

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.530 of 2013

Arising Out of PS. Case No.-92 Year-2011 Thana- TARAIIYA District- Saran

=====

Amit Sah S/O Sri Ram Briksh Sah Resident Of Village- Sahanawajpur, P.S.-
Taraiya, Distt.- Saran

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	None
Amicus Curiae	:	Mr. Anil Singh, Adv.
For the State	:	Mr. S. B. Verma ,Addl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 17-04-2019

1. Heard Sri Anil Singh, learned Amicus Curiae
and learned Addl. P.P. appearing for the State.

2. This appeal is directed against the judgment
of conviction dated 11.12.2012 and the order of sentence
dated 14.12.2012, passed by Sri Anil Kumar Singh,
Additional Sessions Judge XI, Saran at Chapra in Sessions
Trial No. 733 of 2011, arising out of Taraiya P.S. Case No. 92
of 2011, whereby and whereunder the appellant has been
convicted for the offence under section 302 of the Indian
Penal Code and has been sentenced to undergo rigorous
imprisonment for life and to pay a fine of Rs. 5000/-. In



default of payment of fine, the appellant has further been directed to undergo imprisonment for six months. The period undergone by the appellant has been set off into the period of sentence.

3. The prosecution case, in brief, is that fardbeyan of Tarkeshwar Sah (P.W.9) was recorded on 27.06.2011 at 2.00 P.M. by Sub Inspector, Narsingh Upadhaya of Taraiya Police Station stating therein that Nibha Kumari, daughter of the informant was married with the appellant in the year 2003 who was blessed with two children namely, Akash and Pallawi and after one and half years of marriage the accused started torturing her for a ring regarding which Nibha narrated to the informant when she had gone to see her on 26.06.2011 and on 27.06.2011 at 1.30 P.M. the informant learnt that Nibha was killed by the appellant after stabbing her upon which he went there where his Nati Akash disclosed that his mother was stabbed to death by his father.

4. On the basis of the aforesaid fardbeyan of the informant, Taraiya P.S. Case No. 92 of 2011 was registered on 27.06.2011 for the offence under section 302 of the Indian Penal Code in which appellant was made accused. After



investigation, the police submitted charge-sheet under section 302 I.P.C. on 29.07.2011. Thereafter cognizance was taken in this case on 08.08.2011 and the case was committed to the Court of Sessions for trial on 06.09.2011. Charges were framed against the appellant on 19.09.2011 for the offence punishable under section 302 of the Indian Penal Code to which the appellant pleaded not guilty and claimed to be tried.

5. During trial, the prosecution has examined altogether 12 witnesses. P.W. 1/ Baby Devi, P.W. 2/ Dr. Sri Nath Prasad, who examined the injuries on the person of the accused, P.W. 3/ Dr. Rameshwar Prasad, who conducted the post mortem examination over the dead body of the deceased, P.W. 4/Bhagmani Devi, P.W. 5/ Shailesh Kumar Yadav, P.W. 6/ Umesh Sah, P.W. 7/ Asharfi Devi, who is mother of the deceased, P.W. 8 Sunil Kumar Manjhi, P.W.9/ Tarkeshwar Sah, the father of the deceased and the informant of the case, P.W. 10/Narsingh Upadhaya, the Investigating Officer of the case, P.W.11/ Akash, the son of the deceased and Nati of the informant and P.W.12/ Sudama Rai, who is a formal witness.

6. In order to establish the charge, the



prosecution has proved the following documents as exhibits :

Exhibit -1 Injury Report of Amit Sah

Exhibit -2 Post Mortem Report

Exhibit -3 Signature of informant on the fardbeyan

Exhibit-3/1 Feardbeyan of the informant

Exhibit-4 Formal F.I.R.

Exhibit-5 Inquest Report

*Exhibit-5/1 Signature of Sudama Rai on Inquest
Report.*

7. The appellant in his statement under section 313 of the Code of Criminal Procedure has said that he is innocent and has falsely been implicated in this case.

8. No evidence has been adduced on behalf of the defence.

9. Before reaching to any conclusion, it is felt necessary to firstly examine the evidence of all the witnesses.

10. P.W. 1/Baby Devi, who is a hearsay witness, has stated in her evidence that Nibha Devi was her relative. She was married to Amit Shah about 7-8 years ago. She had one issue out of the wedlock. On a dispute over the demand of 'Mangal Sutra' the husband killed her by inflicting a knife



blow. She also stated that the accused was not present in the house.

11. It is the evidence of Bhagmati Devi, P.W. 4, that her relative Nibha Devi was killed. It was gathered that Amit Shah had killed her. She saw that there were injuries on the person of the deceased and blood was oozing out. She was dead and people had gathered there.

12. P.W. 5./ Shailesh Kumar deposed that about four months ago, on hearing a *hulla*, when he went to the house of Amit Shah he saw that the wife of Amit has been killed. People informed that Amit has killed her by inflicting knife blow and has fled away. Police came there and prepared a Panchnama.

13. P.W. 6/ Umesh Shah deposed that he knew nothing about the occurrence. The prosecution has declared this witness 'hostile'. He also stated that on hearing he went to the place of occurrence and saw the deadbody. The accused husband was absconding.

14. P.W.7/ Asharfi Devi, who is mother of the deceased, has stated that her daughter Nibha Kumari was married to Amit Shah. She further stated that a quarrel took place over the demand of a ring, on which Amit killed her



daughter by piercing a knife. On receiving telephonic information, she went there and saw the deadbody of her daughter. She stated that her daughter's son informed that his father had killed her with a knife. Police had arrived there and the husband had given his statement. There were injuries of knife on the person of her daughter. Amit had fled away from his house.

In her cross-examination, she stated that whatever she has deposed was on the basis of hearsay.

15. P.W. 8/ Sunil Kumar Manjhi, has stated in his evidence that the wife of Amit Shah is dead and when she died Amit Shah was not present there. This witness has also been declared hostile by the prosecution.

He also stated that the deadbody of the wife was lying in the 'Angan' and there were marks of injuries and blood on the body of the deceased. The accused was not at his house after the occurrence. He did not even perform the last rites of his wife, rather we performed it.

16. P.W.9/ Tarkeshwar Shah, who is the father of the deceased and the informant of the case, has deposed that about 10 months ago his daughter was killed in her Sasural, she was killed by his son-in-law Amit Shah. The deadbody of



the daughter was lying at the door. This witnesses has stated about lodging of the fardbeyan and has proved his signature on the Fardbeyan (Exhibit-1).

This witness also stated that on information he had gone to the Sasural of his daughter but had not asked anything from his grandson (Nati).

On this point, this witness has been declared hostile by the prosecution and his attention was drawn towards his earlier version where he had denied that he had informed the police that for the demand of a ring his son-in-law always used to beat his daughter. But accepted that his Nati had informed him that his father killed his mother by inflicting several knife blows and he with his sister escaped and hid in the adjacent house.

In cross-examination, he stated that his Nati was crying and he did not disclose anything. His son-in-law used to keep her daughter with dignity and how his daughter was killed is not known to him.

17. P.W. 11/ Akash, who is the son of the deceased and Nati of the informant, has stated in his evidence that his mother was killed with a knife; 21 knife blows were inflicted and his father had inflicted the blows.



He stated that he had stated this fact to the Court also.

In his cross-examination, he stated that he did not see anything with his own eyes as he had gone to School. He also stated that he is unable to put his signature. (This witness has put his thumb impression on his deposition.)

In answer to a query made by the Court, this witness stated that “पापा ने मम्मी को काट दिया था इसलिए जेल में हैं”. He also informed the Court that he is a student of Class IV.

18. P.W. 12/ Sudama Rai is a formal witness who has proved his signature on the Inquest Report as Exhibit-4/1. In cross-examination, he stated that he had put his signature on a blank paper.

19. P.W. 2/ Dr. Sri Nath Prasad, in his evidence has stated that on 27.06.2011 he was posted at Taraiya Referral Hospital and on that day at 4.30 P.M. he had examined the accused- Amit Shah and found the following injuries :

(i) Lacerated wound $\frac{1}{2}$ " X $\frac{1}{4}$ " X $\frac{1}{4}$ " on outer side of right palm.

(ii) Sharp wound $\frac{1}{2}$ " X $\frac{1}{4}$ " X $\frac{1}{4}$ " on outer side of right thigh.

In the opinion of the doctor the injuries have been caused within six hours. First wound caused by hard



blunt substance and second wound by sharp edged weapon.

Both injuries are simple in nature.

In his cross-examination, he has stated that the sharp injury may be self manufactured.

This witness has proved the Injury Report as Exhibit-1.

20. P.W. 3/ Dr. Rameshwar Prasad, in his evidence has stated that he conducted the *post mortem* examination of the dead body of the deceased Nibha Devi at 9.45 am on 28.06.2011 and found the following injuries :

- i. Sharp cut penetrating wound on left side of front-upper part chest just below left clavical 1" X ½" cavity deep.*
- ii. Sharp cut right side penetrating wound on upper part of the neck just below ankle of right mandibul.*
- iii. Sharp cut right side penetrating wound on the upper part of chest just below to right clavical 1" X ½" cavity deep.*
- iv. Sharp cut on the right side of chest on the right margin of nipple near sternum 1X ½" cavity deep.*
- v. Sharp cut injury just on the hypochondrium lateral to right breast 1X ½" cavity deep.*
- vi. Sharp cut penetrating wound on the right side of chest left to right breast.*
- vii. Penetrating wound on right side of abdomen in right hypochondrium 1X ½" cavity deep.*



viii. *Penetrting wound on the right ablical area 1" laterial to umbilicus 1" X ½" cavity deep.*

ix. *Penetrting wound right flanks 1" X ½" cavity deep.*

x. *Sharp cut injury on right side of supra clavical area 1" X ½" cavity deep.*

On the dissection : All visceras were intact and pale apical area of the lung was punctured multiple penetrating wound on right and left lung, penetrating wound on liver, intestine were damaged due to penetrating weapon, stomach was full of undigested material. Uterus was normal.

The doctor has opined the cause of death due to shock and haemorrhage cause by sharp cut penetrating weapon. Duration- 24 hours.

This witness has proved the *post mortem* report as Exhibit-2.

21. P.W. 10/ Narsingh Upadhyay, who is the investigating officer of this case, has deposed that on 27.06.2011 he was posted at Taraiya Police Station. The witness has proved the Fardbeyan (Exhibit-2), Formal F.I.R. (Exhibit-3) and the Inquest Report (Exhibit-4).

The witness has also proved the place of occurrence.

He also stated that the informant had given statement to the effect that the accused always used to beat



her for procuring the ring. On the information that the accused is hiding in a bamboo orchard, went there and arrested him, recorded the statement of witness, received the injury report and the post mortem report. He also produced the son of the deceased namely Akash in the Court for recording his statement under section 164 Cr.P.C.

He further stated that finding the case to be true, he submitted the charge-sheet.

22. Sri Anil Singh, learned Amicus Curiae submitted that there is no eye witness to the occurrence. The witnesses are either hostile or hearsay. Their statements are contradictory and even there is contradiction in their own statements. The investigation is faulty as neither the blood stained soil nor the blood soaked clothes of the deceased nor the weapon used has been seized. There are injuries on the person of the accused also, but the prosecution is completely silent on this aspect. It can be said that the prosecution has not come with clean hands. Therefore, at least the accused should be given the benefit of doubt.

23. Sri Ajay Mishra, learned Additional Public Prosecutor vehemently opposed the appeal by submitting that it is a case of brutal murder of a 25 year young lady



having two minor innocent children. The doctor has found ten injuries on the person of the deceased all of which have been caused by a sharp cutting weapon, which shows that the deceased was killed brutally.

As regards the evidence, the only witness Akash (P.W. 11), who is son of the deceased, is the eye witness, who on the query made by the Court, has specifically answered that his father had stabbed his mother.

Although all the witnesses are hearsay, but their evidence is clear on the point that they all had seen the deceased in the house of accused in injured and dead condition. Post mortem report (Exhibit-2) corroborates this fact.

Although the informant is party hostile, but he has confirmed the fact that his grandson had disclosed to him that his father had stabbed her mother to death by inflicting several knife blows.

Fleeing away from the scene, not informing anybody even on the brutal murder of his wife, recovery of the dead body from his house and his hiding in the bamboo orchard (Banswari), shows his complicity in the crime. Not giving any answer to the specific query made by the Court



under section 313 Cr.P.C. clearly shows his complicity and he has failed to prove his innocence on this point.

So far as the two simple injuries on his person are concerned, in the opinion of the doctor, they can be manufactured. In order to divert the investigation of the case and to defend himself the accused himself might have caused these two simple injuries or they might have been caused due to the attempt made by the wife to ward off the blows made by the husband.

In an answer to the specific query on this point also, in the statement under section 313 Cr.P.C. the accused has stated that he is suffering from epilepsy, and therefore, it cannot be said that the prosecution has not come with clean hands.

Hence, it can be said that the prosecution has proved the charges levelled against the accused beyond all reasonable doubts.

24. Considering the facts and circumstances of the case, the materials available on record and the submissions advanced on behalf of the parties, this Court finds that the submissions advanced by the learned Addl. P.P. appearing for the State has substance, agrees with the same



and rules out the submissions advanced by Mr. Anil Singh,
learned Amicus Curiae.

Accordingly, the appeal is dismissed and the
judgment of conviction dated 11.12.2012 and the order of
sentence dated 14.12.2012, passed by Sri Anil Kumar Singh,
Additional Sessions Judge XI, Saran at Chapra in Sessions
Trial No. 733 of 2011, arising out of Taraiya P.S. Case No. 92
of 2011 is, hereby, affirmed.

(Arvind Srivastava, J)

Rakesh Kumar, J : I agree.

(Rakesh Kumar,)

mcv/-

AFR/NAFR	NAFR
CAV DATE	11.10.2018
Uploading Date	17.04.2019
Transmission Date	17.04.2019

