

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.818 of 2012

Arising Out of PS. Case No.-245 Year-2012 Thana- SAHARSA District- Saharsa

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Md. Mustakim, son of Md. Salauddin, resident of village-Nariyar, P.S.-
Saharsa, District-Saharsa.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mrs. Archana Sinha, Amicus Curiae
For the Respondent/s : Mr. Ashwani Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 26-06-2018

We have heard learned amicus curiae and the State and
have perused the records of this case.

The appellant has preferred this appeal assailing the
judgment of conviction dated 13.07.2012 and order of sentence
dated 16.07.2012 passed by Adhoc Additional Sessions Judge-I,
Saharsa in Sessions Trial No. 109 of 2012 arising out of Saharsa
Sadar P.S. Case No.245 of 2012 by which the appellant has been
convicted for the offence punishable under Section 302 of the
Indian Penal Code and has been sentenced to undergo
imprisonment for life with a fine of Rs.5000/- and in default of



payment of fine, he has been directed to further undergo imprisonment for six months.

The prosecution case, as per fardbeyan of the informant (P.W.1), is that on 20.04.2012 at about 7.45 A.M. while he was sitting at his darwaja, his cousin Nasim Khan informed him that his daughter has been killed by the appellant by throttling. On hearing this, the informant along with his family members rushed to the matrimonial home of the deceased and found that the appellant was present in the house and the dead body of the deceased was lying on the bed. Many persons of the locality also arrived there. With the help of the villagers, the appellant was caught hold and the police was informed on mobile phone. On such information, the police party came there and the appellant was handed over to the police. It has been stated that the deceased was married to the appellant about ten years ago and out of the wedlock, four issues were born. It has been alleged that the appellant always used to assault and torture the deceased for which a case was also lodged by the informant (P.W.1). A panchayati was also held but all in vain. The informant suspected that his daughter had been killed by the appellant by throttling her.

On the basis of aforesaid fardbeyan of the informant, the police registered Saharsa Sadar P.S. Case No. 245/2012 against the



appellant for the offences punishable under Sections 302 of the Indian Penal Code.

After investigation, the police submitted charge sheet against the appellant. Thereafter, the Chief Judicial Magistrate, Saharsa had taken cognizance of the offence against the appellant. The case was committed to the court of sessions, where charges were framed, to which, the appellant pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether seven witnesses in support of its case. P.W.1 is Md. Samsuddin, P.W. 2 is Md. Azim, P.W. 3 is Dr. Akhileshwar Prasad, P.W. 4 is Md. Nasim, P.W. 5 is Saroj Kumar, P.W. 6 is Md. Nazimuddin and P.W. 7 is Sunil Kumar Singh.

The defence has not examined any witness on its behalf.

The trial court, after hearing learned counsel for the parties and considering the materials available on record came to the conclusion that the prosecution has been able to prove the charge against the appellant and, as such, judgment of conviction and order of sentence have been passed against the appellant.

At the first instance we would analyze the evidence of doctor (P.W.3) who has held the autopsy on the dead body of the



deceased. He has found following ante-mortem injuries on the dead body of the deceased:-

Rigor Mortis present on all four limbs:

On external examination- Face & nose, eye closes, mouth close, conjunctive congested, prominence of both side of neck and upper chest vein; black bruise one-two on right side of Trachea & 4 to 6 on left side of Trachea. Both upper limbs flexed & lower limbs extended. Lacerating present on Trachea in front side one or two bruise; neck ring present, two bangles in Asmani colour & two brass bangles in left hand.

On opening of skull- Brain meningeal congested

On opening of heart & lungs- Left chamber empty, right full of blood, lungs showing black spot, on seeing lung blue blood presented.

On opening of trachea- sub-cutaneous blood on each bruise and mentioned above. Corona of Throttled cartilage and Hyoid bone fractured & tendering congesting blood; opening of trachea sharp fracture section.

On opening of abdomen- All viscera congested, stomach empty

Cause of death, in his opinion, is due to asphyxia resulting from throttling

Time elapsed since death- within 2 to 12 hours.

The postmortem report has been marked as Ext.2. The doctor has been cross-examined at length. He has stated that this is a case of throttling and he has denied the suggestion of defence that he has prepared the report on the basis of inquest report.

It appears from the evidence of the doctor that the death is homicidal.

It is admitted fact that none has seen the manner of death. There is no eye witnesses to the occurrence of throttling by the accused. So, the case is totally based on circumstantial evidence.



From the evidence, it appears that since the deceased died in the room and house of appellant and the prosecution witnesses have stated that the deceased was murdered by the appellant, the burden of proof lies upon the accused to show under what circumstances death was caused in view of the provisions contained in Section 106 of the Evidence Act but the accused has failed to discharge the same.

It appears that the prosecution witnesses are relative and interested but there is no proposition of law that relatives are to be treated as untrustworthy witnesses. There is no material on record to show that the accused has falsely been implicated in this case. So, the evidence of the witnesses appears to be reliable and trustworthy.

So far as the genesis of the occurrence is concerned, P.W. 1 has stated in his deposition that his daughter was being tortured by the accused and his family for which his daughter (deceased) filed a case under Section 498 A I.P.C. against the appellant in the court of C.J.M., Saharsha which was ended in the terms of compromise and, after that, his daughter was murdered. There is no denial on this fact. The above facts are corroborated with the evidence of P.Ws. 2 and 4. So the prosecution has proved the genesis of the case.



The place of occurrence is also proved as the deceased was found dead on the cot in the room of appellant and the appellant has apprehended from the spot and, as such, there is no dispute regarding the place of occurrence.

From the evidence of prosecution and the facts and circumstances of the case, it appears that the chain of circumstances of guilt is well established as the deceased filed a complaint case against the appellant, on 13.09.2011 and the appellant assured the deceased for not committing such act in future and thereby compromise petition was filed on 09.04.2012. After the compromise, the deceased/complainant was found dead on 20.04.2012 in the room of the appellant and the doctor also found death of deceased was due to asphyxia but the accused failed to discharge in explaining the cause of death of his wife as per the provisions contained in Section 106 of the Evidence Act. All these circumstances proved that the deceased died due to strangulation by the appellant.

In our considered view, the circumstantial evidence gathered and the failure on part of the accused to explain the death of his wife are more than enough to link the appellant with the offence as the appellant's wife was found killed in his house due to strangulation.



Considering the facts and circumstances of the case and also materials on record, it appears that the prosecution has succeeded in proving its case beyond all reasonable doubts and the trial court has rightly convicted the appellant. Thus, no interference is required by this Court in the impugned judgment of conviction and order of sentence.

As a result, this appeal is dismissed.

Let a copy of the first page and last page of this judgment be given to Ms. Archana Sinha, Amicus Curiae so that she may be able to get the prescribed fee from the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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