

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.887 of 2017

Arising Out of PS.Case No. -82 Year- 2014 Thana -BAUNSI
District- BANKA

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Guddu Jha @ Uttam Jha, Son of Munna Jha @ Satya Prakash Jha,
resident of village - Gollatti, P.S. Bounsi, District - Banka

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Brij Nandan Prasad, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 20-07-2018

The appellant/Guddu Jha @ Uttam Jha has been convicted under Section 304(B) of the Indian Penal Code by judgment dated 06.01.2017, passed by the learned 1st Additional District & Sessions Judge, Banka in Sessions Trial No. 824 of 2014, Trial No. 542 of 2016 and by order dated 10.01.2017, he has been sentenced to undergo rigorous imprisonment for seven years.

2. The appellant is the husband of the deceased who is said to have killed her.

3. The case of the prosecution is based on the F.I.R lodged by the mother of the deceased viz. Nilam Devi, who has been examined as P.W. 2 at the trial. She has stated in her fardbeyan statement that her daughter was



married to the appellant around two years ago. The father of the appellant worked at Bokaro but her daughter and the appellant used to live in the same locality. On 28.05.2015, the daughter of the informant had kept a fast and the appellant had also visited her house. The appellant is stated to have been treated very well in the house of the informant/P.W. 2 and thereafter, on the insistence of the informant/P.W. 2 only, the appellant slept in the house of the informant/P.W. 2 along with her daughter. Early in the morning, the informant/P.W. 2 found that the appellant had run away from the house and her daughter was lying dead in the room. When she went to inform about this occurrence to the mother of the appellant, she fled away from her house.

4. On the basis of the aforesaid fardbeyan statement, a case vide Bounsi P.S. Case No. 82 of 2014 dated 29.05.2014 was registered for investigation for the offences under Sections 304(B) 120(B)/34 of the Indian Penal Code.

5. The police, after investigation submitted charge-sheet whereupon cognizance was taken and the case was committed to the Courts of Sessions for trial.

6. The Trial Court, after examining fifteen witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellant as



aforesaid.

7. The informant/mother of the deceased has been examined as P.W. 2. She has supported the prosecution version but has stated that the deceased along with her mother-in-law/Chandra Kala Devi had come to her house as the deceased had to appear in the Intermediate Examination. After writing the papers, the mother-in-law of the deceased used to come back to her home which was situated across the road. On the day of the occurrence, the appellant had fought with his mother and the deceased also was assaulted and therefore the deceased had visited the house of her mother/informant/P.W. 2. In the night, on the insistence of the informant/P.W. 2, the appellant had stayed back and slept in a room downstairs along with the deceased. Early in the morning, the informant/P.W. 2 spotted that the appellant had run away and the deceased was lying dead. She has categorically stated before the Trial Court that she did not see the occurrence and even though the deceased used to talk about ill treatment because of non-fulfillment of dowry demand, no complaint in any quarter was made by her. She has admitted that the house of the appellant is situated across the road. She has also stated that there was no injury on the person of the deceased except for a minor scratch on the elbow of the left hand. Two other children were also



available in the house but they were not interrogated by the Police. She has denied that for the purposes of extracting money from the family of the appellant, this case has been lodged by her.

8. The aunt of the deceased, who was also present in the house where the deceased died, has been examined as P.W. 1. She has also not claimed to have seen the occurrence but has stated that the appellant ran away after killing the deceased and took away the valuables belonging to her mother, who too was residing in the same house. She has not spoken anything about any injury on the person of the deceased. On being specifically questioned whether the keys of the house were given to the appellant, she said that she did not remember anything about that.

9. The father of the deceased/P.W. 8 has not thrown any light on the occurrence as in the night of the occurrence, he was not available in the house.

10. The postmortem over the dead body was conducted by P.W. 12 who only found a simple scratch over the left elbow and lips of the deceased. He did not find any mark of violence on the neck or other portion of her body. The cause of death therefore could not be ascertained by him. The viscera, but, was preserved and sent for chemical examination. Till the conclusion of the trial and writing of the



judgment, the report of the F.S.L had not been received in the Court below.

11. The Investigating Officer of this case has been examined as P.W. 13 who has admitted that when the mother of the deceased had come to the Police Station earlier for lodging a complaint for murder of her daughter, the same was not accepted by him. Thereafter, he went to the house of the informant/P.W. 2 and recorded the F.I.R. The room in which the occurrence is said to have taken place does not have any attached toilet.

12. The grand-mother of the deceased also has been examined at the trial as P.W. 14 but she had not stated anything which could be said to lend credence to the prosecution version. On the contrary, her statement is different from the deposition of her two daughters viz. P.W. 1 and P.W. 2. She has stated that the appellant was permitted to sleep in her house. When she came down on *hulla*, the appellant snatched the keys of the house from her and ran away through the toilet door.

13. This story has not been narrated by anyone of the witnesses and is not the prosecution case either.

14. The other witnesses viz. P.W.s 3, 4, 5, 6, 7, 9 and 11 have not supported the prosecution version and therefore they have been declared hostile.



15. From the perusal of the entire case records, it appears rather surprising that the deceased died in the house of her mother but the cause of death could not be ascertained. There was no external injury which could suggest that the death was a homicidal one. The story of the prosecution also appears to be doubtful in as much as the appellant admittedly owns a house which is situated across the road. There was no occasion for the appellant to have stayed in the house of the informant/P.W. 2 and to have run away from the house in the wee hours after killing the deceased.

16. Though no specific statement has been made under Section 313 of the Cr.P.C, but the appellant has sought to explain that when he went to the house of the informant/P.W. 2, he found his wife dead.

17. There was no fight between the appellant and the deceased and if the deposition of P.W.s 1, 2 and the grand-mother of the deceased is accepted to be true, the appellant had only slept in the house. Had there been any fight in the night, that would have been audible to the inmates of the house. The witnesses could see the dead body of the deceased only in the wee hours.

18. It has been argued that from the surrounding circumstances, it appears that the deceased died a natural



death and in order to extract some mileage, the present case has been lodged. It is not possible for the deceased to have been killed at the hands of the appellant without there being any external injury of any kind.

19. The charges under Section 498(A) of the Indian Penal Code have not been framed and therefore a vague statement that the deceased, during her life time, used to complain for the ill treatment and torture because of non-fulfillment of dowry demand, cannot be accepted for any purpose.

20. The cause of death of the deceased remains absolutely in mystery.

21. In that event, it would not be incorrect to say that the deceased died a natural death. In any view of the matter, the evidence with respect to the appellant having killed the deceased is not at all complete.

22. Thus, there is no option for this Court but to set aside the conviction of the appellant in such circumstances.

23. The judgment and order of conviction and sentence dated 06.01.2017 and 10.01.2017 respectively passed by the learned 1st Additional District & Sessions Judge, Banka in Sessions Trial No. 824 of 2014, arising out of Bounsi P.S. Case No. 82 of 2014 is set aside.



24. The appeal is allowed.

25. The appellant is acquitted of all the charges.

26. The appellant is in custody. He is directed to be released from jail forthwith, if not wanted in any other case.

27. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for information, compliance and record.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26/07/2018
Transmission Date	26/07/2018

