

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.101 of 1994

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Murti Devi wife of Lakhan Mehta, resident of Nauwa Bhakhar, P.S.-
Kishanpur, Distt- Supaul

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Chandra Bhushan Das, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, A.P.P.

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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 : 01-08-2019

Heard learned counsel for the sole appellant as well as
learned Additional Public Prosecutor for the State and perused
the record along with lower court records.

2. This criminal appeal has been preferred by the
appellant against judgment of conviction and sentence order
dated 05.01.1994 passed by the learned 2nd Additional Sessions
Judge, Saharsa (hereinafter referred to as Trial Court) in
Sessions Trial No. 64/92(S)/120/92 by which and whereunder
he convicted the appellant for the offences punishable under
Section 302/34 of the Indian Penal Code and accordingly,
sentenced her to undergo imprisonment for life under Section



302/34 of the Indian Penal Code. However, by the same impugned judgment the learned Trial Court acquitted co-accused Permeshwari Sada, Kameshwar Yadav and Surendra @ Suren Yadav from the charges framed against them for the offences punishable under Sections 302/34 of the Indian Penal Code.

3. Briefly stated prosecution case is that P.W. 1 namely, Devendra Mehta gave his *fard-e-beyan* to Officer Incharge of Kishanpur P.S. on 11.01.1991 at about 9.30 a.m. to this effect that his brother-in-law (deceased) Lal Bahadur Mehta was separate from his brother Lakhan Mehta (P.W. 5) as the relation of deceased Lal Bahadur Mehta with his brother Lakhan Mehta as well as his Bhabhi Murti Devi (appellant) was strained. P.W. 1 further claimed that in the night between 10/11.01.1991 the deceased Lal Bahadur Mehta was killed in his house and the aforesaid fact came to his notice when Ram Sunder Mehta (P.W. 7) informed him about the killing of deceased Lal Bahadur Mehta.

4. On the basis of *fard-e-beyan* of P.W. 1, Kishanpur P.S. Case No. 19 of 1991 was registered against unknown. The charge of investigation was taken by P.W. 11 Badar Mohi, the then Officer Incharge of Kishanpur P.S. P.W. 11 visited the place



of occurrence, recorded the statement of witnesses and in course of investigation he arrested the appellant and after completion of investigation submitted charge-sheet against the appellant and others.

5. The cognizance of the offence was taken and the case was committed to the Court of Session. Accordingly, the appellant and others, were put on trial before the Court of Session.

6. Appellant and three others stood charged for the offence punishable under Section 302/34 of the Indian Penal Code to which they denied and claimed to be tried.

7. In course of trial, the prosecution examined, altogether, eleven witnesses and also got exhibited some documents. The statements of appellant as well as others were recorded under Section 313 of the Code of Criminal Procedure in which they reiterated their innocence.

8. The defence also examined one defence witness who proved a petition as Ext. A.

9. Learned Trial Court after evaluating the evidences available on record convicted the appellant and acquitted the other accused, basing his finding on the testimony of P.W. 5, the husband of appellant.



10. Learned Counsel appearing for appellant challenged the conviction and sentence order of the appellant submitting that the learned Trial Court believed the so-called extra judicial confession of the appellant who, allegedly, made her extra judicial confession before P.W. 5 in the night of alleged occurrence itself. Learned counsel of the appellant submits that the learned Trial Court did not appreciate the fact and evidence properly and completely ignored this fact that the appellant had sent a petition from jail retracting from her so-called extra judicial confessional statement. Learned counsel of the appellant further submitted that the learned Trial Court also overlooked this fact that the P.W. 5 had some doubts about the character of the appellant and that was the reason the P.W. 5 claimed before the police with *mala fide* intention that the appellant had confessed her guilt before him. He further submitted that no doubt, some of the prosecution witnesses claimed that the relation of appellant was not cordial with deceased, but the aforesaid witnesses, specifically, admitted that the appellant as well as her husband used to chide the deceased as the deceased had no interest in domestic and agricultural work. He submits that only on the basis of aforesaid fact, it cannot be inferred that it was appellant who committed the



murder of the deceased and, therefore, in the aforesaid circumstance, the appellant is entitled to get acquittal.

11. On the other hand, learned Additional Public Prosecutor supported the conviction and sentence of the appellant arguing that P.W. 5, specifically, stated that in the night of alleged occurrence, appellant confessed before him that she hired other accused and got eliminated the deceased, as the appellant wanted to grab the property of deceased.

12. Having heard the rival contentions of the parties, we went through the record along with lower court records. We find that none had seen the actual killing of the deceased and the entire prosecution case hinges upon so-called extra-judicial confessional statement of appellant as well as some other circumstances.

13. P.W. 1 Devendra Mehta is informant of the present case, who happens to be own brother-in-law of deceased as well as P.W. 5, and this witness admitted at para 9 of his cross-examination that deceased had no strained relation with appellant.

14. P.W. 2 Mahavir Mehta stated in his examination-in-chief that the relation of deceased was strained with the appellant, but this witness at para 10 of his cross-examination



admitted that the appellant used to ask the deceased to do the domestic as well as agricultural work and when deceased refused to obey the command of appellant, the quarrel often used to take place between them.

15. Similarly P.W. 3 also admitted that the appellant used to quarrel with deceased when deceased refused to do domestic and agricultural work. However, this witness admitted at para 15 of his cross-examination that he had not ever seen the appellant quarreling with deceased.

16. P.W. 4, P.W. 6, P.W. 7 and P.W. 8 were tendered by the prosecution and they stated nothing in respect of the alleged occurrence.

17. P.W. 5 Lakhan Mehta is full brother of deceased Lal Bahadur Mehta as well as husband of the appellant. This witness states that the deceased was separate from him. This witness further states that on the next morning of the alleged occurrence, he along with appellant was enjoying fire and at that time appellant confessed before him that she with the help of Permishwari Sada and Kameshwar Yadav got eliminated the deceased. This witness further states that appellant also confessed that she had agreed to pay Rs. 1000/- to Permishwari Sada for committing the murder of deceased and she had paid



Rs. 500/- to him. This witness also states that in the night of alleged occurrence appellant had not slept with him rather she was sleeping on Verandah whereas, he slept inside the house. This witness further states that the relation of deceased was not cordial with the appellant and prior to the alleged occurrence, the deceased was tortured by the appellant in different ways. This witness further states that appellant got eliminated the deceased with an object to grab his property. However, in his cross-examination, this witness admitted that the differences between him as well as appellant was since long. This witness also admitted that due to the aforesaid differences, several Panchayati were held. This witness also stated that appellant used to quarrel with the deceased. This witness also admitted at para 20 of his cross-examination that co-accused Permeshwari Sada used to visit his house as he had doubt that his wife (appellant) had illicit relation with the aforesaid Permeshwari Sada. This witness also admitted that when appellant confessed her guilt before him, there was no any other person. This witness further admitted that he went to see his brother after getting the information of murder of his brother. This witness also admitted that he had not gone to police station along with P.W. 1 to lodge the F.I.R. He also admitted that when police



came in his village, the appellant was at her house. This witness further admitted at para 26 of his cross-examination that the appellant confessed her guilt on the next morning after 8.00 a.m.

18. The death of deceased is not in dispute and P.W. 9 has proved the postmortem report of the deceased. P.W. 9 has found punctured lacerated wound size 3/4" X 1/2". Thoracic cavity deep oval in shape. He also found punctured wound 1/2" X 1/2" circular in shape. The first injury was wound of entry whereas, second injury was wound of exit. P.W. 9 opined that the aforesaid injuries were caused by firearm. Therefore, it is obvious from the deposition of P.W. 9 that the deceased sustained firearm injury and for committing his murder, firearm was used.

19. P.W. 11 is the Investigating Officer. This witness stated that on 11.01.1991 at 9.30 a.m. P.W. 1 came to Kishanpur P.S. and his statement was recorded. This witness further stated that he went to the place of occurrence and inspected the place of occurrence at 11.05 a.m. This witness further stated that he recorded the statements of witnesses and brought the appellant to police station. This witness admitted in his cross-examination that he took the appellant as well as P.W. 5 to police station on the basis of suspicion. This witness has, nowhere, stated that



P.W. 5 claimed before him that appellant had made her confessional statement before him.

20. After evaluating the entire evidence available on record, we find that except so-called extra-judicial confessional statement of appellant, there was nothing before the Trial Court and so far as extra-judicial confessional statement of appellant is concerned, allegedly, the same was made before P.W. 5 whose relation was not cordial with appellant as the P.W. 5 had doubt about the character of appellant. It is also obvious that the P.W. 1 gave his *fard-e-beyan* on 11.01.1991 at 9.30 a.m. and prior to recording his statement, according to P.W. 5, appellant had already made her confession before him, but it is surprising enough that P.W. 5 did not take any step to lodge the First Information Report in respect of killing of his brother. P.W. 5 has, specifically, admitted in his cross-examination that he did not go along with others to lodge the case in respect of the killing of deceased. Furthermore, P.W. 11 admitted that he took the appellant and P.W. 5 in custody on suspicion but even then P.W. 5 did not disclose this fact that the appellant had confessed her guilt before him. Therefore, in the aforesaid circumstances, in our view, it would not be safe to place reliance on so-called extra-judicial confessional statement of appellant and we are of



the considered view that the prosecution has failed to prove its case beyond all shadow of reasonable doubts.

21. On the basis of aforesaid discussion, this criminal appeal is allowed and the impugned judgment of conviction and sentence order, so far as it relates to appellant, is, hereby, set aside. The appellant is acquitted of the charge. She is on bail and accordingly, she is discharged from liabilities of her bail bonds.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

vinita/-

AFR/NAFR	AFR
CAV DATE	NA
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