

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1086 of 2012

Arising Out of PS. Case No.-121 Year-2007 Thana- BAUNSI District- Banka

Talo Soren D/o Late Dewan Soren Resident of Village- Jangalpura, Police
Station- Bounsi, District- Banka.

... .. Appellant/s

Versus

The State of Bihar

.. ... Respondent/s

Appearance :

For the Appellant/s : Mr. Ajay Mukherjee, Advocate

For the Respondent/s : Mr. A.K.Sinha (App)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 04-05-2018

Heard learned counsel for the appellant and learned
APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 29.09.2012 and order of sentence dated 06.10.2012 passed by Adhoc Additional Sessions Judge-IV, Banka in Sessions Trial No. 154 of 2008 arising out of Bounsi P.S. Case no. 121 of 2007, whereby the learned trial Court convicted the accused Talo Soren under Sections 302/34 and 201/34 of the Indian Penal Code and sentenced her to undergo rigorous imprisonment for life and also slapped her with a fine of Rs. 1,000/- under Section 302/34 of the Indian Penal Code and further sentenced her to undergo R.I. for two years and slapped her with a fine of Rs. 2,000/- under Section 201/34 of the Indian Penal Code and in



default of payment of fine, further sentenced her to undergo R.I. for one month and two months respectively. However, all the sentences were directed to run concurrently.

3. The factual matrix of the case is that Bounsi P.S. Case no. 121 of 2007 was instituted under Section 302/34 of the Indian Penal Code against accused Barka Soren, Talo Soren and mother of Barka Soren, namely, Bitiya Hembrum on the basis of fardbeyan of Malik Murmu S/o Late Churka Murmu recorded by S.I. Satyendra Sharma, P.S. Bounsi dated 08.08.2007 at around 04:30 PM in the baranda of Barka Soren with the allegation, in succinct that the son of the informant namely, Ramchandra Murmu had brought sister of Barka Soren namely, Talo Soren in his house and kept her as his wife as he was in love with her. He had also given recognition to her as his daughter-in-law and decided to perform marriage of both in the month of December. He had given information of the same to maternal people of his daughter-in-law. In the meantime, on 04.08.2007, Barka Soren arrived at his house and took his sister and his brother-in-law namely, Ramchandra Murmu to his house on 05.08.2007 on the pretext of extending help to him in planting the paddy seedling. On 08.08.2007 at around 10:00 AM, one person of village Jangalpura informed



him that his son Ramchandra Murmu has been eliminated. On the said information, he along with some villagers arrived at village Jangalpura and found his son dead on a cot in the baranda of Baraka Murmu. His nose was bleeding and frothing and inmates of the house were absconding. On grilling locals, he learnt that Barka Murmu in association of his sister Talo Soren and his mother and some other people has strangled his son to death in the past night. He has claimed that Barka Soren, his sister Talo Soren and his mother along with some other person has strangled his son Ramchandra Murmu to death. The bone of contention is said to be keeping of Talo Soren in his house with intent to perform marriage with her by his son Ramchandra Murmu.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused Talo Soren keeping the investigation pending against Barka Soren and Bitiya Hembrum.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused and committed the case to the court of sessions and after



commitment and on transfer finally the case came in *seisin* of Adhoc Additional Sessions Judge-IV, Banka for trial.

6. Charge against accused Talo Soren was framed under Sections 302/34 and 201/34 of the Indian Penal Code. Charge was read over and explained to her to which she pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether six prosecution witnesses namely, Mahashay Murmu as PW-1, Dularchand Hembrum as PW-2, Dr. Ashok Kumar Singh who had conducted autopsy of the deceased as PW-3, Informant Malik Murmu as PW-4, I.O. Satyendra Sharma as PW-5, and Diwakar Yadav as PW-6. Out of the aforesaid witnesses, PW-6 happens to be formal witness. The prosecution has also filed and proved some documents by way of documentary evidence.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming herself to be innocent and falsely implicated in the case. The accused has neither adduced any ocular nor documentary evidence, in buttress of her case.



9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that there is no eye witness of the occurrence. Virtually, it is a case of circumstantial evidence. Barring keeping the sister of Barka Soren, namely, Talo Soren at his house by the deceased Ramchandra Murmu and taking the deceased and Talo Soren by Barka Soren at his house on the pretext of extending help to him in planting the paddy seedling on 05.08.2007 and recovery of dead body of the deceased in the baranda of Barka Soren on 08.08.2007, there is no other circumstance indicating the complicity of the appellant in the occurrence. In the case of circumstantial evidence, all the



chain of circumstances must be tightly linked and substantiated to give only hypothesis of the guilt of the appellant in the occurrence, but barring the aforesaid circumstance, there is no other circumstances like any animosity of the appellant with the deceased, motive behind the occurrence, presence of deceased in the house of appellant altogether for three days i.e. from the date of his arrival till his death in the said house, finding of any incriminating article at the place of occurrence etc. Thus, the chain of circumstances are not tightly linked to give only hypothesis regarding guilt of the appellant in the occurrence. It is further submitted that the informant has himself stated in his cross-examination that the appellant Talo Soren is innocent. He has also stated that there was love affair between his son (deceased) and Talo Soren. Negotiation of marriage was going on and there was no dispute in the said negotiation. They used to like Talo Soren and the accused persons also used to like his son. So, in view of the aforesaid statement of informant, there was no reason for committing murder of her beau by the appellant. I.O. has also not found any incriminating material at the place of occurrence. As per the account of the informant, the appellant had not absconded rather was present at the place of



occurrence on arrival of the informant there. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing trustworthy, consistent and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant by the learned trial court is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that though it is a case of circumstantial evidence as there is no eye witness of the occurrence, but the circumstances such as keeping Talo Soren, sister of Barka Soren in his house without marriage by the deceased, taking the deceased and Talo Soren by Barka Soren at his house on 05.08.2007 and finding of dead body of the deceased in the baranda of Barka Soren on 08.08.2007, eloquently indicates the complicity of the appellant in the occurrence and the chain of circumstances are tightly linked to give only hypothesis of the guilt of the appellant in the occurrence and medical evidence also goes to corroborate the prosecution case and after correctly appreciating the facts and material on record, the learned trial court has rightly passed



the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. From perusal of record, it appears that to substantiate its case, the prosecution has examined altogether three material witnesses of the case namely, PW-1 (Mahashay Murmu), PW-2 (Dularchand Hembrum) and informant PW-4 (Malik Murmu). From perusal of testimony of PW-1 and PW-2, it appears that the aforesaid witnesses are hearsay witnesses as though they have stated about taking the deceased to his house located in village Jangalpura by Barka Soren along with his sister Talo Soren to extend help to him in planting the paddy seedling, getting information about death of the deceased (Ramchandra Murmu) by some person of village Jangalpura on 08.08.2007, rushing to the village Jangalpura on the said information and finding the dead body of Ramchandra Murmu in the baranda of the house of Barka Soren bearing ligature mark on his neck and his nose bleeding and mouth frothing. But, PW-1 in paragraph 7 of his cross-examination has stated that he had not seen the occurrence rather has given statement as what he listened. He has not disclosed the name, identity and source of said information and none has come



forward to corroborate the factum of divulgence of the aforesaid occurrence to him. Likewise, PW-2 (Dularchand Hembrum) has stated in paragraph 9 of his cross-examination that he got knowledge about death of Ramchandra Murmu from people of Santhal community and whatever statement, he has given before the court is hearsay. He has also not given the name and identity of the person from whom he has learnt the occurrence and none has also come forward to corroborate the factum of divulgence of the aforesaid occurrence to him. Thus, for want of corroboration, the statements of PW-1 and PW-2 is not admissible in evidence even as hearsay witnesses of the case.

15. The only witness left to be examined is the informant Malik Murmu (PW-4). From perusal of testimony of the informant as given in his examination-in-chief, it appears that he has supported the occurrence as stated by him in his fardbeyan by stating that on the date of occurrence, people arrived to him from village Jangalpura and informed him about murder of his son (Ramchandra Murmu) and keeping of his dead body in the house of Barka Soren in village Jangalpura. In the said information, he along with his villagers rushed there and learnt that Barka Soren, Bitiya



Hembrum, Talo Soren, Chunda, Nandu, Babua, Gopal, Buddhu, Thakur, Pradhan, Karu, Shivilal, Dhodo, Golo, Dharmu have committed murder of his son by holding meeting. Dead body of his son was lying on the cot in the baranda of Barka Soren bearing abrasion on his left hand and ligature mark on his neck. His nose was bleeding and mouth was frothing. There was love between his son Ramchandra Murmu and Talo Soren. He used to pay visit to her house and Talo Soren also used to pay visit to his house. He had fixed marriage of Ramchandra Murmu with sister of Barka Soren, namely, Talo Soren. Three days preceding to the occurrence, Barka Soren had taken his son to his house for planting the paddy seedling. Thereafter, his son did not regress his house alive and the accused persons were absconding. But, from perusal of aforesaid testimony of the informant, it appears that he also does not happen to be eye witness of the occurrence of committing murder of his son by the aforesaid accused persons rather he is a hearsay witness of the aforesaid occurrence of committing murder of his son by the appellant and others.

16. Thus, from perusal of aforesaid evidence of the prosecution, it appears that there is no eye witness of the



occurrence and it is a case of circumstantial evidence. It is settled principal of law that to hold the accused guilty on circumstantial evidence, the circumstances from which an inference of guilt is sought to be drawn must be cogent and firm. Those circumstances should be of a definite tendency unerringly pointing towards the guilt of the accused. 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 none-else and the circumstantial evidence in order to sustain conviction must be complete and incapable of explanation of any other hypothesis than that of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence. But, from perusal of record, it appears that only incriminating circumstances against the appellant and other accused persons is that the deceased Ramchandra Murmu was in love with Talo Soren and has kept her in his house without marriage and three days preceding to the occurrence, brother of appellant namely, Barka Soren had taken the deceased along with Talo Soren at his house on the pretext of extending help to him in planting the paddy seedling and thereafter three



days later to his taking there, dead body of the deceased (Ramchandra Murmu) was found in the baranda of Barka Soren bearing abrasion on his left hand and ligature mark on the neck and his nose bleeding and mouth frothing. There is no other circumstance such existence of any animosity between the deceased and the appellant and her family members, motive behind the occurrence, finding of any incriminating material at the place of occurrence by the I.O., presence of deceased in the house of Barka Soren altogether for three days preceding to his death. Moreover, there was hiatus of three days between the date of taking the deceased at his house by Barka Soren and his death. Thus, the chain of circumstances, in my considered opinion, is not complete and tightly linked to give hypothesis about guilt of the appellant in the occurrence.

17. Moreover, from perusal of testimony of the informant, it appears that the informant in paragraph 48 of his cross-examination has candidly stated that the appellant Talo Soren is innocent. In paragraphs 29, 30, 38 and 39 of his cross-examination, he has stated that Talo Soren had no animosity with them or their son. They have also no animosity with family members of Talo Soren rather his son



and Talo Soren was in love. Both were bachelor and negotiation of marriage was going on between them. There was no dispute in the aforesaid negotiation. They used to like Talo Soren and her family members also used to like his son. He has further stated in paragraph 22 of his cross-examination that when he arrived in village Jangalpura, he met Talo Soren there. Talo Soren was sitting near the dead body of his son. She divulged him that his son had died one day back. There was nothing there barring the dead body of his son and Talo Soren. The aforesaid statement of the informant eloquently indicates that the appellant Talo Soren is innocent and she has no complicity in the occurrence of murder of his beau (Ramchandra Murmu) as she was in love with him and negotiation of marriage was going on between them and family members of both the couple used to like each other and there was no dispute in the negotiation of their marriage and also there was no animosity between them.

18. Moreover, from perusal of testimony of the informant, it appears that he happens to be tuted witness and has given his fardbeyan and statement at the instance of three old persons of the village as in paragraph 32 of his cross-examination, he has stated that he had given statement before



the police at the instance of three old persons of the village. He has vented his ignorance as on whose dictation, he had given the statement, meaning thereby that he had given statement on dictation of someone and not on his own. Hence, his evidence is not worth credence and reliable.

19. Informant does not happen to be eye witness of the occurrence rather is a hearsay witness as in paragraph 24 of his cross-examination, he has stated that he had not seen anyone eliminating his son. He had only seen him dead. He has also vented his ignorance about manner of his murder. In paragraph 41 of his cross-examination, he has further stated that old fellows in village Jangalpura had divulged him about murder of his son. They had also divulged that Talo Soren, Barka Soren and others had committed murder of his son. He had not disclosed the name of the said old fellows of village Jangalpura to anyone. In paragraph 42 of his cross-examination, he has stated that he has not inquired about name of that old fellows and he has also stated that if the old fellows had not divulged the occurrence to him, he would have not lodged the case. The aforesaid statement of the informant goes to suggest that he has given the aforesaid statement regarding committing murder of his son by the appellant Talo



Soren, Barka Soren and others on the basis of information given to him by the old fellows of village Jangalpura, but he has not given the name and identity of the aforesaid persons and none has come forward to corroborate the factum of divulgence of the aforesaid occurrence to him. Hence, for want of corroboration the aforesaid evidence of the informant even as a hearsay witness is not worth credence and reliable.

20. Hon'ble Apex Court in *Shard Birdhichand Sarda Vs. State of Maharashtra reported in 1984 (4) SCC 116* has postulated the cardinal principle regarding the appreciation of circumstantial evidence by holding that whenever the case is based on circumstantial evidence, the following features are required to be complied with and proved by cogent evidence:

(i) The circumstances from which the conclusion of guilt is to be drawn must or should be and not merely may be fully established (ii) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty (iii) The circumstances should be of a conclusive nature and tendency; (iv) They should exclude every possible hypothesis except the one to be proved; and (v) there must be a chain of evidence so



complete as not to leave any reasonable ground from the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

21. Hon'ble Apex Court in *Kanhaiya Lal Vs. State of Rajasthan reported in (2014) 4 Supreme Court Cases 715* has been pleased to rule that the circumstances of last seen together does not by itself necessarily lead to inference that it was accused who committed crime. There must be something more establishing connection between accused and the crime, that points to guilt of accused and none else. Mere non-explanation of being last seen together with deceased person on part of accused, by itself cannot lead to proof of guilt against him. It is further held that where a case rests squarely on circumstantial evidence, reiterated, inference of guilt can be justified only when all incriminating facts and circumstances are found to be incompatible with innocence of accused or guilt of any other person. Circumstances from which an inference as to guilt of accused is drawn have to be proved beyond reasonable doubt.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and



miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellant is acquitted of the charges levelled against her. As the appellant is in custody, she is directed to be released forthwith from the custody, if not wanted in any other case. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

Dr. Ravi Ranjan, J.-I agree.

(Dr. Ravi Ranjan, J)

rohit/-

AFR/NAFR	AFR
CAV DATE	29-03-2018
Uploading Date	05-05-2018
Transmission Date	05-05-2018

