

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 559 of 2014

Arising Out of PS. Case No.-97 Year-2010 Thana- Balrampur District- Katihar

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Ganesh Das, son of late Prabhu Das, resident of Village and P.S. -
Balrampur, District – Katihar.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant : Mr. Jagdish Prasad, Advocate
Mr. Firoz Ahmad, Advocate
Mr. Md. Manzar Kanu, Advocate

For the Respondent/State: Mr. Ajay Mishra (A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 15-05-2018

The sole appellant, husband of the deceased and lying in custody since more than seven years, has preferred the present appeal under Section 374(2) read with Section 389(1) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘Cr.P.C.’) against judgment of conviction and sentence dated 11-06-2014 and 17-06-2014 respectively passed by Sri Harindra Nath, learned Adhoc Additional Sessions Judge Ist, Katihar (hereinafter referred to as ‘Trial Judge’) in Sessions Trial No. 148 of 2012/530 of 2012 (arising out of Balrampur P.S. Case No. 97 of 2010). The appellant by judgment dated 11-06-2014 was



convicted for commission of offence under Sections 302/34 and 201/34 of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order of sentence dated 17-06-2014, for commission of offence under Section 302 of the I.P.C., he was sentenced to undergo imprisonment for life and to pay a fine of Rs. 2,000/- (two thousand). For commission of offence under Section 201 of the I.P.C., he was sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- (one thousand). In default of payment of fine, the appellant was directed to further undergo simple imprisonment for three months. All the sentences were directed to run concurrently.

2. Short fact of the case is that on 06-10-2010, P.W.8 Lalit Mohan Das filed a complaint in the court of learned Chief Judicial Magistrate, Katihar (hereinafter referred to as 'Magistrate'), which was numbered as Complaint Case No. 2922 of 2010. The said complaint on the same date i.e. on 06-10-2010 was referred to the police for registering F.I.R. and investigating the case under Section 156(3) of the Cr.P.C. and as such, on 04-11-2010, a formal F.I.R., vide Balrampur P.S. Case No. 97 of 2010, was registered at 17.00 hrs. (5:00 P.M.) under Sections 304(B), 302, 120(B)/34 of the I.P.C. against following persons:-



1. Ganesh Das, husband of the deceased (appellant),
2. Muniya Das, S/o late Prabhu Das (brother of the appellant,
3. Thumo Devi (mother-in-law of the deceased),
4. Dinesh Das, brother-in-law of the appellant (जीजा),
and
5. Runiwala Das, wife of Dinesh Yadav.

3. After registering F.I.R., the case was investigated and on 31-01-2011 chargesheet was submitted against: 1. Ganesh Das (appellant) and 2. Munia Das, however; three accused persons namely Thumo Devi (mother-in-law of the deceased), Dinesh Das (brother-in-law of the appellant) and Runiwala Das (wife of Dinesh Das) were found innocent. On 19-07-2011, the learned Magistrate, differing with the police report, took cognizance of offence against four F.I.R. named accused, however; the learned Magistrate did not take cognizance of the offence against Dinesh Das (brother-in-law of the appellant). Thereafter, on 19-07-2011, the case was committed to the court of sessions and it was numbered as Sessions Trial No. 148 of 2012. On 30-04-2012, joint charge was framed against 1. Ganesh Das (appellant), 2. Munia Das and 3. Runiwala Das. Subsequently, on 15-10-2012, charge against Thumo Devi was also framed. Against all the accused persons,



charge was framed under Sections 302/34 and 201/34 of the I.P.C.

4. During the trial, to establish the case on behalf of the prosecution, altogether 11 (eleven) witnesses were examined, however; surprisingly none of the witnesses have supported the prosecution case and as such, P.W.1 Jitendra Das, P.W.2 Shyam Mohan Das, P.W.3 Suresh Chandra Das, P.W.4 Ambika Charan Das, P.W.6 Nirmala Devi (mother of the deceased), P.W.7 Pradeep Das, P.W.8 Lalit Mohan Das (informant and father of the deceased), P.W.9 Pavitra Das and P.W.10 Mahendar Das were declared hostile. However, though P.W.5 Jagdish Das and P.W.11 Krishna Das were examined as 'hearsay witnesses', their evidence does not matter regarding showing complicity of the appellant in the present case. During trial, neither investigating officer was examined nor doctor, who conducted *post-mortem* examination on the dead body of the deceased, was examined. So far as *post-mortem* examination report is concerned, it was got exhibited under the provision contained in Section 294 of the Cr.P.C. Even the complaint petition, which was the basis of the F.I.R., was not got exhibited, since the complainant/informant in his evidence only proved his signature on the complaint petition, however; he did not say that



the complaint petition was typed in his presence or not. After examination of the prosecution witnesses, statement of accused persons under Section 313 of the Cr.P.C. was got recorded, in which, the appellant and other accused persons, who were put on trial, claimed to be innocent.

5. Sri Jagdish Prasad, learned counsel assisted by Mr. Firoz Ahmad, learned counsel for the appellant, after referring to entire evidence, has argued that it was a case of 'No Evidence', even then, the learned Trial Judge, in a peculiar manner, has passed the judgment of conviction and sentence. He submits that it appears that the learned Trial Judge, taking aid of Section 106 of the Indian Evidence Act, 1874 (hereinafter referred to as 'Evidence Act'), has passed the judgment of conviction and sentence in respect of the appellant. Sri Jagdish Prasad, learned counsel for the appellant submits that on the basis of same evidence, the learned Trial Judge has passed judgment of acquittal in respect of other three accused persons, who were tried together with the appellant, but to the reasons best known to him, he has held the appellant guilty and passed judgment of conviction and sentence. As per learned counsel for the appellant, the informant/complainant in the complaint petition, which was not even got exhibited, himself had accepted that he



was informed by this appellant that his wife was missing. This information was given *telephonically* on 25-09-2010. He further submits that in complaint petition, the complainant had tried to explain the reason for delay in filing the complaint petition that after noticing the fact that dead body was recovered from a pond in a village namely Karandighi, he went to the police station i.e. Karandighi Police Station as well as Balrampur Police Station, however; his complaint was not entertained, thereafter, he filed complaint in the court of learned Magistrate. However, fact remains that complaint petition was filed much belatedly i.e. on 06-10-2010, whereas, as per complainant/informant, the dead body itself was found on 28-09-2010. Learned counsel for the appellant submits that in the case, besides other witnesses, mother of the deceased and father of the deceased, who was informant in the present case, had not supported the prosecution case, even though, the learned Trial Judge has passed the judgment of conviction and sentence. It has been argued that it is not a case that deceased was done to death in the house of the appellant and as such, there was no application of Section 106 of the Evidence Act. He submits that since the daughter of the informant went missing, immediately he was informed by the appellant, which fact has been stated by the complainant in the



complaint petition itself. He further submits that while recording statement under Section 313 of the Cr.P.C., it is mandatorily required to explain all the evidences and circumstances against an accused collected during trial, however; on perusal of statement of the appellant recorded under Section 313 of the Cr.P.C., it is evident that only formality was done, otherwise, no circumstance was explained to him and as such, the whole proceeding has vitiated. On aforesaid ground, a prayer has been made for setting aside the judgment of conviction and sentence.

6. Sri Ajay Mishra, learned Addl. Public Prosecutor, though opposed the appeal, was not in a position to properly defend the case of prosecution.

7. Besides hearing, we have also examined the entire evidence on record. Fact remains that in the case, the complaint petition, which was the basis of the F.I.R., was not got exhibited in true sense, even then, for just decision in the matter, we have cursorily examined the complaint petition.

8. As per complaint petition, the P.W.8 informant/complainant has stated that his daughter Meena Devi was married with appellant Ganesh Das about 7-8 years back. Thereafter, she started living in her in-laws' house and she was blessed with two sons, one was aged about 6 years and second



aged about 3 years. It was alleged in the complaint petition that the appellant, his brother, his sister and others were demanding Rs. 50,000/- (fifty thousand) as dowry and after non-fulfillment of demand of dowry, his daughter was being abused and also assaulted. On 20-09-2010, the accused persons, after assaulting the daughter of the informant, had ousted her and thereafter, his daughter Meena came to her parents' house. Thereafter, step was taken for holding *panchayati*. Subsequently, Ganesh (appellant), Munia Das (brother of the appellant) and Dinesh Das (brother-in-law of the appellant) came to the house of the informant and requested for allowing his daughter to come to her in-laws' house and thereafter, विदाई (*Vidai*) was done. On 25-09-2010 in the night at 10:00, the appellant Ganesh Das telephonically informed the informant that his daughter was not in house. On 26-09-2010, the informant/complainant, with his brother Shyam Mohan Das (P.W.2), went to village Balrampur and made search, but no information he could gather. The complainant/informant further stated in complaint petition that Ganesh Das (appellant) informed that Meena was missing from 8:00 in the night of 25-09-2010, but her husband had not given any information to the police nor any search was made by him. On 28-09-2010 in the evening from a pond, Karandighi police



recovered a dead body and it was sent to Raiganj Hospital, where complainant/informant went and identified the dead body. The complainant further alleged in the complaint petition that accused persons in a criminal conspiracy had tortured his daughter Meena and after killing her, her dead body was thrown in the pond. Even accused persons had not allowed the informant/complainant to participate in दाह संस्कार (last rites). In paragraph – 5 of the complaint petition, the informant/complainant disclosed that after the occurrence, he went to Balrampur Police Station and also Karandighi Police Station, however; no case was instituted and thereafter, complaint petition was filed. This complaint petition was filed on 06-10-2010 and on the same date, it was referred to the police for registering F.I.R. and as such, on 04-11-2010, the F.I.R., vide Balrampur P.S. Case No. 97 of 2010, was registered. During investigation, the police did not find any accusation true against most of the accused persons, arrayed in the complaint petition as accused, and as such, chargesheet was submitted only against two accused persons namely Ganesh Das (appellant) and Munia Das (brother of the appellant), however; other three accused persons were found innocent. The learned Magistrate, differing with the police report, took cognizance against all the F.I.R.



named accused persons except one accused namely Dinesh Das (brother-in-law of appellant).

9. On examination of entire evidence, one thing is clear that none of the prosecution witness has even whispered that in the occurrence, directly or indirectly the appellant participated or not. However, it appears that the learned Trial Judge, only taking aid of Section 106 of the Evidence Act, has passed the judgment of conviction and sentence. In the case, P.W.1 (Jitendra Das), P.W.2 (Shyam Mohan Das), P.W.3 Suresh Chandra Das), P.W.4 (Ambika Charan Das), P.W.6 (Nirmala Devi), P.W.7 (Pradeep Das), P.W.8 (Lalit Mohan Das), P.W.9 (Pavitra Das) and P.W.10 (Mahendar Das) had not at all supported the prosecution case and as such, they were declared hostile. Some of the witnesses i.e. P.W.5 (Jagdish Das) and P.W.11 (Krishna Das) ofcourse were not declared hostile, on examination of their evidence, nothing has come to draw an inference showing involvement of the appellant. The mother of the deceased namely Nirmala Devi, who was examined as P.W.6, did not support the prosecution case and as such, she was declared hostile. Similarly, the complainant/informant Lalit Mohan Das, father of the deceased, was examined as P.W.8 had not supported the prosecution case and he too was declared



hostile, however; in his evidence, he only proved signature on the complaint petition, which was marked as Ext. 1. The complaint petition, which was typed copy, was not properly got exhibited. During the trial, even *post-mortem* examination report was not brought on record, rather photocopy of the *post-mortem* report was got exhibited under Section 294 of the Cr.P.C.

10. Learned counsel for the appellant has rightly argued that even though, photocopy of the *post-mortem* report was got exhibited, in absence of examination of doctor, who conducted *post-mortem* examination as well as non-explanation by the prosecution as to under what circumstances the doctor was not examined, no reliance can be placed on such *post-mortem* examination report. In this case, the investigating officer has also not been examined.

11. On overall examination of the evidence, it is difficult to perceive as to under what circumstances, the learned Trial Judge has passed the judgment of conviction and sentence in respect of appellant, in view of fact that there is no direct or indirect evidence showing complicity of the appellant. It is not a case that the dead body was found in the premises of the appellant and death was unnatural. In the present case, it was case in the complaint petition of the complainant/informant that



he was informed on 25-09-2010 itself that his daughter was missing. Had it been a case that appellant had killed daughter of the informant, there was no reason for him to inform the informant regarding missing of the daughter of informant. In the case, dead body was not found in the premises of the appellant. It is also peculiar that on the same material, the learned Trial Judge has passed the judgment of acquittal in respect of other three accused persons, but on the same set of fact, the learned Trial Judge, only considering the fact that appellant was the husband of the deceased, has passed the judgment of conviction and sentence.

12. On examination of entire evidence, we are of the considered opinion that the judgment of conviction and sentence is not sustainable in the eye of law and as such, the judgment of conviction dated 11-06-2014 and order of sentence dated 17-06-2014 passed in Sessions Trial No. 148 of 2012/530 of 2012 (arising out of Balrampur P.S. Case No. 97 of 2010) by Sri Harindra Nath, learned Adhoc Additional Sessions Judge Ist, Katihar is, hereby, set aside and appeal is allowed.

13. Since the judgment of conviction and sentence in respect of appellant has already been set aside and he is in



custody, it is directed to release him forthwith, if not required in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	N/A
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