

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.353 of 2017**

Arising Out of PS. Case No.-310 Year-2013 Thana- PIRBAHOR District- Patna

Moti Ullah @ Md. Matiullah Son of Late Mohi Bullah @ Mohiullah,
Resident of Village-Sikandarpur, P.S.-Sikandarpur, District-Balia U.P., at
Present Alamganj, Machhua Toli, P.S.-Alamganj, District-patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rohit Kumar, Adv. Mr. Manish Kumar No 13, Adv. Mrs. Priti Kumari, Adv. Mrs. Nitu Kumari, Adv.
For the Respondent/s	:	Mrs. Shashi Bala Verma, APP

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 04-08-2023

Heard Mr. Rohit Kumar, learned advocate for
the appellant and Ms. Shashi Bala Verma, learned APP
for the State.

2. The appellant has been convicted under
Section 302 of the Indian Penal Code and has been



sentenced to undergo R.I. for life, fine of Rs. 25,000/- and in default of payment of fine, to further suffer imprisonment for three years vide judgment of conviction and order of sentence dated 15.02.2017 and by order dated 20.02.2017 respectively passed by learned Additional District and Sessions Judge-VII, Patna in Sessions Trial No. 1355 of 2013 arising out of Pirbahore P.S. Case No. 310 of 2013.

3. The appellant is the husband of the deceased. The deceased is alleged to have been killed by a butcher's knife. The occurrence took place in front of the mother, sister, brother-in-law and other relatives of the deceased. The FIR has been registered by the mother of the deceased who has been examined as P.W.4.

4. In her First Information Report, she has alleged that on 31.07.2013, the appellant came to her house and slashed the neck of the deceased by a knife. She has further alleged in the FIR that though the



appellant was married to the deceased some 22 years ago, but the relationship between them was always strained because of the drinking habits of the appellant. For the last 3 to 4 months, the deceased had come to stay with P.W.4. The deceased had given birth to five children out of her wedlock with the appellant. When the appellant was chased, he ran away and threw the weapon of assault at the place of occurrence. The son of the appellant, namely, Faizal, who has not been examined, chased the appellant. The Informant came back to the place where the deceased was lying and saw that she lay lifeless. Many persons of the neighbourhood had arrived and some of them had seen the main part of the occurrence also.

5. On the basis of the aforementioned *fardebayan* statement of Sairun Nisa (P.W.4), Pirbahore P.S. Case No.310 of 2013, dated 31.07.2013 was registered for investigation under Section 302 of the Indian Penal Code.



6. The appellant was arrested on the same day. The matter was investigated whereafter charge-sheet was submitted against the appellant who was put on trial.

7. The Trial Court after having examined nine witnesses on behalf of the prosecution including the I.O. and the Doctor (P.Ws. 8 and 9 respectively), convicted and sentenced the appellant as aforesaid.

8. Mr. Rohit Kumar, learned Advocate for the appellant has submitted that most of the witnesses who have been examined at the trial are close relatives of the Informant and the deceased and they have deposed against the appellant only because of the strained relationship between the deceased and the appellant. He further submits that none of them have seen the occurrence and their statements before the Trial court are full of contradictions. It has further been submitted that the deceased was arrested on the same day which further pre-supposes that he was innocent and had not



made any efforts to run away. He is said to have been arrested at Gaighat. Had he committed the murder, would have made every efforts to run away and not be a sitting duck to be arrested. The further argument of the appellant is that the place where the murder took place is situated on a busy road in a *Mohalla* where there are many meat-shops operating. Had the report regarding the occurrence been true, there would have been many on-lookers who would have narrated the correct version. Not bringing them on the witness stand by the prosecution only reflects that the police has adopted a short-cut approach of laying the blame on a estranged husband as it was the easiest thing to do. With the deceased having left her matrimonial home to live with her mother is a clear indication of the fact that the husband and wife did not live well. Under such circumstances, the relatives of the wife would be more prone to falsely implicate the appellant as for all practical purposes, the relationship between them was



snapped at the time when the victim/deceased chose to leave the matrimonial home and live with her mother.

9. Ms. Shashi Bala Verma, on the other hand, has submitted that all the witnesses saw the appellant either killing the deceased or running away or throwing the dagger nearby, which weapon was immediately seized by the police, sent for forensic examination and the serological report confirming that the weapon was smeared with human blood. This makes the case open and shut against the appellant who otherwise also had been misbehaving with the deceased and precisely for that reason, the deceased had come to stay with her mother.

10. The Doctor who had conducted the the postmortem found four injuries on the person of the deceased, the fatal injury being on the neck which appeared to have been struck from the sideways, lending complete credence to the story of the prosecution that the deceased was butchered like an



animal. The mother, who is the Informant of this case, kept pleading with the appellant to leave her daughter but to no avail. The dare-devility of the appellant is further demonstrated by the way in which he first called the Informant and handed over a bunch of keys of his house and said that he is going somewhere else. When the deceased was coming back home after collecting milk from the milk booth, she was stopped midway by the appellant and her neck was slit, leading to her instantaneous death.

11. We have gone through the entire records of this case and have found that all the witnesses have supported the prosecution version in its entirety.

12. Md. Naushad, who is the co-brother of the appellant, has been examined as P.W.1. He was also present when the deceased was killed. In his presence, the appellant threw the knife in a nearby drain and ran away. In his presence, the inquest report was prepared and the knife used in the crime was seized. The knife



had blood over it. He has testified to the seizure of the knife. According to him, the appellant was jobless and in the past also, he tormented the deceased and her children. He has denied the suggestion that being a co-brother, he has falsely alleged against the appellant.

13. Similarly, Md. Ashraf (P.W.2), who is the brother of the deceased, has claimed to have seen the appellant running away. He did not see the actual assault by him.

14. During the course of trial, the aunt of the deceased, namely, Saheen Parveen (P.W.3) and Md. Mustaque, a neighbour (P.W.7) have claimed to have seen the appellant cutting the neck of the deceased and fleeing away from that place.

15. Md. Arshad, a neighbour, who has been examined as P.W.6, is though only a hearsay witness.

16. The Informant (P.W.4) has supported the case in its entirety. No part of her deposition is different from her version in the FIR and before the police. She



has deposed that the appellant, on the day of the occurrence, had come to her house and had in a rueful way given a bunch of keys of Alamganj house to her and stated that he is going elsewhere. Her daughter/Ishrat @ Ruhi (deceased), had gone to fetch milk. The appellant saw the deceased coming to her home when he caught her and slit her neck. The P.W.4 went to her rescue and also pleaded with the appellant to spare her daughter but, the appellant was so full of rage that he did not pay heed to her. He, thereafter, ran away. Many people came and tried to take the deceased to hospital but she had died immediately. *Mohalla* people had called the police whereafter the police had come and had seized the weapon as also the dead body which was sent for postmortem examination. She has admitted during the cross-examination that the appellant always fought with the deceased. The eldest son of the deceased was around 19-20 years of age. She has denied the suggestion that somebody else had



killed her daughter and because of strained relationship, she had falsely implicated the appellant.

17. The Investigating Officer who has been examined as P.W.8 also supported the prosecution version in its entirety. He has deposed that on receiving an information that somebody had killed his wife in Darzi Gali, he recorded a station-diary entry to that effect and proceeded to the place of occurrence. Thereafter, he got the inquest report prepared by a police officer whose handwriting he identified. The appellant was arrested on the same day from Gaighat by one Dhananjay Kumar Singh. The Investigating Officer recognized and proved the handwriting of aforementioned Dhananjay Kumar Singh on the arrest memo. All the witnesses had told him that the appellant was the person who slit the throat of the deceased and ran away. He has also proved the forwarding report of the weapon of assault. The report has been exhibited which confirms that the weapon which was used had



human blood smeared over it.

18. However, we find that the finger print of the appellant, which was obtained by the Investigating Officer, was not put to any use. Mere obtaining the finger print and that being placed on record would not be of any avail to the prosecution unless it is proved that the same finger print was available on the butt of the weapon of assault.

19. However, this lapse on the part of the prosecution cannot be a ground for rejecting the prosecution case when there are so many eye witnesses to the occurrence, all of whom have categorically asserted that the deceased was killed at the hands of the appellant. The medical testimony also is in complete consonance with the prosecution version. It appears that the other injuries suffered by the deceased was caused to her while saving herself from the attack.

20. Thus, we find that the Trial court has rightly convicted and sentenced the appellant, which judgment



requires no interference.

21. The appeal is dismissed.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

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