

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.199 of 2018

Arising Out of PS.Case No. -51 Year- 2016 Thana -MALSALAMI District- PATNA

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1. Rajan Kumar Gupta, aged about 39 years, S/o Late Prayag Lal Gupta, R/o
Mansoorganj, P.S.- Malsalami, Dist.- Patna. Appellant/s

Versus

1. The State of Bihar. Respondent/s

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Appearance :

For the Appellant/s : Mr. Surya Prakash Singh, Adv.
Mr. Shankar Pramod Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 12-03-2018

Heard learned counsel for the appellant as well as
learned Additional Public Prosecutor.

2. At an earlier occasion while appellant had prayed
for suspension of sentence and grant of bail till pendency of
instant appeal, during the said course with the assistance of
learned counsel for the appellant, the judgment impugned was
gone through in consonance with the evidence available on the
record whereupon, it has been thought to hear the appeal only on
its merit in stead of delving over intermediary issues.

3. Detailed discussion of the evidence is forbidden
for the present as it will cause prejudice to the interest of the either
side and that being so, only the infirmities which vitiate the
judgment impugned followed with its remittance to the learned
lower court to hear the parties and pass the judgment afresh in
accordance with law.

4. Vide judgment of conviction dated 23.12.2017 and



order of sentence dated 05.01.2018 appellant Rajan Kumar Gupta has been found guilty for an offence punishable under Section 306 of the IPC and sentenced to undergo S.I. for 3 years as well as to pay fine appertaining to Rs. 5,000/-, in default thereof, to undergo S.I. for two months additionally by the Additional District & Sessions Judge, 7th, Patna City, Patna in S.T. No. 607 of 0216.

5. Ramji Prasad filed a written report on 15.2.2016 alleging inter alia that he had married his daughter Sweety Kumari, aged 31 years in the year 2010 with Rajan Kumar Gupta s/o Late Prayag Lal Gupta of village Mansoorganj, Malsalami, Dist.- Patna. During course of consuming her marital life, she had begotten a child, presently is of four years. It has further been alleged that just after marriage Rajan Kumar Gupta began to torture her, even physical assault was inflicted for non-fulfillment of demand of cash. Anyhow he had provided Rs. 30,000/- but the aforesaid part payment did not satisfy him on the pretext that he is suffering from loan and for re-payment of the same, she will have to procure money from her *Naihar*. On that day i.e 15.02.2016 at about 7:00 P.M. her neighbour Ashok Kumar informed him to rush to Patna whereupon he along with his brother and others came and then saw his daughter dead on account of hanging. He had also seen *Dupatta* hanging from the ceiling fan which was half cut. Dead body was lying over the bed. So he claimed that his daughter has been murdered by Rajan Kumar Gupta by way of



strangulation.

6. On the basis of the aforesaid written report Malsalami P.S. Case No. 51 of 2016 was registered followed with an investigation as well as submission of charge-sheet facilitating the trial, meeting with ultimate result, subject matter of challenge under instant appeal.

7. 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 of charge. In an alternative, it has also been suggested that deceased committed suicide on account of financial crunch. However neither oral nor documentary evidence has been adduced by the defence.

8. In order to substantiate its case, prosecution has examined altogether 12 prosecution witnesses. Those are P.W.-1 Jyoti Devi, P.W.-2 Rinki Kumari, P.W.-3 Bishwajeet Kumar, P.W. 4 Raja Kumar @ Raja Gupta, P.W. 5, Deonarain Prasad, P.W. 6 Rakesh Kumar, P.W. 7 Jitendra Kumar, P.W.-8 Ramji Prasad, P.W.-9 Nirmala Devi, P.W. 10 Ayodhya Prasad, P.W.-11 Dr. Ramanand Choudhary, P.W.- 12 Abhishek Kumar Singh. Besides, the prosecution also exhibited Exhibit-1 signature of P.W.-5 Deonarain Prasad over inquest report, Exhibit 1/1 signature of P.W.-8 over inquest report, Exhibit 1/2 endorsement over the written application, Exhibit-2 written application, Exhibit-3 postmortem report, Exhibit-4 formal FIR and Exhibit-5



inquest report. As stated above, defence has not examined ocular as well as documentary evidence.

9. Learned counsel for the appellant at initial stage tried to challenge the judgment impugned suggesting that no offence even to the extent of Section 306 of the IPC is made out because of the fact that deceased had herself committed suicide on account of financial crunch. It has also been submitted that appellant was suffering from huge loan and for that, the respective lenders were repeatedly demanding and seeing humiliation of the appellant, her husband, she was unable to bear the shock and committed suicide. None was responsible and that being so, in the opinion of the learned counsel for the appellant this appeal happens to be fit to be allowed.

10. During course thereof, with the assistance of learned Additional Public Prosecutor as well as learned counsel for the appellant when the circumstances, so visualizing on the record have been exposed then, all of them happen to be of the view that the judgment impugned is fit to set aside and the matter be remitted back to the lower court for reappraisal.

11. Before coming to those circumstances, it looks prudent to categorize the witnesses. P.W.-1 is the sister of the deceased while P.W.-2 is Bhaujai of deceased, P.W.-3 is brother of deceased, P.W. 5 is uncle of deceased and P.W.-8 is the father of the deceased/informant. On the other hand, P.W.-4, P.W.-6



P.W.-7 and P.W.10- are neighbours of the appellant/deceased while P.W.-9 happens to be a tutor, who claimed that she was engaged at the end of the appellant to teach his son. P.W.-11 is the doctor who conducted postmortem and P.W.-12 is the I.O. who conducted investigation. From the evidence available on the record right from P.W.-1 to P.W. 10, none had claimed to be witness of the occurrence. They have not disclosed that when they reached at the place of occurrence, that means to say that in the room, they had found the appellant engaged in cutting *Dupatta* by climbing over the chair have over bed. None of them had disclosed that they caught hold of the dead body of deceased during course of putting the same over the bed. As the inquest speaks supported by ocular evidence, presence of dead body on bed. None of them had claimed that door was closed from inside, they had broken the latches and then entered inside the room, that means to say that none of the witnesses has stated that they have seen the dead body hanging from the ceiling fan although half cut *Dupatta* was there. Whether deceased committed suicide by hanging herself that how the dead body was put over bed is a circumstance not explained. Dead body was lying over the bed. The bed-sheet was not in a shrinking position. *Dupatta* was not found around the neck, although, half of the same was lying over the floor, so actually by that *Dupatta* deceased committed suicide is another circumstance which the appellant failed to explain. At



least, there should have been positive evidence at the score of appellant who had cut the *Dupatta* but the dead body over bed, who cut *Dupatta* having around the neck. Non explanation suggests otherwise which the court below completely overlooked.

12. Now coming to other aspect, while conducting post-mortem P.W. 11 had found the following ante-mortem injuries :

“One non continuous oblique ligature mark associated with abrasion and bruise seen over neck between thyroid and lower law size 11”x ½”. Ligature mark absent on left side of neck on further dissection. The subcutaneous tissue under the ligature mark was dry white and glistency. The neck muscle such as platysma and sternomastoid muscles were injured. The major vessels were injured at the side of ligature mark. The mucosa of trachea and larynx were congested. Right heart chamber was full with blood and blood clots, left chamber empty. The stomach contain yellow colour watery fluid about 100 ml. without specific smell and there mucosa normal in appearance. The abdominal viscera in general were congested, The urinary bladder was empty. The uterus was non-pregnant. The brain and its meninges were congested.

Opinion: The above noted injury was ante mortem in nature. Death was resulted from asphyxia due to hanging caused by ligature material. The time elapse since death was 6-24



hours approx from the time of post-mortem examination. The thyroid cartilage and hyoid bone were intact. Both lungs were congested. Right”

13. So death by asphyxia caused on account of hanging has conclusively been proved but the doctor during course of cross examination had not been questioned whether it happens to be suicidal or homicidal. If the aforesaid even is taken together with the other circumstances be pointed out, it speaks otherwise than whatever been supported at the end of appellant.

14. The learned lower court had endeavored to find out that demand which was raised at the end of the appellant was not a dowry, rather it was a demand to set off the loan and on that very score negated the evidence of the prosecution in the background of finding having been relied upon at the end of appellant in *Appa Saheb and others Vs. State of Maharashtra* reported in *A.I.R 2007 S.C. 763* and *Bipin Jaiswal Vs. State of Andhra Pradesh* reported in *A.I.R 2013 S.C. 1567* but, failed to construe that there was an alternative charge having against the appellant for an offence punishable under Section 302 of the IPC. Death was admitted inside the room of the house of the appellant and so, the incident was within his exclusive knowledge which he was bound to explain as required under Section 106 of the Evidence Act.

15. In *Trimukh Maroti Kirkan vs State Of*



Maharashtra reported in (2006) 10 SCC 681, it has been held:-

“The demand for dowry or money from the parents of the bride has shown a phenomenal increase in the last few years. Cases are frequently coming before the courts, where the husband or in-laws have gone to the extent of killing the bride if the demand is not met. These crimes are generally committed in complete secrecy inside the house and it becomes very difficult for the prosecution to lead evidence. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it would be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of



proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision.”

16. In *State of Rajasthan Vs. Thakur Singh* reported in **2014 Cr.L.J. 4047**, it has been held :-

“22. The law, therefore, is quite well settled that the burden of proving the guilt of an accused is on the prosecution, but there may be certain facts pertaining to a crime that can be known only to the accused, or are virtually impossible for the prosecution to prove. These facts need to be explained by the accused and if he does not do so, then it is a strong circumstance pointing to his guilt based on those facts.”

17. In *Harijan Bhala Teja Vs. State of Gujrat* reported in **AIR 2016 SC 2065**, it has been held :-

“Section 106 of the Indian Evidence Act provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Since it is proved on the record that it was only the appellant who was staying with his wife at the time of her death, it is for him to show as to in what manner she dies, particularly, when the prosecution has successfully proved that she died homicidal death”



18. At para-22, page 10 of the judgment, the logic whatever, been advanced at the end of the learned lower court for drawing an inference in favour of Section 306 of the IPC, it is apparent that while doing such exercise, the learned lower court failed to perceive the circumstances as well as conduct of the appellant/accused duly exposed from the record and in likewise manner non-performance of obligation which the appellant carried in accordance with Section 106 of the Evidence Act. That being so judgment impugned is set aside. Appeal is allowed. Matter is remitted to the learned lower court to hear both the parties and pass judgment afresh in accordance with law. Appellant who is under custody should be accordingly produced before the learned lower court.

(Aditya Kumar Trivedi, J)

sushma/-

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