

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.461 of 2017

Arising Out of PS. Case No.-17 Year-2015 Thana- BAISI District- Purnia

Md. Salim Son of Md. Sahid, Resident of Village- Sakarbaliya, Police
Station- Baisi, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Saghir Ahmad, Advocate.

For the Respondent/s : Mr. Abhimanyu Sharma. APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-06-2023

Heard Mr. Saghir Ahmad for the appellant and
Mr. Abhimanyu Sharma for the State.

2. This appeal is directed against the judgment of conviction dated 27.02.2017 and order of sentence dated 04.03.2017 passed by the learned Additional Sessions Judge -I, Purnea in S. Tr. No. 485 of 2015 (CIS No. 447 of 2015, Tr. No. 08 of 2017), arising out of Baisi P.S. Case No. 17 of 2015, whereby and whereunder the sole appellant/Md. Salim has been convicted for the offences under Sections 302 and 201 of the I.P.C. and has been



sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 10,000/- and in default of payment of fine, to further suffer imprisonment for one year for the offence under Section 302 of the I.P.C. and rigorous imprisonment for seven years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further suffer imprisonment for a period of six months for the offence under Section 201 of the I.P.C. The sentences have been ordered to run concurrently.

3. The appellant has been charged of murdering Bijalo @ Najneen with whom he was made to marry about six months ago on the dictates of the local *panchayat*. The further charge against the appellant is of having entering into a conspiracy with two others in executing the murder and concealing the dead body for screening the offence. The two other persons who were put on trial along with the appellant were, for the paucity of any evidence of their conspiracy and participation, acquitted by the Trial Court.



4. The appellant was charge-sheeted, whereafter cognizance was taken and the case was committed to the Court of *Sessions* for trial.

5. The Trial Court, after having examined eleven witnesses on behalf of the prosecution and none on behalf of the defense, convicted and sentenced the appellant as aforesaid.

6. The father of the deceased, namely, Md. Tabrez (P.W. 5) had initially lodged an F.I.R. on 31.01.2015 against unknown for the offence under Section 363 of I.P.C. as the deceased had gone missing from his house. In his F.I.R., he has stated that his daughter Bijalo @ Najneen, aged about 18 years, who was married to the appellant about six months ago, had come to stay with him about two days before her going missing. In the night of 29.01.2015, the appellant had called on the mobile telephone of his sister-in-law, viz., Nahida Praveen (P.W. 1), which was picked up by his daughter, who while talking on telephone, went out of the



house. The deceased kept on talking on the telephone for a long time. P.W. 5, thereafter, slept but was informed in the morning by P.W. 1 that the deceased is not to be found in the house. A frantic search was made for her in the neighbourhood as also in the house of the appellant, who incidentally resided only at a short distance from the house of P.W. 5, but no trace could be found. Thus, on 30.01.2015, the afore-noted report was lodged regarding the deceased having gone missing, but the accusation was levelled against none. After about five days of the report, the appellant was arrested, who made a confession before the police admitting his guilt and on his pointing, the dead body was recovered from under a water-body and the mobile telephone of P.W. 1 was also found destroyed and hidden under hay-stack of a neighbour.

7. The appellant has urged that there is no evidence against him except for the fact that he had married the deceased about six months ago under duress and coercion of the local *panchayat* and the so-called



confession by him, which is not admissible in the eyes of law. The appellant claims to have been kept in police lockup for about three days, whereafter the confession was extracted from him, pursuant to which it has been shown in the records that the dead body was recovered. Sans the aforesaid confession and the so-called recovery, there is no connecting chain of evidence of anybody either have seen the deceased in the company of the appellant or any evidence under Section 10 of the Evidence Act towards hatching any conspiracy or any indicator of the appellant having managed to get the deceased near the water-body where she was killed by the appellant with the help of two other family members, who too were put on trial, but acquitted for paucity of evidence. Thus, it has been urged that it is a case of circumstantial evidence with no supporting props justifying the prosecution and conviction of the appellant.

8. Additionally, it has been urged that the circumstances revealed that the deceased was done to



death at the instance of her own family members because she had chosen to marry in an unconventional manner with the appellant, who stood in the relationship of cousin grandfather to the deceased. This proposition however cannot be taken any further as the witnesses have not stated during the course of investigation that the marriage between the appellant and the deceased was performed under the threat of the local *panchayat* but the story has only been unfolded during the trial.

9. Ratan Kumar (P.W. 10), the I.O. of this case, has specifically denied that the witnesses had told him during the course of investigation that about 12-13 months prior to the occurrence, the deceased was spotted along with the appellant inside a bush in a compromising position and, therefore, they were pressurized to marry each other.

10. Lastly, it has been submitted that if the appellant ever intended to commit the murder of the deceased under stealth, it would have been very naive for



him to have called the aunt of the deceased who resided in the same house for calling the deceased to the place of murder for executing such a plan. There could have been number of other ways to procure the presence of the deceased outside her house when such a plan could have been executed without leaving any trace or evidence.

11. The State, on the other hand, has contended that notwithstanding the fact that no witness has seen the occurrence nor there is any direct evidence but the circumstance is complete, justifying the conviction of the appellant. The afore-noted argument has been advanced in the light of the fact that the deceased, a person of relatively younger age, was forcibly married to the appellant for the couple having been seen in a compromising position against the conventions in the village. This reflects that the appellant had married the deceased only under duress and, therefore, it is quite likely that he was not happy with the relationship and wanted to eliminate the deceased.



12. Mr. Abhimanyu Sharma, the learned counsel for the State has further pointed out that in the deposition of the witnesses, definite evidence against the appellant has been garnered that after the marriage, the deceased was not well treated in the house of the appellant. Precisely for this reason, the deceased had chosen to come to stay with her father. The relationship between the spouses had not been completely snapped, which left room for the appellant to contrive a situation whereby she would come out of her house in the dead of the night, not to remain alive thereafter. He has further submitted that the statement of the appellant while in police custody lead to the recovery of the dead body as also the mobile telephone of P.W. 1, which information was in the context of such disclosure which was admissible under Section 27 of the Evidence Act, giving sufficient link to the police to believe the statement of the appellant for continuing the further investigation.



13. Thus, the discovery of the dead body and mobile telephone of P.W. 1 is a circumstance which clearly puts the appellant in the dock. It is trite, Mr. Sharma contends that merely because there are only circumstantial evidence, the case can not be shut down when there are positive indicators to forge a complete chain of events. Had the family members of the deceased indulged in honour-killing, this was the most unusual and complicated way of executing the same, namely, of weaving a story of calling the deceased in the dead of the night by the appellant and also hiding the mobile telephone so as to lend credence to such story. The afore-noted theory of the appellant, therefore, is not worth accepting.

14. Mr. Sharma, thus, concludes that the Trial Court has rightly convicted and sentenced the appellant and no interference is required.

15. On a perusal of the evidence on record, we find that initially a case was registered by P.W. 5 against



unknown under Section 363 of the I.P.C. The appellant resided only 50 yards away from the house of P.W. 5. While searching for his daughter for three days, P.W. 5 had visited the house of the appellant also, but till the time of lodging of the F.I.R. or 3-4 days, thereafter, no suspicion was cast on the appellant. This appears to be rather surprising in as much as it renders the conduct of the prosecution as also the appellant highly unusual. It is not expected of a father or a near relative of a young girl, recently married, not to lodge the F.I.R. immediately on her going missing. There is an unreasonable delay in lodging the F.I.R., waiting till the dead body was recovered. Similarly, if the appellant really had murdered the deceased, he would not have been available in his house for all this while without making any preparations of creating his defense.

16. During the trial, P.W. 5 has narrated a somewhat different story, namely, that a telephone call came on the mobile telephone of P.W. 1, his younger



sister-in-law, which was picked up by the deceased, who while talking to the caller, went out of the house. Neither P.W. 5 nor P.W. 1 bothered to look for her in the night. She had come out of the house at 10 O'clock in the night. It appears to be rather unusual again that the inmates of the house would keep their doors open when a young member of the house was out in the night and does not return for a long time. The explanation that both of them slept because the deceased kept on talking to the caller for a long time, is not readily acceptable. P.W. 5 has further stated that on 31.01.2015 at about 5:00 P.M., he had informed the local police about his daughter having gone out of the house in the night and not returning home, but the F.I.R. against unknown was lodged only on 01.02.2015. After four days of the lodging of the F.I.R., P.W. 5 has alleged that he heard a rumour in the village that the police has brought the appellant near to the bank of the local river. On learning this, he too went to the river side where he found many persons of the village



having assembled. In his presence, according to his deposition at the trial, the appellant was asked to disclose as to where had he concealed the dead body. On such insistence of the police, the appellant entered the water-body and took out the dead body of his daughter, who was naked from her waist. Her hands were also tied by a jute rope. Before the police, the appellant is said to have confessed that he had killed the deceased along with Md. Sanowar, Md. Shahid and Md. Jahid (since acquitted). The dead body, thereafter, was brought to the police station and, thereafter, to the Government Hospital, Purnea for post-mortem. The dead body was handed over to P.W. 5 after the post-mortem, who conducted the last rites. For the first time, during the trial, P.W. 5 has stated that about 12-13 months before, he and his family members had caught the appellant and the deceased in a compromising position in the village. A *panchayati* was held and the appellant was forced to marry the deceased.



17. The I.O. (P.W. 10) but has denied that any such statement was made by P.W. 5 during the course of investigation.

18. Mr. Saghir Ahmad, the learned counsel for the appellant has submitted that this very statement of P.W. 5 at the trial completely discredits the prosecution case for many reasons, the primary being that if the appellant was made to enter the water body to fetch the dead body, it was no discovery as contemplated under Section 27 of the Evidence Act. He further submits that no exact words of the appellant which lead the police party to come to the river to recover the dead body, has been proved. The statement of P.W. 5 that such disclosure was made by the appellant in front of the villagers who himself was made to recover the dead body, only indicates that the statement, if at all, made by the appellant was not voluntary but was under duress and coercion. Thus, that part of the information was not at all admissible as it was only part of a confession to a police which is not required



to be proved under Sections 25 and 26 of the Evidence Act. The accusation against the appellant is absolutely false and concocted and only with the purpose of helping the prosecution in closing the case as an open and shut case.

19. Nahida Praveen, the aunt of the deceased has been examined as P.W. 1 at the trial. She has deposed that the appellant had called on her mobile telephone which was picked up by the deceased. Mr. Ahmad again points out that if it were the intention of the appellant to have the deceased come out of her house, it was the most crude step to call the aunt, expecting that the telephone would be picked up by the deceased. P.W. 1 has categorically stated that everybody in the family had their own mobile telephones. There was thus no necessity for the appellant to have called her aunt for asking the deceased to come out of her house. Her conduct also appears to be unusual in not waiting for the return of the deceased inside the house when she had gone out of the



house in the dead of the night. P.W. 1 has further stated that when she along with her family members had gone to Baisi police station to inform about the occurrence, the appellant was present there, who had lodged a case against the family of the deceased. She has also ratified the fact that the appellant was brought near the river at the instance of the police. She has also confirmed that when the appellant had come to the police Station to lodge a case against the family members of the deceased, he was arrested there and kept in the police lockup for about five days and only thereafter he was remanded to custody but after extracting a confession from him.

20. Almost similar statements have been made by Md. Jahid Alam (P.W. 2), Md. Riyaz (P.W. 3) and Md. Nayeem (P.W. 4), all of whom are hearsay witnesses.

21. The F.I.R. was registered by Mr. Subhash Chandra Mandal (P.W. 9), but the investigation was carried out by Mr. Ratan Kumar (P.W. 10), who, after his



examination-in-chief, was declared hostile and was cross-examined by the prosecution.

22. The statements made by the hostile witnesses are not totally effaced from the record.

23. We have examined the deposition of P.W. 10 and have found that the statement regarding the deceased having been caught with the appellant some 12-13 months prior to the occurrence and that they married to each other on the asking of the *panchayat*, was never told to the I.O. during the course of the investigation. Thus, the afore-noted story was only cooked up later. Though P.W. 10 has denied that the appellant was kept in police custody for a long time, but the consistent evidence of the witnesses are that no sooner had the appellant come to the police station to get the case lodged for his wife having gone missing, he was arrested and kept in the police lockup and a confession was recorded after five days.



24. We also find from the evidence that the water body in which the dead body was concealed is frequented by fishermen of the village for fishing. If the deceased was murdered in the night when she had come out of her house, *i.e.*, on 29.01.2015, it appears to be rather unusual that the dead body would not have been spotted by those fishermen. Equally surprising is that when the post-mortem was conducted on the dead body, even though the Doctor placed the time of occurrence between 24-72 hours, but was not in a position to say whether the dead body was kept under water for all this while. Blood was still trickling down the nostrils and *rigor mortis* was found on all four limbs. The neck was found to be broken. The timing suggested by the Doctor does not fit in the scheme of the prosecution that the deceased was murdered sometimes in the night of 29.01.2015. The post-mortem examination was done on 04.02.2015 at about 1:00 P.M. If the deceased was murdered sometimes in the night of 29.01.2015, the medical



evidence ought to corroborate the afore-noted timing of murder. That apart, it appears to be strange that the blood from the nostrils was still not wiped out after the dead body remained under water for about five days. If the story would have been true, the dead body would have been completely soaked in water, which would have been identified as such by the Doctor conducting the post-mortem.

25. Deepak Kumar (P.W. 6), the Doctor, not having found any evidence of the dead body remaining submerged under water, creates a big doubt in the story line propounded by the prosecution.

26. After having said that, we also find that there is no evidence of honour-killing of the deceased by her family members. If that would have been so, there was no necessity of putting up a story of the appellant having called the deceased on the mobile telephone of another inmate of the house and then destroying that evidence by throwing the mobile telephone somewhere else. There



could have been some much easier way of executing the honour-killing.

27. Does it that mean that if this possibility is excluded, the chain becomes complete automatically against the appellant?

28. The answer clearly is in the negative.

29. Nobody has seen the occurrence of assault or of the deceased accompanying the appellant or of the appellant making any overtures for screening himself from the offence. This is a definite pointer towards the innocence of the appellant. It is not the case of the prosecution that the deceased had ever complained of ill-treatment by the appellant. Such reference of ill-treatment is but few and far between the deposition of the witnesses but without any supporting fact.

30. We have also not found any evidence regarding at whose instance, the *panchayati* had been convened. This leaves room for speculation that the liaison between



the appellant and the deceased was not to the liking of the family members of the deceased.

31. Under such circumstance, we do not find any positive rationale for assuming that because it was a forced marriage, the appellant wanted to do away with the life of the deceased so as to come out free of the relationship. The deceased was way too young than the appellant and also stood in the relationship of cousin granddaughter, *vis.-a-vis.*, the appellant.

32. In the absence of any witness or circumstance to believe the story line that the dead body was submerged in water for five days and that nobody spotted the dead body, even when such water body was frequented by fishermen, and no evidence of the appellant having been seen with the deceased any time after 29.01.2015, raises doubts in our minds.

33. We have also examined the aspect of the telephonic conversation between the mobile telephones of the appellant and of P.W. 1, which allegedly was picked



up by the deceased. Though, the CDR has been exhibited, but without any certification as mandated under Section 65(B) of the Evidence Act, making it completely inadmissible in the eyes of law.

34. Thus, we are left with practically no evidence so far as the appellant is concerned.

35. We are in a quandary as to who had murdered the deceased. Well, this Court has only been called upon to decide the culpability of the appellant against whom the evidence is deficient, to say the least.

36. For the afore-noted reasons, we are forced to give benefit of doubt to the appellant.

37. The judgment of conviction and order of sentence dated 27.02.2017 and 04.03.2017 respectively, therefore, in our opinion, is not sustainable in the eyes of law and, thus, are set aside.

38. We have been informed that the appellant, viz., Md. Salim has been in custody all through the investigation and trial since 2015.



39. The appellant above-named is directed to be directed to be set at liberty forthwith unless his detention is required in any other case.

40. The appeal stands allowed.

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

42. The records of this case be sent back to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Shailendra Singh, J)

Annu/Praveen

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	27.06.2023
Transmission Date	27.06.2023

