

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.534 of 2015

Arising Out of PS. Case No. -49 Year- 1999 Thana -KATEYA District- GOPALGANJ

Sugan Bari Son of Late Dukhi Bari, Resident of Village- Panchdewari, P.S. Kateya, District Gopalganj.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance:

For the Appellant/s : Mr. Arbind Kumar Singh, Adv.
Mr. Baban Roy, Amicus Curiae

For the State : Mr. Parmeshwar Mehta, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT
Date: 24-08-2018

Vide judgment of conviction dated 14.07.2015 and order of sentence dated 21.07.2015 passed by First Addl. Sessions Judge, Gopalganj in Sessions Trial No.32 of 2001 appellant Sugan Bari has been found guilty for an offence punishable under Section 376 of the IPC and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for one year, additionally.

2. Lalan Prasad Barnwal (PW.1) gave his fardbeyan on 26.03.1999 disclosing the fact that on the eve of Ram Nawmi Mela leaving his wife Kusum Devi along with a kid at his house, he along with other children came at Dharhara Mela where he stalled a sweet shop. While he was sitting at his shop, one lady came and informed that his wife is going along with some body towards eastern direction at a lonely place whereupon, he rushed. Finally, he reached at the spot where he found his co-villager Sugan Bari having been indulged in sexual activity with his wife. He wanted to kill him but, he



managed to escape after tearing the thatched wall of a hut on being chased by him. He continued with chasing and arrived at village-Dharhara. When he reached near the house of Kundan Bhagat, his wife appeared seeing whom, he lost his control, gave fatal *chura* blow as a result of which, she succumb.

3. After registration of Kateya P.S. Case No.49/1999 under Section 376 of the IPC, investigation commenced and after concluding the same charge sheet has been submitted facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it has been pleaded that deceased who was a major and was consenting party indulged herself in copulation with the appellant out of her sweet will and the same was seen by the informant Lalan Prasad Barnwal who caused murder of his wife whereupon, on the fardbeyan of his son Kateya P.S. Case No.48/1999 was registered and only to make out a defence case this case has been instituted. Furthermore, oral as well as documentary evidence has also been adduced in support thereof.

5. In order to substantiate its case, prosecution had examined altogether six PWs who are PW.1-Lallan Prasad Baranwal, PW.2-Gudari Bhagat, PW.3-Kundan Bhagat, PW.4-Ganesh Kushwaha @ Rajesh Kushwaha, PW.5-Binod Prasad Baranwal and PW.6-Janardan Singh. Side-by-side had also exhibited Signature of the informant as Ext.1, Certified Copy of P.M. report-Ext.2, Formal



FIR-Ext.3. Defence had also examined one DW Parshuram Manjhi and had also exhibited judgment of Sessions Trial No.247 of 2019 as Ext.A depicting conviction of the informant under Section 302 of the IPC for causing murder of his wife.

6. Now coming to status of the witnesses, it is apparent that PW.2, PW.3, PW.4 have not supported case of the prosecution and on account thereof, they all have been declared hostile. Investigating Officer has not been examined whereupon the relevant documents have been exhibited by PW.6 Janardan Singh, a formal witness. Therefore, the prosecution rest upon the shoulder of only two witnesses that means to say PW.1-Lallan Pd. Barnwal and his son PW.5-Binod Kumar Barnwal. That means to say, duo are father and son.

7. PW.1 during course of his evidence had completely changed the scenario from his earlier version that means to say the fardbeyan. During course of evidence, he has stated that on the alleged date and time of occurrence he along with his whole family member has come to Dharhara Ram Nawmi Mela. While he was sitting at his sweet shop, his son was over a betel shop, his wife has gone to meet nature's call, a lady came to his shop and disclosed that Sugan Bari along with one person is engaged in grappling with his wife whereupon he along with his son rushed. They have seen one person standing while Sugan Bari was engaged in raping his wife. Seeing them, Sugan Bari attempted to run therefrom after tearing the thatched wall of a hut but his wife caught hold him and during course thereof, in order to facilitate fleeing of Sugan Bari, the person who was standing gave *chura* blow over his wife causing



injury over her person. Even thereafter, they continued in chasing Sugan Bari as well as the other person but, they both succeeded in their escape. Then thereafter, villagers instructed him to take wife to hospital and accordingly, while they were carrying, she died. Police arrived, got his signature as well as signature of his son, daughter on different blank paper, exhibited his signature. He had further stated that police had not recorded his fardebayan correctly whereupon, he filed protest petition from the Jail. He further deposed that Sugan Bari had committed rape as well as murder of his wife. During cross-examination at para-8 he had disclosed that his fardbeyan was recorded by the police near iron bridge lying at village Rasauti about an hour after the occurrence. Till then, his wife was already dead. In para-9 he had further stated that police had taken control over dead body. Postmortem was conducted on next day and then thereafter, dead body was received by his son Binod Pd. Barnwal. Then he denied the suggestion that he was arrested by the police on an allegation of committing murder of his wife. In para-11 there happens to be contradiction relating to his earlier version. In paras-12, 14, 15 there happens to be cross-examination with regard to presence of his wife inside a hut, manner of assault, presence of blood in the hut. In para-17 he had stated that police had called him at Police Station and then, arrested. He had further stated that he had not disclosed anything before the Chief Judicial Magistrate. In para-19 he had stated that after 17-18 days remaining inside the jail he had filed written report. Then at para-20 again there happens to be contradiction as well as suggestion that appellant has been made scapegoat on account of long standing



enmity after killing the wife.

8. PW.5 is the son who had deposed that on the alleged date and time of occurrence he was over betel shop while his father, mother, brother were on sweet shop. His mother had gone to Durga Mandir in order to perform rituals during midst thereof, one lady came and disclosed that in order to commit rape upon his wife, Sugan Bari is taking her away forcibly whereupon he along with his father, sister rushed. When they reached at the hut of Kundan Bhagat they have seen Sugan Bari engaged in committing rape over his mother. Sugan Bari tried to flee but, his mother caught hold him. One person who was along with Sugan Bari hurled knife causing injury over her hand, stomach as a result of which, she became injured. They have chased Sugan Bari but he along with the aforesaid person managed in their escape. Then thereafter, he brought his mother to his village over bicycle and then to hospital. Police came at Kateya hospital where, whole event was disclosed but he is unable to say what the police officials have recorded. He had further stated that police had taken his signature as well as signature of his sister. Claimed identification. He has further stated that Sugan Bari is his co-villager having his house intervened by 3-4 houses. In para-4 there happens to be contradiction. In para-5 he has stated that his statement was recorded at hospital. In para-6 he has stated that his father had not gone to hospital as, police had apprehended at the *Mela* itself just after 5-10 minutes of the occurrence. Whether his father had disclosed whole event before the police or not he is not knowing. In para-8 he has stated that he rushed from *Mela* just 10-15 minutes after the occurrence. At that



very time his father was present. His father was not arrested in his presence. In para-9 he had stated that he had not taken her to his house rather he had taken her to market where she was treated. Then he carried her to Kateya over Jeep then thereafter, at 02:00 AM she died. Then had said that after death, he had taken her to hospital along with police. Then had denied institution of a case against his father by him for causing murder of his mother.

9. from the evidence available on the record, it is evident that there happens to be material development in the testimony of PW.1 as well as PW.5. PW.5 corroborated PW.1 with a moto to save PW.1, informant from the Sessions Trial No.247 of 1999/122 of 2005 wherein lastly judgment was delivered on 02.12.2005 convicting the PW.1 under Section 302 of the IPC. Furthermore, due to non-examination of the Investigating Officer, it is apparent that not only the defence has been prohibited to bring on record the relevant portion of the developed evidence rather, defence had also found prejudiced as, could not be able to substantiate whether the deceased was assaulted in the hut of Kundan Bhagat or it was in the village-Dharhara. Apart from this, it is also evident that as per initial version deceased who was major was a found to be a consenting party and the act was consensual which had provoked the PW.1 to commit murder of his wife and the same, during course of evidence has been developed as an act of rape divulging protest at the end of deceased whereupon she was assaulted. It is also found that if the act happens to be consensual one then in that circumstance, there would be applicability of Section 497 of the IPC, whereupon the instant prosecution would not have been investigated without taking



permission from the Magistrate.

10. In any view of the matter, considering the material development in the evidence of PW.1 as well as PW.5 in consonance with the non-examination of the Investigating Officer causing prejudice to the interest of the appellant coupled with PW.1 being convicted for causing murder of deceased it did not find safe to concur with the finding recorded by the learned lower court. Consequent thereupon, the judgment of conviction and sentence recorded by the learned lower court is hereby set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
CAV DATE	N.A.
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