

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1046 of 2016**

Arising Out of PS. Case No.-38 Year-2014 Thana- SARSI District- Purnia

Manoj Mahto Son of Chandeshwari Mahto, R/o Village- Kudwaghat,
Jeewanganj, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Arya Achint, Amicus Curiae
For the Respondent/s : Mr. Sri Satya Narayan Prasad

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 11-05-2023

Nobody has appeared on behalf of the appellant to
press this appeal even though the appellant has remained
all along in jail for the last more than nine years.

We have, therefore, appointed Mr. Arya Achint as
Amicus to assist us on behalf of the appellant. The State
is represented by Mr. Dilip Kumar Sinha, learned APP.

The appellant had been charged for offences under
Sections 304B and 302 of the Indian Penal Code. He has
but been convicted under Section 302 IPC only and has
been sentenced to undergo R.I. for life, to pay a fine of



Rs. 10,000/- and in the default of payment of fine, to further undergo simple imprisonment for one year in connection with Sessions Trial No. 825 of 2014/C.I.S. No. 575 of 2014/Trial No. 101 of 2015 passed by the learned 5th Additional Sessions Judge, Purnea, vide judgment and order dated 24.05.2016 and 27.05.2016 respectively.

The FIR was lodged by the brother of the deceased (P.W. 7) on 05.05.2014 that his sister was married about five years ago with the appellant in accordance with Hindu religious rites but for the last one year, she was being subjected to domestic violence. Many a times, it was alleged by P.W. 7 that his sister came back to her matrimonial home but on persuasion, again went to the matrimonial home. A day before lodging of the FIR *i.e.* on 04.05.2014 at about 8.30 p.m. in the night, the deceased had called P.W. 7 and beseeched him to come to her matrimonial home otherwise she would not survive. The informant promised that he shall visit her on



the next day. In the morning of 05.05.2014, the appellant called him and informed that his sister had died. On such information, the informant and other villagers went to the matrimonial home of the deceased and found her dead body kept in the courtyard. The police was informed thereafter, when Mukesh Kumar (P.W. 6), the investigating officer of this case arrived and recorded the FIR. The informant but has categorically stated that in this occurrence, the parents of the appellant are not to be blamed.

On the basis of the aforementioned fardbeyan statement, a case *vide* Sirsa P.S. Case No. 38 of 2014 dated 05.05.2014 was instituted for the offence under Section 302 of the Indian Penal Code only, perhaps for the reason that there was no allegation of any demand of dowry or consequent torture of the deceased immediately preceeding her death. The police, after investigation, submitted chargesheet against the appellant under Section 302 IPC only but charges were framed against



him under Section 304B and 302 IPC.

The trial court, after examining eight witnesses in all on behalf of the prosecution and none on behalf of the defence convicted the appellant only under Section 302 IPC and sentenced him to undergo the punishment as noted above.

Mr. Achint Arya, learned *Amicus* on going through the records of this case has submitted that no prosecution witness has supported the case of the prosecution. In fact, even the own brother of the deceased, who is the informant of this case and was examined as P.W. 7 has turned hostile. The neighbours of the appellant and the villagers of the informant have also not expressed anything against the appellant except for the fact that they learnt later that the deceased had died and that she was issueless.

He, therefore, submits that merely because the death had taken place within the four walls of the house of the appellant, it could not be said to be a culpable



homicide amounting to murder as even the post-mortem report does not fully support the accusation of strangulation and death as a result of consequent asphyxia. He, therefore, submits that when there is so much of doubt with respect to the correctness of the prosecution version, it was not safe and appropriate for the trial court to have convicted and sentenced the appellant for the offence under Section 302 IPC.

Mr. Dilip Kumar Sinha, learned Advocate for the State, however, has contended otherwise. He submits that no doubt there is no reverse burden on the appellant as he has been charged, convicted and sentenced under Section 302 IPC only, but a wrong explanation was given for the death of the deceased by the appellant, who had disclosed that the deceased had suffered some stomach trouble in the night and later had died. This explanation of death was not found correct during the course of investigation. In fact, the post-mortem report revealed that there were some bruises on different parts of the



body of the deceased and one thyroid cartilage was found to be fractured in its mid-line. In the absence of any explanation by the appellant, as is mandated under Section 106 of the Indian Evidence Act 1872, the burden has not been discharged by the appellant and therefore, he has rightly been convicted and sentenced under Section 302 IPC.

We have given our anxious consideration to the entire records of this case and we find that P.Ws. 1, 2 and 3, who are the neighbours of the appellant have not supported the prosecution case.

Devki Devi (P.W. 1) is the next door neighbour. She has testified before the court that much prior to the occurrence, some fight had taken place between the spouses but she had no idea that the deceased was harassed at the hands of her husband because of her remaining issueless. She has also stated before the trial court that the deceased was suffering from asthma and was very weak and frail in her health and the appellant



used to work at Punjab for earning his livelihood.

Rita Devi (P.W. 2), who made a similar statement has been declared hostile.

Birendra Thakur (P.W. 3), another neighbour of the appellant, categorically stated before the court that the deceased died of illness. He visited the house of the appellant only on hearing the cries and wails of the family members. He too has been declared hostile.

What is of importance in this case is the statement of Shiv Kumar Mahto (P.W. 4), who is a neighbour of the informant (P.W. 7). The informant had told him that his sister had died in her matrimonial home. On this information, he had visited the house of the deceased along with P.W. 7 and had found the dead body lying in the courtyard. Thereafter, P.W. 4 claims to have gone to the police station along with P.W. 7 where P.W. 7 got the FIR registered on which he too put his signature (Ext. 1).

Janak Lal Mahto (P.W. 5) claims to have first received the information about the death of the deceased



and that also from the appellant himself. The appellant had called him on telephone intimating him that his wife had suffered colic pain in the night whereafter she died. On such information, P.W. 5 claims to have told P.W. 7 that his sister had died and he also accompanied P.W. 7 and P.W. 4 to the matrimonial home of the deceased.

From the matrimonial home of the deceased, P.W. 5 along with P.Ws. 4 and 7 went to the police station where the FIR was registered on which, he also signed as a witness.

It would be important to now refer to the deposition of the Investigating Officer of this case *viz.* Mukesh Kumar (P.W. 6), who at the relevant time was posted as Officer In-charge of Sarsi police station. He, contrary to what P.W. 4 has stated before the trial Court, has stated that P.W. 4 had come to the police station at 07:45 AM on 05.05.2014 and had given oral information to him that a daughter of his village, who was married to the appellant, has been killed. On such information by



P.W. 4, station diary entry was recorded and P.W. 6 thereafter, proceeded to the place of occurrence which was the courtyard of the appellant. He found the dead body lying in the courtyard in a north-south direction. He also found some injuries on the wrist, back and cheeks of the deceased.

Inquest report was prepared by him on which Janak Lal Mahto (P.W. 5) and one Chaman Lal Mahto (not examined) put their signature (Exhibit 2).

After having prepared the inquest report, referred to above, the dead body was sent through chowkidars for post-mortem to Purnea hospital. Thereafter, the fardbeyan of P.W. 7 was recorded at the place of occurrence (Ext. 4). The formal FIR has been produced as Ext. 6.

Thus, from his deposition, we find that he had recorded the fardbeyan of P.W. 7 at his house only and not at the police station. We do not know as to what was recorded in the station diary on P.W. 6 having been



informed about the occurrence by P.W. 5, on which information, he had proceeded for the place of occurrence. There was no reason for the prosecution to have withheld or suppress that station diary entry which was the starting point of the entire investigation.

A deeper examination of the deposition of the informant (P.W. 7) would further reveal certain quaint facts.

As narrated in the First Information Report, P.W. 7 insisted that the deceased was married to the appellant about five years ago and in the night before she died, she had called him on telephone asking him to come for her rescue in her matrimonial home. Next day, when P.W. 7 visited the matrimonial home of the deceased, he found her dead body. The appellant and other family members had absconded. He was accompanied by his uncle (P.W. 4) and another relation viz. Janak Lal Mahto (P.W. 5). He also claims to have given his fardbeyan at the matrimonial home of the deceased to the



Investigating Officer (P.W. 6). However, he has been declared hostile for having made an upfront disclosure before the Court that he had settled the dispute with the appellant.

He has but admitted that the report of domestic violence by the appellant was correct and the deceased had gone back to live with him only after a Panchayati. He also did not deny that the deceased had called him on 04.05.2014 on telephone at about 08:30 PM informing him that she was not being treated well by her husband and that P.W. 7 should come for her rescue. Even on such preceeding facts, P.W. 7 claims to have abandoned the case after settling the dispute with the appellant and others.

The dead body of the deceased was subjected to post-mortem examination on 05.05.2014 at 04:30 PM by Dr. Parmanand Thakur (P.W. 8), who was posted as Medical Officer in Sadar Hospital, Purnea. On the examination of the dead body, P.W. 8 found a small



scratch on the wrist, left temple, on the left side of the neck and at the back of right hand. Some scratches were also found below the chest. He has opined that the deceased died because of strangulation of neck. The time of death was fixed between six to thirty hours from the time of post-mortem examination. Asphyxia was attributed as the cause of death which was only secondary to strangulation. However, *rigor mortis* also was present in all the limbs of the dead body. On dissection of neck, however, thyroid cartilage was found to be fractured in its mid-line. In response to the query by the defence whether such injuries could be caused by a fall, P.W. 8 did not answer in the negative. He had not directed for preservation of viscera as there was no confusion in his mind about the cause of the death viz. strangulation.

He has, however, denied the suggestion that the post-mortem report is false and collusive.

From the post-mortem report as also the



deposition of P.W. 8, we do not get a fair idea about the cause of death. We say so for the reason that no ligature mark was found on the neck of the deceased.

True it is that no inference, in all circumstances, could be drawn simply because of presence or absence of a ligature mark as there are instances where even in cases of strangulation or hanging, such ligature marks are indistinct or absent. When strangulation is resorted to by a soft cloth, it may not produce significant mark of ligature. It also depends upon the thickness of the skin of the victim. Many a times, in a stout body with many folds in the neck, no such distinct ligature mark is found but that itself could not be the reason to deny the expertise of the Doctor, who would opine the cause of death to be strangulation. Thus, as a matter of caution, any conclusion that the death was due to strangulation should be accompanied with other corollary symptoms and evidences; may be of the effects of violence on other parts of the body or on the underlying tissues or any



other causes for suboxic or asphyxial death. Its a matter of common knowledge that homicidal strangulation is a very common cause of homicidal death but for coming to a definite conclusion that the death was because of asphyxia and that also because of strangulation, one must look out in the first instance for ligature mark. In cases of strangulation, unlike in the case of hanging, the ligature mark is more often than not, continuous and throughout the roundness of the neck, below the thyroid. It is almost necessary that abrasions and ecchymosis be found around the edges of the ligature mark. Normally, the subcutaneous tissues also would be found to be echymosed. It is very common to find muscular injuries of neck in cases of mechanical strangulation.

For a thyroid cartilage to be fractured because of strangulation, the carotid arteries and internal cords also are ordinarily to be found fractured. If the thyroid cartilage is fractured then there are every chances that there would be fracture of the laryngeal trachea. One of



the most important side evidences of strangulation as distinguished from the case of hanging is that in case of strangulation, there is almost absence of any emphysematous bullae on the surface of the lungs.

From the perusal of the post-mortem report, we find that except for one statement that the thyroid cartilage was found to be fractured in the mid-line, no other evidence of strangulation can be discerned. It would not be too much for us to presume that those secondary evidences were not available as we have nothing on record to doubt or discredit the expertise of P.W. 8 as a Doctor.

What we can safely presume (even though there is no space for presumption in criminal matters), from the facts and circumstances as also the evidence adduced during trial that there could have been some physical skirmish between the spouses for a petty matter as there are few marks of violence which cannot be necessarily read to be any sexual violence or the injuries while



struggling for saving one's life when subjected to strangulation. A minor scratch on the wrist, on the back of the hand and on the cheeks would not tell us that those injuries were because of the struggle by the deceased to save herself while she was being strangled. If the impact of strangulation was such as to cause her death, it surely would have caused at least a faint ligature and other subcutaneous rupture.

We are at a loss to understand as to how there was a mid-line fracture of the thyroid cartilage when there is no injury to any carotid artery or any muscular rupture in the neck.

This leads us to the only inescapable inference that there could have had been some fight between the spouses but the intention of the appellant would not have had been to kill the deceased. The appellant would not have even harboured the intention of causing any such bodily injury, which in normal course would have caused the death.



We say so for other reasons as well. Though the deceased remained issueless for all this while but there is no written complaint about any domestic violence. The parents of the deceased admittedly, as noted in the First Information Report by P.W. 7, were not to be blamed for any occurrence. There was no demand or consequent torture for dowry. The neighbors had no idea that the couple used to fight for any serious issue; in fact two of the neighbours of the appellant, who have been chosen as prosecution witnesses have categorically stated before the Court that only on the hearing of cries after the death that they went to the house of the appellant to find the deceased dead.

The deceased also has been described by some of the witnesses as a person of frail body and that she had been suffering from some bronchial decease. In this factual background, when none of the prosecution witnesses including the brother of the deceased, who is the informant of this case, has supported the prosecution



version, we are constrained to take a different view of the matter viz. that the death may have been occasioned because of some fight between the spouses, accelerated by the frail health of the deceased.

This does not take us across the river for the requirement of Section 106 of the Indian Evidence Act to be satisfied.

Section 106 of the Indian Evidence Act reads as follows:

"When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

This is an exception to Section 101 of the Evidence Act which enjoins the prosecution to prove the case beyond all reasonable doubts. If a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

The appellant is the husband and the death of



his wife takes place inside his house. He ought to have been truthful in stating everything regarding the cause of death. We do find that he lacked in truthfulness when he talked about the deceased having received colic pain in the night whereafter she died.

No evidence, either ocular or circumstantial, appears to be on record to indicate that death was in normal course of nature because of colic trouble or because of any physiological aberrations in the body of the deceased. The absence of the appellant and the other family members from the house when P.Ws 4, 5 and 7 visited also speaks of guilty intent.

But those are not full proof facts to charge any person for murder.

Anybody would find such situation to be so precarious and intimidating that he would not like to be present at the scene of the occurrence.

It is not unknown that in cases of death of a woman in family, cases are lodged immediately without



verifying the truth. The absence of the appellant or his explanation of death of the deceased because of colic pain which was first communicated to one of the uncles of the informant, having been found to be non-existent, renders the appellant liable for not having discharged the reverse burden of explaining away the circumstance under which death was caused and of which he is expected to be in full know of. But that by itself would not render him liable to be prosecuted and punished for the offence of murder. He may have acted in his defence or on wrong counsel or out of fear but one thing can surely be inferred that he did not keep such information of the death of his wife close to his chest but gave a telephonic call to the uncle of the informant. There was no hurry in disposing of the dead body or cremating it in the absence of the family members of the deceased.

We therefore, have all through, been entertaining a lingering doubt in our mind that the appellant may have accelerated the death of the



deceased because of some physical attack on her but without any intention or even knowledge that such would cause her death.

We therefore find that in such case of lingering doubt, it would not be appropriate to affirm the conviction and sentence of the appellant under Section 302 of the Indian Penal Code.

We therefore, set aside the judgment and order of conviction and sentence by the trial court and hold that, at best, the appellant would be guilty of culpable homicide not amounting to murder under Section 304 (Part II) of the Indian Penal Code, and we declare it to be so.

So far as sentence is concerned, we have checked up from the records that he was all along in jail since his surrender to the process of law after the registration of this case. The period which the appellant has already undergone in jail would be sufficient sentence to meet out justice in the case.



The appeal is thus partially allowed. The conviction of the appellant under Section 302 of the Indian Penal Code is converted into one under Section 304 (Part II) and the appellant is sentenced to the period that he has already undergone in custody.

The appellant thus is directed to be released from custody forthwith, if not required to be detained in any other case.

Mr. Arya Achit, the learned *Amicus Curiae* shall be paid Rs. 2500/- by the Legal Services Authority for the services rendered by him.

The appeal stands partially allowed.

(Ashutosh Kumar, J)

(Harish Kumar, J)

krishna/shivank

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.05.2023
Transmission Date	22.05.2023

