

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.81 of 2016

Arising Out of PS.Case No. -134 Year- 2012 Thana -SAHEBGANJ District- MUZAFFARPUR

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1. Dinesh Sah S/o Surendra Sah, resident of village- Bisunpur Patti, P.S.-
Sahebganj, District- Muzaffarpur

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ranjeet Kumar Singh, Adv.

For the Respondent/s : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 09-02-2018

Heard the learned counsels for the parties.

2. The appellant, Dinesh Sah, has been convicted under Sections 304B and 201, with the aid of Section 34 of the IPC by the judgment dated 18.01.2016 passed by the learned IXth Additional District & Sessions Judge, Muzaffarpur in S.Tr. No. 19/2013, arising out of Sahebganj P.S. Case No. 134/2012 and by order dated 20.01.2016, he has been sentenced to undergo R.I. for eight years for the offence under Section 304(B)/34 of the Indian Penal Code, to pay a fine of Rs. 10,000/- and to further suffer R.I. for three years for the offence under Section 201/34 of the Indian Penal Code, to pay a fine of Rs. 3,000/- and in default of payment of fine to further undergo simple imprisonment for six months each; the sentences however



having been ordered to run concurrently.

3. The appellant is alleged to have killed his wife, viz. Puja Kumari, who was married to him only one month and seven days prior to her death.

4. The prosecution case is based on the written report of Prabhu Sah, the father of the deceased, who has been examined as P.W. 8. Aforesaid Prabhu Sah has stated in his written report that he had married his daughter with the appellant on 23.05.2012 and at the time of marriage, whatever he could afford, he had offered as gift. After the marriage, the deceased had been living in her matrimonial home and every now and then, she had been complaining of ill-treatment for not being paid the additional money and gold chain. The informant/P.W.8 has also stated that his daughter had also complained of being assaulted by the appellant and his family members. On 01.07.2012 at about 5 O'clock in the morning, he was telephonically informed by somebody that his daughter has been killed at the hands of the accused persons, including the appellant and the dead body has been concealed in the night of 30.06.2012.

5. On the basis of the aforesaid written report, a case vide Sahebganj P.S. Case No. 134/2012 dated 01.07.2012 was instituted for investigation under Sections 304B and 201 of the Indian Penal Code.



6. The police, after investigation, submitted charge-sheet against the appellant and another co-accused, viz. Munna Sah, who is the brother-in-law of the appellant, whereas the investigation with respect to the other accused persons were kept pending.

7. On submission of charge-sheet against the aforesaid two accused persons, cognizance was taken and the case was committed to the court of Sessions for trial.

8. The learned trial court, after examining 8 witnesses on behalf of the prosecution, convicted the appellant as aforesaid; whereas for the paucity of any evidence against co-accused Munna Sah, acquitted aforesaid Munna Sah of all the charges.

9. It is a peculiar case where even the father of the deceased has not supported the prosecution case, but has not been declared hostile. Even the I.O. of this case, viz. P.W. 6, has given his deposition before the trial court which may amount to misleading the trial court over basic set of facts.

10. It would be necessary to examine as to how the father of the deceased as well as the I.O. of this case have given a complete go-by to the prosecution version and efforts have been made to torpedo the case of the prosecution for no apparent reason.

11. During the trial, Prabhu Sah (P.W.8) has stated that he had married his daughter on 23.05.2012 with the appellant. No



child was born out of the wedlock and the deceased died only within one month and seven days of her marriage with the appellant. He has stated in his examination-in-chief that the in-laws of the deceased troubled her during her stay in the matrimonial home and on telephonic information that the deceased had been killed, he had visited the matrimonial home of the deceased. In the examination-in-chief, he has also stated that the dead body had already been burnt by the time he went to the place of occurrence and thereafter he gave the written report to the police. However, in his cross-examination, curiously, he has deposed that the marriage of the deceased with the appellant was self-organized and was a culmination of love between the deceased and the appellant. Nobody had come from the side of the groom nor was there any talk of any demand of money at the time of marriage. P.W. 8 has also stated that his daughter never complained about any ill-treatment to her. He was informed about the death of the deceased by the family members of the appellant and when he went there, whatever was told to him was inscribed, in the written report. In the last, aforesaid P.W. 8 has stated that the relationship of the deceased was very cordial with the appellant and her in-laws and that she had died because of illness.

12. Despite P.W. 8 having made a complete *volte face* at the trial, the prosecution, in its wisdom, did not have him declared



hostile. That apart, the trial court also did not take care to question him as to how such a statement was being made by him. P.W. 8 obviously cannot be believed for the simple reason that he at the time of lodging of the F.I.R. had not seen the dead body and was only informed that the deceased had been killed in the night of 30.06.2012 and the dead body had been concealed for the purposes of screening the offence.

13. Similarly, Chandrashekhar Gupta (P.W. 6), who is the I.O. of this case has deposed before the trial court that on receiving the written report, he had registered the case and had taken up the investigation. He has further, in perhaps what could be called an effort to save the appellant, stated that when he visited the place of occurrence, he did not find any incriminating mark or substance at the place to doubt about the deceased having been killed. With respect to the place of occurrence, P.W. 6 has given description of the boundary of the house of the appellant. In his examination-in-chief, however he has stated that the dead body of the deceased was found by the side of Bia River from a ditch and thereafter inquest was prepared and the dead body was sent for autopsy. After receiving the report of the post-mortem, he submitted charge-sheet. In his cross-examination, P.W. 6 has stated that the written report was not inscribed in his presence and he did not even enquire as to on whose information the case was



lodged or who wrote the written report. He has also admitted that despite many persons being present at the house of the appellant, he did not record the statement of anybody.

14. From the deposition of the aforesaid two witnesses, it is difficult to know as to how and under what circumstances the dead body was recovered and was sent for post-mortem examination. In this context, it would be necessary to examine the deposition of the doctor (P.W. 4) who performed autopsy on the dead body. P.W. 4 has deposed that the post-mortem was conducted on 03.07.2012 and abrasion of 3"x1" over right side of middle of the neck was found. On dissection of the neck, subcutaneous tissues and muscles were found to be lacerated. The trachea was found to be congested and there was fracture of tracheal bone and there was presence of blood clots. The time of death was assessed to be within 2 to 3 days from the time of the post-mortem examination. In the opinion of P.W. 4, the deceased had died due to asphyxia as a result of pressure over her neck.

15. The very fact that the dead body of the deceased was found near the bank of the river indicates that her death was not under normal circumstances; rather it was a homicidal death.

16. It is further buttressed by the fact that the death was caused by asphyxia as opined by the doctor, conducting the post-mortem and the abrasion marks on the neck. The subcutaneous tissues



of the neck were found to be lacerated, indicating that pressure was used on the neck for strangulating the deceased.

17. What is of relevance is that there is no information from the appellant or any one of his family members about the deceased having gone missing. Admittedly, according to the prosecution case, when P.W. 8 went to the matrimonial home of the deceased, no body was found present in the house and the door of the house was locked. The dead body was actually found after two days which was identified by the informant/P.W. 8. No effort has been made by the appellant to state as to how the deceased went missing from her matrimonial home. Section 106 of the Evidence Act, which reads as hereunder, enjoined the appellant to explain the reason as to why and under what circumstances the deceased was not to be found in the house:

“106. Burden of proving fact especially within knowledge.-
When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

- (a) *When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.*
- (b) *A is charged with travelling on a railway without a ticket. The burden of proving that he had a*



ticket is on him.”

18. It is really sad that the father of the deceased, despite his having found out the dead body with his efforts has not supported the prosecution version and has said something which seriously impacted the trial of the appellant. The other witnesses also have not supported the prosecution version and have been declared hostile.

19. However for the reasons aforesaid, this Court is of the view that the trial court has rightly convicted and sentenced the appellant as aforesaid. The acquittal of co-accused Munna Sah is also justified for the paucity of any material against him. It was the prime duty of the appellant to have disclosed as to how the deceased died. No such responsibility is of Munna Sah.

20. Thus, finding no fault with the judgment and order of conviction of the appellant, the same is sustained. The appeal is dismissed.

(Ashutosh Kumar, J.)

Rakhi

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