

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.87 of 2014**

Arising Out of PS. Case No.-130 Year-2011 Thana- BANMANKHI District- Purnia

Birendra Yadav S/O Natho Yadav Resident Of Village Jhouwari, P.S.
Banmankhi, District Purnea.

... .. Appellant.

Versus

The State Of Bihar

... .. Respondent.

Appearance :

For the Appellant : Mr. Praveen Kumar Agrawal, Advocate.
For the State : Mr. S.N. Prasad, 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 : 10-03-2022

By this appeal, the appellant/convicted accused is challenging the Judgment and Order dated 29.11.2013 and 30.11.2013 respectively passed in Sessions Trial No.320 of 2012 by the Adhoc Additional Sessions Judge-V, Purnea, thereby convicting him of the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for life apart from directing him to pay fine of Rs.10000/- and in default to undergo simple imprisonment for two months.

2. Facts leading to the prosecution of the appellant/convicted accused can be summarized thus:



(a). Appellant Birendra Yadav is resident of village-Jhouwari within jurisdiction of Police Station-Banmankhi in Purnea District of Bihar. P.W.11 Sunaiyna Devi is also the resident of the same village and her house was located just in front of house of appellant Birendra Yadav. Maharani Devi (since deceased) was daughter of P.W.11 Sunaiyna Devi. As the appellant and Maharani Devi (since deceased) were having their respective houses just opposite to each other, love relations between them developed and ultimately in the year 2006, Maharani Devi married appellant Birendra Yadav.

(b). According to the prosecution case, out of this wedlock, Maharani Devi gave birth to a female child named Madhu Kumari (since deceased), who at the relevant time was aged about three years. It is case of the prosecution that appellant Birendra Yadav used to beat his wife Maharani Devi. After such incident in the year 2009, meeting of the Panchayat was called. Because of this incident, appellant/convicted accused Birendra Yadav became angry. Ultimately, at about 03.00 P.M. of 31.08.2011, appellant Birendra Yadav had committed murder of his wife Maharani Devi and his daughter Madhu Kumari by throttling.

(c). According to the prosecution, many villagers



from village-Jhouwari rushed to the house of P.W.11 Sunaiyna Devi and informed her about the murders of her daughter Maharani Devi and her granddaughter Madhu Kumari. P.W.11 Sunaiyna Devi then rushed to the house of appellant Birendra Yadav and saw dead bodies of Maharani Devi and Madhu Kumari kept at the front yard of the house of appellant Birendra Yadav. She noticed injuries on necks of the dead bodies. She therefore lodged the F.I.R. on 31.08.2011 itself which has resulted in registration of the subject crime for the offence punishable under Section 302 of the Indian Penal Code.

(d). During the course of investigation, the Investigator has recorded the statements of the witnesses. Inquest notes were taken after inspecting dead bodies. Those were then sent for post-mortem examination to the Sadar Hospital, Purnea, where autopsy came to be conducted by P.W.10 Dr. Umesh Kumar. On completion of investigation, the appellant came to be charge-sheeted.

(e). After committal of the case, charge for the offence punishable under Section 302 of the Indian Penal Code came to be framed and explained to appellant/convicted accused. He pleaded not guilty and claimed to be tried. His defence was that of total denial and in support, the defence has



examined in all four witnesses.

(f). After hearing the parties, the learned trial court concluded that appellant Birendra Yadav committed murder of his wife Maharani Devi and his daughter Madhu Kumari. Accordingly, the appellant came to be convicted and sentenced as indicated in the opening paragraphs of this Judgment.

3. We heard the learned counsel appearing for the appellant. He argued that there is no evidence to connect the appellant to the crime in question and evidence of P.W.11 Sunaiyna Devi is totally unreliable and untrustworthy. As against this, relying on the provisions of Section 106 of the Indian Evidence Act, the learned Prosecutor argued that appellant/convicted accused is presumed to have committed murder of his wife and the daughter. He has not explained how they died in his house and therefore the appeal deserves to be dismissed.

4. We have considered the submissions so advanced and also perused the records and proceedings.

5. At the outset, let us examine whether Maharani Devi and Madhu Kumari died homicidal death on 31.08.2011. P.W.11 Sunaiyna Devi, the first informant has categorically stated that her daughter Maharani Devi and granddaughter



Madhu Kumari died in the incident. This fact is not disputed by the defence. On the contrary, it is defence of the appellant that the deaths are suicidal deaths.

6. Evidence of P.W.13 Rajesh Kumar Singh, the Investigating Officer, shows that he had dispatched dead bodies of Maharani Devi and Madhu Kumari for autopsy to the Sadar Hospital, Purnea. P.W.10 Dr. Umesh Kumar had conducted the post-mortem examination on those dead bodies. It is in evidence of P.W.10 Dr. Umesh Kumar that during the course of post-mortem examination, he noticed ligature marks around necks of dead bodies of Maharani Devi and Madhu Kumari. Similarly, he noticed fracture of hyoid bones, thyroid cartilage and tracheal rings of the dead bodies under autopsy. This Medical Officer has also noticed laceration around the ligature marks on necks of dead bodies. With this finding, P.W.10 Dr. Umesh Kumar concluded that Maharani Devi and Madhu Kumari died because of asphyxia caused due to strangulation. Now, the question for determination will be whether deaths of Maharani Devi and Madhu Kumari occurring on 31.08.2011 are proved to be homicidal death caused by appellant Birendra Yadav. Let us scan the evidence on record for finding the answer to this question.



7. In order to prove the fact that the appellant/ convicted accused had committed murders of his wife and daughter, the prosecution has examined in all 13 witnesses. They are:

- (a). P.W.1 Ganesh Yadav- co-villager.
- (b). P.W.2 Raj Kishore Yadav- co-villager.
- (c). P.W.3 Praveen Kumar Choudhary-resident of neighbouring village, who turned hostile.
- (d). P.W.4 Lal Bahadur Yadav- a co-villager, who turned hostile to the prosecution.
- (e). P.W.5 Rajendra Prasad Yadav- a co-villager, who turned hostile to the prosecution.
- (f). P.W.6 Sanjay Paswan- a co-villager, who turned hostile to the prosecution.
- (g). P.W.7 Tilak Chand Yadav- a co-villager, who turned hostile to the prosecution.
- (h). P.W.8 Anil Kumar Yadav- a co-villager, who turned hostile to the prosecution.
- (i). P.W.9 Prawesh Kumar Yadav- a co-villager, who turned hostile to the prosecution.
- (j). P.W.10 Dr. Umesh Kumar- Medical Officer, Sadar Hospital, Purnea.
- (k). P.W.11 Sunaina Devi- the first informant/ mother.
- (l). P.W.12 Rajo Paswan- a co-villager.
- (m). P.W.13 Rajesh Kumar Singh-Station House Officer, Banmankhi Police Station, who recorded the F.I.R. and conducted the



investigation.

In rebuttal, the defence has examined the following witnesses:

- (A). D.W.1 Md. Alauddin- a co-villager.
- (B). D.W.2 Yogendra Yadav- a co-villager.
- (C) . D.W. 3 Anil Kumar Yadav- a co-villager.
- (D). D.W.4 Salauddin Ansari- a co-villager.

8. At the out set, it needs to mention here that P.W.3 Praveen Kumar Choudhary, P.W.4 Lal Bahadur Yadav, P.W.5 Rajendra Prasad Yadav, P.W.6 Sanjay Paswan, P.W.7 Tilak Chand Yadav, P.W.8 Anil Kumar Yadav and P.W.9 Prawesh Kumar Yadav have turned hostile to the prosecution and there is nothing in their evidence to incriminate the appellant in the subject crime. Their evidence is not of any use to the prosecution. They have spoken about the love marriage of the appellant with deceased Maharani Devi. So far as P.W.1 Ganesh Yadav and P.W.2 Raj Kishore Yadav are concerned, these co-villagers have stated that after love marriage of Maharani Devi with appellant Birendra Yadav, there used to be occasional quarrel amongst the couples on account of financial crunch. P.W.1 Ganesh Yadav has deposed that Maharani Devi died suicidal death as her mother P.W.11 Sunaiyna Devi told her



that after third cesarean she will not be in a position to give birth to a child. P.W.2 Raj Kishore Yadav has also deposed that the deaths are suicidal in nature and that the appellant had not committed murder of Maharani Devi and Madhu Kumari. He has also stated that because of this incident, P.W.11 Sunaiyna Devi was cursing the appellant that he should die and he will not get bail. Thus evidence of these two witnesses is also of no use to the prosecution and rather it is casting a shadow of doubt on the prosecution case. P.W.12 Rajo Paswan has feigned ignorance about the incident.

9. So far as evidence of the Investigating Officer P.W.13 Rajesh Kumar Singh is concerned, he stated that he recorded the First Information Report lodged by P.W.11 Sunaiyna Devi and then registered Crime No.130 of 2011 against the appellant. He deposed about the line of investigation conducted by him. However, cross examination of this witness is relevant. He has stated that he noticed dead bodies of Maharani Devi and Madhu Kumari lying at the spot. The Investigating Officer further stated that dead bodies were in a house made of mud which was not having any door or window. It implies that the house was accessible to all and sundry. Thus, the Investigating Officer has also not clarified as to whether he



noticed the noose, if any, used for strangulating the victims for commission of murder. In fact, the prosecution has not clarified as to how and in what circumstances the offence took place. It is not brought on record by the prosecution by furnishing cogent evidence as to how and at what spot the dead bodies were hanging to the noose in the light of the evidence of P.W.10 Dr. Umesh Kumar to the effect that there were ligature marks around the necks of the dead bodies.

10. What remains now, so far as the side of the prosecution is concerned, is evidence of first informant P.W.11 Sunaiyna Devi-mother of the deceased Maharani Devi. This witness has lodged the F.I.R. which according to P.W.13 Rajesh Kumar Singh-the Investigating Officer was recorded correctly by him. Perusal of the F.I.R. lodged by this witness makes it clear that she is not an eye witness to the incident. She reported to the police vide her F.I.R. which was lodged with promptitude that at about 03.00 P.M. many people in the village came to her and told her about murder of Maharani Devi and Madhu Kumari. However, this first informant had materially improved her version about the incident in her statement before the court. She has deposed that she herself had seen appellant Birendra Yadav throttling Maharani Devi and Madhu Kumari. She stated



that as there was meeting of Panchayat because of beating to Maharani Devi, appellant Birendra Yadav committed these murders. P.W.11 Sunaiyna Devi is not the witness of the truth. She had materially improved her version in order to show that she is an eye witness to the murder of her daughter and the granddaughter. As per her version, murders were committed by constricting necks of Maharani Devi and Madhu Kumari. However, medical evidence is totally contrary to the version of this first informant. Evidence of P.W.10 Dr. Umesh Kumar shows that the dead bodies were having ligature marks around the neck and laceration was caused because of ligature marks on necks of the dead bodies. Thus evidence of P.W.11 Sunaiyna Devi who is an interested witness cannot be accepted and relied upon. She has modulated her version to suit the case of the prosecution.

11. It is well settled that the prosecution has to stand on its own legs and it cannot rely on weaknesses if any in the defence. Provisions of Section 106 of the Indian Evidence Act has no application to the facts of the instant case because initial burden of proving the facts that appellant had committed murders of his wife and daughter is not discharged by the prosecution. Section 106 of the Indian Evidence Act cannot be



attracted unless the initial burden of establishing the guilt of the accused is prima facie discharged by the prosecution. If we see evidence of the prosecution then it is clear that there is no evidence to prove that the appellant was seen at any time before or at the time of the incident or after the incident at the spot of the occurrence. The incident took place at about 03.00 P.M. at the house of the appellant and the deceased which was not having any door or window. It was a day time. Evidence of P.W.11 Sunaiyna Devi and more particularly her F.I.R. shows that it was a populous locality. However, evidence regarding presence of the appellant on the scene of the occurrence is totally missing and therefore in absence of any prima facie evidence against the appellant, Section 106 of the Indian Evidence Act has no application in the instant case.

12. As evidence of the prosecution is not sufficient to convict the appellant of the offence punishable under Section 302 of the Indian Penal Code, there is no need to look into the defence evidence. However, we have perused the version of the defence witnesses. D.W.1 Md. Alauddin is an agriculturist having a field adjacent to the field of appellant Birendra Yadav. He testified that he was in his own field at about 03.00 P.M. of the day of the incident. The appellant at that time was cutting



the grass in his field. Then message came regarding death of wife and daughter of appellant Birendra Yadav. Therefore, he as well as Raj Kishore Yadav accompanied appellant Birendra Yadav to his house and noticed dead bodies of Maharani Devi and Madhu Kumari. There is no material in his cross examination to doubt his version.

13. D.W.2 Yogendra Yadav is neighbour. He had rushed to the spot of the incident after hearing the shouts of P.W.11 Sunaiyna Devi. As per his version, dead bodies of Maharani Devi and Madhu Kumari were hanging to the noose. Appellant Birendra Yadav was not present in the house. He himself opened the noose and rested the dead bodies on the ground. Thereafter, as per his version then Birendra Yadav, came and started weeping. His evidence is not shattered in the cross examination by the prosecution.

14. D.W.3 Anil Kumar Yadav and D.W.4 Salauddin Ansari had noticed dead bodies lying on the ground at the house of the appellant. Rest of their evidence is regarding what they heard from others.

15. This is all on the record. From these evidence on record, it cannot be said that the prosecution has proved the fact that the appellant had committed murders of his wife



Maharani Devi as well as his daughter Madhu Kumari by throttling them. Evidence of the prosecution is lacunic so also doubtful.

16. In the result, we are unable to uphold the impugned Judgment and Order. Therefore, the following orders:

(I). The appeal is allowed.

(II). The impugned Judgment and Order dated 29.11.2013 and 30.11.2013 respectively passed by the Adhoc Additional Sessions Judge-V, Purnea, in Sessions Trial No.320 of 2012, is quashed and set aside.

(III). The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code. He be set at liberty forthwith if not required in any other case. The fine amount, if any, paid by him be refunded to him.

(A. M. Badar, J)

(Sunil Kumar Panwar, J)

P.S./-

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