

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.74 of 1996

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Ambuj Sharma, son of Shri Nursing Sharma, resident of village Sachai, P.S.-
Kurtha, District- Jehanabad.

... .. Appellant

Versus

State of Bihar

... .. Respondent

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Appearance :

For the Appellant	:	Mr. Surendra Singh, Sr. Advocate Mr. Bimal Kumar, Advocate
For the Respondent	:	Mr. Anand Mohan, Advocate Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 08-07-2022

The present criminal appeal has been preferred against the judgment of conviction and order of sentence dated 16.12.1995 passed by 1st Additional District and Sessions Judge, Jehanabad in Sessions Trial No. 149 of 1994 (arising out of Kurtha P.S. Case No. 236 of 1993, G.R. No. 1539/1993), whereby and whereunder the appellant has been convicted under sections 302 and 304B of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life under section 302 of the Indian Penal Code. No separate sentence has been awarded for the offence punishable under section 304B of the Indian Penal Code.



The present case got initiated on the basis of fardbeyan of the appellant, wherein he has narrated that in the intervening night of 19th-20th December, 1993 at around 2 a.m., when the appellant and his wife (deceased) were sleeping in the room built at the roof of the house, his wife woke up upon hearing some noise. The wife of the appellant (deceased) went out of the room with a torch in her hand and the appellant followed her. In the light of torch flashed by the wife of the appellant (deceased), the appellant saw one Brij Nandan Sharma and Shashi Bind Sharma, who were carrying rifle in their hand, Sita Ram Singh, Navlesh Sharma and Yogendra Sharma were also present with arms in their hand. In the courtyard, Awadhesh Sharma, Nagendra Sharma and 5 to 6 persons were also present, who were unknown to this appellant. The accused persons, who were on the roof, started moving towards the appellant upon which the wife of the appellant (deceased) asked the appellant to run away. The appellant started fleeing away. In the meanwhile, Brij Nandan Sharma asked Shashi Bind Sharma to fire upon the appellant. Upon the exhortation so made, Shashi Bind Sharma with an intention to kill the appellant opened gun fire. However, the bullet hit the wife of the appellant (deceased). The appellant raised alarm and in order to save his life, escaped from the place of occurrence and took shelter in the



house of Shailendra Kumar. The accused kept firing upon the appellant. However, he did not sustain any bullet injury. Upon hearing the sound of bullet and the alarm raised by the appellant, the family members of the appellant woke up and his brother Arjun Sharma, his friend Anil Singh, Amrendra Kumar, Jitendra Narayan Singh and some other villagers came and identified the aforementioned accused while they were fleeing away from the place of occurrence. When the appellant along with other persons reached at the roof, he saw that his wife has been hit by a bullet in her head and she was lying dead. The reason for the occurrence has been narrated in the fardbeyan to be political rivalry between the appellant and one Ram Jatan Sinha.

On the basis of the fardbeyan of the appellant, Kurtha P.S. Case No. 236 of 1993 was registered and the investigation was carried out by the police. During the course of investigation, the Investigating Officer inspected the place of occurrence and recovered two empty cartridges and torch. He also prepared the inquest report of the dead body of the deceased and recorded the statement of the witnesses. While the investigation was under process, on 26.12.1993, the father of the deceased came at the police station and gave a written report, upon which the Investigating Officer (P.W. 6) recorded the statement of the father



of the deceased and also recorded the statement of brother of the deceased among other relatives. The Investigating Officer collected some letters written by the appellant and deceased and the same was kept in the case diary. The Investigating Officer came to the conclusion that the murder of the deceased has been committed by the appellant himself for demand of dowry and, as such, after completion of the investigation, he submitted charge-sheet against the appellant under Sections 302, 201, 498A/34 of the Indian Penal Code and Section 27 of the Arms Act. The Chief Judicial Magistrate took cognizance of the offence on 09.06.1994 and thereafter committed the case to the Court of Sessions. On 23.8.1994, charges under sections 302 and 304B of the Indian Penal Code were framed against the appellant. The appellant pleaded not guilty and claimed to be tried.

In course of the trial, the prosecution examined altogether seven witnesses in all. P.W.-1 is Muneshwar Sharma, who is father of the deceased. P.W.-2 is Yogendra Sharma, who is uncle of the deceased. P.W.-3 Abhay Narain Sharma and P.W.-4 Brajesh Sharma are brothers of the deceased. P.W.-5 is Naresh Yadav (who was declared to be hostile). P.W.-6 is Sriram Singh (Investigating Officer) and P.W.-7 is Dr. Bindu Amitabh, who conducted post mortem on the dead body of the deceased. Nine documents were



exhibited on behalf of the prosecution. The defence has also examined five witnesses. D.W.-1 is Amrendra Kumar, D.W.-2 is Vakil Bhuinya, D.W.-3 is Narsingh Singh (father of the appellant), D.W.-4 is Jitendra Narayan (uncle of the appellant) and D.W.5 is Raj Ballav Sharma. The post-mortem report is marked as Ext.-9 and inquest report is marked as Ext.-7. The letter written by the deceased one day prior to the alleged occurrence is marked as Ext.1/II and the letter purported to be written by the sister of the appellant, namely, Usha Kumari is marked as Ext.-1/III.

Heard Mr. Surendra Singh, learned senior counsel assisted by Mr. Bimal Kumar, learned counsel for the appellant and Mr. Dilip Kumar Sinha, learned APP for the State.

Learned senior counsel Mr. Surendra Singh, appearing on behalf of the appellant, has submitted that there was no demand of dowry made by the appellant. The appellant had enmity with one Ram Jatan Sinha, for which Kurtha P.S. Case No. 152 of 1993 was registered against the appellant. On 11.11.1993, when the appellant came home after his release on bail, said Ram Jatan Sinha had threatened to kill him. On 18.11.1993, the persons of said Ram Jatan Sinha had come and opened fire on the appellant, for which an F.I.R. was registered and the case was investigated. Learned Senior Counsel has pointed out that the brothers of the



appellant had gone to the police station to inform the police that there was firing being made in their house and an entry in the Station House Diary was made in this regard. Learned Senior Counsel further submits that the prosecution has not brought on record the said entry made in the Station House Diary. It has also been argued that there is no eye witness to the alleged occurrence. The appellant and his wife (deceased) were sleeping in the room built on the roof top and the roof of the house is said to be the place of occurrence. The appellant has duly explained the incident leading to death of his wife immediately after the occurrence, which gets corroborated by his fardbeyan, supported by the seizure list of torch and empty cartridges from the roof. The medical evidence also supports the version of the defence as the doctor, who conducted the post-mortem, has found that there was no blackening, charring, tattooing found at the wound of entry which strongly suggests that the firing was made from a distance. Further, learned senior counsel has drawn the attention of this Court to Ext.- 1/II, which was written by the deceased one day prior to the date of incident. From perusal of the same, it would appear that the deceased had not mentioned anything regarding any demand of dowry being made by the appellant or any sort of cruelty being committed on her, rather it appears that the deceased



was concerned regarding the danger to the life of the appellant and not of her own life. The defence witnesses have been consistent in their deposition to support the fact that the F.I.R. named accused persons were seen running away from the place of occurrence. Lastly, it has been submitted that the reliance placed by the trial court on Ext.1/III is misplaced as the same is an undated letter and the author of the said letter has not been examined as a witness in this case, so as to prove the contents of Ext.1/III.

Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State has submitted that the judgment and order under challenge requires no interference. The prosecution has been able to prove its case beyond all reasonable doubt.

After hearing both the sides and perusing the materials available on record, following issues arise for consideration:

- (I) Whether as per the F.I.R., the place of occurrence has been duly proved?
- (II) Whether the prosecution has been able to prove the manner of occurrence?
- (III) Whether in the light of Section 106 of the Evidence Act, the appellant has duly discharged his burden of proof by explaining the cause of death of his wife?



(IV) Whether Ext.-1/II written by the deceased one day prior to the occurrence supports the version of prosecution regarding the threat to the life of the deceased?

(V) Whether Ext.-1/III can be admissible as evidence in law especially in view of the fact that the author of the letter has been withheld by the prosecution by non-examining her for proving Ext.-1/III?

While advertng to the first issue, from perusal of the record, it appears that the place of occurrence is the rooftop of the house of the appellant. The Investigating Officer (P.W.6) in his deposition has stated that empty cartridges and a torch were recovered from the roof and a seizure list in that regard was prepared, which has been marked as Ext.6. The dead body of the deceased was also found on the roof, which will be evident from perusal of the Inquest Report marked as Ext.7. Further, the Investigating Officer in his deposition has also supported the fact of presence of a bamboo ladder at the place of occurrence. Therefore, the version of the appellant finds support from the deposition of the Investigating Officer (P.W.6), Ext.6 and Ext.7. There is nothing on record which goes on to indicate that the firing was made from the courtyard as there is no recovery of any empty cartridge or any incriminating article from the courtyard.



Therefore, there is no reason to disbelieve the version of the appellant so far as the place of occurrence is concerned. Hence, we find that the place of occurrence is the rooftop of the house of the appellant as narrated by him in his fardbeyan.

So far as the second issue is concerned, the appellant in his fardbeyan has categorically stated that upon the exhortation made by F.I.R. named accused, namely, Brij Nandan Sharma, another F.I.R. named accused Shashi Bindu Sharma fired, as a result of which the wife of the appellant (deceased) sustained bullet injury and died. However, the case of the prosecution is that the bullet injury sustained by the deceased has been shot from close range or contact range. From perusal of the postmortem report, it appears that there is no charring, scorching or tattooing near the entry wound. In this regard, we would refer to ***TAYLOR'S PRINCIPLES AND PRACTICE OF MEDICAL JURISPRUDENCE, Volume I***, under the heading ***Interpretation of Firearm Wounds*** reads as : ***“Entrance Wounds. When a weapon is discharged in contact with, or very close indeed to the body, the gases, including CO, which emerge with the bullet enter the tissues and thereafter expand, causing tearing of the skin or clothes, very often in the form of a cruciate or stellate split. Most of the powder is found inside the tissues, but there may be traces***



of blackening, burning, soiling and tattooing around the entrance hole... ”. It is evident from the postmortem report that the doctor has not found any traces of blackening, burning, soiling or tattooing around the wound of entry. This fact goes on to indicate that the firing has not been made from close range or contact range. Further, the doctor, in his cross examination, has categorically stated that he had not found any mark of scorching, tattooing, charring or blackening around the wound. Hence, the version of the prosecution that the firing was made from close range or contact range is contrary to the medical evidence available on record. On the other hand, it supports the version of the appellant as narrated in the F.I.R. that the bullet has been fired from a distance.

So far the third issue is concerned, the trial court in its judgment has held that since the deceased was the wife of the appellant and both were sleeping in the same room and she was last seen alive with the appellant, therefore, the onus of explaining the cause of death of his wife will be upon the appellant. From the record, it is apparent that the appellant has, without any interval of time, taken steps to inform the police regarding the incident of firing, which took place in his house. The brothers of the appellant, soon after the firing, went to the police station and



informed that firing has taken place at their house. The appellant in his fardbeyan narrated the entire incident and upon his fardbeyan the police case was registered. His version of the occurrence also stands supported by the medical evidence and ocular evidence. Therefore, from the totality of facts, we find that the appellant has duly explained the cause of death of his wife. Hence, the appellant has discharged the burden of proof as envisaged under Section 106 of the Evidence Act.

In order to deal with the fourth issue as formulated above, we have carefully perused Ext.-1/II, which is a letter written by the deceased, one day prior to the alleged date of occurrence, wherein the deceased has narrated regarding the incident of firing being made by some miscreants. It has been clearly stated by the deceased that she was worried regarding the threat which was on the life of the appellant. Nowhere in the letter (Ext.1/II), has the deceased stated explicitly or even impliedly that there is threat to her life. The Investigating Officer in his deposition has also corroborated the fact that two days prior to the occurrence, an incident had taken place at the house of the appellant wherein firing was made by some miscreants. He further states that information regarding such firing was received by him and he had made an inquiry regarding the same. The letter does not mention



any sort of cruelty done upon her by the appellant. The absence of any mention regarding cruelty or apprehension of death is sufficient enough to substantiate that the deceased had no apprehension of any threat to her life.

Now, coming to the fifth issue which is regarding Ext.-1/III i.e. letter said to be written by Usha Devi (sister of the appellant), the Investigating Officer in his cross-examination has stated that though he had recorded the statement of the sister of the appellant, namely, Usha Devi but he had not asked any question to her regarding Ext.-1/III. It is also evident from the record that the prosecution has not examined Usha Devi as a prosecution witness. The prosecution has also not taken any steps to get the handwriting of the author of the said letter marked as Ext.-1/III verified by any expert. Therefore, in our opinion, the Ext.-1/III cannot be relied upon in a circumstance wherein the prosecution has chosen not to examine the author of Ext.-1/III and the content of Ext.1/III has not been proved. As also there is no ocular evidence or evidence of any expert in support thereof.

On the basis of the findings arrived at regarding the issues formulated hereinabove, we are of the considered opinion that the prosecution has failed to establish the guilt of the appellant beyond all reasonable doubt. On the other hand, the appellant has



duly discharged his burden of proof as envisaged under Section 106 of the Evidence Act.

Therefore, the appeal is allowed. The judgment of conviction and order of sentence dated 16.12.1995 passed by 1st Additional District and Sessions Judge, Jehanabad in Sessions Trial No. 149 of 1994 (arising out of Kurtha P.S. Case No. 236 of 1993, G.R. No. 1539/1993), are hereby set aside. The appellant is acquitted of the charges framed against him under Sections 302 and 304B of the Indian Penal Code. Since the appellant is on bail, he is discharged from the liabilities of his bail bonds.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	13.07.2022
Transmission Date	13.07.2022

