

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.343 of 2013

Arising Out of PS.Case No. -173 Year- 2009 Thana -DEEPNAGAR District- NALANDA
(BIHARSHARIFF)

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Bhushan Mahto, S/O Late Dukhi Mahto, Resident Of Village- Navinagar, P.S.-
Deepnagar, District- Nalanda

..... Appellant/s

Versus

The State Of Bihar

..... Respondent/s

with

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Criminal Appeal (DB) No. 247 of 2013

Arising Out of PS.Case No. -173 Year- 2009 Thana -DEEPNAGAR District- NALANDA
(BIHARSHARIFF)

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Munni Devi, W/O Late Dukhi Mahto, Resident Of Village- Navinagar, P.S.-
Deepnagar, District- Nalanda

..... Appellant/s

Versus

The State Of Bihar

..... Respondent/s

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Appearance :

(In CR. APP (DB) No.343 of 2013)

For the Appellant/s : Mr. Sanjay Kumar, Adv.
Mr.Mritunjay Kumar, Adv.

For the Respondent/s : Ms. S.B. Verma, APP

(In CR. APP (DB) No.247 of 2013)

For the Appellant/s : Mr. Sanjay Kumar, Adv.
Mr.Mritunjay Kumar, Adv.

For the Respondent/s : Ms. S.B. Verma, APP

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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: 19-06-2018

These two criminals appeals have been preferred for



setting aside the judgment dated 23.02.2013 passed by the learned 1st Additional Sessions Judge, Nalanda at Biharsharif (hereinafter referred to as the 'learned trial court') in Session Trial No.56 of 2010. By the impugned judgment, the learned trial court has been pleased to held both the accused persons (appellants) guilty for the offences under Sections 302/34 and 201/34 of the Indian Penal Code. They have been convicted accordingly with a sentence to undergo life imprisonment under Section 302 I.P.C. and fine of Rs.2000/- each. For the offences committed under Section 201/34 I.P.C. the appellants have been sentenced to undergo rigorous imprisonment for five years. Both the sentences are to run concurrently. In default of fine the learned trial court has sentenced them to undergo rigorous imprisonment for three months.

2. The prosecution case is based on the written report submitted by the informant Upendra Kumar (PW-5) alleging that his sister Dharam Devi was married with accused Bhushan Mahto (appellant in Cr.Appeal (DB) No.343 of 2013) about 13 years ago according to Hindu customs and rights. The informant claims that gifts were given according to capacity of the family of the informant at the time of marriage and from their wedlock one daughter namely Dhanwanti Devi aged 8 years and one son Bittu Kumar aged 5 years were born. It is further alleged that after marriage accused husband,



father-in-law, mother-in-law, Bhaisur and wife of Bhaisur all used to torture Dharam Devi for non-fulfillment of dowry and used to assault her. It is alleged that on informant's cousin brother Ajay Prasad trying to convince the accused persons not to torture his sister, they had assured to keep her nicely but on 12.08.2009 in the evening informant got information about death of his sister Dharam Devi by committing her murder and that the accused persons had concealed the dead body somewhere after keeping in a bag (Bora).

3. The informant after receiving this information along with his brother Ajay Prasad Sarpanch, Ravindra Prasad, Bulu Kumar, Jitendra Kumar and Bhola Prasad went to village Navinagar in the house of accused Bhushan Mahto where only Bhagina and Bhagini of the informant were found as the accused persons were said to have fled away from the house. Informant further alleged that after seeing him his Bhagina and Bhagini started crying and they told that accused persons have committed murder and after keeping in the bag, they have taken away the dead body somewhere. The informant enquired from the villagers and came to know that his sister Dharam Devi has been murdered by the family members and they have concealed the dead body after keeping in a gunny bag. On the basis of this written report Deepnagar P.S. Case No.173/09 was registered against accused Bhushan Mahto, Jaiprakash, Vishun Mahto, Dukhi Mahto, wife of



Dukhi Mahto, wife of Jaiprakash Mahto and wife of Bishun Mahto.

4. After investigation police submitted a charge-sheet against accused Bhushan Mahto, Dukhi Mahto and Munni Devi. Cognizance was taken by the learned C.J.M. under Sections 328, 302 and 201 I.P.C. Later on records were committed to the court of Sessions. A formal charge was framed against the accused persons under Sections 302/34 and 201/34 I.P.C. The accused persons denied the charges and pleaded not guilty and claimed to be tried.

5. Before the learned trial court altogether 9 witnesses were examined on behalf of the prosecution to prove the guilt of the accused persons. PW-1 Govind Prasad is a co-villager of the convict Bhushan Mahto. He has stated that wife of Bhushan Mahto died in her sasural in the house of Bhushan Mahto. He has stated that sasural people used to quarrel with the deceased and on the day when the wife of Bhushan Mahto died there was a quarrel with sasural person.

6. Similarly PW-2 Gullu Kumar is a co-villager of the informant who has also stated that he was knowing the deceased Dharam Devi. According to this witness she was murdered by her husband, mother-in-law and brother-in-law and after that the dead body of Dharam Devi was concealed in the field. He had stated this before the police in course of investigation. He has also identified the accused persons in course of cross-examination. He has stated that the



informant belongs to his village and at the time of occurrence he was working at Calcutta. The information regarding murder was given to him by his Bhagini Dhanmanti Devi (PW-6), thereafter he went to village Nabinagar and information was given to police.

7. PW-3 Manoj Kumar has also supported the prosecution case and has stated that on information received from Ajay Prasad he had come at Deepnagar and had gone to Deepnagar police station and from there he had gone to Navinagar in the sasural of Dharam Devi where he saw two children and non-else was present. He has stated that both the children started weeping after seeing Mamu and while crying they told that her mother had been murdered and dead body had been concealed. According to this witness, both the children had told that accused Bhushan Mahto had committed murder and concealed the dead body and did not tell anybody else.

8. PW-4 Ajay Prasad is also cousin brother of the deceased and supported the prosecution case. PW-5 Upendra Kumar is informant who has changed his version in course of trial. He has stated that when he reached at her sister's place in village Nabinagar he found the house locked, he met his sister's son Bittu and daughter Dhanmanti outside the house. They were crying but not saying anything and after that he informed the police station. On the next day police informed that the dead body of his sister was found and then he



went there and identified the dead body of his sister and papers regarding the dead body was prepared and he along with Ajay had put signature thereon.

9. PW-6 Dhanmanti Devi is the daughter of the deceased Dharam Devi who has stated in her evidence that Dharam Devi was her mother who died three years ago and she cannot say how she died. PW-6 had become hostile and during her evidence on attention drawn by the prosecution she had stated that she does not know that her father is in jail in connection with the murder of her mother. PW-7 Ravindra Prasad is also relation of the deceased from her maikey who has become hostile and has not supported the prosecution case.

10. PW-8 Dilip Kumar is the investigating officer of the case who has stated during evidence that he had received the written report of the information on the basis of which Deepnagar P.S. Case No.173/09 was instituted under Sections 302/201 I.P.C. The written report has been exhibited as Ext.-2. The formal FIR is in the handwriting of Pandeyji as proved by PW-8 which has been marked as Ext.-3. He has stated that during investigation he had recorded the restatement of the informant and according to I.O. in his restatement the informant had stated that his sister Dharam Devi was murdered by accused Bhushan Mahto at village Nabinagar where the sasural people



used to torture her. The informant had stated before him that sasural people has administered poison to her sister. Similarly the I.O. has stated that the place of occurrence is the house of accused Bhushan Mahto situated at Navinagar, he has given the description of the place of occurrence. He has further stated that on the instance of Dhanmanti (PW-6) he had gone to search the dead body and he reached in the Navinagar village at the distance of 700 meters north Khandha which is the field of accused Bhushan Mahto where he found the dead body of the deceased kept in a gunny bag. The investigating officer (PW-8) has proved the inquest report (Ext.-4). He has deposed that the dead body had been recovered at a distance of 700 meters north which is between Navinagar and Jamanichak Road which is the field of accused Bhushan Mahto. This witness has further stated that it was his field where the accused Bhushan Mahto had concealed the dead body of his wife Dharam Devi after administering poison and he had also proved the boundary of said place of occurrence (P.O.). The investigating officer has further proved the viscera report obtained from the Forensic Science Laboratory (Ext.-7).

11. PW.-9 Dr. Ram Kumar Prasad is the medical officer who conducted the postmortem examination of the dead body of Dharam Devi. He found the dead body of the deceased in decomposed stage. No external injury was detected. He has proved



the letter sent by Director F.S.L., Patna addressed to S.P. Nalanda (Ext.10) and the forensic science report which bears memo no.6731 F.S.L.1131/09 dated 23.3.2012 which is marked as Ext.11. As per forensic report 'Alluminium phosphite' was detected which is also known as 'Celphas' and is a highly poisonous substance.

12. The defence of the accused was total denial of the alleged occurrence. The learned trial court has upon analysis of the evidences available on record held that both the accused persons were guilty of committing offences under Sections 302/34 and 201/34 of the I.P.C. They have been convicted accordingly and sentenced as stated above.

13. In course of argument, learned counsel representing the appellants would submit that in course of evidences the informant (PW-5) has clearly stated before the trial court that his sister was treated nicely by the appellant and his mother. In his cross-examination he has stated that he cannot say how his sister had died. Learned counsel further submits that according to custom of the concerned village in case of death by poisoning the deceased is not cremated rather the dead body placed by digging earth. It is further submitted that PW-6 Dhanwanti Devi who happened to be the daughter of the deceased has also denied the alleged occurrence and has stated that she had not seen the occurrence. It is submitted that all



the prosecution witnesses are related to the informant, moreover it would not be safe to convict the husband of the deceased when there is no evidence to prove the charge under Section 302 of the Indian Penal Code.

14. On the other hand, learned APP representing the State submits that from the evidences available on the record it is proved beyond all reasonable doubts that these appellants were indulged in committing torture and poisoned the victim lady inside the house. It is submitted that the fact that the dead body of the deceased was found in decomposed position in a gunny bag from the field/land owned and possessed by the husband of the deceased shows beyond all reasonable doubts that after poisoning the victim lady when she died these appellants disposed off the dead body with an intention to conceal the death of the victim lady. The dead body was buried in the field owned by the appellant Bhushan Mahto.

15. Having heard learned counsel for the parties in both the cases and learned APP for the State as also on perusal of the records received from the learned trial court, we find that even though the informant (PW-5) and Dhanmanti Devi (PW-6) as also some of the prosecution witnesses have become hostile and in course of trial they did not support the case of the prosecution, but there are clinching materials available on the record to show that the deceased



Dharam Devi was poisoned inside the house of Bhushan Mahto and after her death the appellants with an intention to conceal the dead body put her corpse in a gunny bag and buried the same in the field/land owned and possessed by Bhushan Mahto. The investigating officer (PW-8) has in his evidence stated about the statement of the prosecution witnesses in course of investigation. From the evidence of the investigating officer it appears that he had categorically stated that in course of investigation Dhanmanti Devi (PW-6) who happened to be the daughter of the deceased had told him that she had seen her mother being tortured and her mother was beaten by father, grandfather, grandmother. PW-6 had stated before the investigating officer that her mother was killed by administering poison by her father, grandfather and grandmother. In course of his cross-examination PW-8 has not been suggested that PW-6 had not made this statement before him. Similar is the position with regard to the informant about whom also the investigating officer has categorically stated that he had told to him about the alleged manner of occurrence. Apart from these materials available on the record, we are willing to agree with the findings recorded by the learned trial court also for the reason that admittedly the dead body of the deceased was recovered in a gunny bag from the field/land owned by the appellant Bhushan Mahto. The fact that the deceased was poisoned inside the house of



Bhushan Mahto and then appellants tried to conceal the dead body has been duly proved beyond all reasonable doubts.

16. In result, we do not find any reason to interfere with the judgment of the learned trial court. Both the appeals are dismissed. The appellants are liable to suffer the sentence imposed by the learned trial court.

17. This Court has been informed that the appellant Bhushan Mahto is in jail whereas the appellant Munni Devi has been granted bail earlier during the pendency of the present appeal. Her bail bond is cancelled. She is directed to surrender forthwith.

18. Let a copy of this order be sent to the court of learned C.J.M., Nalanda at Biharsharif for taking onward action to procure attendance of the appellant Munni Devi and send her jail to suffer remaining sentence.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	NAFR
CAV DATE	N/A
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