

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.878 of 2018

Arising Out of PS. Case No.-129 Year-2016 Thana- RAJPUR District- Buxar

=====

Gyanwati Devi @ Gyanti Devi W/o Late Manoj Chohan @ Baya Chouhan,
Residents of Vill. and Post office- Sarenja, P.S.- Rajpur, District- Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 508 of 2019

Arising Out of PS. Case No.-129 Year-2016 Thana- RAJPUR District- Buxar

=====

Amar Chouhan Son of Munna Chauhan Resident of Village- Lohri, P.S.- Goh,
District- Aurangabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 878 of 2018)

For the Appellant/s : Mr. Arun Kumar Gupta, Advocate

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

(In CRIMINAL APPEAL (DB) No. 508 of 2019)

For the Appellant/s : Mr. Narendra Kumar, Advocate

Mr. Shankar Kumar, Advocate

Mr. Shashi Shekhar, Advocate

Mr. Sada Nand Roy, Advocate

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

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 03-11-2023

Both the appeals have been heard together
and are being disposed off by this common judgment.

2. Both the appellants have been
convicted and sentenced *vide* judgment and order dated



30.11.2017/05.12.2017, holding them guilty under Sections 302/34 and 201/34 of the Indian Penal Code, passed by the learned Sessions Judge, Buxar, in Sessions Trial No. 268 of 2016, arising out of Rajpur P.S. Case No. 129 of 2016 and have been sentenced to undergo rigorous imprisonment for life, to pay a fine of Rs. 10,000/- under Section 302/34 of the IPC and to undergo rigorous imprisonment for six years, to pay a fine of Rs.2,000/- under Section 201/34 of the IPC and in default of payment of total fine, to further suffer rigorous imprisonment for one year.

3. The allegation against the appellants is of having killed one Manoj, who is the husband of appellant/Gyanwati Devi. Appellants Gyanwati Devi and Amar Chouhan had illicit relationship between them and this was the reason for the murder.

4. The FIR, however, was lodged by appellant/Gyanwati *vide* Rajpur P.S. Case No. 129 of 2016 in which she had alleged that her husband had



left home with the assurance that he would come back by lunch time. When he did not come back, Gyanwati tried to locate him by calling on his mobile telephone but that was found to be switched-off. Later, the women folk of the locality reported that a dead body was found lying in a ditch in front of the house of one Putul. She went there to find the dead body of her husband (deceased).

5. Shortly after the police took up the investigation and recorded the statement of the children of the deceased and Gyanwati/appellant, the case was closed in the sense that the dead body was recovered and it was learnt through the mouth of the children of the deceased that Gyanwati and Amar had made the deceased suffocate by putting cloth in his mouth after sedating him by mixing some deleterious medicine with eggs and thereafter the deceased was killed, his hands and legs were tied and the dead body was kept in a sack which later was thrown in the ditch somewhere



near the house of appellant/Gyanwati. Most of the witnesses have relied upon what they heard from the children of the deceased.

6. Sakuntla Devi/P.W. 1, who is the sister-in-law of the deceased, has alleged that after killing the deceased, Gyanwati/appellant made a pretence of searching her husband.

7. The family was separated from before and Gyanwati did not have good relations with the deceased.

8. Amar Chouhan/appellant, who is the son of the sister-in-law of the sister of Gyanwati/appellant, stayed in the same house and with whom, Gyanwati had illicit relationship. Because of such relationship between them, the deceased always fought with his wife (Gyanwati).

9. It further appears from her deposition that she was told by Khushi Kumari, who has not been examined, that the deceased was killed at the hands of



the appellants. She has denied the suggestion that because the deceased was dead and his wife was arrested, this was ploy to appropriate the property, which had fallen in the share of the deceased.

10. Harihar Chouhan/P.W. 2, a co-villager, also claimed to have learnt about the deceased having been killed at the hands of his wife and her paramour. The source of information to him was again the statements made by the children of the deceased. He was also informed that the deceased always protested against the appellant/Amar residing in his house. One of the children of the deceased had also stated that the deceased was hit by a stone. Before P.W. 2, a stone was seized from the roof-top of the house of appellant/Gyanwati.

11. It is important to note that P.W. 2 is the *Sarpanch* of the village but he had no idea as to from where the dead body was recovered. He had never made any statement before the police and for the



first time, he stood as a witness in the case before the Trial Court.

12. Kajal Kumari, aged about nine years has been examined as P.W. 3, who did not answer the preliminary questions of the Trial Judge but the Trial Judge has assessed that she is capable of understanding the questions put to her. She has stated before the Trial Court that all the children were made to sit on the staircase, when the deceased was suffocated to death after he was administered some medicine which made him unconscious. Thereafter, the dead body was disposed off by the appellants. The children of the house were threatened and were instructed not to speak about the occurrence to anybody. Despite her young age, she has denied any tutoring by her uncle and aunt before she had come to the Court to appear as a witness.

13. On the day when the deceased was killed, P.W. 3 states that he had not gone outside to



earn his livelihood.

14. Be it also noted that from the background facts, it appears that the deceased was a daily wage labourer. He was not to be seen in the house for two days and thereafter his dead body was recovered.

15. Did she tell the police that the appellants had killed him?

16. Similarly, Badal Chouhan/P.W. 4, aged about six years, has also made similar statement before the Trial Court.

17. One Mayan Chouhan/P.W. 5 claims to have seen the dead body, which was thrown in a ditch. He had seen the dead body also. When he questioned the children of the deceased, he was told by them that the deceased was killed by the appellants.

18. Similar statements have been made by other witnesses suggesting illicit relationship between the appellants as the moving factor for committing the



offence.

19. However, we found it rather interesting to go through the deposition of the Investigating Officer of this case, who has been examined as P.W. 7. He took out the C.D.R. of the telephone number of the deceased which was provided in the FIR by appellant/Gyanwati. A perusal of the C.D.R. reflected that on 10.07.2016, there was one message on his telephone and thereafter, no call was received on that telephone. He did not make any attempts to know about the age of the children of the deceased for recording their statements and proceeding to investigate the case on the basis of clue provided by them. He has not made any seizure list nor had he mentioned about it in the police papers. No effort was made by him to arrange for the transfer of the children of the deceased to any child friendly/utility home.

20. Rambha Devi/P.W. 8 has testified to the fact that many persons of the neighbourhood



arrived at the place where the dead body was found thrown. Apart from that, she did not have any information about the occurrence.

21. The post-mortem was conducted on the dead body on 12.07.2016 at 10:30 A.M. Dr. Ravi Bhushan Srivastava/P.W. 9 in his deposition has stated that he had found ante-mortem fracture of lower jaw with swelling and a ligature mark, which was very prominent across the front of the neck situated below the thyroid cartilage and which mark was horizontal. On dissection of the body, the larynx and trachea were found to be congested. Subcutaneous tissues under the neck were also found to be pressed. The time fixed for death was 36 to 48 hours of the post-mortem examination. In the opinion of the Doctor/P.W. 9, the death was due to asphyxia and shock due to strangulation.

22. However, in his cross examination, he has made a contradictory statement that he did not find



any ante-mortem injury or rope mark over any part of the hands or legs or on the head. No ribs, thyroid and laryngeal cartilages were found to be broken. From the medical testimony, it therefore appears that the story narrated by the children of the deceased that he was crushed by a stone, therefore, is incorrect.

23. Was the deceased sedated?

24. The only material that is available on record is the statement of Kajal Kumari, one of the daughters of the deceased, who has narrated that the deceased was administered some medicine along with eggs and thereafter, he was killed and his body was disposed off.

25. Even otherwise, when the cause of death was not readily visible to the Doctor and in the background fact of the children having stated that the deceased was also attempted to be poisoned, it was the duty of the Doctor to preserve the viscera for finding whether any deleterious substance was administered to



the deceased before his death. In the absence of any forensic examination of the viscera, the allegation of the appellant having been administered some stupefying substance or poison also falls to the ground.

26. After having gone through the entire records of this case, we find that the police has handled the investigation in a very casual manner. The moment the I.O. recorded the statements of the children of the deceased, who alleged that the deceased was killed by of the appellants, no further investigation appears to have been made by the police. The I.O. has himself admitted that he never inquired and ascertained about the age of the children for him to believe their statements or for him to take their statements as undiluted and untutored piece of information.

27. Though it is stated that the dead body was recovered from a ditch near the house of the deceased but there is no recovery memo on the record. The I.O. has very fairly conceded that no such



reference was made by him in the police diary.

28. Where was the dead body found?

29. Who led the police party to the ditch from where the dead body was recovered?

30. These two facts remain absolutely unknown. The importance of these facts lie in assessing the cause of murder as well. If the legs and hands of the deceased were tied with a rope and then the dead body was kept in the sack, the dead body would have bore evidence to that effect.

31. The Doctor who conducted the post-mortem examination did not find any tying signs on the legs or hands of the deceased. Because of the passage of time, the skin had also peeled off. However, even with such decomposition of the body, it was not difficult for the Doctor to have found whether the deceased was hit by a stone or any hard and blunt substance. On specifically being questioned, the Doctor has stated that he did not find any broken ribs or bones in the body. It



is really surprising that the Investigating Officer did not enter in the police papers any clue which led him to the ditch where the dead body was found. Under such circumstances, it is difficult to believe that the dead body packed in a sack was found in the ditch.

32. We have already noted that there are no signs reflecting that such statement was correct.

33. Where was then the dead body found?

34. Did the police tow a simplistic line of believing the children that the appellants had killed the deceased?

35. It appears from the tenor of the evidence that the investigation proceeded on the assumption that because of the unholy relationship between the appellants, the deceased was murdered, perhaps for his opposition to such relationship between the appellants.

36. P.W. 2, who is the *Sarpanch* did not know about any such unholy relationship between the



appellants. Appellant/Amar Chouhan stood in the relation of nephew to appellant/Gyanwati.

37. Was he married or unmarried is also not known. It is because of these facts that we get an idea that there has been no investigation in this case.

38. The issue has got further obfuscated by the faulty manner in which questions were put to the appellants under Section 313 of the Code of Criminal Procedure.

39. No circumstance appears to have been put to them for the appellants to effectively explain away their bonafides. Only two questions have been asked from them *viz.*, whether the accusation against them is correct and whether they had conspired and killed the deceased.

40. There are numerous circumstances which required an explanation from the accused *viz.* (I) appellant/Amar staying in the house against the wishes of the deceased; (II) because of the deceased doubting



about the relationship between the appellants, he ill-treated appellant/Gyanwati; (III) he had forbade appellant/Amar to reside in the same house but such directive was not followed; (IV) deceased always assaulted appellant/Gyanwati because of her being unchaste; (V) whether the deceased was administered some medicine along with the eggs and for what purpose?; (VI) was the deceased hit by a stone? (VII) how was the dead body disposed off and who all first saw the dead body in the ditch?

41. All these are important circumstances, the answer to which could have been either incriminating or would have cleared the air regarding the killer(s) of the deceased.

42. It needs no repetition that the requirement under Section 313 of the Cr.P.C. is not a mere formality. Apart from it offering an opportunity to the Trial Court to know about the case from the mouth of the accused persons, the accused persons also get



an opportunity of explaining their innocence to the Court with respect to circumstances on which the prosecution hinges.

43. The Trial Court appears to have taken a very casual approach towards recording the statement under Section 313 of the Cr.P.C. of the appellants. This further makes the conviction of the appellants shrouded in doubt and renders it redolent with elements of unfairness in the trial.

44. Tying the strings together, we find that the investigation has proceeded on the assumption that the children had spoken undiluted truth; there is no recovery memo which could have proved that the dead body was thrown in a ditch near the house of the deceased and the post-mortem report not being in consonance with what was suggested by the children of the deceased, especially with respect to the manner of killing of the deceased, the basic tenets of the prosecution in our estimation totters.



45. With such casual handling of the requirement under Section 313 of the Cr.P.C., to say the least, we find the trial of the appellants to be completely unfair to them.

46. For the aforementioned reasons, we are not inclined to accept the opinion rendered by the Trial Court.

47. Per force, we set aside the conviction of the appellants after giving them benefit of doubt as also for lack of cogent and complete evidence to prove the accusation against them of having killed the deceased.

48. For the reasons aforementioned, the judgment is set aside and the appellants are acquitted of all the charges levelled against them.

49. Both these appeals stand allowed.

50. It is informed by the learned Advocates that both the appellants are in jail since 2016.



51. They are directed to be released forthwith from jail, if not detained or wanted in any other case.

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

53. The records of this case be returned to the Trial Court forthwith.

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
krishna-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.11.2023
Transmission Date	22.11.2023

