

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.9 of 2014

Arising Out of PS.Case No. -30 Year- 2010 Thana -ASHTHWAN District- NALANDA
(BIHARSHARIFF)

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1. Urmila Devi, W/O Late Pankaj Manjhi, Resident Of Village- Lakhnu Bigha, P.S.
Asthawan, District Nalanda.

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Ajay Kumar Thakur, Adv.
Ms.Swati Sinha, Adv.
For the Respondent/s : Mr.S.B.Verma.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: 05-07-2018

This Criminal Appeal has been preferred for setting-aside the judgment dated 22nd day of November, 2013 passed by the learned Additional Sessions Judge-I, Nalanda at Biharsharif (hereinafter referred to as learned 'trial Court') in Sessions Trial No.394 of 2010. By the impugned judgment the learned trial Court has been pleased to hold the appellant guilty under Section 302 of the Indian Penal Code and has sentenced her to undergo rigorous imprisonment for life and to suffer a fine of Rs.2000/-. In default of payment of fine she has been further sentenced to undergo rigorous imprisonment for one month. The period of sentence shall run concurrently.

The prosecution case is based on the statement of one Sushila Devi (P.W 12) who gave her Fardbeyan (Ext.3) wherein she alleged that yesterday evening she along with her husband Pankaj Manjhi (deceased) and daughter-in-law, Urmila Devi (appellant) returned to their house after working at the Chimney Bhatti. It is stated that the informant along with her two daughters slept in the



middle room, whereas, her son Pankaj Manjhi and her wife Urmila Devi went to sleep in the southern side room. It is alleged that at about 03.00 A.M her daughter, Sangeeta aged about 13 years woke her up and said that Pankaj had been killed by Urmila, she started crying. The informant says that she got up and found that the door was closed from inside and her daughter-in-law Urmila Devi was assaulting her son Pankaj. The informant alleged that when she peeped into the room through the whole of the door, she found that her son was crying in pain. The informant is said to have raised Hulla on which Mahesh Choudhary (P.W.6), Pankaj Kumar (not examined) and Ram Swarup Manjhi (P.W.1) and others reached there and they broke open the door. By this time her son Pankaj Manjhi had already died. It is alleged that the hand of Urmila Devi was soaked in blood, on the place of occurrence there was a 'Tangi' and 'Trikone Pathar' which were stained with blood. The informant alleged that this appellant had killed Pankaj Manjhi (son of the informant) with the 'Tangi' and the 'Trikone Pathar'. It is further alleged that when on opening the door this appellant wanted to flee away, the co-villagers caught hold of her and assaulted her in anger. The reason for the murder is said to be the regular quarrel between the son and her daughter-in-law.

On the basis of the Fardbeyan of the P.W.12, a formal First Information Report giving rise to Asthawan P.S.Case No.30 of 2010 dated 22.03.2010 under Section 302 of the Indian Penal Code was registered. After investigation police submitted a charge-sheet against the appellant, cognizance was taken and the record was committed to the Court of Sessions for trial.

In course of trial, prosecution examined as many as 16 witnesses, whereas, defence did not bring any evidence but pleaded total denial of the occurrence and found that the prosecution witnesses are consistent in supporting the prosecution case. The informant, Susheela Devi (P.W.12), her daughter-in-law Sangeeta Devi (P.W.8), father of the deceased Rajendra Manjhi @ Arjun



Manjhi (P.W.9) and co-villager, Ramswarup Manjhi (P.W.1) are consistent on the prosecution case and the manner of occurrence. Sakeena Kumari (P.W.10) who is non else but the daughter of the deceased aged about 8 years at the time of her deposition has stated in clear words that her mother Urmila Devi had killed her father during the night hours. This witness has stated that when she told her mother not to kill her father, her mother threatened to kill her. This witness has stated that she had seen killing of her father.

Other prosecution witness Rajesh Chaudhary (P.W.11) has also supported the prosecution case. The learned trial Court found from the evidence of the Investigating Officer (P.W.13) that he had seized the blood stained stone and Tangi. He had proved the seizure list which was prepared in presence of Sanjay Kumar and Bharat Kumar whose signatures have been proved by him as Exts. 5 and 5/1 respectively. He had prepared the inquest report and had seized the blood stained Kulhari (also called Tangi) and the stone. The postmortem report was also proved and the injuries found thereon supports the ocular evidences available on the record. The learned trial Court believed the evidences present on the record and took a view that the defence was not able to take any contradictions in the statement of the prosecution witnesses. The appellant has, therefore, been convicted and sentenced as stated above.

While assailing the impugned judgment of the learned trial Court, learned counsel submits that the prosecution witnesses are not consistent and that the Investigating Officer had not proved the seized 'stone' and 'Tangi' in course of trial. Learned counsel also submits that the blood stained stone and Tangi were not sent for examination to the Forensic Science Laboratory and the finger prints were also not examined, therefore, it would not be safe to convict the appellant on the basis of the materials which have come in course of trial.

On the other hand, learned A.P.P representing the State submits that



this is an open and shut case wherein the prosecution witnesses are the mother, father, sister and daughter-in-law as also the co-villagers family members who are the natural witnesses present in the house during night hours of the deceased. Apart from the co-villagers who are the independent witnesses are also consistent in support of the prosecution case. Learned counsel submits that, in the nature of the evidences which are available on the record merely because the blood stained stone and Tangi were not sent to the Forensic Science Laboratory and the finger prints were not examined the appellant cannot be given the benefit of doubt.

Having heard learned counsel for the appellant as well as learned A.P.P representing the State and upon perusal of the evidences available on the record, we find that the appellant of the present case was caught not only in presence of the family members of the deceased but also in presence of large number of co-villagers. The prosecution witnesses are consistent on the point that when the door of the room was broken, the appellant was found with her blood stained hands, there was a 'Trikona Stone' and 'Tangi' which were also having blood stains and this appellant was caught at the spot itself. The evidence of P.W.10 who is non-else but the daughter of the deceased and is aged about eight years only supports the prosecution case. This witness had seen the appellant killing the deceased who happened to be her father. The evidence of the co-villagers and the Investigating Officer are consistent and support the prosecution case beyond any reasonable doubt. The postmortem report (Ext.8) has also been proved by Dr. Awadesh Kumar Sinha (P.W.16) supports the ocular evidence as it would appear from a perusal of the postmortem report that there were lacerated wound over right side of eyebrow which was bone deep and the bone was fractured. Nasal bone was also broken. Lacerated wound were there over the upper lip. On dissection of skull, the bone over the right side of forehead was found fractured. All these injuries were caused by hard blunt substance blow over



forehead.

On the face of the credible evidence coming through the eye-witnesses and the ocular evidence getting support from the postmortem examination report (Ext.8), we are of the opinion that only because the blood stained stone and Tangi were not sent to the Forensic Science Laboratory and for finger print examination, the appellant cannot be given the benefit of doubt. There are clinching evidences on the record to prove her guilt. In the case of **Ganpathi and another vs. State of Tamilnadu** reported in **AIR 2018 SC 1635 (Paragraph No.14)** the Hon'ble Supreme Court has once again held that merely because the eye-witnesses are family members this evidence cannot per-se be discarded.

We do not find any error in the judgment of the learned trial Court. The Criminal Appeal has no merit. It is, accordingly, dismissed. The bail bond of the appellant is cancelled. She is directed to surrender forthwith and to undergo the remaining sentence.

Let a copy of this order be sent to the Court of Chief Judicial Magistrate, Nalanda at Biharsharif for taking steps to procure the presence of the appellant and to send her in judicial custody for undergoing the remaining sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/R.R.Ojha

AFR/NAFR	
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