

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.338 of 2013

(Against the judgment of conviction dated 25.02.2013 and the order of sentence dated 26.02.2013 passed by the Adhoc A.D.J.-IV, Jamui in Sessions Trial No. 119 of 2011 arising out of Chakai P.S. Case No. 123 of 2010)

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1. PUNIYA DEVI, W/O AMRIT MAHTON @ Amrit Yadav, R/O VILLAGE - DULAMPUR, P.S. CHAKAI, DISTRICT - JAMUI
 2. UMESH YADAV @ UMESH MAHTON S/O AMRIT MAHTON R/O VILLAGE - DULAMPUR, P.S. CHAKAI, DISTRICT - JAMUI

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sourendra Pandey
Mr. Rajoday Satyjeet
For the Respondent/s : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 12-07-2018

Heard learned counsel for the appellants and
learned Additional Public Prosecutor, appearing on behalf
of the State.

2) This appeal has been filed against the
judgment of conviction dated 25.02.2013 and the order of
sentence dated 26.02.2013 passed by Sri Jai Ganesh Singh,
Adhoc Additional Sessions Judge-IV, Jamui in Sessions
Trial No. 119 of 2011 arising out of Chakai P.S. Case No.
123 of 2010, whereby and whereunder the above named



appellants have been convicted for the offence under sections 302/34 and 201/34 of the Indian Penal Code and sentenced to undergo life imprisonment along with fine of Rs. 10,000/- for the offence under section 302/34 of the Indian Penal Code and three years imprisonment along with fine of Rs. 5000/- for the offence under section 201/34 of the Indian Penal Code. Further, in default of payment of fine, they will undergo Simple Imprisonment for Six months for Rs. 10,000/- and three months for Rs. 5000/- in addition to their sentence of conviction. Both the sentences shall run concurrently. The order further stated that first five years of the conviction of Umesh Yadav shall be rigorous imprisonment and rest will be simple imprisonment while Puniya Devi have to undergo 2 years of rigorous and rest simple imprisonment.

3) The facts of the case, in brief, is that one Jodho Yadav gave his *fardbeyan* before the Sub-Inspector of Chakai P.S. on 30.09.2010 alleging therein that his son-in-law Umesh Yadav, Bholi Yadav, Amrit Mahto, Puniya Devi, Anpi Devi and Tilak Yadav assaulted the daughter of the informant Uma Devi and killed her by strangulating and



threw her in a well. The said Jodho Yadav further stated that his daughter used to complain her mother, brothers and others that she was being tortured on account of non-fulfillment of the demand of Rs. 50,000/- and her in-laws used to threaten her that if the said demand is not fulfilled, she will be killed and Umesh Yadav would be remarried. The informant said that he used to take away his daughter on such threat but her in-laws again approached and pleaded sorry for their acts and took away his daughter and again started torturing her for dowry. The informant stated that he apprehends that all the named accused persons have connived together to kill his daughter for non-fulfillment of demand of Rs. 50,000/- and threw her body in the well.

4) On the basis of the aforesaid *fardbeyan* of the informant, Chakai P.S. Case No. 123 of 2010 was registered on 30.09.2010 for the offence under sections 302/34 and 201/34 of the Indian Penal Code against six named accused persons, including the appellants. After investigation, the Police submitted charge-sheet against the appellants for the offence under sections 302 and 201/34 of the Indian Penal Code. On the basis of the charge-sheet, the



learned Chief Judicial Magistrate took cognizance and the case was committed to the Court of learned Sessions Judge, Jamui. On 02.05.2011, charge was framed for the offence punishable under sections 302/34 and 201/34 of the Indian Penal Code. The accused persons denied all the charges and claimed to be tried.

5) During trial, the prosecution has examined altogether 11 witnesses namely, P.W. 1/Anil Yadav, P.W. 2/Jodhi Yadav @ Jodhi Mahton is the informant of the case, P.W. 3/Ganesh Yadav, P.W. 4/Bhushan Kant Rai is the Investigating Officer, P.W. 5 Baleshwar Yadav, P.W. 6 Hugal Yadav, P.W. 7 Kishore Yadav, P.W. 8 Narayan Yadav, P.W. 9/Nagina Paswan is the Doctor, who has conducted the Postmortem of the deceased. P.W. 10/Sudhir Yadav and P.W. 11/Sunil Yadav.

6) In order to establish the charges, the prosecution has proved the following documents as Exhibits:-

Exhibit – 1 – Fardbeyan of the Informant.

Exhibit – 2 – Medical Report

Exhibit – 3 – Inquest Report



Exhibit – 4 – Postmortem Report.

7) Before proceeding further, it would be necessary to firstly examine the evidence of the prosecution witnesses :-

P.W. 1/Anil Yadav, who is brother of the deceased, has stated in his evidence that the marriage of his sister was solemnized with accused Umesh Yadav. Soon after the marriage, they started demanding Rs. 50,000/- from her and when demand was not fulfilled, they started torturing his sister. Thereafter, due to non-fulfillment of money, both the appellants alongwith other accused persons committed murder of his sister. This witness further stated that earlier also accused persons used to assault her.

After receiving message about her death, this witness went to her Sasural and found her sister dead. All accused persons had fled away from the place of occurrence. Police was informed, police came and took statement of his father. Statement of witnesses were also taken. Dead body was sent for postmortem. After postmortem, the deceased was cremated by her family members and the witnesses.



In cross-examination, the defence could not ask anything which could have helped them.

The witness has also denied the suggestion that her sister died in an accident.

P.W. 2/Jodhi Yadav, who is informant of the case, has re-stated his statement made in the First Information Report, which is not necessary to be reiterated.

From this witness also, the defence could not extract anything, which could make its evidence unbelievable.

P.W.3/Ganesh Yadav has stated in his evidence that the deceased was married with accused Umesh Yadav. All the accused persons used to torture and assault her for demand of money. Once, they had gone to settle the dispute with the accused persons, but in presence of the witnesses, demand of money was made. On receiving information about the death of the deceased, he along with father and brother of the deceased had gone there. This witness had seen the dead body as also the mark on the neck. All the accused persons had fled away from the house.

From this witness also, the defence, in his



cross-examination, could not extract anything, which could have helped them.

P.W.4/Bhushan Kant Rai, who is Investigating Officer of the case, has stated in his evidence that on 30.09.2010, he was posted at Chakai Police Station. On that date, he took charge for investigation of Chakai P.S. Case No. 123 of 2010. First of all, he went to the place of occurrence and recorded the fardbeyan of the informant. The witness has stated about the recording of the fardbeyan in his writing, which has been proved as Exhibit-1. The witnesses have also proved the formal F.I.R. (Exhibit-2) and Inquest Report (Exhibit-3).

This witness also stated about sending the dead body for postmortem and receiving the postmortem report. Further he stated that after investigation, charge-sheet has been submitted against all the accused persons.

In cross-examination, he clarified that since the dead body was recovered near the well, the same was taken as the place of occurrence but there was no mark/sign of the occurrence.

P.W. 5/Balenshwar Yadav, P.W. 6/Hugal



Yadav, P.W. 7/Visho Yadav and P.W. 8/Narayan Yadav have all stated that at the time of occurrence, all accused persons were absent.

P.W. 9/Dr. Nagina Paswan has stated in his evidence that on 01.10.2010, he was posted at Sadar Hospital, Jamui. On that date he conducted postmortem on the dead body of the deceased and found the following injuries :-

i) Ligature mark present on the anterolateral surface of both sides of neck size 4" x 1/4" black in colour.

ii) Bruise with black to colour on the right side of chest lateral surface size 2" x 1"

iii) Bruise with black in colour as black of chest in circular shape.

On dissection found following :

i) Skull intact brain matter and meninges intact.

ii) Neck – Cricoid cartilage fracture trakia depressed.

iii) Chest and abdomen – lungs intact, blood clot present in heart. Stomach empty, liver, spleen and kidney were congested. Small and large intestine full of gases and faced matter. Uterus enlarged four months foetus.

iv) These all injuries were caused



by hard and blunt substance, such as pressed by hand.

v) Cause of death - Asphyxia due to strangulation.

vi) Time elapsed since death beyond 36 hours.

External affairs - Eye balls bulge out.

Mouth Tongue protruded and clinch under teeth. Rigour Mortis absent in all four limbs.

P.W. 10/Sudhir Yadav and P.W. 11/Sunil Yadav, who are also brothers of the deceased, both have stated in their evidence about the marriage of the deceased with accused, demand of money, torture for non-fulfillment of the same and lastly the murder of the deceased by the accused persons. They also stated that on receiving information about the murder, they went to the place of occurrence and saw the dead body. Murder was committed by throttling.

There is nothing in the cross-examination of these witnesses, which could have benefited the defence.

8) The statements under section 313 of the Code of Criminal Procedure were recorded, in which appellants have denied the allegations and claimed



themselves to be innocent.

9) The Defence did not produce any witness on its behalf though the accused persons denied the facts and the manner of occurrence and said that they are innocent and have falsely been implicated in the present case.

10) Sri Surendra Pandey, learned counsel for the appellants has mainly emphasized on the following important points :

I) This is a case of circumstantial evidence and on the basis of the materials available on records, it cannot be said that the chain of circumstances is complete.

II) No such evidence has come that just before the death of the deceased, any dowry was demanded or any cruelty was done.

III) The dead body was found in a well but the Postmortem Report does not show that the Doctor found water in the dead body. The evidence has also not come as to who took out the dead body from the well.

IV) The place of occurrence has not been established. It could not be ascertained as to whether the



dead body was thrown in the well after committing murder inside the house or the deceased died due to fall in the well.

V) The informant was informed about the alleged occurrence by one Basuki Yadav but he has not been examined as witness by the prosecution.

VI) The deceased has two children but they have also not been examined as witness by the prosecution.

VII) According to the first information report, the informant received information from Basuki Yadav that the accused persons have killed the deceased by pressing her neck and threw the dead body in the well. It is a matter of consideration that when the dead body was in the well, how Basuki Yadav came to know that the deceased was killed by pressing her neck.

VIII) P.W. 5, P.W. 6, P.W. 7 and P.W. 8 clearly stated that at the time of occurrence, accused Punia Devi was in another village but the Trial Court has not believed the evidence of these witnesses, while they were not declared hostile by the prosecution.

IX) The deceased accidentally slipped and fell into the well, due to which she died. This point has also



not been considered by the Trial Court.

Learned counsel, therefore, submits that the impugned judgment of conviction and order of sentence be set aside and the appellants be acquitted.

11) Sri Ajay Mishra, learned A.P.P. appearing on behalf of State, has categorically replied on each of the points raised by the learned counsel for the appellants, which are as follows:-

It is stated that the present case is of circumstantial evidence and the chain of circumstances is complete, which have been very well established by the prosecution evidence.

Since the accused persons have been convicted under section 302 of the Indian Penal Code, it is not necessary to prove the demand of dowry and cruelty soon before the death.

So far as the matter of not finding water in the dead body is concerned, the Inquest Report was prepared on 30.09.2010 at 12:30 in the Noon, whereas the Postmortem was done on 01.10.2010 in the morning at 06:30 A.M., i.e. after lapse of 18 hours. Under such



circumstances, due to lapse of time it is very much possible that clear symptoms/signs would not appear. When a person drowns in the water, the water goes in his body while taking breath. Generally, when an alive person drowns in the water then in the process of breathing, water goes inside the body, but when a body is thrown in the water after killing then it is possible that water will not go inside the body since the process of breathing is stopped.

This evidence is not important as to who took out the dead body from the well.

So far as non-establishing of the place of occurrence is concerned, the evidence of the Investigating Officer is clear. In the cross-examination also, the defence could not ask anything which could create doubt about the place of occurrence.

So far as non-examination of Basuki Yadav is concerned, it is not necessary that every person is examined as witness. Furthermore, according to First Information Report, two children of the deceased are aged about 5 and 3 years, as such, their evidence is not necessary.

So far as how Basuki Yadav came to know



that the deceased was killed by pressing her neck is concerned, when dead body would have been taken out from the well and Basuki Yadav would have seen the mark around her neck and thereafter, he would have come to the conclusion that the deceased was killed by pressing her neck and accordingly, he gave information.

As regards the evidence of P.Ws. 5, 6, 7 and 8, they are the residents of same Police Station where the accused are residing. Therefore, the maximum distance would be the territorial limits of a Police Station, which will not be more than 10-15 kilometers and it is possible for accused that they after killing the deceased thrown the dead body in the well and went to the house of the aforesaid witnesses.

Lastly, the most important point of defence of the appellants is that the deceased slipped and fell into the well and accidentally died, neither the accused persons said anything in the statement recorded under section 313 of the Cr. P.C. nor they produced any evidence in this regard.

The prosecution has brought the evidence clearly that the dead body of the deceased has been recovered



from a well near the house of the accused and all accused persons had fled away from the place of occurrence. In such a situation, it was for the defence to explain as to how the victim lady died, in which they failed.

The Postmortem Report (Exhibit-4) and the evidence of the Doctor/P.W. 9 show that the deceased has been killed by pressing her neck.

The deceased was a young lady and at the time of death, she was pregnant and her two small children were aged about 3 and 5 years respectively. In such a situation, her murder is a heinous crime.

12) Having considered the above facts and circumstances of the case, the materials available on record and the submissions advance on behalf of the parties, this Court finds substance in the submissions of Sri Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State and agrees with the same and do not find any force in the submissions advance on behalf of the appellants. This appeal is, accordingly, dismissed. The judgment of conviction dated 25.02.2013 and the order of sentence dated 26.02.2013 passed by Sri Jai Ganesh Singh, *Adhoc* Additional Sessions Judge-IV, Jamui in Sessions Trial No. 119 of 2011 arising out of Chakai



P.S. Case No. 123 of 2010 is, hereby, affirmed.

13) The order whereby the appellant, Umesh Yadav has been sentenced to undergo rigorous imprisonment for the first five years and thereafter to undergo simple imprisonment and the appellant Puniya Devi has been sentenced to undergo rigorous imprisonment for the first two years and thereafter to undergo simple imprisonment, is hereby modified to the extent that they will undergo rigorous imprisonment for life.

Since the appellant no. 1 Puniya Devi is on bail, her bail bond is cancelled and she is directed to surrender before the Court below.

(Arvind Srivastava, J)

(Rakesh Kumar, J)

(Rakesh Kumar, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	24.04.2018
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