete that there is no escape from the conclusion that within all human probability the crime was committed by the accused and they should be incapable of explanation on any hypothesis other than that of the guilt of the accused and inconsistent with their innocence. At the same time, the Courts have, in few cases, held, particularly, in a case where an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their



choice that it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon. Keeping in focus the twin legal principles noticed above, the Court is required to scan the relevant evidence in the light of rival submissions advanced on behalf of the appellant and the State.

10. On a conspectus of evidences on record, the prosecution has been able to prove the following facts/circumstances;

(i) The deceased was residing at his sasural with the appellant since last few days prior to the date of occurrence.

(ii) The death of the deceased had occurred at his sasural which was homicidal in nature. He was poisoned.

(iii) After initial hiccup after the marriage between the deceased and the appellant sometimes in the year 1996/1998 and Gauna in the Year 2000, their relationship as husband and wife had normalized. Inasmuch as the criminal litigation filed by her against the in-laws had been compromised/settled.

(iv) The deceased, thereafter, kept on visiting and staying with his wife on his previous several visits to his home from abroad.

(v) Inasmuch as he was remitting money to his wife on regular basis.

(vi) On the date of occurrence, both the deceased and



the appellant had telephonic talks with the family members of the deceased and in the night of the occurrence, they were informed about the serious condition of the deceased.

11. It is thus more than explicit that none of the aforesaid proved facts except the first two would constitute the circumstance (s) adverse to the appellant. The Court may presume some fact from the existence of some other facts. Presumption of facts is a rule in law of evidence that a fact otherwise doubtful may be enforced from certain other proved facts. The Court in order to do justice then exercises a process of reasoning and reaches a logical conclusion as the most probable position.

12. The appellant, as noted above, appeared as DW-3 and deposed that the deceased was addicted to liquor/toddy and used to go outside for consuming wine. On the date of occurrence also, he had gone to bazaar and returned late in the evening in a somewhat precarious condition when his family members were informed to rush to the place. All the relevant witnesses have stated that the deceased was found dressed in trouser and shirt. Notably, the DWs including the appellant were suggested by the prosecution that the victim was administered poison in the wine/toddy. In other words, the prosecution admits that the victim died of consuming poisonous liquor/toddy. The inquest report (Exhibit-5) does not state about presence of foul smell from the body. Incidentally, it may be noticed



that the autopsy was performed on the cadaver on 11.04.2009 at 01:15 PM. The Doctor found his Urine Bladder full of urine. In Court, however, the Doctor PW-4 in reply to a court question stated that he did not find any smell from the body like wine, etc. Considering the character of the medical evidence and the time consumed in conducting the post mortem examination, it is difficult to hold conclusively that the deceased was not drunk when he suffered homicidal death.

13. The counsel for the State has submitted that there is another circumstance which points to the guilt of the appellant. PWs-1, 2 and 3 have deposed that when they reached the sasural of the deceased on the relevant night, no one of her family including the appellant was seen. It has been argued that the appellant had abandoned her house. Investigating Officer (PW-6) had visited the spot the following morning. This witness, in reply to the Court question, has stated about the presence of the appellant, her father and mother besides the dead body. Again in Para-7, the I.O. has reiterated the presence of the appellant in the house. The presence of the appellant in the house when the police visited demonstrates the normal conduct of a family member (wife) who does not suffer from guilty mind. Thus the contention of the prosecution that she was absconding from the house is not well established.

14. On the basis of proved facts at the trial, the counsel



for the State has laid much stress in **Trimukh Maroti Kirkan v. State of Maharashtra (2006) 10 SCC 681** to contend that the onus shall substantially shift on the accused to explain the circumstances that led to the unnatural death of the deceased while staying with her. It is, thus, apt to examine the factual profile of the said case. It was a case where the appellant/accused was charged for committing murder of his wife within 5-6 years of marriage. Considering the facts evidencing from the record, the Trial Court acquitted him of the charge of murder of his wife. On appeal preferred by the State, the judgment of acquittal was reversed and he was held guilty of the said charge. The Hon'ble Supreme Court on revaluation of evidence found that there were several other incriminating circumstances proved against the accused. On his disclosure statement, several incriminating articles were recovered. The deceased was found to have received several bodily injuries besides the ligature mark around her neck. It was pristinely a case of dowry death. The appellant had offered an explanation that she died of snake bite. The Court found overwhelming evidence that the deceased was being subjected to torture and physical harassment preceding to her death by the accused. In the background of these facts, the Apex Court held that if explanation given by the accused leading to her unnatural death was found false, the same reinforces the guilt of the accused. Accordingly, he was held guilty of the charge of murder. Whereas in



the present case, no such evidences/circumstances have remotely emerged. In *State of W.B. v. Mir Mohammad Omar* (2000) 8 SCC 382, the accused had forcibly abducted/kidnapped the victim at about 02:30 hours in the night. The following day, the mangled body was found lying in the hospital. The Trial Court had held the accused guilty only under Section 364/34 of the Indian Penal Code. The state preferred an appeal challenging the acquittal of the accused for murder charge. The accused had not given any explanation as to what happened to Mahesh (victim) after he was abducted. In the aforesaid circumstances, the Court invoked the provision of Section 106 of the Evidence Act and reversed the order of acquittal under Section 302/34 of the Indian Penal Code and held him guilty for the charge of murder. Quite explicitly this is not the scenario present in this case. Even if the court presumes that the deceased was residing at the sasural with the appellant and was thus last seen with her would not be sufficient to presume from the proved facts the guilt of the appellant. In *Jaswant Gir vs. State of Punjab* (2005) 12 SCC 438, Apex Court held that in absence of any other links in the chain of circumstantial evidence, the appellant cannot be convicted solely on the basis of “last seen together” even if version of the prosecution witness in this regard is believed.

15. Having regard to the principles of law discussed above and applying to the facts of the present case, it is difficult to



hold that the chain of circumstances proved at the trial is so complete and coherent as to conclusively find the guilt of the appellant. The appellant is surely entitled to the benefit of doubt.

16. The appeal is allowed. The conviction of the appellant under Sections 302 and 328 of the Indian Penal Code passed in Sessions Trial No. 115 of 2011 is set aside. She shall be released forthwith from jail if not required otherwise.

(Kishore Kumar Mandal, J)

(Prakash Chandra Jaiswal, J): I Agree.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	N.A.F.R.
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