

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.198 of 2019

Arising Out of PS. Case No.-64 Year-1999 Thana- RAMPUR CHAURAM District-
Jehanabad

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Yogendra Singh, Son of Late Ramashray Singh, Resident of Village-Dhorhan,
Police Station-Rampur Chauram, District-Arwal

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Roona, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-08-2023

Heard Ms. Roona for the appellant and Mr.

Sujit Kumar Singh for the State.

2. This appeal is directed against the
judgment and order of conviction and sentence dated
09.01.2019 and 10.01.2019 respectively, passed by
the learned Fast Track Court No. 1, Jehanabad in



Sessions Trial Nos. 35 of 2001/285 of 2017, arising out of Rampur Chauram (Arwal) P.S. Case No. 64 of 1999, whereby the appellant has been convicted under Sections 302 and 201 of the I.P.C. and has been sentenced to undergo R.I. for life, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 302 of the I.P.C. and to undergo R.I. for three years, to pay a fine of Rs. 3000/- and in default of payment of fine, to further suffer R.I. for three months for the offence under Section 201 of the I.P.C. The sentences have been ordered to run concurrently.

3. The appellant is the husband of the deceased.

4. According to the prosecution case lodged by the father of the deceased, namely, Kedar Singh, who has been examined as P.W. 4 at the trial, the deceased was married to the appellant seven years ago. During the subsistence of this marriage, the



appellant is alleged to have married another person. He has alleged that the deceased was ill-treated in her matrimonial home.

5. In this context, a reference has been made about a *bond* executed by the appellant and his family members on 28.03.1999.

6. On 18.05.1999, one Baikunth Singh (P.W. 2) informed the father of the deceased (P.W. 4) that his daughter (deceased) is missing since 09.05.1999. On such information, P.W. 4 visited the matrimonial home of the deceased, but did not find his daughter. His son-in-law, *i.e.*, the appellant and his father did not give any information regarding the whereabouts of his daughter. He, therefore, suspected that his daughter has been taken to some unknown destination.

7. On the basis of the afore-noted written report, referred to above, a case *vide* Rampur Chauram (Arwal) P.S. Case No. 64 of 1999, dated 27.05.1999,



was registered for investigation for the offences under Sections 498(A), 364, 494 and 34 of the I.P.C.

8. In the aforesaid case, only three persons were made accused, namely, the appellant, his father and the sister of the appellant.

9. The police submitted charge-sheet against all the three accused persons, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

10. During the pendency of the trial, the father of the appellant died and, therefore, the case against him was dropped.

11. A supplementary case record was initiated and the person with whom the appellant is said to have contracted marriage during the subsistence of the marriage with the deceased, was also put on trial, who has since been acquitted.

12. It may be noted that during the course of investigation, a dead-body was recovered from near



the banks of river *Punpun*, which was identified to be that of the deceased and, hence, Section 302 I.P.C. was added.

13. The sole appellant before this Court was charged for the offence of murder and of screening the offence punishable under Sections 302 and 201 of the I.P.C. respectively.

14. The Trial Court, after having examined five witnesses on behalf of the prosecution including the mother of the appellant, convicted and sentenced the appellant as aforesaid.

15. Ms. Roona, the learned Advocate for the appellant has submitted that in this case, neither the Doctor nor the Investigating Officer have been examined and, therefore, the appellant has been severely prejudiced as he could not bring to the fore the falsity of the prosecution evidence. Apart from this, it has been urged that the identification of a dead-body to be that of the deceased of this case is highly



doubtful. A skeleton was identified by the prosecution witnesses. The *post-mortem* report also does not inspire confidence. The skeleton had no muscles attached to it. The face was totally unidentifiable.

16. These facts, Ms. Roona argues, have not been rebutted during the trial but on the contrary affirmed by the prosecution witnesses. The manner in which the dead-body was identified by the witnesses also appears to be absolutely doubtful. Some of the witnesses have identified the deceased by the bangles and the clothes that she was wearing.

17. There is nothing on record, it has further been argued that the dead-body which was recovered and was made to be identified by the witnesses had any clothes on it. It is the consistent evidence collected by the prosecution that what was recovered was almost a skeleton, which was identified by the witnesses. In fact, P.W. 4 did not even see the skeleton himself, but claims to have identified it on the



basis of photographs which was shown to him.

18. Lastly, it has been submitted that the deceased had an unstable mind and every time she used to run away from her matrimonial home to her parental home. On this occasion also, she had disappeared from her matrimonial home but never reached her parental home. These facts were known to the prosecution witnesses, but on a wrong advice, the instant case was filed.

19. Mr. Sujit Kumar Singh, the learned counsel for the State, on the other hand, has submitted that even assuming the proposition put forth by the appellant that the deceased came out of her matrimonial home, never to be found again, is accepted to be true, no missing report has been lodged by the appellant, who is the husband of the deceased. He further submits that the deceased was subjected to cruelty. Precisely for this reason, case was instituted under Section 498A of the I.P.C. also along with other



sections of the I.P.C. Admittedly, the appellant married another lady during the subsistence of this marriage and in front of the respectable persons of the village, a *bond* also was executed (we have no idea about the contents of the bond or the promise made by the appellant).

20. The learned counsel for the State, therefore, urges that this *bond* must have been for good conduct of the appellant and a promise not to ill-treat the deceased. Additionally, it has been argued that it was the husband of the deceased who was required to explain as to where had she gone if she was not dead.

21. As noted above and as a sequitur to his earlier argument, Mr. Singh has raised the point that there is nothing on record to indicate that any complaint was made either by the appellant or his father while she was surviving about the victim having disappeared from her marital home. That the father of



the deceased also was never informed about such disappearance, is also confirmed by the fact that the case was lodged after a long time of the deceased having disappeared from her house. This information also was given to P.W. 4 by P.W. 2, who is only remotely related to P.W. 4.

22. In order to test the correctness of the proposition put forth by the prosecution, we have examined the deposition of P.W. 4 in detail. As noted above, he is the father of the deceased, who affirms the fact that the appellant had married another person during the subsistence of this marriage. He has also talked about the *bond*, which was executed by the appellant for keeping the deceased in her matrimonial home with dignity and honour. Notwithstanding the execution of the afore-noted *bond*, P.W. 4 has asserted that the deceased was ill-treated in her matrimonial home. He received information from P.W. 2 that the deceased was not be found in her matrimonial home



since 09.05.1999. He had looked for his daughter at all places, but only when he could not get any clue regarding her whereabouts, he lodged the instant case. After lodging of the case, he was informed that the police party of *Karpi* Police Station has recovered a dead-body from *Punpun* river. On this information, he visited *Karpi (Punpun)* Police Station, where he was made to see the photograph of the dead body and the clothes. He could identify with the clothes that the dead-body was of *Sushma* (deceased). He had not made any statement before the police after getting his F.I.R. recorded. He has also denied that his daughter was mentally unstable but because of ill-treatment, she had temporarily lost her mental balance. Within six to seven months of the marriage of the deceased with the appellant, the appellant had married again. In the meantime, the deceased did not bear any child from the wedlock for which she was taken to a doctor for treatment. The doctor had diagnosed some congenital



defect in the stomach.

23. In the cross-examination, the afore-noted witness has stated that after four to five months of the marriage, the victim became trace-less. This obviously appears to be some kind of misconception on the part of P.W. 4 as the deceased was married to the appellant about seven years ago and the disappearance of the deceased was reported only on 09.05.1999. He waited for about eight days for lodging the case after knowing about the disappearance of the deceased. During his cross-examination, he has admitted that he did not see the dead-body himself, but had only identified by means of photograph in which the face was very visible.

24. The suggestion to him that it was only a skeleton was denied.

25. Very surprisingly, the mother of the appellant has been cited and examined as a prosecution witness No. 5. She has said before the Trial Court that



the deceased had gone out of the house for attending to the call of nature, but she never returned. An attempt was made to locate her, but it yielded no result. She has also confirmed that her daughter-in-law was mentally weak. She further confessed that till date, *i.e.*, till the date of her deposition before the Trial Court, she could not know the whereabouts of her daughter-in-law.

26. Similar statement has been made by Baikunth Singh (P.W. 2) and Bhagwan Singh (P.W.1), both of whom have testified to the fact that the appellant had married another person and the deceased was ill-treated in her matrimonial home. However, none of these witnesses have said anything which would indicate that they had any information about the deceased having been killed at the hands of the appellant.

27. The cousin of the deceased, namely, Nagdeo Singh (P.W. 3) has categorically stated in his



cross-examination that the photograph of the deceased, which was shown, was only of skeleton and that the identification was only on the basis of clothes.

28. From the inquest as well as *post-mortem* report, it appears that the dead-body which was recovered was attempted to be burnt. The hairs of the body was found to be partially singed. No such accusation has been levelled against the appellant. As noted above, the charge against the appellant is only under Sections 302/201 of the I.P.C.

29. With the non-examination of the I.O. as also the Doctor, there is no way in which it could be discerned as to how the dead-body was recovered; the reason for intimating the prosecution witnesses for identifying the dead-body; whether *post-mortem* could have been conducted on such muscle-less skeleton, which was recovered from *Punpun* river, so on and so forth.

30. There is force in the submission of the



learned counsel for the appellant that in the present case, non-examination of I.O. and the Doctor has caused severe prejudice to the appellant, who only could have unravelled the circumstance under which the investigation proceeded when a dead-body from the *Punpun* river was recovered. Whether the house of the appellant was searched was also necessarily to be known for confirming that the so-called dead-body was that of the deceased. There are traces of the recovered dead-body having been burnt, which is not the allegation in the present case.

31. After all, if the deceased did not die and the identification of the dead-body to be that of the deceased of this case is incorrect, where did the deceased go?

32. We have given our anxious consideration to this aspect of the matter for there is complete absence of any explanation on the part of the appellant regarding the deceased having gone missing



from the house. A husband is required to protect his wife. If she was not to be found in home, there were some necessary steps which were required to be taken by the appellant. The records do not indicate any such step having been taken by the appellant. Could then, it be inferred that the deceased was done to death and the dead-body was thrown somewhere, perhaps, in *Punpun* river. For that also, the evidence had to be collected, which could have completed the chain.

33. The I.O. of this case, as noted above, has not been examined.

34. We have found the identification of the dead-body of the person so recovered to be that of the deceased. It is impossible to identify by the photograph of a skeleton like dead-body, when most of the witnesses have confirmed during the trial that the face was absolutely unidentifiable. With that kind of dead-body in possession of the police, the death must have occurred long time ago. The time of death of the



so-called dead-body recovered does not match with the prosecution version.

35. In this context, in view of the specific charge of murder and of screening the offence saddled on the appellant, even the provisions contained in Section 106 of the Evidence Act would be of no avail to the prosecution.

36. Section 106 of the Evidence Act provides that when any fact is essentially within the knowledge of any person, the burden of proving that fact is upon him.

37. There is no allegation or charge of the deceased having died in the house of the appellant. Only under such circumstance, would the requirement under Section 106 of the Evidence Act be triggered. The case of the defense consistently has been that the wife of the appellant had come out of her matrimonial home and never reached her destination, which was, perhaps, her parental home. In such a situation, in the



absence of the prosecution having done its part of proving the case beyond all reasonable doubts, there could be no question of reading the provisions under Section 106 of the Evidence Act as being akin to the proposition of "reverse burden". That would amount to rewriting the criminal jurisprudence. All that the appellant can be charged for is that he has shown carelessness and callousness in not taking steps for recovering or locating his wife. That the deceased was ill-treated in her home has been spoken about by the witnesses. The fact which has not been denied that the appellant married another lady during the subsistence of his marriage with the deceased, further confirms that the relationship between the spouses were not cordial. However, no case having been lodged either by the wife of the appellant or P.W. 4 or any one of her relatives, reflects that the cold relationship between the husband and the wife was accepted as a *fait accompli*.



38. There is reference of a *bond* executed by the appellant. According to P.W. 4, the *bond* was for keeping the wife of the appellant with dignity in her marital home. This *bond* was executed after the appellant had married the other person. Was it an acquiescence or was it helplessness in reacting to the situation? In either case, the deceased/wife of the appellant would be presumed to have stayed in her matrimonial home.

39. It is really strange that the appellant has not been able to satisfy the Trial Court about the location of his wife, but in the absence of any charge against him for any offence which would otherwise have been attracted for this, there is no way in which the judgment and order of conviction of the appellant for the offence under Sections 302/201 of the I.P.C. can be sustained.

40. We say so, we repeat, for the reason of the identification of the skeleton like dead-body being



doubtful, especially when the identification was by looking at the photograph of such dead-body.

41. Thus, giving benefit of doubt to the appellant, we set aside the judgment of conviction dated 09.01.2019 and the consequent order of sentence dated 10.01.2019 passed by the learned Fast Track Court No. 1, Jehanabad in Sessions Trial Nos. 35 of 2001/285 of 2017, arising out of Rampur Chauram (Arwal) P.S. Case No. 64 of 1999.

42. The appellant is acquitted of the charges levelled against him.

43. The appellant/Yogendra Singh is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

44. The appeal stands allowed.

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

46. The records of this case be returned to



the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Partha Sarthy, J)

Praveen-II/Avinash

AFR/NAFR	NAFR
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