

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.264 of 2022

Arising Out of PS. Case No.-41 Year-2015 Thana- OBRA District- Aurangabad

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PINTOO KUMAR @ PINTU KUMAR S/o Late Rajendra Goswami R/o Mohalla- New Godown, Pahsi, P.S.- Kotwali, District- Gaya, at present resident of Mohalla- Maharani Road, Kumar Colony, P.S.- Civil Lines, District- Gaya

... .. Appellant/s

Versus

1. The State of Bihar
2. Rajesh Goswami @ Raghu Goswami S/o Narsingh Goswami R/o village- Shankarpur, P.S.- Obra, District- Aurangabad
3. Narsingh Goswami S/o Late Keshwar Goswami R/o village- Amawan, P.S.- Bind, District- Nalanda
4. Chinta Devi W/o Narsingh Goswami R/o village- Shankarpur, P.S.- Obra, District- Aurangabad
5. Pappu Goswami S/o Narsingh Goswami R/o village- Shankarpur, P.S.- Obra, District- Aurangabad

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Shailesh Kumar, Advocate
For Respondent No 2-5	:	Mr. Ajay Kumar Thakur, Advocate
		Mrs. Vaishnavi Singh, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 18-08-2023

In the present appeal preferred under the *proviso* to Section 372 of the CrPC, the appellant has put to challenge a judgment and an order dated 10.12.2021, passed by learned Additional District and Sessions Judge-IX, Aurangabad, in

Sessions Trial No. 458/1583/21 (CIS -5841/15), whereby the trial court has recorded acquittal of the opposite parties No. 2-5 who were facing trial in respect of charge of commission of offence punishable under Section 302 read with 34 of the Indian Penal Code.

2. We have heard Mr. Shailesh Kumar, learned counsel for the appellant, Mr. Ajay Kumar Thakur, learned counsel representing the opposite parties No. 2-5 and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

3. Before addressing the submissions advanced on behalf of the appellant, we need to notice the prosecution's case first as disclosed by the informant in his *fardbeyan*, who is the appellant in the present case. The informant is the brother of the deceased who was married to the opposite party No. 2, Rajesh Goswami, in the year 2007. At the time of marriage, the family of the deceased had, within their means, given sufficient gifts to the opposite party No. 2 and his family members. Opposite party No. 3 is the father and opposite party No. 4 is the mother of opposite party no. 2, and thus, they are father-in-law and mother-in-law of the deceased, respectively. Opposite party No. 5 is the brother of opposite party No. 2. The informant accused the said opposite parties of having tortured the deceased variously on one pretext or

the other. The informant further alleged that attempts were made to reconcile the dispute. According to the informant, all the accused persons hatched up a conspiracy on 11.10.2011, to eliminate the deceased, but this conspiracy was disclosed by the sister-in-law of the deceased, Sindhu Kumari (not examined). A case of torture was lodged against the accused persons in the Civil Court, Gaya and in retaliation, opposite party No. 2 had lodged a case in Family Court, Gaya. It is evident from the *fardbeyan* of the informant that the matrimonial dispute between the opposite party No. 2 and the deceased had reached the Court. Despite the Court's intervention, the informant alleged that the accused persons again started assaulting her. He alleged that on 09.05.2015, the informant had sent the deceased to her matrimonial home with opposite party No. 5. He subsequently learnt through an unidentified person that the deceased had been murdered by her in-laws. Except for the fact that some unidentified person had informed the appellant that the deceased had been killed by her in-laws, no material was disclosed in the *fardbeyan* indicating culpability of the accused persons who are the opposite parties. The informant also alleged that when he reached the matrimonial house of the deceased with his sister, he noticed wound marks of assault over the head of the deceased and different parts of the body. Upon inquiries made by the persons

present nearby, he was informed that the accused persons had murdered her by assaulting her with hard and blunt substance.

4. Upon completion of investigation the police submitted chargesheet on 02.07.2015. After taking cognizance charge was framed for commission of the offence punishable under section 302 read with 34 of the IPC against the accused persons. At the trial the prosecution examined eight witnesses including the two Investigating Officers, namely, Balchand Ram (PW-5) and Ratan Kumar (PW-7). Dr. Sartaj Ahmed who had conducted the *postmortem* examination came to be examined as PW-6, whereas Janardan Prasad who was also a member of the medical board which had conducted the *postmortem* of the deceased deposed at the trial as PW-8. He proved following *postmortem* injuries on the body of the deceased and the cause of death:

1. Incised wound 1"x1/2"x Muscle deep on frontal area lateral to right orbit.

2. Lacerated wound 1"x1/2" leading to fracture of right mandible and right chest.

3. Incised wound 3.5"x1.5" cavity deep. Partial bone leading to fracture right parital bone leading to fracture of right partial hemisphere.

4. Lacerated wound 1"x1/2" leading to fracture of occipital bone producing lacerated wound of occipital lobe of brain.

5. Bruise 4"x2" on back of neck.

6. Bruise 3"x2" on right forearm leading to fracture of right forearm.

7. Bleeding right ear.

3. On dissection:-

Clotted blood present in brain material. Fracture of right forearm, trachea intact.

Chest:

All chest bones are intact. Left chamber of heart empty.

Right chamber contained clotted blood. Lungs and pleura intact.

Abdomen

Stomach contains no food particles, only watery material present. Small intestine contains juicy material noticed. Large guts contains fecal matter. Urinary bladder contains 50 ml. Of urine. Uterus-Not pregnant.

Cause of death:

Shock and hemorrhage and failure of vital areas. Ultimately, leading to CR failure. The injury produced pointed and hard blunt substance. Time elapsed death within 24 hours.

5. The elder sister of the deceased Manju Devi (PW-1), brother of the deceased Rajesh Goswami (PW-3) and the informant Pintoo Goswami (PW-4) deposed in support of the prosecution's case at the trial. One Anil Goswami (PW-2) also deposed at the trial on behalf of the prosecution.

6. On perusal of the impugned judgment of acquittal passed by the trial court, we notice that relying on the Supreme

Court's decision in case of *Sharad Birdhichand Sarda v. State of Maharashtra* reported in (1984) 4 SCC 116 the learned trial court reached at a conclusion that there was no complete chain of circumstances connected to one another to prove the charge against the persons facing trial. Learned trial court concluded in its finding that taking into account all the evidences/materials brought on record during the trial holistically, the prosecution has miserably failed to bring home the charge against the accused persons and accordingly recorded the finding of acquittal.

7. Mr. Shailesh Kumar, learned counsel appearing on behalf of the appellant has vehemently submitted that the trial court has committed a gross error by ignoring the circumstances which clearly pointed towards the guilt of the opposite parties No. 2-5. He has submitted that it is evident from the evidence of the witnesses that the factum of the death of the deceased was not communicated to the informant and other family members, which information they had received from an unidentified person. When they reached the matrimonial home of the deceased they had seen her dead and noticed several injuries on various parts of her body. He has submitted that the defence put forth by the persons facing trial that the victim died because of a fall on a hand pump has wrongly been believed by the learned trial court. He has submitted

that it was incumbent upon the accused persons facing trial to explain properly the circumstances on which the deceased died as the death had taken place in an unnatural circumstance in her matrimonial home.

8. Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the opposite parties has submitted that evidently it is a case of circumstantial evidence and there is no eyewitness to the occurrence. He has submitted that the trial court has rightly recorded acquittal of the accused persons, since the prosecution failed to establish conclusively based on circumstantial evidence adduced at the trial that killing of the deceased by the persons facing trial could be the only possible hypothesis excluding any other possible view. He has also submitted that the trial court has the added advantage of seeing the witnesses and noticing the demeanor at the time of deposition of the trial. Once the trial court after having duly appreciated the evidence adduced at the trial has recorded acquittal, the presumption of innocence of an accused stands strengthened and in the absence of any clinching evidence on record, this Court may not interfere with the finding of acquittal recorded by the trial court.

9. In the present case, by an earlier order dated 14.09.2022, the lower court's records were called for while issuing

notices to the opposite parties No. 2-5. The trial court's records are available.

10. We have perused the impugned judgment of acquittal as well as the trial court's records. We have given our anxious consideration to the rival submissions advanced on behalf of the parties as noted above. We find from the records that PW-1 deposed in her cross examination that her evidence was based on hearsay. She deposed that she had met her sister (the deceased) two days prior to her death when she had gone to her in-laws place happily. PW-2, who claimed to be a person intimately associated with the family of the informant, supported the prosecution's case of demand of dowry by the in-laws of the deceased leading to registration of cases which were subsequently compromised. He also proved that after having learnt about the death of the deceased, he had visited the matrimonial house of the deceased and had noticed certain injuries over the person of the deceased. It is noteworthy at this juncture that PW-2 was not examined during the course of investigation and he was deposing for the first time at the trial as a prosecution's witness. PW-3 claimed to be cousin of the deceased and supported the prosecution's case of presence of wound marks over the dead body of the deceased when he had reached her matrimonial house on hearing the news of her death.

The informant (PW-4) in his evidence deposed that after disposal of the matrimonial cases on compromise, the deceased had started living in her matrimonial home happily. A third son was born to the deceased with opposite party No. 2 after the said case was compromised. He could not disclose at the trial as to who had informed him that the deceased had been killed by her in-laws. The dead body of the deceased, according to him, was lying adjacent to the hand pump.

11. It is pertinent to note that PW-3 in his evidence deposed that one of the sons of the deceased had disclosed to him that respondent Nos. 2-5 had killed his mother. Son of the deceased has not been examined at the trial. It is apparent thus that except the circumstance that there was some matrimonial dispute between the deceased and the victim; which was subsequently reconciled whereafter they were living happily and peacefully together and that the deceased died after having sustained certain injuries, there was no evidence adduced at the trial on behalf of the prosecution to prove the charge of commission of an offence under Section 302 of the Indian Penal Code. The defence at the trial took specific stand while explaining the circumstances in their statements under Section 313 of the CrPC that the deceased died because of a sudden fall on a hand pump. The Doctor (PW-6) in

his deposition has opined that such injuries could have been caused by a fall on a hand pump. Mere circumstance that the deceased died in the house of the opposite parties could not have been the basis for the trial court to have held the persons facing trial guilty of offence of murder.

12. In our opinion, the prosecution was not able to establish beyond all reasonable doubts, the essential ingredients of murder within the meaning of Sections 299 and 300 of the Indian Penal Code attracting the penal provisions under Section 302 of the CrPC. The trial court has rightly relied upon the Supreme Court's decision in case of ***Sharad Birdhichand Sarda v. State of Maharashtra*** (supra) which clearly lays down the parameters for proving a charge based on circumstantial evidence, paragraph 153 whereof reads thus: -

"...153. A close analysis of this decision would show that the following conditions must be fulfilled before a case against an accused can be said to be fully established:

(1) the circumstances from which the conclusion of guilt is to be drawn should be fully established.

It may be noted here that this Court indicated that the circumstances concerned "must or should" and not "may be" established. There is not only a grammatical but a legal

distinction between “may be proved” and “must be or should be proved” as was held by this Court in Shivaji Sahabrao Bobade v. State of Maharashtra [(1973) 2 SCC 793 : 1973 SCC (Cri) 1033 : 1973 CrL LJ 1783] where the observations were made: [SCC para 19, p. 807: SCC (Cri) p. 1047]

“Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between ‘may be’ and ‘must be’ is long and divides vague conjectures from sure conclusions.”

(2) the facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say, they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency,

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused...”

13. Further we are also of the view that acquittal of an accused by the trial court doubles the presumption of innocence of a person facing trial. In any event, the finding of acquittal recorded by the trial court appears to us to be a reasonably possible view. In

the background of the above mentioned discussions, we do not find any reason to interfere with the finding of acquittal recorded by the trial court. The finding, in our opinion, does not suffer from any legal infirmity.

14. We do not find any merit in this appeal which is accordingly dismissed.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/-

AFR/NAFR	NAFR
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