

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.825 of 2014

Arising Out of PS. Case No.-33 Year-2011 Thana- DIGHALBANK District- Kishanganj

Munna Harijan @ Munna Lal Harijan Son of Shyam Lal Harijan Resident of
Village - Tulsia Kumhar Toli P.S.- Dighalbank, District -Kishanganj.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellant	:	Mr. Dilip Kumar Singh, Advocate.
For the State	:	Dr. Mayanand Jha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 20-05-2022

By this appeal, the appellant/convicted accused is challenging the Judgment and Order dated 25.07.2014 and 01.08.2014 passed by the learned Adhoc Additional Sessions Judge-IV, Kishanganj, in Sessions Case No.565 of 2013, thereby convicting him of the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer imprisonment of life apart from directing him to pay fine of Rs.10,000/- and in default, to undergo simple imprisonment for six months. For the sake of convenience, the appellant shall be referred to as “an accused”.



2. The facts, in brief, leading to the prosecution of the accused projected from the police report can be summarized thus:

(a). Rukmani Devi (since deceased) was wife of accused Munna Harijan. She married the accused about four months prior to her homicidal death and that marriage was a love marriage.

(b). Deceased Rukmani Devi lost her mother at the age of about two years. Her father, thereafter, neglected to maintain her and entrusted her to her maternal uncle P.W.9 Ram Lal Harijan-the first informant. Rukmani Devi was then maintained by her maternal uncle/P.W.9 Ram Lal Harijan and her maternal aunt P.W.8 Rina Devi, wife of P.W.9 Ram Lal Harijan. The accused used to reside in their neighbourhood at village-Tulsia Kumhar Toli, Police Station-Dighalbank, District-Kishanganj. Love relations between accused and Rukmani Devi developed and that is how, the accused and Rukmani Devi married each other and Rukmani Devi started cohabiting with the accused in the very same village. After initial nice treatment to her, married life of Rukmani Devi suffered from rough weather, as the accused used to harass her by demanding dowry in the form of gold and cash of Rs.10,000/-. In the meanwhile,



elder brother Naresh Lal Harijan of the accused became ill and after prolonged illness he died just a day earlier to the day on which Rukmani Devi was murdered. Because of prolonged illness of Naresh Lal Harijan, Rukmani Devi was being considered as inauspicious women and she was driven out of her matrimonial house and, as such, she was required to take shelter at the house of her maternal uncle P.W.9 Ram Lal Harijan and maternal aunt P.W.8 Rina Devi.

(c). According to the prosecution case, the incident of commission of murder of Rukamani Devi took place in the morning hours of 23.07.2011 itself at the house of P.W.9 Ram Lal Harijan and P.W.8 Rina Devi, where Rukmani Devi was residing after being driven out of her matrimonial house by the accused. On that day, at about 12.00 P.M., P.W.8 Rina Devi was in front yard of her house for drying the washed clothes. The accused entered in her house. He assaulted Rukmani Devi and after hearing shouts of Rukmani Devi, P.W.8 Rina Devi entered inside her house. She saw the accused holding a knife. The accused had given blows of the knife to Rukmani Devi. P.W.8 Rina Devi questioned the accused and accused threatened her and asked her to run away. P.W.8 Rina Devi came out of the house shouting loudly. The accused ran away by taking knife



and lot of people who gathered there had seen him going away with the knife.

(d). Accompanied by P.W.8 Rina Devi, P.W.9 Ram Lal Harijan, who had returned to the house after being informed about the incident, went to Police Station-Dighalbank on 23.07.2011 and P.W.9 Ram Lal Harijan lodged report of the incident, which was signed by P.W.8 Rina Devi as a witness. Accordingly, crime in question was registered and wheels of investigation were set in motion.

(e). Routine investigation followed. The Investigating Officer recorded inquest notes and dead body of Rukmani Devi was sent for autopsy to the Sadar Hospital, Kishanganj. P.W.1 Dr. Gadadhar Pandey conducted post-mortem examination on the dead body of Rukmani Devi and prepared the post-mortem report (Ext.1), which was signed by P.W.3 Dr. Ramdev Prasad, the Deputy Superintendent of that Hospital. Statement of witnesses came to be recorded and on completion of investigation, the chargesheet came to be filed.

(f). So far as the accused is concerned, charge for the offence punishable under Section 302 of the Indian Penal Code was framed and explained to him. He pleaded not guilty and claimed trial.



(g). In order to bring home the guilt to the accused, the prosecution has examined as many as 10 witnesses those are as under:

- (I). P.W.1 Dr. Gadadhar Pandey, Medical Officer, Sadar Hospital, Kishanganj, who performed autopsy.
- (II). P.W.2 Krishna Prasad, neighbour of P.W.9 Ram Lal Harijan, who claimed to have seen the post event happenings.
- (III). P.W.3 Dr. Ramdev Prasad, the Deputy Superintendent of Sadar Hospital, Kishanganj, who witnessed the autopsy conducted by P.W.1 Dr. Gadadhar Pandey and signed the post-mortem report.
- (IV). P.W.4 Rupo Devi, neighbour of P.W.9 Ram Lal Harijan.
- (V). P.W.5 Dukho Devi, neighbour of P.W.9 Ram Lal Harijan.
- (VI). P.W.6 Ghatak Lal Harijan, neighbour of P.W.9 Ram Lal Harijan and husband of P.W.4 Rupo Devi.
- (VII). P.W.7 Ajay Kumar Pandit, resident of village-Tulsia Kumhar Toli.
- (VIII). P.W.8 Rina Devi, wife of P.W.9 Ram Lal Harijan, an eye witness and maternal aunt of the deceased Rukmani Devi.
- (IX). P.W.9 Ram Lal Harijan, the first informant and maternal uncle of the deceased Rukmani Devi.
- (X). P.W.10 Shashi Shekhar Choubey, P.S.O.



Dighalbank Police Station-the Investigating Officer.

The prosecution has also relied upon the documentary evidence such as F.I.R., inquest report, post-mortem report, which are proved from the concerned witnesses.

(h). The defence of the accused was that of total denial. However, he did not enter into the defence.

(i) After hearing the parties, the learned trial court was pleased to convict the accused and to sentence him as indicated in the opening paragraphs of this Judgment by holding that the prosecution has proved that the accused had committed murder of his wife Rukmani Devi on 23.07.2011.

3. We have heard the learned counsel appearing for the appellant/accused. He argued that P.W.8 Rina Devi cannot be said to be a prudent person having capacity to depose as she has stated in her evidence that she married P.W.9 Ram Lal Harijan prior to 14 years and has further stated her age as 22 years. According to the learned counsel, she has three children and, therefore, she is not a matured lady, whose evidence can be accepted. It is further argued that P.W.2 Krishna Prasad is a labourer who goes for labourer work and he cannot be an eye witness to the subject crime which took place after 09.00 A.M. It is further argued that P.W.4 Ruppo Devi is also not an eye



witness to the subject crime and P.W.5 Dukho Devi is an interested witness because as per the village relations, the first informant is her brother-in-law. It is urged that the first informant is also not an eye witness to the subject crime and, therefore, the appellant/accused is entitled for acquittal. Evidence of the witnesses examined by the prosecution is contradictory. It is also argued that, in fact, the case is of honour killing of Rukmani Devi because she married the accused because of love relations. Therefore, she was killed by her parents. It is further argued that weapon of the offence was not recovered and the prosecution has failed to prove the motive.

4. As against this, the learned A.P.P. supported the impugned Judgment and Order of conviction and resultant sentence by contending that by trustworthy evidence, prosecution has proved the guilt of the accused.

5. We have considered the rival submissions and we have also gone through the records and the proceedings including the oral as well as documentary evidence.

6. At the outset, the prosecution will have to establish the fact that deceased Rukmani Devi died homicidal death on 23.07.2011. Unimpeachable evidence of P.W.9 Ram Lal Harijan



and his wife P.W.8 Rina Devi shows that Rukmani Devi died because of infliction of blows of knife on her at their house on 23.07.2011. Other witnesses, who happen to be neighbours of P.W.9 Ram Lal Harijan and his wife P.W.8 Rina Devi have stated that they had seen dead body of Rukmani Devi drenched with blood lying at the house of P.W.9 Ram Lal Harijan. Evidence of P.W.8 Rina Devi and her husband P.W.9 Ram Lal Harijan shows that after the incident, upon being informed by the villagers, police came on the spot and took dead body of Rukmani Devi to the Hospital at Kishanganj after effecting necessary writing work.

7. Evidence of P.W.10 Shashi Shekhar Choubey, the Investigating Officer, shows that by taking over the investigation of the subject crime, he visited the spot of the incident, which was the house of P.W.9 Ram Lal Harijan at Tulsia Kumhar Toli. Dead body of Rukmani Devi was lying in the room and after inspecting dead body, he prepared the inquest notes (Ext.5) and then dispatched the dead body to the Sadar Hospital, Kishanganj, for post-mortem examination. The inquest notes at Ext.5 shows that dead body was having injuries on back and other parts of body and blood was oozing from those wounds.



8. Evidence of P.W.3 Dr. Ramdev Prasad, Deputy Superintendent of Sadar Hospital, Kishanganj, shows that the said hospital received the dead body of Rukmani Devi in presence of the relatives named as Bhutuk Lal Harijan and Gautam Lal Harijan and, thereafter, as stated by him, post-mortem examination on dead body of Rukmani Devi was conducted by P.W.1 Dr. Gadadhar Pandey in his presence.

9. Evidence of P.W.1 Dr. Gadadhar Pandey shows that during the course of autopsy, he found following antemortem injuries on the dead body of Rukmani Devi:

- (1). Incised wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ " on front of left upper arm.
- (2). Incised wound $1\frac{1}{2}$ " x $\frac{1}{2}$ " x $\frac{1}{4}$ " on front of left upper arm below injury No.1.
- (3). Incised wound 1" x $\frac{1}{4}$ " x $\frac{1}{2}$ " on front of left elbow.
- (4). Incised wound $1\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{2}$ " on outer side of left elbow.
- (5). Incised wound 1" x $\frac{1}{4}$ " x $\frac{1}{2}$ " on left Anilla.
- (6). Incised wound 1" x $\frac{1}{4}$ " x $\frac{1}{2}$ " on left side of waist.
- (7). Incised wound $\frac{1}{2}$ " x $\frac{1}{4}$ " x $\frac{1}{4}$ " on outer side of left side of chest.
- (8). Incised wound 1" x $\frac{1}{2}$ " x $\frac{1}{2}$ " on back right lob of lung.



As deposed by P.W.1 Dr. Gadadhar Pandey, Rukmani Devi died because of haemorrhage and shock caused by injuries, which were caused by sharp cutting weapon. This witness proved the post-mortem report (Ext.1), which is corroborating his version. With this acceptable evidence, the prosecution has proved that Rukmani Devi died homicidal death on 23.07.2011 at her residential house owned by her maternal uncle P.W.9 Ram Lal Harijan and aunt P.W.8 Rina Devi at village Tulsia Kumhar Toli.

10. Now let us examine whether the prosecution has proved that the accused had committed murder of his wife Rukmani Devi by causing her death with the intention of causing her death by inflicting successive blows of knife on her person. The star witness for the prosecution is P.W.8 Rina Devi, wife of P.W.9 Ram Lal Harijan. As stated in the foregoing paragraphs, she is maternal aunt of deceased Rukmani Devi and had maintained the deceased from her childhood. Evidence of P.W.9 Ram Lal Harijan-maternal uncle of deceased Rukmani Devi and more particularly, his cross-examination goes to show that after death of mother of Rukmani Devi, this couple had maintained Rukmani Devi. Biological father of Rukmani Devi and her step mother had



refused to maintain Rukmani Devi after death of her mother. Similar is the version of P.W.8 Rina Devi coming on record from her cross-examination. The defence has brought on record from cross-examination of P.W.8 Rina Devi that when Rukmani Devi was child her mother died and her father remarried. After death of mother of Rukmani Devi, her father had handed over Rukmani Devi to P.W.8 Rina Devi and her husband P.W.9 Ram Lal Harijan. Thus, the defence has accepted this position by eliciting this material from cross-examination of these witnesses. Thus, house of P.W. 8 Rina Devi and P.W. 9 Ramlal was the parental house of Rukmani Devi. The defence has also elicited from cross-examination of P.W.8 Rina Devi that there was love affair between Rukmani Devi and the accused. Rukmani Devi, because of love relations, married accused Munna and, thereafter, she as well as her husband were relieved of the responsibility of maintaining Rukmani Devi. With this undisputed position, let us now examine what is the version of P.W.8 Rina Devi about the incident.

11. It is in evidence of P.W.8 Rina Devi that on the date of the incident, she was drying the clothes at her front yard. At about 12.00 noon, accused Munna entered in her house and assaulted Rukmani Devi by knife. P.W.8 Rina Devi



further stated that hearing the shouts, she entered inside her house. She further stated that the accused gave knife blows on neck and back of Rukmani Devi and he was holding the knife. It is further testified by P.W.8 Rina Devi that when she questioned, the accused threatened her and asked her to run away from the spot. P.W.8 Rina Devi then came out of the house by shouting and then accused Munna ran away from the spot. In cross-examination, she stated that then she went to the police station with her husband for lodging the report. In cross-examination, it was only suggested to her that she had not seen the incident and is telling a lie. She denied this suggestion. Except this suggestion, she was not cross-examined in respect of the incident of murderous assault by the accused on Rukmani Devi, as deposed by her in the cross-examination. Thus, her evidence regarding the incident of murderous assault by the accused on Rukmani Devi has virtually went unchallenged. Similarly, we are unable to find any question put to this witness regarding alleged honour killing of Rukmani Devi by her parental relatives for the reason that they were not happy with the love marriage of Rukmani Devi and the accused. On the contrary, in cross-examination, P.W.8 Rina Devi has stated that after marriage of Rukmani Devi and the accused, she and her



husband were relieved of their responsibility to maintain Rukmani Devi which they had taken since Rukmani Devi was aged about two years. There is no material in evidence of P.W.8 Rina Devi that any of the parental relatives of the deceased were angry because of the fact that deceased married the accused out of love relations. Similarly, there is no reason coming on record from cross-examination of P.W.8 Rina Devi to infer that she is telling a lie just to falsely implicate the accused in the murder of her niece. She seems to be witness of truth and we have found her signature on the F.I.R. lodged by her husband P.W.9 Ram Lal Harijan, as a witness to that F.I.R. There is no material to doubt the version of this maternal aunt of the deceased, who is most natural witness to the incident in question.

12. P.W.9 Ram Lal Harijan is the first informant, who has set the criminal law in motion by lodging the F.I.R. However, he was in the field at the time of the incident and upon getting the information about the incident, he returned to his house and saw dead body of Rukmani Devi lying at his house. Then he lodged the F.I.R. (Ext.4).

13. P.W.4 Ruppo Devi is the next door neighbour of P.W.9 Ram Lal Harijan and the deceased. From her cross-



examination this fact is brought on record by the defence. Similarly, from cross-examination of this witness, the defence has brought on record that parental house of deceased was that of P.W.9 Ram Lal Harijan and his wife P.W.8 Rina Devi. The defence has also brought on record the fact that a day earlier to the murder of Rukmani Devi, brother of accused Munna died and when that death occurred, deceased Rukmani Devi was residing at the house of P.W.8 Rina Devi and her husband P.W.9 Ram Lal Harijan, who are maternal aunt and maternal uncle respectively of the deceased. Thus, defence has not disputed the fact that on the date of the death of Rukmani Devi, she was staying in the house of P.W.8 Rina Devi and P.W.9 Ram Lal Harijan. As such, P.W. 8 Rina Devi had every opportunity to witness the murder of Rukmani Devi which took place at her house.

14. P.W.4 Ruppo Devi, neighbour of the deceased, has stated in her evidence that prior to three or four months of the incident of murder, Rukmani Devi married accused Munna. After initial good treatment to Rukmani Devi, accused started demanding dowry and then he had driven Rukmani Devi out of her matrimonial house. With this, P.W.4 Ruppo Devi has stated that the incident of murder of Rukmani Devi took place at about



10.00 to 11.00 A.M. and at that time, she was present at the front yard of her house. As per her version, she saw accused entering in the house of P.W.9 Ram Lal Harijan and she thought that the accused might have come for taking Rukmani Devi with him. However, accused started assaulting Rukmani Devi and Rukmani Devi shouted for saving herself. This witness further stated that maternal aunt of Rukmani Devi said that Rukmani Devi died and because of shouts, accused Munna went away from the front of her house. P.W.4 Rupo Devi testified that then she went inside the house of P.W.8 Rina Devi and saw Rukmani Devi lying dead with bleeding wounds on chest, back and nose.

15. As stated earlier, the defence has brought on record that house of this witness and house of P.W.8 Rina Devi are adjacent to each other with a common wall and there is only one approaching road to their house. From her cross-examination, it is brought on record that a day earlier to the incident of murder of Rukmani Devi, elder brother of accused Munna died and accused Munna had performed funeral rites of his elder brother. She stated in cross-examination that as per custom in Hindu religion, the person performing funeral rites does not go out of house for 13 days. With this, the learned



counsel for the appellant argued that accused Munna was not expected to go out of the house for 13 days and, therefore, it is not possible for him to commit murder of Rukmani Devi on the next day. We see no logic in this argument and the same is only noted for rejection. There are no suggestions to P.W.4 Rupo Devi that she had not seen accused at the spot of the incident. In fact, her version in the chief examination is not even challenged in the cross-examination. Thus, evidence of P.W.4 Rupo Devi shows that though she had not actually seen the incident of murderous assault on Rukmani Devi by the accused, she saw the accused entering in the house of P.W.8 Rina Devi and P.W.9 Ram Lal Harijan, which was being shared by their niece Rukmani Devi. P.W.4 Rupo Devi then heard shouts and utterances of P.W.8 Rina Devi that Rukmani Devi died. This witness has also seen the fact that at that time, the accused left spot of the incident. Thereafter, she saw Rukmani Devi in the pool of blood with bleeding injuries lying inside the house of P.W.8 Rina Devi and P.W.9 Ram Lal Harijan. Her evidence speaks volume about the presence of the accused on the spot of the incident at the time of murder of his wife Rukmani Devi. Thus, this acceptable evidence of P.W.4 Rupo Devi fully corroborates version of P.W.8 Rina Devi regarding giving of



successive blows of knife by the accused to deceased Rukmani Devi and her resultant death.

16. P.W.5 Dukho Devi is also neighbour and her house is situated after one house from the house of P.W.8 Rina Devi and P.W.9 Ram Lal Harijan. Similarly, her house is at the distance of 10 feet from the house of the accused. These are the facts elicited from her cross-examination by the defence. It is, thus, apparent that even the house of the accused is at a very short distance from the house of P.W.8 Rina Devi and P.W.9 Ram Lal Harijan. P.W.5 Dukho Devi testified that she was at the lane in front of her house at about 12.00 noon. She saw accused Munna returning with the knife and, therefore, she rushed at the house of Rukmani Devi and saw Rukmani Devi lying with bleeding injuries. She stated that Rukmani Devi died on the spot itself and her dead body was taken to the hospital. From her cross-examination, it was attempted to show that it was not possible for her to see the incident of accused going away with the knife as she was expected to be at the place work, she being the labour. However, her cross-examination shows that she is an agricultural labour and she goes for the seasonal work as and when she is called for doing it. It is a matter of common knowledge that agricultural labour



is seasonal work and it is not available throughout the year. Her cross-examination itself shows that as and when field owners call for work, the labour is required to go at 09.00 A.M. and to work upto 04.00 P.M. It was put to her in cross-examination that whether she remembers that on 23.07.2011, she had gone for work or not, she answered that she is not knowing this fact. P.W.5 Dukho Devi is a rustic villager, who had entered into witness box after about two and half years. It is not expected of her to remember whether two and half years earlier and that too on a particular date, she had gone for agricultural work or not. Tricky question was asked to her as to whether on 23.07.2011 she had gone for work or not. This half hearted cross-examination cannot inure to the benefit of the defence. It was not suggested to her that on the date of the incident, she had gone for agricultural work. In fact, it was also not suggested to her that on the date of the incident she was not present at her house. Hence, it cannot be said that this witness is telling a lie and was not present on the spot. This witness has also admitted that elder brother of accused Munna died a day earlier to the incident and as per Hindu customs, a person performing funeral is not expected to go out of the house for 13 days. This material cannot lead us any where. Thus, we are of



the opinion that P.W.5 Dukho Devi by her truthful version has pointed out presence of the accused on the spot of the incident and the fact that when Rukmani Devi was lying with bleeding injuries on her person, the accused was going away holding a knife from that place. This witness has not exaggerated her version by claiming her to be an eye witness to the incident. Her trustworthy evidence is fully corroborating the version of P.W.8 Rina Devi.

17. P.W. 2 Krishna Prasad is neighbour of P.W.8 Rina Devi. He claimed to have seen the post event happenings by stating that when Rukmani Devi was lying dead, the accused went away with the knife in his hand. However, his cross-examination shows that he is an agricultural labour, who used to go for work at about 09.00 A.M. As per his version, the incident took place at about 10.00 A.M. This witness had accompanied P.W.9 Ram Lal Harijan to the court and was expecting lunch of meat and rice from P.W.9 Ram Lal Harijan on that day. P.W.9 Ram Lal Harijan had borne the expenses of attending the court by this witness. This witness has candidly admitted the fact that on 23.07.2011, i.e., the date of the incident, he had gone for work and his working hours were from 09.00 A.M. Hence, evidence of this witness needs to be



kept out of consideration as his version is doubtful and unreliable.

18. Similarly, version of P.W.6 Ghatak Lal Harijan is also required to be kept out of consideration because on his own P.W.6 Ghatak Lal Harijan is stating that he had heard that accused Munna was holding knife and when he entered the house, he saw Rukmani Devi lying dead. In cross-examination, he admitted that on 23.07.2011, he had gone for labour work. Thus, the evidence of this witness is not of any use to the prosecution.

19. P.W.7 Ajay Kumar Pandit is also hearsay witness, who had heard that the accused had committed the murder of his wife Rukmani Devi.

20. True it is that prosecution witnesses are not stating exact time of the incident of commission of murder of Rukmani Devi but this aspect is not of much importance. P.W.8 Rina Devi is stating that the incident took place at about 12.00 noon whereas P.W.4 Rupoo Devi is stating that incident took place at about 10.00 to 11.00 A.M. P.W.5 Dukho Devi has stated that incident took place at about 12.00 P.M. However, all these three witnesses are unanimously stating that the incident took place at the noon time. There is marginal gap of one hour



in respect of the time of the incident in versions of these three witnesses. Sluggish chronomatic sense of rustic villagers is a matter of common knowledge. Time is not essence of life for them. In the case in hand, all these three witnesses are rustic women residing in the small village and some of them are agricultural labour. It is not expected of them to have a wrist watch with them to note exact time of the incident. Their version is found to be otherwise reliable and trustworthy. Hence, this short gap of time cannot be used to doubt the prosecution case, which is otherwise found to be truthful and trustworthy from acceptable version of the witnesses.

21. Case of the prosecution is based on the eye witness account as well as on the version about the post event happenings coming on record from the reliable witnesses. Therefore, motive of the crime in questions pales into insignificance. Similarly, as the version of the prosecution regarding giving of successive blows of knife by the accused to the deceased is acceptable, non recovery of the weapon of offence from the accused is of no consequence.

22. In the result, we find no merit in the instant appeal. From evidence of the prosecution, it is proved beyond all doubts that the accused had committed murder of his wife



Rukmani Devi on 23.07.2011. The appeal is, accordingly,
dismissed.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	12.05.2022.
Uploading Date	20.05.2022
Transmission Date	20.05.2022

