

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.178 of 2020**

Arising Out of PS. Case No.-11 Year-2017 Thana- BAISI District- Purnia

Md. Sahbul, aged about 27 years, male, Son of Md. Mojib, resident of Village-Paharia, P.S.-Baisi, District-Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**WITH**

**CRIMINAL APPEAL (DB) No. 1539 of 2019**

Arising Out of PS. Case No.-11 Year-2017 Thana- BAISI District- Purnia

1. Md. Mojib @ Mojib, aged about 60 years, male, Son of Late Md. Kasim.
2. Asgari Begum @ Bibi Asgari, aged about 50 years, female, W/o Md. Mojib.  
Both are resident of Village-Paharia, P.S.-Baisi, District-Purnea.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

**Appearance :**

(In both the Appeals)

For the Appellant/s : Md. Helal Ahmad, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 29-08-2023**

We have heard Md. Helal Ahmad for the  
  
appellants in both the appeals and Mr. Dilip Kumar Sinha



for the State.

2. The appellant/Md. Sahbul [*Cr. Appeal (DB) No. 178 of 2020*] is the husband of the deceased, whereas the appellant Nos. 1 and 2/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari respectively [*Cr. Appeal (DB) No. 1539 of 2019*] are the parents-in-law of the deceased.

3. The appellants, in both the appeals, have been convicted under Section 304-B/34 of the I.P.C. *vide* judgment dated 29.11.2019 passed by the learned Presiding Officer, Fast Track Court No.-II, Purnea in Sessions Trial No. 93 of 2018/CIS No. 93 of 2018, arising out of Baisi P.S. Case No. 11 of 2017, and by order dated 04.12.2019, the appellant/Md. Sahbul has been sentenced to undergo imprisonment for life, whereas the appellant Nos. 1 and 2/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari respectively have been sentenced to undergo rigorous imprisonment for seven years.



4. Md. Helal Ahmad, the learned Advocate for the appellants has submitted that none of the ingredients to bring home the charge under Section 304-B of the I.P.C. can be said to have been made out against any one of the appellants. He has further submitted that the conviction of the appellants and the respective sentence awarded to them is bad in the eyes of law and facts both.

5. As opposed to the aforesaid contention, Mr. Dilip Kumar Sinha, the learned APP has submitted that the deceased died within seven years of her marriage with the appellant/Md. Sahbul. There was demand of dowry, which continued for about five years. Ever since the marriage and shortly before the death, there was a demand and consequent cruelty for non-fulfillment of such demand. In such a scenario, the appellants were required to explain the reason for the death of the deceased. The *post-mortem* report confirms that the death was homicidal and that it was as



a result of asphyxia caused by throttling. There could have been no more clinching evidence than these for the prosecution and conviction of the appellants under Section 304-B/34 of the I.P.C.

6. The F.I.R. was registered by Md. Hassimuddin (PW-7), who is the father of the deceased. On 26.01.2017, he has alleged that his daughter was married to the appellant/Md. Sahbul about four years ago and at the time of marriage, sufficient cash and jewellery was given by way of dowry. Nevertheless, the appellants kept on demanding Rs. 50,000/- and a motorcycle and because of the non-fulfillment of this additional demand, the deceased was not treated well in her matrimonial home. For the last two months, it has been alleged, the appellant/Md. Sahbul had been working at Punjab. On 20.01.2017, while coming home, the appellant/Md. Sahbul had informed him that his wife should be sent to his home. On such request, he sent his daughter to the house of the appellant/Md. Sahbul.



On 21.01.2017, after having come back from Punjab, appellant/Md. Sahbul started checking up the personal belongings of the deceased and again put up the demand of Rs. 50,000/- and a motorcycle. This was informed to him and others by the deceased. In the night intervening between 25<sup>th</sup> and 26<sup>th</sup> of January, 2017, the appellant/Md. Sahbul is said to have informed that the deceased has committed suicide after she was slapped by the appellant/Md. Sahbul. On this information, the informant (PW-7) proceeded to the matrimonial home of his daughter along with others and found the dead-body of his daughter lying on the *verandah* of the house and the members of the matrimonial family had absconded themselves. PW-7 claims to have left behind few of his associates at the house of the appellants and himself came to the local *Panchayat* functionaries to let them know about the occurrence. However, those *Panchayat* functionaries told him that because of 26<sup>th</sup> January celebrations, they



might get delayed in reaching the place of occurrence. Thereafter, PW-7 along with other family members reached the place of occurrence and saw the dead-body again. This time, it was found by PW-7 that there was a black mark on the neck and back of the deceased. He, therefore, suspected that his daughter has been killed. In this act, one Md. Ishak and Ainul Haque were also responsible as they had participated in the *Panchayati* in favour of the appellants. They had also threatened the informant sometimes earlier.

7. On the basis of the afore-noted written report, a case *vide* Baisi P.S. Case No. 11 of 2017, dated 26.01.2017, was instituted for investigation for the offences under Sections 304-B/34 of the I.P.C. and 3/4 of the Dowry Prohibition Act.

8. The police, after investigation, submitted charge-sheet, whereupon the cognizance was taken and the case was committed to the Court of *Sessions*.

9. The learned Trial Court, after examining



nine witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

10. The informant (PW-7) though has supported the case at the trial, but admitted that the information regarding the death of the deceased was received by his daughter-in-law, namely, Shahra when the appellant/Md. Sahbul had called her at about quarter to one in the night intervening between 25/26.01.2017. On being questioned by Shahra, the appellant/Md. Sahbul is said to have admitted of having given three to four slaps to his wife, which infuriated her and she committed suicide. He went to the house of the deceased on a tempo, where he found one motorcycle parked. Later, he saw Ainul and Ishak fleeing away on the said motorcycle.

11. Be it noted that even though the aforesaid two persons were named by PW-7 in his written report, the police did not send them up for trial.

12. PW-7 has further stated that he did not



find any one of the family members of the appellants or the appellants in the house. Inside the house of the appellants, an iron rod and a belt was also seen by him. However he in his cross-examination has again made a different statement that he went to the police station himself without being accompanied by any one of his associates and before the case could be lodged by him, the police had arrived at the place of occurrence. All the written documents were prepared at the house of the appellants. He had not deposited the mobile telephone of Shahra on which information had been provided by the appellant/Md. Sahbul regarding the death of the deceased.

13. What is important to note is that PW-7 has admitted in his cross-examination that whenever the appellant/Md. Sahbul came from Punjab, the deceased used to go to him and in his absence, the deceased primarily resided at her parental home.

14. The mother of the deceased, namely,



Sarifunnisha has been examined as PW-6 at the trial. She has also confirmed that the appellant/Md. Sahbul had informed about the death of the deceased, which information was received by her daughter-in-law, namely, Shahra. The deceased kept on shuttling between her parental and marital home. She has stated about a *Panchayati* having been held in the matrimonial home of the deceased in which *Mukhiyas* of two *Panchayats* had participated. However, none of them have been cited as witnesses. As part of the arrangement, decided in the *Panchayati*, some amount also was given to appellant/Md. Sahbul. She had also seen that the deceased was bleeding from her neck and had a bloated stomach. There was an iron rod and a belt found in the room of the deceased. The deceased had two sons, one of whom stayed with his grandparents, whereas the other stayed with PWs-7 and 6. She has also admitted in her cross-examination that in case the son of the deceased, who is staying with her,



is attempted to be taken back by the appellants, she would resist the same.

15. What is most important to note is that she has admitted that one Nuruddin (PW-4), who is the neighbour of the appellants, is also related to her. In fact the marriage had taken place because of his mediation in the matter and the family does not have any hard-feelings for afore-noted Nuruddin.

16. In this context, it would be profitable to refer to the deposition of aforesaid Nuruddin (PW-4).

17. As admitted by PW-6, he (PW-4) is a neighbour of the appellants. PW-4 has also confirmed that he stays in the neighbourhood of the appellants. The deceased, according to him, was married five years ago to appellant/Md. Sahbul. After a day of her marriage with appellant/Md. Sahbul, she came back to her mother's house. She went to live in her matrimonial home only after a year. At her matrimonial home, her behaviour was good for a few months; but later, she did



not behave well. PW-4 came to learn about the death of the deceased from appellant/Asgari Begum @ Bibi Asgari, who told him that the deceased had strangled herself. Thereafter, the mother-in-law of the deceased took PW-4 to the place where the deceased had been lying dead. He has admitted that he is directly related to the informant/PW-7, who is his co-brother with whom he has not enmity or dispute.

18. From the deposition of the afore-noted witnesses, few fact clearly come to the fore.

19. The appellant/Md. Sahbul had himself informed PW-7 about the occurrence though the information was received by her daughter-in-law. The reason for the deceased for having strangled herself was also candidly expressed by appellant/Md. Sahbul, who has disclosed that he had first slapped the deceased a couple of times, whereafter she committed suicide. The appellant/Md. Sahbul and the deceased had two children out of the wedlock, one of whom was being



reared up in his maternal grandfather's house, whereas the other son was being looked after in the matrimonial home of the deceased. The deceased did not behave well in the matrimonial home. One of the neighbours of the appellants, namely, Nurrudin, who is directly related to the parents of the deceased, was told by the appellant/Asgari Begum @ Bibi Asgari about the death of the deceased.

20. With these facts coming to the fore, we have examined the deposition of other witnesses.

21. Manjoor Alam (PW-1), a neighbour of the appellants, has stated before the Trial Court that after about 1 year of the marriage of the deceased with appellant/Md. Sahbul, she started living separately with appellant/Md. Sahbul and away from her in-laws. On *hulla*, at about 8:00 P.M. in the night of 25/26<sup>th</sup> of January 2017, he went to the matrimonial home of the deceased, but only to find that the deceased was dead. He had seen the dead-body from very close quarters and



had not found any injury on her body. The couple, namely, deceased and appellant/Md. Sahbul used to fight amongst each other. The major cause of fight, according to PW-1, was the desire of the deceased and her insistence on appellant/Md. Sahbul to stay separately from appellants/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari. Because of the domestic dispute, PW-1 asserted before the Trial Court, the deceased committed suicide.

22. Md. Zahrul (PW-2) has not supported the prosecution case and has been declared hostile.

23. This takes us to the deposition of the brother of the deceased, namely, Md. Asraful Alam (PW-3). He claims to have seen that near the dead-body of his sister, her two children were crying. Before fixing the marriage of the deceased with the appellant/Md. Sahbul, necessary enquiry was made by his family. The appellants had different vocation, but they stayed together. Before her death, PW-3 has asserted that



appellant/Md. Sahbul regularly visited his house. Similar was the case with the deceased, who intermittently stayed either in her parental home or in matrimonial home. No complaint, according to PW-3, was ever made with respect to the demand of Rs. 50,000/- and a motorcycle and consequent torture to the deceased, which demand had been put up right after the marriage. When appellant/Md. Sahbul had informed his wife about the death, no case was lodged by the family, but information was provided to the *Mukhiya* and *Sarpanch* of the village, who have also not been examined. The only person whom he could name from whom he had inquired about the cause of death of the deceased was Nuruddin (PW-4), whose statement has been referred to above.

24. The case was investigated by Nagina Kumar (PW-9) who has deposed that on 26.01.2017, he learnt a rumour that a woman has been killed in village *Paharia*. On such information, he along with one Sadan



Prasad Singh (not examined), another police officer, reached the house of the appellants. The dead-body was found to be lying on the *verandah* of the house and the inquest report was prepared there. He had noticed that the deceased had clenched teeth and liquid like substance was flowing from her nose. He also noticed black-mark around the neck of the deceased. The stomach, according to him, was a bit swollen. It appeared to him *prima facie* that the deceased had been strangled to death. He, in his cross examination, has categorically admitted that the mother of the deceased, namely, PW-6 had never stated before him that on any occasion, any money was given to appellant/Md. Sahbul. She had also not told the I.O. that appellant/Md. Sahbul had called on the mobile telephone of Shahra, her daughter-in-law, intimating about the death of the deceased. She had also not stated that the father of the deceased along with 8 to 10 persons had gone on a *tempo* to the matrimonial home of the deceased when



such information came forth.

25. From an analysis of deposition of the witnesses, thus, it appears that the deceased ran her own kitchen, though in the same building. She came back to her matrimonial home only when appellant/Md. Sahbul, her husband, used to come back from his place of work. There was no strained relationship between the spouses, which gets reflected from the fact that no complaint ever was made about any demand of dowry or consequent torture because of its non-fulfillment. The mother of the deceased has not stated before the Investigating Officer that because of such demand, appellant/Md. Sahbul was paid any amount after the marriage. The fact that appellant/Md. Sahbul himself informed about the death of the deceased explaining the reason for her to do such an act and before that, his asking PW-7 to send the deceased to her matrimonial home because he was coming from Punjab to his village home, demonstrate that everything between the spouses



or with the in-laws was hunky and dory and there was no reason to fear any reprisal. The deceased had been residing in her matrimonial home since 21<sup>st</sup> of January 2017, when she had come from her parental home. The occurrence took place five days thereafter.

26. Did the couple fight amongst themselves and the deceased, in a knee-jerk reaction, attempted to and successfully committed suicide?

27. This question can be answered by looking at the evidence of the Doctor.

28. The Doctor, who conducted the *post-mortem* (PW-8), found *rigor mortis* all over the four limbs on external examination. He found half-inch wide ligature mark all around the neck in the upper portion. On dissection, just below the ligature mark, the underneath subcutaneous tissues were found to be bleeding and there was a fracture of cricothyroid cartilage. The cause of death, in his opinion, was asphyxia, which was secondary to the ligature around



the neck. The time fixed for death was thirty six hours from the *post-mortem* examination. Very surprisingly, he, in his cross examination, has admitted that he did not get the *post-mortem* examination video-graphed, which is a requirement under the procedure prescribed for conducting the *post-mortem* examination. He has also admitted of taking help from his employees. While answering a particular question, PW-8 has admitted that the operation was done by his employees and he made a noting of what he saw during the process of the *post-mortem* examination.

29. Be it noted that noting in his diary has never been furnished by the prosecution to give at least some credence to the fact that the operation in the *post-mortem* examination was done in the presence of PW-8. All the findings in the *post-mortem* report, according to PW-8, were based on the notings made by him while overseeing the *post-mortem* examination process.

30. This leaves us with great doubt whether



PW-8 had really seen the ligature mark all around the neck. Had he performed the operation himself, he would have been in a position to see the dead-body from near quarters. We say so for the reason that there are some recognized distinguishing features of cases of self-inflicted strangulation in suicides and homicidal strangulation. In self-inflicted suicide cases, the ligature mark is not continuous and more often than not, it is on the upper part of the neck. In cases of homicidal strangulation, the ligature mark is almost continuous. There are some other distinguishing features between instances of suicide by hanging and death because of asphyxia, as a result of strangulation. In cases of strangulation, certain developments take place in the lungs, which are nearly absent in the cases of self-inflicted harm, especially the presence of *emphysematous bullae*. That PW-8 did not take care of performing operation himself, there is no use of discussing the distinguishing features between self-



inflicted suicide attempts or strangulation of the deceased for murdering him/her.

31. With the admission of PW-8 that he did not personally subject the body to any operative process, we are in a quandary whether to accept his deposition that there was a continuous ligature mark on the neck of the deceased, suggesting homicidal death by strangulation, in which case it would have been really important for the appellants to have explained the reasons for such ligature mark on the neck of the deceased and her death consequently.

32. Thus, as noted above, we have found that there is no evidence whatsoever that the deceased stayed with her in-laws. There is nothing on record to find that shortly before her death, there was any demand of dowry and consequent torture. Even assuming that the deceased was goaded into committed suicide because of the intemperate behavior of appellant/Md. Sahbul, it was not clear whether



appellant/Md. Sahbul intended to create a situation which would force the deceased to commit suicide. Even the most temperate of the persons would not resort to this act, especially when there is no evidence of regular fight between the spouses and for no apparent good reason, the deceased had been staying separately.

33. The participation of appellants/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari in the crime therefore stands completely excluded. We have also noted that Nuruddin (PW-4), a neighbour of the appellants and a close relative of PW-7, was told by appellant/Asgari Begum @ Bibi Asgari about the death of the deceased. There was no attempt on the part of the appellants to conceal the factum of death of the deceased in the night in their home. For all we know, the appellants would have thought that their neighbour, who is related to the prosecution side, must be informed about the occurrence. What was the information given by appellant/Md. Sahbul to Shahra is not known as



Shahra has not been examined.

34. These facts drive towards one's supposition that there could be possibility of the deceased inflicting harm upon herself as a knee-jerk reaction to some behaviour of her husband/appellant/Md. Sahbul. The doubt gets further exacerbated by the conduct of PW-8, the Doctor, whose truthful version could have been the clincher.

35. We have noted that he had not performed the operation himself. How do we accept his statement then that the ligature mark around the neck of the deceased was regular and continuous suggesting mechanical strangulation leading to death of the deceased.

36. The entire set of facts, therefore, creates doubt and the cause of death of the deceased has remained a mystery to us.

37. For the reasons afore-noted, we do not put our imprimatur to the reasoning given by the learned



Trial Court in convicting the appellants/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari. From the evidence on record, it appears to us that they have not been residing with the deceased for quite sometime.

38. Thus, the conviction and sentence of the appellant Nos. 1 and 2/Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari [*Cr. Appeal (DB) No. 1539 of 2019*] are set-aside and they are acquitted of the charges levelled against them.

39. So far as the appellant/Md. Sahbul [*Cr. Appeal (DB) No. 178 of 2020*] is concerned, we have no option, but to give benefit of doubt to him. His conviction and sentence is also set-aside and he is acquitted of the charges levelled against him.

40. The appellant Nos. 1 and 2, viz., Md. Mojib @ Mojib and Asgari Begum @ Bibi Asgari [*Cr. Appeal (DB) No. 1539 of 2019*] are on bail. Their liabilities under the bail-bonds are cancelled.

41. The appellant, viz., Md. Sahbul [*Cr.*



*Appeal (DB) No. 178 of 2020]* is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

42. Both the appeals stand allowed.

43. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and for the purposes of record.

44. The records of these appeals be returned to the Trial Court forthwith.

45. Interlocutory application/s, if any, also stand disposed off accordingly.

**(Ashutosh Kumar, J)**

**(Alok Kumar Pandey, J)**

Praveen-II/Alok

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| AFR/NAFR          | AFR        |
| CAV DATE          | N/A        |
| Uploading Date    | 01.09.2023 |
| Transmission Date | 01.09.2023 |

