

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.217 of 1994

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Muslim Mian son of Rahman Mian, resident of Sarfuddinpur Tok, P.S-
Bochahan, Dist- Muzaffarpur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr.Sunil Kumar Singh
For the Respondent/s : Mr. Dilip Kumar Singh

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 02-08-2019

Heard Mr. Ram Priya Sharan Singh, learned Amicus
Curiae, appearing for the appellant, as well as learned Additional
Public Prosecutor Mr. Dilip Kumar Singh for the State and perused
the records.

2. This criminal appeal has been preferred by the above
stated sole appellant against the impugned judgment of conviction
and sentence order dated 28.04.1994 passed by the learned 1st
Additional Session Judge, Muzaffarpur in Session Trial No. 1320
of 1990 by which and whereunder, the learned 1st Additional
Session Judge, Muzaffarpur (hereinafter referred to as ‘Trial
Court’) convicted the appellant for the offence punishable under



Section 302/34 of the Indian Penal Code and, accordingly, sentenced him to undergo life imprisonment.

3. Briefly stated prosecution story is that PW-7 Najumun Khatoon gave her fardbeyan to PW-11, the then A.S.I of Bochahan Police Station, on 28.08.1989, at about 18/15 hours, in front of house of appellant to this effect that on 27.08.1989 at about 9 p.m her *Bhaisur*, Md. Shafique informed her that her sister Shamila Khatoon (deceased) was being assaulted by her husband namely, Ali Ahmad @ Ladoo Mian. She further stated that due to night, she could not go to the house of her sister but in the next morning on 28.8.1989 at about 1. p.m while she was going to the house of her sister, on the way PW-4, Hafijan Khatoon wife of Rahmat Mian met her and gave information that her sister was done to death by her husband Ali Ahmad as well as her father -in-law Md. Muslim. PW-7 further stated that having got information, she returned to her home and sent the aforesaid information to her native place through her brother-in-law, namely, Md. Najim and after that her brother and other people of her *Myaka* came and then she went to the house of her sister and found her sister lying dead. She claimed that she is of firm belief that her sister was killed by the appellant and F.I.R named accused Ali Ahmad .



On the basis of fardbeyan of PW-7, Bochaha Police Station Case No. 64 of 1989 was registered for the offence punishable under Section 302/34 of the Indian Penal Code and formal F.I.R was drawn up on the same day for the above stated offence against the appellant and co-accused Ali Ahmad.

4. PW-12, Nagendra Prasad Sinha took charge of investigation and in course of investigation, he inspected the place of occurrence, recorded the statements of witnesses and after completion of investigation and other formalities, submitted charge sheet against the appellant and F.I.R named co-accused Ali Ahmad. The cognizance of the offence was taken and the case was committed to the court of session in usual course. The appellant along with F.I.R named co-accused Ali Ahmad was put to trial before the session court and, accordingly, he as well as co-accused Ali Ahmad stood charged for the offence punishable under Section 302/34 of the Indian Penal Code. The charge was read over and explained to which they denied and claimed to be tried.

5. In course of trial, prosecution examined, altogether, 12 prosecution witnesses and also got exhibited inquest report as well as post mortem report as documentary evidence. The statement of appellant as well as co-accused Ali Ahmad was recorded under section 313 of the Cr.P.C in which they denied the



prosecution story and, specifically, stated that they were not at their home when the deceased died.

6. No evidence was adduced on behalf of the appellant as well as other accused but the statement recorded under section 313 of the Cr.P.C as well as trends of cross-examination of prosecution witnesses, it would appear that defence of appellant and co-accused was total denial of the prosecution story.

7. It is pertinent to note here that before pronouncement of impugned judgment, it was informed to the trial court that co-accused Ali Ahmad died and, accordingly, the proceeding against him was dropped.

8. Learned trial court after hearing the parties and after evaluating the evidences available on the record passed the impugned judgment of conviction and sentence order. Learned trial court has based his finding of conviction on the ground that PW-12 found that the room of house of the appellant had been washed and some injuries were found on the person of the deceased.

9. Learned Amicus Curiae Mr. Singh assailed the impugned judgment of conviction and sentence order arguing that the learned trial court has based his finding only on the basis of surmises and conjunctures. Criticising the finding of learned trial



court, learned Amicus Curiae submitted that learned trial court failed to take note of this fact that not a single prosecution witnesses claimed to have seen the actual killing of the deceased and, furthermore, the circumstances, on which the finding of conviction has been based, were not sufficient to prove the guilt of the appellant. Learned Amicus Curiae, further, submitted that in fardbeyan of PW-7, it has, specifically, been averred that PW-7 came to know about the alleged occurrence from PW-4 but in course of trial PW-4 did not support that above stated claim of PW-7. He further submitted that only PW-6 claimed before the trial court that deceased was subjected to cruelty by the appellant as well as F.I.R named co-accused Ali Ahmad due to non-fulfillment of demand of dowry. Learned Amicus Curiae submitted that PW-6 developed the story in course of trial and, moreover, there were several contradictions and omissions in the deposition of PW-6 but learned trial court ignored the aforesaid omissions and contradictions while passing the impugned judgment of conviction.

10. On the other hand, learned Additional Public Prosecutor appearing for the State supported the impugned judgment of conviction and sentence order arguing that PW-12, in course of investigation, visited the place of occurrence and found



that one of the rooms of the house of the appellant had been washed and furthermore, PW-9 found grievous injury on the head of the deceased. He submitted that according to the prosecution case, the deceased was assaulted inside her house and, therefore, the aforesaid two circumstances were sufficient to come on the conclusion that it were appellant as well as co-accused Ali Ahmad, who committed the murder of the deceased. Learned Additional Public Prosecutor for the State further submitted that the deceased was killed inside four walls of the house of the appellant and, therefore, it was incumbent duty of the appellant as well as co-accused Ali Ahmad to explain as to how deceased sustained injury and under which circumstance she died.

11. Having heard the above stated rival contentions of the parties we went through the record. We find that PW-1 Md. Shafique, who happens to be *Bhaisur* of PW-7, PW-2 Akhtar Hussain, PW-3 Md. Suleman, PW-4, Hafijan Khatoon wife of Rahmat Mian and PW-8, Md. Safique have been declared hostile. Similarly, we find that PW-5 and PW-10 have been tendered and they have stated nothing in respect of death of the deceased. PW-6 Md. Jalil is brother of the deceased whereas PW-7 is informant Najumun Khatoon. PW-9, is Doctor Mumtaz Ahmad, who did the post mortem examination of the dead body of the deceased



Shamila Khatoon. PW-11 and PW-12 are police officials. It is obvious from the perusal of the evidences available on the record that only PW-6 and PW-7 have supported the prosecution story. PW-6 claims that at the time of alleged occurrence, he was at his house and one Najibul, brother of his brother-in-law, came to his house and gave information that deceased was done to death by the appellant and Ali Ahmad. This witness further claims that having got information he went to Bochaha Police Station and narrated the entire incident to Daroga and after that he along with Daroga went to in-laws house of the deceased. This witness further stated that appellant is father-in-law of the deceased whereas F.I.R named accused Ali Ahmad is husband of the deceased. Furthermore, this witness claims that appellant and husband of the deceased used to demand one bye-cycle in dowry but when he did not give bye-cycle to the appellant as well as husband of the deceased, the deceased was subjected to cruelty by the husband. This witness further claims that husband of the deceased had taken Rs. 500/- from him at the time of death of his grand father. This witness further claims that police recorded the statement of PW-7 in his presence and this witness also admitted that PW-7, who happens to be sister of deceased as well as this witness, was married in the village of appellant. This witness also admitted in



his cross-examination that house of PW-7 was at the distance of 80 to 90 *Laggi* from the house of appellant. This witness also admitted that prior to the alleged occurrence, a Panchayati was held and in the aforesaid Panchayati, his mother was fined of Rs. 500/- by the Panches. This witness further admitted that his sister never came to his house after the aforesaid panchayati. This witness also admitted in his cross-examination that he had not made any complaint in respect of torture of his sister. PW-7, (informant) Najumun Khatoon is full sister of deceased and she states a different story, she claims that deceased died due to diarrhoea. This witness also disowns her fardbeyan as well as statement made by her before the court. She also denies that she had given information to her brother about the death of the deceased. The statement of this witness shows that she has not supported the prosecution story but, even then, she has not been declared hostile.

12. PW-9 Doctor, Mumtaz Ahmad claims that he did the post mortem examination on the dead body of the deceased Shamila Khatoon and found blood clots on the inner surface of scalp and on the outer surface of skull bone 2" above the bridge of the nose in the area of 1.5"x1.5" after dissection of scalp and after opening of chest and abdomen, internal organs were highly



congested and spleen and lungs were exuding bloody fluid on cut. He also noticed that white froth was coming out from nostrils. The internal wall of the stomach was found highly congested and was found containing bloody tinged fluid about 12 once and smell consisting of Kerosene oil was found.

13. This witness further claims that injury found on the head of the deceased was caused by hard and blunt substance whereas injury no. 2 was caused by forcefully administering poison. This witness further stated that presence of kerosene oil smell in the stomach's fluid was indicative of Aldrin of poisoning which is sufficient to cause death in the normal course of events but this witness did not give his opinion information regarding cause of death and kept his opinion pending regarding cause of death of deceased.

14. PW-11, Chhotelal Paswan claims that on 28.09.1989, at about 6.15 p.m, he recorded the fardbeyan of PW-7 and this witness proved the fardbeyan of PW-7 and except recording of the fardbeyan of PW-7, this witness did nothing.

15. PW-12, Nagendra Prasad Sinha, the then, officer-in-charge, of Bochaha Police Station claimed that PW-10 had already recorded the fardbeyan of PW-7 before his arrival at the place of occurrence. This witness claims that the place of occurrence was



the house of appellant Muslim Mian and Ali Ahmad. This witness further claims that he found broken piece of green glass bangles in the house of appellant and also found old cloths. He also noticed that the aforesaid room had recently been washed.

16. After perusing the entire evidence of prosecution, we find that not a single prosecution witness claimed to have seen the alleged occurrence. Furthermore, that except PW-6, none of the prosecution witness supported the prosecution story. PW-7, who happens to be informant of the present case, demolished the prosecution case, saying that she had not given any statement before the police. Here we would like to mention that PW-6 claimed that having got information about the death of the deceased, he went to the police station and narrated the entire incident to the police and after that he along with police came to the house of the deceased and, thereafter, the statement of PW-7 was recorded.

17. The aforesaid admission of PW-6 goes to show that it was PW-6, who first gave information about the death of the deceased but the aforesaid statement of PW-6 was not brought on record by the prosecution.

18. No doubt, deceased died at her matrimonial home but the inquest report goes to show that the dead body of the



deceased was recovered in front of her house. Although PW-12 claimed that he had investigated the case and submitted charge sheet but in his deposition, PW-12 nowhere, stated about the recovery of dead body. Moreover, admittedly, the dead body of deceased was found in front of the house of the appellant. There is nothing on the record to show that deceased died inside the house of appellant. The appellant, specifically, stated in her statement recorded under section 313 of the Cr.P.C that on the alleged date of occurrence, he was not present in his house. Therefore, in the aforesaid circumstance, a serious doubt arises in respect of claim of the prosecution and we are of the opinion that the learned trial court committed error in convicting the appellant for the offence punishable under section 302/34 of the Indian Penal Code.

19. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, is hereby, set aside. The appellant is acquitted of the charge framed against him. The appellant is on bail and he is discharged from the liabilities of his bail bonds.

20. Before parting the judgment, we direct the Legal Service Authority, Patna High Court, Patna to make payment of Rs. 5000/- to learned Amicus Curiae.



21. Let the first page and the last page of this judgment be handed over to the learned Amicus Curiae so that he could claim his remuneration from the concerned authority.

(Hemant Kumar Srivastava, J)

N.K/-

(Prabhat Kumar Singh, J)

AFR/NAFR	NAFR
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