

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.369 of 2017

Arising Out of PS. Case No.-37 Year-2014 Thana- BIRPUR District- Supaul

Suraj Kumar Sada @ Suraj Sada son of Bishnu Sada Resident of village -
Puraini Ward no. 14, P.S. - Birpur, District - Supaul.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pramod Mishra, Advocate.

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

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 05-10-2023

We have heard Mr. Pramod Mishra, learned Advocate for the appellant and Mr. Abhimanyu Sharma, learned APP for the State.

2. The appellant, who is the husband of the deceased, stands convicted under Section 302 of the Indian Penal Code *vide* judgment dated 24.01.2017 passed by the learned Additional District & Sessions Judge-I, Supaul in Sessions Trial No. 11 of 2015 arising out of Birpur P.S. Case No. 37 of 2014 and *vide* order



dated 30.01.2017 he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 20,000/- for the offence under Section 302 of IPC.

3. A nineteen years old woman died in her matrimonial home within one year of her marriage with the appellant. The FIR was lodged by the father of the deceased, viz. Nabi Lal Sada (P.W.5), who has alleged that on 06.02.2014, his neighbour Tarachand Sada (not examined) informed him that he had received a telephone call from the matrimonial home of the daughter of the informant that she has fallen seriously ill and that her family members should come urgently.

4. On this information provided by his neighbour, P.W.5 along with his wife and other family members went to the matrimonial home of the deceased, where he found his daughter dead. The dead body was kept on a cot with a blanket spread over her. On removing the blanket, he saw black marks on her neck and a circular spot on her back. It was learnt from the villagers that on 05.02.2014, the



appellant had assaulted the deceased and had then taken her inside the room and strangled her. The deceased was married to the appellant about a year ago and no child was born out of the wedlock.

5. On the basis of fardbeyan of P.W.5, a case *vide* Birpur P.S. Case No. 37 of 2014 was registered for investigation for the offence under Section 302 of the Indian Penal Code.

6. The police after investigation submitted charge-sheet whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

7. The Trial Court, after having examined eight witnesses on behalf of the prosecution, convicted the appellant under Section 302 of the IPC and sentenced him for life imprisonment and to pay a fine of Rs. 20,000/-.

8. It appears from the records that the Doctor who conducted the postmortem on the deceased (P.W.4) found one ligature mark on the neck, but the same was



oblique and irregular. At the upper end of the neck, the mark was very prominent and deep. No other injury was found on the body of the deceased.

9. On the basis of the aforementioned nature of the ligature, P.W. 4 concluded that the death was caused by cardio-respiratory failure, which in turn was due to the mechanical asphyxia caused by hanging/suicide. The time elapsed since death was stated to be 24 hours before the postmortem examination.

10. During the course of trial, P.W.4 was very specific in his statement that he did not find any external or internal injury on the person of the deceased. He has further told the Court that the nature of ligature is possible in suicidal deaths.

11. Even otherwise, the ligature not being regular and the mark being prominent at the upper end of the neck are indicators towards self-hanging and not strangulation.



12. In cases of strangulations, the ligature is more often than not regular and the mark is even/regular. With irregular ligature, it can be inferred that if a person commits self-harm and hangs herself, the upper extremity of the neck would stand damaged leading to asphyxiation. No other injuries on the person of the deceased further indicates that the information provided to P.W.5 was not correct.

13. P.W.5 has not even stated the names of the persons from whom he learnt about the deceased having been assaulted and strangled in the previous night. However, P.W.5 was very specific in stating that he learnt that not only the appellant assaulted the deceased but his parents also.

14. This suggests that perhaps the appellant was not at ease with himself or had displayed some drunken behavior, or was not happy with his surroundings including his parents and his wife.



15. During the trial, P.W.5 has but stated that at about 4 O'clock in the morning of 06.02.2014, the family members from the matrimonial home of the deceased had informed about some seriousness of the matter. Thereafter, he along with his relatives including his wife and many persons of the neighbourhood of the matrimonial home of the deceased arrived at the place of occurrence. The police was informed in his presence, whereafter police party arrived and inquest was prepared and only thereafter the dead body was taken to the hospital for post-mortem.

16. P.W.5 only provided hearsay information, the source of which remained undisclosed even during the trial, that there had been a fight between the couple a night before. On being questioned, he has admitted that the case lodged by him was only on the basis of the information provided to him.



17. We have already noted that the source of information was neither disclosed in the fardbeyan nor during the trial.

18. Ramesh Sada, Sanfi Sada and Shukla Sada P.Ws. 1, 2 and 3 respectively have not supported the prosecution version and have been declared hostile. Uday Chand Sada and Devi Lal Sada who are the cousin and own brother of P.W.5 respectively and have been examined as P.Ws. 6 and 7 respectively at the trial have categorically stated that they received information that the deceased had committed suicide. Their houses are situated near the house of the father of the deceased (P.W. 5).

19. This takes us to the deposition of P.W. 8, the Investigating Officer of the case.

20. Be it noted that he had taken over the investigation only on 22.02.2014. The then Officer-in-Charge of the concerned police station, who had recorded the fardbeyan, has not been examined at the Trial. In his cross-examination, P.W. 8 stated that P.W. 3 who has



been declared hostile had spoken before him during the course of investigation that he had gone to the place of occurrence, had seen the dead body and had also seen that the rope tied to her neck was still there and that the appellant had killed the deceased.

21. Beyond this, the Investigator has said nothing which would throw any light on the prosecution case.

22. We must admit that he was never put to any question on behalf of the defence.

23. Thus, there is no idea about the presence of the family members of the appellant in the home when the appellant is alleged to have assaulted not only the deceased but his own parents.

24. For the last one year, there was no complaint of the family members of the deceased against the appellant or her parents-in-law. Had there been any complaint, the father of the deceased (P.W. 5) would surely have said that in his fardbeyan or during the Trial.



25. There could be some possibility of the appellant not being happy with the deceased for no child was born out of the wedlock. But then, the marriage was only one year old.

26. In the absence of any allegation of torture, immediately preceding death, the case rightly was registered under Section 302 of the IPC and not under Section 304B of the IPC. For a conviction under Section 302 to be sustained, there ought to be evidence, proving beyond all reasonable doubts, the guilt of the accused.

27. As has already been noted, three of the prosecution witnesses, namely, P.Ws. 1 to 3 have been declared hostile. P.W. 5 admits of having lodged the case only on the basis of information which was provided to him by the neighbours of the appellant. The names of such persons have not been disclosed by him. It is equally surprising that if the mother and other family members of the deceased had visited the place of occurrence and had



seen the dead body, no one except P.W. 5 came forward to support the prosecution case.

28. This, coupled with the fact that the Doctor did not find any injury on the person of the deceased and inferred from the positioning of the ligature mark that it could be a case of self-inflicted harm of hanging oneself (suicide), we do not find it safe to affirm the conviction and sentence of the appellant.

29. While saying so, we have also taken into account the deposition of P.Ws 6 and 7, who are the cousin and own brother of P.W. 5 and who reside only next to the house of P.W. 5, that they had been informed that the deceased had committed suicide.

30. What could have been the motive of committing the crime is not known. There could be a possibility of the deceased being fed-up with the behaviour of the appellant. Or it could have been a case of solitary act of assault which the deceased could not tolerate.



31. Thus, with this deficient evidence, conviction under Section 302 would only be based on conjectures and probabilities.

32. For the aforementioned reasons, we set aside the judgment dated 24.01.2017/30.01.2017 passed by the learned Additional District & Sessions Judge-I, Supaul in Sessions Trial No. 11 of 2015 arising out of Birpur P.S. Case No. 37 of 2014 and acquit the appellant of the charge levelled against him.

33. Since the appellant is in jail, he is directed to be released forthwith from jail, if not detained or wanted in any other case.

34. The appeal stands allowed.

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

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



37. Interlocutory application/s, if any, also stand
disposed of accordingly.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

manoj/saurav-

AFR/NAFR	NAFR
CAV DATE	NA
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