

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.273 of 2015

Arising Out of PS. Case No.-218 Year-2014 Thana- NOORSARAI District- Nalanda

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1. Suresh Prasad, S/o Rameshwar Mahto;
 2. Manju Devi, W/o Suresh Prasad;
- Both resident of Village-Bhagwat Bigha, P.S.-Noorsarai, District-Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Rabindra Prasad Singh, Advocate
For the State : Mr. Dilip Kumar Sinha, A.P.P

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 26-09-2023

We have heard Shri Rabindra Prasad Singh,
the learned Advocate for the appellants and Mr. Dilip
Kumar Sinha, the learned APP for the State.

2. On the information given by Shri Ravindra
Prasad Singh that one of the appellants, viz., Manju
Devi, has died during the pendency of this appeal, we



had asked for a report from the Senior Superintendent of Police regarding the death of appellant No. 2/Manju Devi. The report has been received confirming that appellant No. 2/Manju Devi died in jail. Along with the death certificate, the inquest and the post-mortem report of aforesaid Manju Devi also has been brought on record. She died of illness.

3. As such, the appeal as against appellant No. 2/Manju Devi, wife of Suresh Prasad, abates.

4. The appellant/Suresh Prasad has been convicted under Section 302 and 201 of the Indian Penal Code *vide* judgment dated 09.03.2015 passed by the learned 5th Additional District and Sessions Judge, Nalanda, Bihar Sharif in Sessions Trial No. 622 of 2014 (T.R. No. 288 of 2014), arising out of Noorsarai P.S. Case No. 218 of 2014, and on the same day, he was sentenced to undergo imprisonment for life, to pay a fine of Rs. 25,000/- and in default of payment of fine, to further suffer simple imprisonment



for six months for the offence under Section 302 IPC. For the offence under Section 201 IPC, the appellant/Suresh Prasad has been sentenced to undergo rigorous imprisonment for seven years, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer simple imprisonment for two months. The sentences have been directed to run concurrently.

5. The appellant and his late wife are alleged to have killed one Krishna Prasad, their neighbour, and for which the FIR was lodged by the wife of the deceased, namely, Lalti Devi (P.W. 8). In the written report of Lalti Devi dated 14.08.2014, it has been alleged that the appellant had taken Rs. 51,000/- as loan from the deceased about ten days ago. On 12.08.2014, the appellant/Suresh Prasad and his wife/late Manju Devi came to her house and insisted upon her husband to come and take meal in their house as mutton was prepared in their house. Despite



reluctance of the deceased and insistence of P.W. 8 on her husband not to go to the house of the appellant, the deceased went and ate there. However, when he did not come back late in the evening of 12.08.2014, P.W. 8 went in search of him and asked the appellant and his late wife regarding the whereabouts of her husband. She was told by them that he had already left their house. P.W. 8 was not satisfied with that answer. She along with others continued to search for her husband on the next day. In the evening of 13.08.2014, she again went to the house of appellant when late Manju Devi refused to meet her on the ground that she was bathing at that time. She is also said to have forbade P.W. 8 coming back to her house every now and then as it affected her and her husband's reputation. P.W. 8 along with others, thereafter, again went near the house of the appellant late in the night of 13.08.2014, when all the persons accompanying P.W. 8 found foul smell coming out



from the house of the appellant.

6. On the suggestion of one of the relatives of P.W. 8, the police was informed. The police party came and recovered the dead body of the deceased from inside the house of the appellant. The dead body was found concealed below the staircase. On looking at the dead body, it appeared to P.W. 8 that the deceased was strangled and was hit in his mouth and knees. The dead body was kept concealed under stone-chips and sand.

7. According to P.W. 8, the murder was committed only for the purposes of appropriating Rs. 51,000/- which was lent by the deceased to the appellant.

8. On the basis of the afore-noted written report, which was scribed by the nephew of P.W. 8, namely, Chandan Kumar (P.W. 3), Noorsarai P.S. Case No. 218 of 2014, dated 14.08.2014, was registered for investigation for the offences under



Sections 302, 201 and 34 of the IPC against the appellant and his late wife.

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

10. The learned Trial Court, after having examined 11 witnesses on behalf of the prosecution, convicted the appellant and his late wife under Sections 302 and 201 of the IPC and sentenced them as aforesaid.

11. As noted above, the appellant/Suresh Prasad is in jail since 14.08.2014, *i.e.*, the day of his arrest. His wife, late Manju Devi, also was arrested on the same day and was in jail till 2019, when she died of illness.

12. The witnesses, namely, Ajeet kumar (P.W. 1), who is the son of the deceased; Vijay Prasad (P.W. 2), who is the own brother of the deceased;



Chandan Kumar (P.W. 3), who is the nephew of the deceased, Laurik Yadav (P.W. 4), who is a labourer of the deceased and Nitish Kumar (P.W. 5), another son of the deceased, have all narrated the same story of the insistence of the appellant on the deceased to visit his house and have food with them. All of them have in unison stated that there was an outstanding loan amount against the appellant and precisely for this reason, the deceased was called for lunch and then killed.

13. The two of the other witnesses, namely, Rakesh Kumar @ Doctor (P.W. 6) and Dharamsheela Devi, the sister-in-law of the deceased (P.W. 8) have also testified to the fact that the deceased had visited the house of the appellant in the afternoon of 12.08.2014 and his dead body was recovered from the house of the appellant in the morning hours of 14.08.2014.

14. The Trial Court, therefore, came to the



conclusion that there was a motive for killing the deceased; the deceased was called inside the house on the pretext of being served lunch and, thereafter, he was done to death and his dead body was concealed. The conduct of the appellant and his late wife was also found to be suspicious by the Trial Court.

15. The injuries on the person of the deceased further confirmed that the deceased was battered to the death and was buried inside the house of the appellant.

16. With these evidence on record, both the appellant and his late wife were convicted and sentenced for offences under Sections 302/201 of the IPC.

17. On perusal of the records and deposition of the witnesses, however, we have found some intrinsic inconsistencies in the prosecution version which makes the case against the surviving appellant very doubtful.



18. To start with the motive for eliminating the deceased, P.W. 8, in her written report as also in her deposition, has stated that Rs. 51,000/- was given to the appellant about ten days prior to the occurrence for the purposes of marriage of the daughter of the appellant. The son and the nephew of the deceased, however, have stated during Trial that the money exchanged hands about six months ago. It has also come in evidence that neither the appellant nor the deceased had any daughter to marry. The appellant had a son who did not stay with him as he was working outside for his livelihood.

19. There is also no evidence on record indicating that there was any demand for return of that money by the deceased, providing a motive for eliminating him. There is no record of the money transaction, which, we must admit, may not be necessary in case of accommodation loan between neighbours. However, the inconsistencies and



contradictory statements of the witnesses with respect to the time of giving of loan and there being nothing on record that such money was being demanded back, have rendered this aspect of the prosecution version to be doubtful.

20. True it is that according to the evidence of the I.O., the dead body was recovered from below the staircase of the house of the appellants on 14.08.2014, in the wee hours at around 4:00 A.M. All the witnesses including the I.O. have stated that the members of the family of the deceased were picketing outside the house of the appellant. However, surprisingly, the I.O. after having recovered the dead body, did not prepare any recovery memo nor inspected the house in question, at least to ensure that the house was being occupied by the appellant and his late wife. The only thing which the I.O noted in the house was the presence of a hand-pump.

21. All this assumes relevance with the claim



of the prosecution that the appellant and his late wife were arrested on the same day at around 06:00 A.M. while they were trying to flee away.

22. This part of the story, again, is doubtful for several reasons.

23. The relatives of the deceased which included the wife, the sons, the brother and the nephew of the deceased were standing in front of the house of the appellant, but never made any attempt to enter the house or apprehend the appellant and his wife. They may not have done so before the arrival of the police, which is quite understandable. However, the police claims to have reached the place at around 3:30 to 4:00 A.M., when the door of the house was opened and the dead body was recovered.

24. We have no idea whether the police made a forcible entry in the house or the appellant and his late wife responded to the knocks at the door and opened it for the police to enter. If the door was



forcibly opened by the police, there could be some justification for the appellants not being found in the house as they might have run away but then, there is yet another flip-side to this speculation as well.

25. Much before the arrival of the police, the informant and other relatives of the deceased were present in front of the house. This, therefore, lends credence to the version of the appellant and his late wife that they were not even present in the village for the last ten days as they had gone to meet their son at Delhi. They came to learn about a dead body having been recovered from their house and they promptly boarded a train for their home-town and on reaching their home-town, instead of going to their house, they went to the police station from where they were arrested.

26. However, the arrest memo of the appellant and his late wife, which though has not been exhibited, indicates that both of them were arrested



from a field in the village at around 6:00 A.M. If this story of the arrest of the appellant and his wife at 6:00 A.M., on the same day, is to be believed, it requires an answer from the prosecution as to where were they all this while.

27. The evidence of the I.O. is replete with omissions in conducting the investigation in a fair and a professional manner.

28. Did the police party dug up the surface under the stairs for recovering the dead body or the dead body was found kept below the staircase?

29. There appears to be some doubt about that as well.

30. For curiosity, we looked at the inquest report, which is said to have been prepared at the place of recovery. It indicates that initially it was shown that the dead body was recovered from a two feet deep ditch, dug up below the staircase. However, that statement was struck out and in the concerned



column of the inquest report format, it has been stated that dead body was found covered with sand and pebbles.

31. Many inferences can be drawn from this disclosure in the inquest report.

32. If the floor was dug up, how did the police know that the dead body was buried at that place. Was there some sign of recent digging of the floor and some attempt at mending the floor for the police to turn its gaze to that spot.

33. For the laconic recording of the facts , we have no idea about that.

34. If the dead body was kept on the floor but covered with sand and pebbles, it would only suggest the extreme naivete of the perpetrators of the crime.

35. There is yet another aspect which raises our curiosity. The Doctor conducting the post-mortem on 14.08.2014 found the body to be totally decomposed and swollen. If at all, the murder had



taken place inside the house as claimed by the prosecution, it must have been executed sometimes between late afternoon and evening hours of 12.08.2014. The dead body was recovered in the early hours of 14.08.2014. Such putrefaction and decomposition does not normally set in, in such a short span of time.

36. Be that as it may, we, for the moment, do not intend to question the identification of the dead body for the reason that the photograph of the deceased is on record where his face is clearly identifiable.

37. The question then arises whether the deceased was actually killed in the house by the appellant and his late wife.

38. The evidence suggests that there was no other person in the house of the appellant except him and his late wife. The deceased appears to be an able-bodied person. Suggestions have been given to the



witnesses that the deceased was a drunkard and he carried the reputation of being a philanderer. Vijay Prasad (P.W. 2), who is the brother of the deceased, acknowledges the fact that because in the past, the deceased after some intoxication did not return home, therefore no complaint was lodged in the night of 12.08.2014 or 13.08.2014 regarding his having gone missing. The suggestions of the deceased having a bad character and having a bad reputation with women folk in the village, though has been completely denied by the witnesses, who are but only the close relatives of the deceased.

39. With this background fact, one can question whether the story of the prosecution of the deceased having been killed in the house of the appellant is worth believing.

40. The deceased may have been killed by someone else and his dead body might have been kept in the house of the appellant which was empty. This is



a speculation of the appellants in their defence but it is not totally off the line.

41. We do not find it to be off the line for the reasons that we have listed in the preceding paragraphs, namely, the absence of the recovery memo; the arrest of the appellant at 6 O'clock in the morning hours from a field and not from the house; the defence of the appellant that he and his wife had come back from Delhi after meeting their son; their claim of having been arrested at the police station and the dead body having been found below the staircase of their house. We have also noted that there is no evidence whether there was any forced entry of the police in the house of the appellant.

42. All these set of facts, if seen together from a prism with a larger perspective, it would render the prosecution case tottering at the seams.

43. For these reasons, we have not been able to persuade ourselves to believe in the prosecution



version and affirm the opinion of the Trial Court holding the appellant and his late wife to be guilty.

44. Giving benefit of doubt to the surviving appellant/Suresh Prasad, we are inclined to and acquit him of the charges of murder and of the attempt at concealing the dead body.

45. The impugned judgment of conviction and sentence dated 09.03.2015 passed by the learned 5th Addl. District & Sessions Judge, Nalanda, Bihar Sharif in Sessions Trial No. 622 of 2014 (T.R. No. 288 of 2014), arising out of Noorsarai P.S. Case No. 218 of 2014, is set aside and the appellant No. 1, viz., Suresh Prasad, is acquitted of the charges levelled against him.

46. The appellant No. 1/Suresh Prasad is said to be in custody for the last nine years. He is directed to be set at liberty forthwith unless his detention is required in any other case.

47. The appeal stands allowed as against



appellant No. 1/Suresh Prasad.

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

49. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Vashudha/-
Praveen

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	03.10.2023
Transmission Date	03.10.2023

