

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.86 of 2017**

Arising Out of PS. Case No.-74 Year-2013 Thana- PAROO District- Muzaffarpur

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Ram Nath Thakur S/o Rajendra Thakur Resident of Village - Daudpur,
P.S. - Paroo, District – Muzaffarpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance:

For the Appellant/s	:	Mr. Suraj Narain Yadav, Advocate Mr. Upendra Kumar Chaubey, Advocate Mr. Naresh Kumar Mehta, Advocate Mr. Satish Kumar, Advocate Mr. Masoom Alam, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

Date : 25-07-2023

1. We have heard Mr. Suraj Narayan Yadav,

the learned Advocate for the appellant and Mr.

Abhimanyu Sharma for the State.
2. The appellant, who is the husband of the

deceased has been convicted for the offences under



Sections 302/201 of the Indian Penal Code *vide* judgment and order dated 10.11.2016 passed by the learned 13th Additional Sessions Judge, Muzaffarpur in Sessions Trial No. 20 of 2016, arising out of Paroo P.S. Case No. 74 of 2013, and has been sentenced to undergo R.I. for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer imprisonment for two months and R.I. for four years under Section 201 of the IPC. The sentences have been ordered to run concurrently.

3. The FIR has been registered by Baichu Thakur (PW-4), who is the father of the deceased on 22.05.2013, alleging that his daughter was married to the appellant on 08.04.2001 as per Hindu rites and customs. However, since the beginning of the marital life, the deceased was troubled in various ways by the appellant and members of his family. The intercession by PW-4 did not bear any fruit and his daughter had to come back to her parental home. Vexed by this, the deceased had to file a case against the appellant, which



was pending consideration before a Court of law. Under the orders of the Court, the deceased had gone to join the appellant in her matrimonial home and within one month, she was killed by the appellant and several others whose names have been stated in the FIR and the dead body was disposed of stealthily without informing the PW-4 or any other members of the family of the deceased about such death.

4. On the basis of the afore-noted written report lodged by PW-4, Paroo P.S. Case No. 74 of 2013 dated 22.05.2013 was instituted for investigation for offences under Sections 302/34 and 201 of the IPC. The police, however, did not find the entire accusation by PW-4 to be correct and therefore only chargesheeted the appellant and his father (father-in-law of the deceased), who two were put on trial.

5. The Trial Court after having examined six witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant as aforesaid but acquitted Rajendra Thakur (father-in-law



of the deceased) for paucity of evidence against him.

6. Hence this appeal.

7. Mr. Yadav, the learned Advocate for the appellant has submitted that there is no evidence worth the name to convict and sentence the appellant. True it is that the wife of the appellant has died but the death has not taken place under any mysterious circumstance. The deceased died a natural death after a brief illness which fact was made known to the informant and others. However, at the instance of the brother of the deceased namely, Ram Nath Thakur, his own namesake (PW-2), this case was lodged against him. The other witnesses at the trial have not supported the prosecution version at all.

8. As opposed to the afore-noted contentions, Mr. Abhimanyu Sharma, the learned APP has submitted that the deceased died under circumstances which are not known to anybody. It was, therefore, the duty of the appellant to have explained the nature of illness and the immediate cause of death of the deceased.



That apart, in the absence of any evidence that last rites were performed before the dead body was cremated, it can only be presumed that such cremation of dead body was done in stealth for preventing any evidence to come to the fore with respect to her being killed. Apart from this, he has submitted that the Trial Court was absolutely justified in convicting the appellant as there was a previous history of the deceased having been ill-treated by the appellant and his family members, forcing her to leave her matrimonial home and go to her parental home. It was only under the orders of the Court that the deceased had come to the matrimonial home, but alas, was killed within a month of her joining the appellant as her husband. There is definite assertion of some of the witnesses, Mr. Abhimanyu Sharma argues, that the appellant had married another lady and it was for that reason that the deceased was eliminated with the concerted efforts of the other family members of the appellant. Had it not been the case, it is argued, the



father and the brother of the deceased would surely have been informed and they would have participated in the last rites. If the case was filed on wrong advise, it was for the appellant to have brought on record some evidence regarding the information given to the family members about the cause of death and their participating in the final journey of the deceased. Thus, the circumstances clearly reveal that the deceased died in mysterious circumstances and in the present case, non-explanation of the cause of death by the appellant justifies the conviction and the sentence imposed on him is absolutely condign. Thus, it has been urged that the judgment and order of conviction needs no interference by this Court.

9. We have examined the evidence on record and have found that but for PW-2, who is the brother of the deceased, nobody has supported the prosecution version. Surprisingly, the informant, who is the father of the deceased has somersaulted and has stated before the Trial Court that the deceased died because



of illness. The deceased had been suffering from some illness for which PW-4 had also got her treated and in her matrimonial home also, treatment was being given to her. He had very cordial relations with the family of the appellant and he was treated with great respect. With respect to the lodging of the FIR by him, he has deposed before the Trial Court that an application was written by somebody at his instance, the contents of which application he could not understand. From the FIR (exhibit-1), it appears that the FIR was scribed by one writer namely, Bidhu Kant Mishra, whose name has been inscribed on the left hand side of the formal FIR. Neither aforesaid Bidhu Kant Mishra nor the person named by PW-4, who was engaged to write the FIR, have been examined before the Trial Court.

10. This, therefore, leaves us with some doubts whether the PW-4 knew about the contents of the FIR which contained allegations against the appellant of having contracted another marriage during the subsistence of her marriage with the deceased and the



ill-treatment of the deceased and her ultimate death.

PW-4 has been declared hostile.

11. This leaves us with the deposition of the brother of the deceased, who has been examined as PW-2 before the Trial Court. Though, he has supported the prosecution version but does not give the details of the case which was lodged by the deceased against her husband, when she had to come back from her matrimonial home to her parental home because of ill-treatment meted out to her. The nature and the details of the case lodged by the deceased against the appellant and his family would not have been so important, had the allegation been supported by other family members or the father of the deceased. Not having done that, the prosecution has missed out on necessary link evidence for the Court to come to a definite finding that she was being ill-treated in her home and therefore she had to, for a large part of her marital, life live with her parents.

12. We have no evidence even through the mouth of



PW-2 regarding the time she had spent in her parent's home or whether she had given birth to any child out of the wedlock. That the deceased had gone to stay with her husband is clearly indicative of the fact that good relations had been restored. Till the time that she stayed with her husband/appellant in her matrimonial home, there was no complaint by the deceased; otherwise the same would have been reported by her to her family members. If that would have been the case, it would not have been without her past experience of registering her protest in case of ill treatment.

13. One of the neighbours of the appellant namely, Shankar Thakur has been chosen by the prosecution to stand in the witness box to depose against the appellant as he would be in a better position to know about the occurrence which may have taken place in his neighbour's house. Shankar Thakur (PW-1), however, has expressed complete ignorance about the deceased having been killed; rather he has categorically stated that prior to her death, the deceased had suffered colic



pain for which she was treated, but ultimately she died.

He did not know about the strained relationship of the deceased with her husband or her in-laws.

14. Mahendra Thakur (PW-3), a villager of the accused has also not supported the prosecution case in any manner whatsoever.

15. This leaves us with two other witnesses who have categorically been declared hostile. Even their deposition do not throw any light on the cause of death of the deceased. With such evidence on record, it is difficult to presume that the deceased was killed and her dead body was disposed of stealthily. Though, there are no evidence on record to indicate that the last rites were performed in presence of onlookers and family members but in the absence of any one of the prosecution witnesses deposing that the deceased was stealthily burnt and her dead body disposed of, we are left with no material to affirm the judgment of the Trial Court.

16. After having perused the Trial Court judgment,



we find that it has gone more on circumstance, namely, the deceased not having good relations with her husband in the beginning, for which she had filed a case and her joining the matrimonial home only after an order by the Court was passed. This according to the Trial Court was a big indicator towards the deceased having died under mysterious circumstances within a month of her joining her matrimonial home.

17. True it is that this indicates towards a situation where it could be doubted whether the deceased had died her natural death. But, for coming to such conclusion, the Court had to look for other evidence, especially the evidence with respect to the kind of allegation levelled by her earlier against her husband, the veracity of the accusation that the appellant had married someone else during the subsistence of his marriage with the deceased and the nature and content of the order under which the deceased had gone to the matrimonial home. Was that a settlement between the spouses or was only a temporary measure in order to



test whether the spouses could live together happily and peacefully, was required to be verified before taking this indice as one of the definite evidence for coming to the conclusion that the deceased was definitely killed and the dead body was disposed of.

18. In this context, we are forced to ask a question to ourselves as to what may have happened to the deceased. There is no evidence of any serious illness of the deceased. What was the medication administered to her before she died is also unknown to us.

19. This again leaves us with the possible recourse to an explanation from the accused persons, especially the appellant who is the husband of the deceased as to what had happened. Neither under 313 of Cr.P.C., anything has been mentioned by the appellant nor any evidence has been brought forth by him to explain the kind of illness suffered by the deceased immediately prior to her death and the cause of her death. Since the dead body has been cremated, no *post-mortem* was done and the I.O. of this case has also not been



examined. No explanation also appears on record for the non-examination of the I.O.

20. The Trial Court ought to have made some efforts for ensuring the taking of evidence of the I.O. of this Case, which would have thrown some light on the investigating process and the materials against the appellant.

21. Whether recourse to Section 106 of the Evidence Act straightaway would be justified is the question which confronts us? Section 106 of the Indian Evidence Act, 1872 provides that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. One of the illustrations is that if 'A' is charged with travelling on a railway without a ticket, the burden of proving that he had a ticket is on him.

22. The deceased admittedly was residing with the appellant. She died after complaining of stomach pain. Therefore, it was the duty of the husband/appellant to have explained the cause of death



of the deceased. That does not appear to have been done. Nonetheless, whether this lapse on the part of the appellant can be read against him for convicting and sentencing for the offence under Section 302.

23. The answer is in the negative.

24. The reasons are that if the death of the deceased was under normal circumstances, accelerated by some illness, which could not be diagnosed, no further formality was required except for providing information to the family members of the deceased, in the neighbourhood and performing the last rites.

25. It appears and as has been argued by Mr. Yadav, the same thing was done by the appellant. Had there been any doubt with respect to the deceased having died a natural death, it would have been incumbent upon the appellant or the other family members to have explained the circumstances of the death for coming out of the dragnet of the present prosecution. It has been argued that such accusation comes only later, at the insistence of the brother of the deceased (PW-2).



26. Thus, in this situation, we are in a dilemma whether to accept the deposition of the father of the deceased or the brother of the deceased.

27. That apart, for pressing Section 106 of the Indian Evidence Act, 1872 into play, the Trial Court needed to understand that Section 106 is only an exception to Section 101 of the Evidence Act. Section 101 lays down the general rule about the burden of proof.

"Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exists." This is the general rule namely, that in a criminal case, the burden of proof is on the prosecution. Section 106 of the Evidence Act is certainly not intended to relieve the prosecution of its duty. On the contrary, it is designed to meet certain exceptional cases in which it would be impossible, or at any rate disproportionately difficult, for the prosecution to establish facts which are especially within the knowledge of the accused and which he could prove



without difficulty or inconvenience (**refer to Shambhu Nath Mehra Vs. State of Ajmer, 1956 Supreme Court, 400)**)

28. The Supreme Court in the afore-noted case went on to explain that the word “especially” means that facts that are pre-eminently or exceptionally within the knowledge of the person concerned is required to be explained.
29. If the Section were to be interpreted otherwise, it would lead to very startling conclusion that in a murder case, the burden would lie on the accused to prove that he did not commit the murder, because who could know better than he, whether he did or he did not.
30. Thus, pressing Section 106 of the Evidence Act for trying to ascertain the cause of death and in the absence of any explanation from the appellant, holding him guilty, would be reading against the criminal jurisprudence in a criminal trial. The prosecution is first required to prove its case beyond all reasonable doubts.
31. As noted above, there is no evidence on record



with respect to any ill-treatment, the contents of the charge of the deceased against the husband in the case lodged by her reasons for her staying in matrimonial home and for what time, the contents of the order under which the deceased is touted to have gone to her matrimonial home and the correctness of the assertion that the appellant had married another person during the subsistence of marriage. All these lapses coupled with non-examination of the I.O. makes the prosecution case highly doubtful and leaves us with no option but to give benefit of doubt to the appellant.

32. For the afore-noted reason, we are not in agreement with the opinion arrived at by the Trial Court for convicting and sentencing the appellant. Perforce, we set aside the judgment and order of conviction and acquit the appellant of all the charges.

33. Since the appellant is in custody, he is directed to be released from jail forthwith, unless his detention in jail is required for any other reason.

34. This appeal is allowed.



35. Let a copy of this order be communicated to the Superintendent of concerned jail for record and compliance.
36. Let the records of this case be returned to the Trial Court forthwith.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

sunilkumar/-
shanawaz

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.07.2023
Transmission Date	27.07.2023

