

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1175 of 2017

Arising Out of PS. Case No.-34 Year-2015 Thana- BHAWANIPUR District- Purnia

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Md. Imtiyaz Alam Son of Md. Ramjan Ali, Resident of Village- Bhangre,
Police Station- Bhawanipur, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 515 of 2017

Arising Out of PS. Case No.-34 Year-2015 Thana- BHAWANIPUR District- Purnia

- =====
1. Md. Ramjan Ali and Anr S/o Late Jahir,
 2. Md. Zubair Alam, S/o Md. Ramjan Ali, Both are resident of Village-
Bhangra, P.S.- Bhawanipur, District- Purnea.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 1175 of 2017)

For the Appellant/s : Mr. Vikramdeo Singh, Advocate
Ms. Shruti Sinha, Advocate

For the Respondent/s : Mr. Shivesh Chandra Mishra, APP

(In CRIMINAL APPEAL (DB) No. 515 of 2017)

For the Appellant/s : Mr. Nafisuzzoha, Advocate

For the Respondent/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-06-2023

Both the appeals have been taken up



together and are being disposed off by this common judgment.

2. Heard the learned counsel for the parties.

3. Both the appeals are directed against the judgment and order of conviction and sentence dated 03.04.2017 and 10.04.2017 respectively, passed in Sessions Trial No. 46 of 2016, arising out of Bhawanipur P.S. Case No. 34 of 2015, whereby the appellants have been convicted under Sections 302/34 and Sections 201/34 of the I.P.C. and have been sentenced to undergo life imprisonment, 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 Sections 302/34 of the I.P.C. and to undergo R.I. for seven year, 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 Sections 201/34 of the I.P.C. The



sentences, however, have been ordered to run concurrently.

4. The appellant/Md. Imtiyaz Alam (in Cr. Appeal (DB) No. 1175 of 2017) is the husband of the deceased, whereas the appellants/Md. Ramjan and Md. Zubair Alam (in Cr. Appeal (DB) No. 515 of 2017) are the father-in-law and the brother-in-law of the deceased respectively.

5. The deceased/Shahen Parween is alleged to have been strangled at the hands of the appellants and others. The dead-body of the deceased was put to *post-mortem* examination on 10.02.2015, when Dr. Vimal Kumar (P.W.-3) found *rigor mortis* present in all the four limbs. He found a faint and irregular serculatee ligature around the mid portion of the neck which was only half inch wide. On dissection of the neck, an underneath ligature was also found. There were no marks of violence on any part of the body. The P.W.-3 was of the opinion that



the death was caused by strangulation. The time of death was placed sometimes between 6 to 36 hours from the death to the *post-mortem* examination. P.W.-3 also did not find any finger print on the entire body including the neck portion.

6. The time of death, according to the records, is not known. The F.I.R. was lodged by the father of the deceased, who has been examined as P.W.-5. He has alleged that on 09.02.2015, at about 6:00 P.M., his son/Md. Munna @ Salim/P.W.-4 informed him that the deceased has been killed by her in-laws. The deceased was the youngest of the daughters of P.W.-5. In the F.I.R., he has also stated that about six months ago, the deceased had eloped with the appellant/Md. Imtiyaz Alam, whereafter the appellant had married her. Since she was not of the age of marriage, a case of kidnapping was registered at his instance against the appellant. Ever since then, the relationship between the family of the



informant/P.W.-5 and of the appellants was disturbed. The appellant/Md. Imtiyaz Alam had a family from his earlier marriage. In the case lodged by P.W.-5, the appellant/Md. Imtiyaz Alam as well as the deceased were apprehended and later, when the deceased was released in favour of the appellant/Md. Imtiyaz Alam, she started residing with him in the family home along with his older wife and children. The informant/P.W.-5, therefore, suspected that the appellants and others have killed the deceased by strangulating her.

7. On the basis of the afore-noted statement given by P.W.-5, Bhawanipur P.S. Case No. 34 of 2015 dated 09.02.2015 was registered for investigation for the offences punishable under Sections 302 and 120(B) of the I.P.C.

8. The police, after investigation, submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the Trial Court.



9. The Trial Court, after examining nine witnesses on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

10. It may be necessary to state that the other family members of the appellants were subjected to a separate trial and against one of them, final report false was submitted.

11. Mr. Vikramdeo Singh, the learned counsel for the appellants, has submitted that except for the vague suspicion of the father and brother of the deceased, there is no other evidence to connect the appellants with the offence. The further argument is that looking at the *post-mortem* report, the death does not appear to be homicidal. No independent person has come forward to claim that they had seen the occurrence or had definite information about the deceased having been strangled to death. He has further submitted that true it is that the deceased died in her matrimonial home, but in the absence of



any specific proof of the appellants having played any part in killing the deceased, the burden of proving the same could not be shifted on them by taking resort to Section 106 of the Evidence Act. There are certain yawning gaps in the prosecution case, which surely renders the prosecution version to be doubtful. There is no evidence whether the deceased was brought dead or was brought to the hospital while still living. When did the occurrence take place is also not known. Who brought to her to hospital remains obscure. There is no medico-legal report available on record giving any history of the case of the deceased. There are divergent versions of the witnesses regarding the presence of the family members of the appellants in the hospital, when the informant, his son and the police party had arrived there. According to some, there was no family member available in the hospital, whereas one of the witnesses has stated that he found the family members of the appellants in the



hospital when he had visited the same. All these factors, therefore, point towards the doubts/chinks in the prosecution version, rendering the same to be redolent with doubts and confusion.

12. In such circumstances, it has been urged that it would be unsafe to convict the appellants for a serious offence of murder and of screening the offence. The dead-body was found in the hospital, whereafter it was sent for *post-mortem*. There was no concealment of *corpus delicti* for bringing home the charge under Section 201 of the I.P.C.

13. Lastly, it has been submitted that though the F.I.R. was lodged under Sections 302/120(B) I.P.C., but rightly, for complete paucity of evidence either under Section 10 of the Evidence Act or otherwise, no charge was framed under Section 120(B) of the I.P.C. The appellants, therefore, it has been argued, deserve to be acquitted after their conviction is set-aside.



14. As opposed to the afore-noted contentions, the State has argued that it is only the appellants who are responsible for the death of the deceased. Nothing has been brought on record by way of defense of the appellants as to the reason ascribed for death. The ligature mark on the neck of the deceased may not be continuous, but on dissection of the epithelial layers in the neck portion, underneath contusion was found. Such an injury could not have been caused by a fall or, perhaps, while successfully committing suicide. The *post-mortem* report reveals that the deceased was pressed in her neck till the time she died. The absence of marks of violence on other parts of the body is not sufficient enough to infer that the death was not homicidal. The deceased died within the house where the appellants resided. They only could have provided an explanation as to under what circumstances, the deceased suffered such injury in her neck, which led



to her death.

15. It has further been argued that even if some aspects have been left wide open by the investigating agency and by the prosecution during the trial, that cannot be a ground for acquitting the appellants, who have not furnished any explanation for the injury and consequent death of the deceased.

16. What has struck us most, while analyzing the evidence in the cases, is that there is complete lack of evidence with respect to arrival of the deceased in the hospital. If she had been brought dead, a different procedure would have been adopted by the hospital authorities, namely, following the magisterial inquest procedure as the death was under suspicious circumstances. If she had been brought while still surviving, it should have been registered in the hospital records, especially with respect to the condition under which the patient had been admitted. When did the death take place, thus, remains



unknown. One thing is certain that the deceased did not die of any disease. Therefore, there must have been some injuries on the deceased for her to have been brought to the hospital.

17. On perusal of the *post-mortem* report, it appears that there was some contusion in the underneath muscular layers causing congestion of lungs. However, the absence of continuous ligature on the neck, sends us doubting whether the deceased was strangled with such force that she died. In this background, we have no idea whether the deceased attempted to commit suicide and ultimately became successful.

18. In order to quell all these divergent thoughts in our minds, we deem it appropriate to probe a bit deeper.

19. The circumstance narrated by the informant/P.W.-5 is that the deceased married appellant/Md. Imtiyaz Alam of her own volition,



knowing that the appellant already had a surviving wife and children. The deceased must not have come of age at the time of marriage or else case of kidnapping would not have been registered if the liaison was voluntarily. In any view of the matter, according to the First Information Report as also the deposition of P.W.-5, the appellant/Md. Imtiyaz Alam and the deceased, were apprehended by the police. P.W.-5 wanted the custody of his daughter, which was refused by the Court. This could have happened only when the Court was satisfied that the deceased wanted to reside with her husband. We have said so for the reason that *prima facie* it appears that the relationship between the deceased and the appellant/Md. Imtiyaz Alam was very cordial. Had the deceased not agreed to every proposal of the appellant/Md. Imtiyaz Alam, it would have been difficult for the appellant to have taken the deceased to a house where his other wife and children were



also residing. This background fact clearly gives an impression that the deceased had no dispute with her husband, even when the appellant/Md. Imtiyaz Alam had chosen to keep two women together in the house.

20. We are at a loss to fathom as to the trigger point for any assault on the deceased. This requires proof by evidence for the prosecution to proceed ahead with the theory of murder. Unfortunately, there is none.

21. Md. Subhan and Abran Khatoon, P.Ws.-1 and 2, have not supported the prosecution case and have been declared hostile.

22. Dr. Vimal Kumar (P.W.-3) did not find any fingerprints on the neck of the deceased nor did he find any continuous ligature mark on the neck. However, he has opined that the death could be because of asphyxia as a result of strangulation. Some other medical evidence was required to conclusively reach an opinion regarding the cause of



death. In cases of strangulation, there are other indicators, viz.:-

- (i) abrasions and ecchymosis round about the edges of the ligature mark;
- (ii) injuries to the neck muscle;
- (iii) rupture of carotid arteries;
- (iv) fracture of larynx, trachea and hyoid bone.

23. The Doctor has not reported whether emphysematous bullae was or was not found on the surface of the lungs, leaving us in doubt-whether the death was by hanging. In strangulation, emphysematous bullae is generally not present.

24. Because the P.W.-3 did not give a detailed *post-mortem* report, we do not have enough medical evidence before us to ratify the opinion of the doctor that the death was because of strangulation.

25. The brother of the deceased/Md. Munna @ Salim/P.W.4 does not state before the Court as to who had informed him about the death of his sister. He claims to have learnt at Bhawanipur



Bazar that the deceased has been killed and her dead body has been brought to hospital. On this information, he claims to have gone to the hospital and also informed his father. The police, thereafter, arrived and recorded the F.I.R. of his father. He hazarded a guess that because the appellant/Md. Imtiyaz Alam had two wives, there could have been some dispute in the family and enraged by such dispute, the accused persons including the appellants strangled the deceased. This appears to be a wild guess work of P.W.-4.

26. P.W.-4 has provided some other background facts, which further rendered the theory of the prosecution of murder doubtful. The appellant/Md. Imtiyaz Alam was known to P.W.-4 from before. Both of them used to work as daily wage labourers in Delhi. Many a times, both worked together. P.W.-4 had lent about a lakh of rupees to the appellant/Md. Imtiyaz Alam, which he did not take



back as the appellant/Md. Imtiyaz Alam had chosen to marry his sister. If this be so, then, perhaps, the case of kidnapping against the appellant/Md. Imtiyaz Alam was uncalled for. When the appellant/Md. Imtiyaz Alam and the deceased were apprehended by the police after a kidnapping case was lodged against the appellant/Md. Imtiyaz Alam by his father, the deceased at that time was allowed to go with the appellant/Md. Imtiyaz Alam as she was found to be against them. Of course, P.W.-4 has admitted that, thereafter, the relationship between the two families never improved and neither side visited each other.

27. This explanation is relevant to the extent that P.Ws.- 4 and 5 had no idea whether the deceased was ill-treated in her family or lived happily. In that event, especially when the relationship between the two families had gone sour, it was very easy to raise allegation after the death of the deceased, which does not conclusively appear to be



homicidal. In this background, the statement of P.W.5 that the deceased had not entered into any love marriage with the appellant/Md. Imtiyaz Alam, does not appear to be correct.

28. It would be profitable to refer to the deposition of Amit Kumar (P.W.-8), the I.O. of the case. He has not investigated as to who had brought the deceased to the hospital and in what state of health. What he had to offer to the Trial Court was that he learnt a rumor that the deceased has been killed, whose dead-body has been brought to the hospital. The afore-noted information was recorded by him in the station diary and, thereafter, he proceeded to the hospital, where he met P.W.5/the father of the deceased and recorded his *fardebyan*. After taking up the investigation, he visited the house where the deceased and the appellant/Md. Imtiyaz Alam resided, but did not find any incriminating circumstance, indicating the factum of murder in the house. One



Abran Khatoon (P.W.-2), who has been declared hostile at the trial, was interrogated by him. She was the person who first saw the deceased. She would have been the person who could have testified that the deceased had died in the home only. If this were true, the appellants would not have brought the deceased to the hospital and suffered the risk of being arrested. P.W.-8 has categorically stated that even after intense combing/searching of the house of the appellants, no incriminating material or circumstance could be found.

29. This leaves us in complete doubt as to the cause of death. The question which begs an answer therefore is who killed the deceased and how?

30. The vague statement made by the appellants during their 313 Cr.P.C. statement does not give us any clue.

31. Do we, in such circumstance, rely upon the provisions contained under Section 106 of



the Evidence Act, which throws the burden on such person who has the special knowledge about any fact. The burden of proof is normally on the prosecution, but the *doctrine* of reverse burden comes into play only if the initial burden is discharged. Section 106 of the Evidence Act is not intended to relieve the prosecution of its burden entirely. Only when the prosecution proves certain facts, from which reasonable inference can be drawn regarding certain other facts, which unless explained by the accused by virtue of his special knowledge, tending to inculcate the accused, only in such circumstances, the accused would owe an explanation; otherwise Section 106 of the Evidence Act would not put any burden on the accused to prove his innocence.

32. As noted-above, the prosecution has not been able to prove the basic fact leading to the hypothesis of the appellants being the murderers of the deceased. We are not even sure where the death



has taken place in the house or in the hospital for the paucity of evidence.

33. Under the afore-noted circumstances, we find it highly unsafe to affirm the judgment and order of conviction and sentence against the appellants.

34. The benefit of doubt has to be given to the appellants.

35. For the afore-noted reasons, we set-aside the judgment of conviction and order of sentence dated 03.04.2017 and 10.04.2017 respectively, passed by the learned 1st Addl. Sessions Judge, Purnea in Sessions Trial No. 46 of 2016, arising out of Bhawanipur P.S. Case No. 34 of 2015.

36. The appellant, viz., Md. Imtiyaz Alam (*in Cr. Appeal (DB) No. 1175 of 2017*) is in custody. He is acquitted of the charges levelled against him and is directed to be set at liberty forthwith unless his detention is required in any other case.



37. The appellants, viz., Md. Ramjan Ali and Md. Zubair Alam (*in Cr. Appeal (DB) No. 515 of 2017*) are on bail. Their liabilities under the bail-bonds are cancelled.

38. Both the appeals stand allowed.

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

40. The records of these cases be sent back to the Trial Court forthwith.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

Praveen-II/Sanjay

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	26.06.2023
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