

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1281 of 2018

Arising Out of PS. Case No.-455 Year-2015 Thana- KAHALGAON District- Bhagalpur

Boudhi Mandal, Son of Ram Sarup Mandal, Resident of Village - Nathlok
Bagicha, P.S. - Kahalgaon, District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vivekanand Vivek, Adv.

For the State : 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 : 28-07-2023

Heard Mr. Vivekanand Vivek for the appellant
and Mrs. Shashi Bala Verma for the State.

2. The appellant has been convicted for the
offence under Sections 302 and 201 of the Indian Penal
Code *vide* judgment dated 17.09.2018 passed by the
learned Addl. District & Sessions Judge-V, Bhagalpur in



Sessions Trial No. 251 of 2016/Trial No. 65 of 2018, arising out of Kahalgaon P.S. Case No. 455 of 2015, and by order 20.09.2018, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 5000/- and in default of payment of fine, to further suffer S.I. for three months for the offence under Section 302 of the I.P.C. and to undergo imprisonment for three years, to pay a fine of 1000/- and in default of payment of fine, to further undergo S.I. for a period of one month. Both the sentences have been ordered to run concurrently.

3. Navnita Kumari, the deceased died within five months of her marriage. There was no complaint with respect to any ill-treatment or demand of any dowry. In fact, after the marriage, the deceased had stayed at her parental home and had gone to join the appellant, who is the husband of the deceased, only in the month of October after her second marriage (*Duragaman*). Shortly after that, in the night, she died



of colic pain. However, the prosecution asserts that she was killed and her dead-body was thrown in river *Ganges* under the stealth of darkness. The consistent stand of the appellant is that the deceased had suffered colic pain in the night and before treatment could be administered to her, she died unfortunately. The information of her death was provided to her parents and others, but they have chosen to file this case against the entire family. However, only the appellant, who is the husband of the deceased, was put on trial. The dead-body, according to the appellant, was cremated, but the prosecution insists that since the dead-body has not been recovered, therefore, there is a presumption that the deceased has been killed.

4. The father of the deceased, namely, Suresh Mandal (P.W. 2) had lodged the First Information Report on 28.10.2015, alleging that the deceased was married to the appellant in the month of June, 2015. In the night intervening between 27th and



28th of October, 2015, the deceased had talked to her mother/Siyawati Devi (P.W. 3) but she had not complained about anything. This was at 8:00 P.M. in the evening. Later, at about 11:00 P.M., the appellant is said to have called P.W. 3 and informed her that the health condition of the deceased has deteriorated and that they should come immediately. P.W. 3 told the appellant that the family would reach only on the next day. Later, when the family of the deceased went to the village of the appellant, they found that the house had been abandoned and even the livestock had been taken away to some other place. This gave an inkling to P.W. 2 that perhaps the deceased has been killed and her dead-body has been disposed of. Allegation, therefore, was raised against the appellant, his parents and others of having killed the deceased.

5. On the basis of the afore-noted written report, Kahalgaon P.S. Case No. 455 of 2015, dated 28.10.2015, was registered for investigation under



Sections 302, 201 and 34 of the I.P.C.

6. The police, as noted-above, after investigation submitted charge-sheet only against the appellant and put him on trial.

7. The Trial Court, after examining seven witnesses on behalf of the prosecution and two on behalf of the defense, convicted and sentenced the appellant as aforesaid.

8. The learned counsel for the appellant has submitted that except for the fact that the dead-body was not recovered, there is no other material to even remotely suggest that the deceased was killed. Had it not been true, the deceased would have surely complained against the appellant and his family members to her mother in the night when the occurrence is said to have been committed. No doubt, the dead-body was cremated before the family members of the deceased arrived but that by itself, would not justify any inference of the appellant having killed the



deceased and disposed of the dead-body.

9. It has further been submitted that from the analysis of the deposition of all the witnesses, it would appear that the relationship between the spouses was never strained. The relationship of the deceased with her in-laws also was never strained. That is not the allegation also against the appellant or the family members. Was it that the appellant and his family members, out of fear of being falsely implicated in a case of murder, hurriedly cremated the dead-body and disposed of the remains? Or that they were informed by the family members of the deceased but since the only connection with the family of the appellant was the deceased herself, who had died, they chose not to participate in the last rites. The issue would have been clinched, it has been argued, if the investigator would have inquired from the village of the appellant and would have ascertained whether any cremation had taken place or any villager having seen the body of the



deceased being disposed of.

10. As opposed to the afore-noted contention, Ms. Shashi Bala Verma insists that who else but the appellant and his family members could have killed the deceased. There was no past history of any illness of the deceased. Even otherwise, if the death was natural, there was no reason for the appellant and his family members to have feared any onslaught by the family members of the deceased. They ought to have, at least, waited for the next day for cremating the dead-body. The dead-body was cremated in the night only, if the defense of the appellant is to be believed. What was the necessity of such hurried cremation? More so, when for four and half months of the marriage, there was no complaint from either side about any strained relationship.

11. Deaths do occur and many a times without any preceeding illness, but that does not necessarily justify disposal of the dead-body without



awaiting the arrival of the family members.

12. Apart from this, Mrs. Verma has argued that the evidence through the mouth of the parents of the deceased confirm the allegation or else they could have alleged many other things against the appellant and his family members. Till about 8:00 P.M., the deceased had not complained of any stomach pain or any illness, but by around 11:00 O'clock in the night, the appellant informed P.W. 3, who is the mother of the deceased, that they are required to come immediately as the health condition of the deceased has deteriorated. This was a laconic information provided to P.Ws. 1 and 2. What were the symptoms and whether the deceased was made available any medical help, were not communicated to P.Ws. 1 and 2. In this background, with no trace of any cremation of the dead-body in the village, it was incumbent upon the appellant to have explained the circumstances under which the death ensued and the body was cremated.



13. Section 106 of the Evidence Act though enjoins a person having special knowledge to explain the circumstances but, according to us, that does not relieve the prosecution of its duty to prove the case to the hilt.

14. After having gone through the entire gamut of evidence, we have been able to infer few facts: namely, that the deceased was married to the appellant about five months ago and that the second marriage (*Duragaman*) had taken place in the month of October, the month in which the deceased died; an information was given to P.W. 3 by the appellant about the deteriorating health of the deceased; and that no dead-body was found nor is there any evidence regarding cremation of the dead-body in the night of the occurrence.

15. The question which confronts us is whether this evidence would justify an inference that the appellant has killed the deceased.

16. We only lament that the investigator



(P.W. 7) had done nothing to facilitate the unraveling of truth. He deposed before the Trial Court that he registered the F.I.R. on 28.10.2015 and proceeded with the investigation. He had visited the house of the appellant, but had not found any incriminating article there to suggest that the murder was committed in the house. He has only stated that he could not recover the dead-body. Such statement from the investigator means nothing. However, he was candid enough to say that there was no evidence with respect to any demand of dowry or ill-treatment of the deceased. He did not even find out as to which of the villagers had told P.Ws. 1 and 2 that there was a fight in the night between the spouses, whereafter the deceased was killed and her dead-body was disposed of. Even the *Sarpanch* or *Mukhiya* of the village were never approached by the investigator to know about the truth.

17. With this faulty investigation, nothing comes out to the fore.



18. The assertion of the appellant that the deceased was cremated could have been very easily verified by P.W. 7, had he asked some responsible persons of the village or *panchayat* functionaries about it. He does not even appear to have visited the place of cremation. He has also admitted that he did not record the statement of any one of the family members of the deceased.

19. This is no investigation at all.

20. With such investigation report, the only option with us is to believe the assertion of the appellant that the deceased was cremated.

21. Two of the defense witnesses examined on behalf of the appellant have asserted that the deceased died because of colic pain and the dead-body was cremated with full religious rites.

22. As note-above, the prosecution has thus failed to prove the case of murder against the appellant. The background facts of the marriage in the month of



June, 2015 and no demand of dowry thereafter, makes us rather wary to accept the proposition that the deceased was killed by the appellant.

23. Thus, giving benefit of doubt to the appellant, we set aside the impugned judgment of conviction dated 17.09.2018 and the consequent order of sentence dated 20.09.2018 passed by the learned Addl. District & Sessions Judge-V, Bhagalpur in Sessions Trial No. 251 of 2016/Trial No. 65 of 2018, arising out of Kahalgaon P.S. Case No. 455 of 2015 (G.R. Case No. 4008 of 2015)

24. The appellant, viz., Boudhi Mandal, is acquitted of the charges levelled against him.

25. Since the appellant/Boudhi Mandal, is in custody, he is directed to be set at liberty forthwith unless his detention is required in any other case.

26. The appeal stands allowed.

27. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail



forthwith for compliance and record.

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

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

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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