

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.568 of 2015

Arising Out of PS. Case No.-159 Year-2011 Thana- BANIAPUR District- Saran

Nageshwar Ram S/o Ram Nath Ram R/v - Bangali Pati, Purab Tola, P.S. -
Baniyapur, Distt. - Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Vijay Kumar Sinha, Advocate Mr. Arvind Kumar Srivastava, Advocate Mr. S.K. Bhatnagar, APP
For the Respondent/s	:	Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-09-2023

Heard Mr. Vijay Kumar Sinha, learned Advocate

for the appellant and Mr. Ajay Mishra, learned APP for the
State.

2. The appellant has been convicted under
Section 302 of the Indian Penal Code for having killed his
wife *vide* judgment dated 21.03.2015 passed by the
learned Additional District and Sessions Judge-XI, Saran at
Chapra in Sessions Trial No. 937 of 2011/2071 of 2014
and by order dated 23.03.2015, he has been sentenced to



undergo imprisonment for life, to pay a fine of Rs. 15,000/- and in default of payment of fine to further suffer imprisonment for six months.

3. The appellant is alleged to have given repeated *dab* blows on his wife for her not having served food to him on the fateful night. The matter was reported by the son of the appellant, who is the informant of this case.

4. Saheb Ram/P.W. 4 lodged his fardbeyan on 14.09.2011 at about 9:00 P.M., alleging that while he was in the company of his grandfather (P.W. 3) and others, some children of the village came shouting that the appellant is trying to kill his wife. On such information, P.W. 4 immediately rushed to his house, only to find that his father (appellant) had been assaulting his mother. He saw that his mother had been severely hit and injured near her eyes, shoulders, ears, etc. Since the appellant was in a rage, he chased P.W. 4 also. P.W. 4 had to run for his safety. He later again went to the house to find his mother dead. With the help of villagers, the appellant was nabbed



and was handed over to the police. Despite best efforts by P.W. 4 and his associates/villagers, the weapon of assault could not be found. Perhaps, it had been thrown in the agricultural field near the house of the appellant.

5. On the basis of the aforementioned fardebayan statement of the son of the appellant, a case *vide* Banyiapur P.S. Case No. 159 of 2011 dated 14.09.2011 was registered for investigation for offence under Section 302 of the IPC against the appellant.

6. The police after investigation submitted chargesheet whereupon cognizance was taken and the appellant was tried.

7. The prosecution came up with eight witnesses on its behalf in support of the accusation against the appellant of his having killed the deceased.

8. Sagar Ram, Chhotelal Ram and even Ramnath Ram, who is the grandfather of the informant and father of the appellant, who have been examined as P.Ws. 1, 2



and 3 respectively have not supported the prosecution case and have been declared hostile.

9. The son (P.W. 4) however, has completely supported the prosecution case and has, without any difference in his statement which he had made in the first instance, deposed before the Trial court that it was his father (appellant) who had killed the deceased. He has also alleged that the appellant never treated his mother with any respect. Aggrieved by the bad behaviour of the appellant, the mother of P.W. 4 had not served food to the appellant on the day of the occurrence. It was for this reason that the appellant, in a fit of rage, severely assaulted his mother thereby killing her. On seeing P.W. 4, the appellant tried to harm him also but he could anyhow escape.

10. Biran Ram and Ravindra Ram, co-villagers of the informant and the appellant, who have been examined as P.Ws. 5 and 7 are only hearsay witnesses, but they have supported the prosecution case in the sense that they



had learnt the deceased had been killed at the hands of her own husband *viz.* the appellant.

11. The investigator/P.W. 8 has said nothing before the Trial court which would impeach the credibility of P.W. 4 in particular.

12. Doctor Ramnath Choudhary (P.W. 6) who had conducted the post-mortem examination on the deceased had found three incised wound; one at the back of the neck and the others on the left side shoulder and arm. The death in his opinion was due to hemorrhage and shock as a result of the injuries received by the deceased.

13. There is no discrepancy in the deposition of P.W. 4 for us to disbelieve him on any count.

14. The evidence of the doctor completely puts a stamp on the homicidal murder of the deceased caused by the appellant.

15. The learned advocate for the appellant has however submitted that apparently it may appear to be an open and shut case because the son of the appellant has



raised allegations against him, but the fact of the matter is that there are certain glaring inconsistencies which cannot be ignored. In the inquest report, it was found that the ears of the deceased had been completely cut-off. The doctor while conducting the post-mortem did not find any injury on the ears of the deceased. Rather the incised wounds were found at the back of the neck, on the left shoulder and left arm.

16. This discrepancy, therefore, it has been argued, means that correct version has not been put across regarding the death of the deceased. He has further urged that even the grandfather of the informant did not support the prosecution case and expressed his complete ignorance about the cause of the death of the deceased.

17. Lastly, it has been submitted that since the appellant did not treat the mother of the informant well, the informant has chosen to raise false accusation against his father.



18. Had it not been true, he would have named the persons through whom he learnt about the occurrence and proceeded for his home to see his mother dead.

19. The two independent persons of the village, who have been examined at the trial, do not claim to have witnessed the occurrence.

20. On these grounds, it has been argued that the conviction and sentence of the appellant is not justified.

21. Mr. Ajay Mishra, learned APP, on the other hand, submits that the deposition of one witness whose credibility could not be impeached during trial is good enough for bringing home the guilt against the person charged. If the son has alleged against his father, there could be no reason to disbelieve him. He had actually seen his father assaulting his mother.

22. In such a situation, where the medical testimony is in complete sync with the ocular version, there would be no requirement of, Mr. Mishra suggests,



looking at the deposition of other witnesses for convicting and sentencing the appellant.

23. After having heard the learned counsel for the parties and having perused the records, we have found that P.W. 4 is a truthful witness, whose sole testimony can form the foundation for returning the verdict of guilt against the appellant.

24. The appellant appears to be an intemperate person, who did not behave with his wife well in his life. On the fateful day, his wife had refused to give food to him, perhaps because of ill-treatment at the hands of her husband. This is said to have enraged the appellant to kill his wife. This act of the deceased namely of not giving food on time to the appellant cannot be said to constitute any sudden or grave provocation for the appellant to lose his mental balance and start assaulting the deceased by a sharp cutting weapon. The appellant appears to have had sufficient time for him to hide the weapon of assault. The informant (P.W. 4) was shooed away by the appellant



when he had first shown himself before the appellant and the deceased. It was only later that the informant along with his villagers went to his house to find his mother dead. This was the time which was utilized by the appellant to hide the weapon of assault.

25. We have examined the evidence of the Investigating Officer as well in some detail. He found plenty of blood at the place of occurrence, but because of constant visit of the villagers after the occurrence, the blood at the scene of occurrence had become a puddle. The I.O. has explained this reason for not seizing the blood and sending it for any forensic examination. Even without that blood having been seized and sent for forensic examination, there does not appear to be any doubt that the deceased was killed in her own house by her husband. The act must have been in a fit of rage but by no stretch of imagination can this provocation be a defence for the appellant.



26. Thus, we find that the appellant has not been prejudiced either by the non-seizure of blood at the place of occurrence or the weapon of assault not having been recovered and no independent person having claimed to have seen the occurrence. It was the appellant only who attacked and killed his wife in a brutal manner.

27. The Trial court has rightly convicted and sentenced the appellant which requires no interference.

28. The appeal is dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

krishna/vasudha

AFR/NAFR	NAFR
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