

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1155 of 2019

Arising Out of PS. Case No.-88 Year-2015 Thana- SHERGHATI District- Gaya

1. Manoj Chaudhary Son of Lal Muni Chaudhary @ Lala Muni Chaudhary Resident of Village- Bela, P.S.- Sherghaty, District- Gaya.
2. Lal Muni Chaudhary Son of Late Bangali Chaudhary Resident of Village- Bela, P.S.- Sherghaty, District- Gaya.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants : Mr. Nand Kishore Prasad Sinha, Advocate

For the Respondent : Mr. Sujit Kumar Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 24-08-2023

This appeal has been preferred under Section 374(2) of the CrPC against the judgment of conviction dated 29.07.2019 and the order of sentence dated 07.08.2019 passed by the learned Additional Sessions Judge-IV, Gaya, in Sessions Trial No. 338 of 2016/523 of 2016, arising out of Sherghati P.S. Case No. 88 of 2015, whereby the appellants have been convicted and sentenced as under: -

Cr. Appeal (D.B.) No. 1155 of 2021				
	Convicted under Sections	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Appellant No. 1 (Manoj Chaudhary)	302/34 of the IPC	Life Imprisonment	10,000/-	S.I. for six



Appellant No. 2 (Lal Muni Chaudhary)	302/34 of the IPC	Life Imprisonment	10,000/-	S.I. for six
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2. We have heard Mr. Nand Kishore Prasad Sinha, learned counsel appearing on behalf of the appellants and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State.

3. Appellant No. 1 is the husband of the deceased and the appellant No.2 is the father of appellant No.1. Both of them were charged for commission of offence punishable under Section 302 read with 34 of the IPC and Section 304B read with 34 of the IPC. They have been acquitted by the trial court of the charge of offence punishable under Section 304B read with 34 of the IPC and, as has been noted hereinabove, they stand convicted of the offence punishable Section 302 read with 34 of the IPC by the impugned judgment.

4. We need to briefly take note of the prosecution's case, as disclosed in a written report by the informant, Arun Chaudhary (PW 7), a cousin of the deceased, addressed to the Station House Officer, Sherghati Police Station, which was the basis for registration of concerned Sherghati P. S. Case No. 88 of 2015, disclosing commission of offence punishable under Section 340B/34 of the IPC. According to the said written report, the deceased was married to appellant No.1 in the year 2011-12. On



02.04.2015, the informant received an information that the deceased had died of burn injuries in her in-laws' house. He rushed to the matrimonial home of the deceased, where he found the dead body of the deceased lying in the courtyard and all members of the house having fled away. There were severe burn injuries on the body of the deceased. He made allegations of demand of dowry and torture against the two appellants. He suspected that the deceased might have been done to death by these appellants for non-fulfillment of demand of dowry and, thereafter, fled away.

5. Upon completion of investigation, charge-sheet was submitted for commission of offence punishable under Section 304B/34 of the IPC, whereafter cognizance was taken and after complying with the requirements of Section 207 of the CrPC, the case was committed to the court of Sessions for trial. Subsequently, charges were framed by the trial court for commission of offence punishable under Section 304/34 of the IPC and Section 302/34 of the IPC. The appellants denied the charge and accordingly they were put on trial.

6. At the trial, the prosecution examined seven witnesses, namely, Sahdev Chaudhary (PW 2, father of the deceased), Ravindra Chaudhary (PW 3, a brother of the deceased) and Arun Chaudhary, the informant (PW 7, a cousin of the



deceased). One Mohan Yadav, who appeared as PW 4 as an independent witness, came to be declared hostile, as he did not support the prosecution's case. The uncle of the deceased, Devki Chaudhary, deposed as PW 1. The IO and the Doctor, who had conducted the postmortem examination were examined as PWs 5 and 6 respectively. In addition to the oral evidence of the abovementioned witnesses, the prosecution brought on record following documentary evidence: :-

1.	Signature of PW 2 on X-copy of inquest report	Ext.-1
2.	Signature of witness Mohan Yadav on inquest report.	Ext.-1/1
3.	Inquest report	Ext.-1/2
4.	Formal FIR	Ext.-2
5.	Endorsement on written report	Ext.-3
6.	Postmortem report	Ext.-4

7. After closure of the prosecution's evidence, the appellants were questioned by the trial court under Section 313 of the CrPC so as to give them an opportunity to explain the circumstances emerging against them based on the prosecution's evidence. The questions put by the court to the appellants and their answers recorded under Section 313 of the CrPC read as under: -

“Manoj Chaudhary



प्रश्न : आपने साक्षियों का साक्ष्य सुना है?

उत्तर: हाँ

प्रश्न : आपके विरुद्ध साक्ष्य है कि आपने अन्य के साथ मिलकर एकमत होकर जून 2015 ग्राम बेला थाना - शेरघाटी, गया में पुष्पा देवी को प्रताड़ित किया तथा उसकी हत्या की। क्या कहना है ?

उत्तर - नहीं

प्रश्न - सफाई में कुछ कहना है ?

उत्तर - नहीं "

"Lal Muni Chaudhary

प्रश्न : आपने साक्षियों का साक्ष्य सुना है?

उत्तर: हाँ

प्रश्न : आपके विरुद्ध साक्ष्य है कि आपने अन्य के साथ मिलकर एक मत होकर जून 2015 ग्राम बेला थाना - शेरघाटी, गया में पुष्पा देवी को प्रताड़ित किया तथा उसकी हत्या की। क्या कहना है ?

उत्तर - नहीं

प्रश्न - सफाई में कुछ कहना है ?

उत्तर - निर्दोष हूँ "

8. The trial court, after having appreciated the evidence adduced at the trial and considered the contentions advanced on behalf of the prosecution and the defence, reached a conclusion that though the prosecution was able to prove the charge of



commission of offence punishable under Section 302/34 of the IPC, in the absence of cogent evidence of demand of dowry, the charge of commission of offence punishable under Section 304B of the IPC cannot be said to have been proved. After having held the appellants guilty of the offences, the trial court sentenced the appellants to imprisonment of life and fine as has been noted above.

9. Mr. Nand Kishore Prasad Sinha, learned counsel appearing on behalf of the appellants has submitted that it is apparently a case of circumstantial evidence and the chain of circumstances are not so complete as to reach a definite conclusion that murder of the deceased by these two appellants could be the only possible hypothesis, leaving aside possibility of any other circumstance in which the deceased died. He has submitted that the trial court has committed a gross error by invoking Section 106 of the Evidence Act to record the impugned finding of guilt. He submits that the only reasoning, which the trial court has assigned for holding the appellants guilty of the charge of commission of the offence punishable under Section 302 of the IPC, is that the appellants failed to disclose the fact, which was especially within their knowledge as the deceased had died in the house of the appellants. He has submitted that it is evident from the deposition



of the prosecution's witnesses that appellant No.1 himself had informed the brother of the deceased about her death. The circumstance that after having killed the deceased, the appellants had fled away from the house, as the basis for holding the charge of murder proved, is also illogical. From the evidence, it would appear that appellant No.1 himself had gone to the police station to report about the occurrence of maltreatment meted out to him by his in-laws, which led to registration of a counter case, i.e., Sherghati P.S. Case No. 90 of 2015. He has further submitted that the appellants had a right of silence and the burden was heavy on the prosecution to prove the charge of commission of murder punishable under Section 302 of the IPC against these appellants.

10. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State has submitted that it is true that it is a case of circumstantial evidence, which is based on a strong circumstance that the victim died in the house of the appellants of severe burn injuries. The defence of the appellants that the deceased died in an accident while cooking does not appear to be acceptable in view of the medical evidence that smell of kerosene oil was coming out from the entire body of the deceased including her scalp. He has submitted that the trial court has rightly convicted the appellants invoking Section 106 of the



Evidence Act in the absence of any plausible explanation put forth by these appellants regarding the death of the deceased by burn injuries.

11. There are certain facts, which are not at all in controversy. The victim died in her matrimonial home and her dead body was found lying in the court-yard of the house. She had sustained severe burn injuries. The Doctor, who had conducted the postmortem examination, deposed in his evidence that smell of kerosene oil was coming out of scalp, hairs and residual clothes including the body and the percentage of burn was approximately 90 percent. Cause of death, according to the Doctor, was shock, coma and asphyxia as a result of burn injuries. We find no hesitation in recording a finding that the prosecution did not lead any evidence to prove that before or at the time of the death of the deceased, the appellants were present in the house, where she died. The brother of the deceased (PW 3), in his evidence, deposed that there was a demand of dowry, which had remained unfulfilled. It is evident from his deposition that it was appellant No.1, who had informed PW 3 about the deceased having sustained burn injuries, whereupon PW 3 had advised him to take her to a Doctor. Evidently thus, the appellant No.1 had himself disclosed the fact of the deceased having sustained burn injuries. Further, it is the case



of the prosecution's witnesses that the appellants had fled away from the house when the family members of the deceased had reached the matrimonial home of the deceased. The IO, in his deposition, has mentioned that appellant No.1 himself had gone to the police station, whereupon, a counter case was registered vide Sherghati P.S. Case No. 90 of 2015. After registration of the FIR, the appellant No.1 was arrested in the police station. The conduct of the appellant No. 1 shows that he did not make any attempt to evade the course of investigation. The prosecution's case of demand of dowry and torture meted out to the deceased by her in-laws has not been found to have been proved by the trial court and accordingly the appellants have been acquitted of the charge of the offence punishable under Section 304B of the IPC. In the present case, death of the deceased by burn injury in the house of her in-laws is the only circumstance, which has been proved by the prosecution at the trial and which is not much in controversy. We are, however, of the opinion that this circumstance alone cannot be said to be sufficient to hold the appellants guilty of commission of the offence punishable under Section 302 of the IPC. In our opinion, Section 106 of the Evidence Act, in the present set of facts, cannot be applied for the simple reason that it cannot be



presumed that there were certain facts, which were within the knowledge of the appellants.

12. Section 106 of the Indian Evidence Act can be invoked only if the prosecution is able to prove that a particular fact is 'especially' within the knowledge of any person. Only if the prosecution proves that a particular fact is especially within the knowledge of any person, burden of proving that fact would lie on the accused. If in the present case, Section 106 of the Evidence Act is applied, it would amount to first presuming that the appellants are the murderers, which, in our opinion, is impermissible. Section 106 of the Evidence Act does not cast a burden on an accused for proving innocence. In any event, right of an accused to silence could not have been taken away by invoking Section 106 of the Evidence Act in the facts and circumstances of the present case.

13. There is yet another aspect of the matter. The prosecution's witnesses deposed at the trial that these appellants had fled away from the house. The circumstance was not explained to the appellants by the trial court, while questioning them under Section 313 of the CrPC. A vague question was put to both the appellants that there was evidence to the effect that they had tortured the deceased and had killed her. The manner in which the appellants were questioned under Section 313 of the CrPC by the



trial court cannot be approved by this Court. It is also pertinent to mention that the defence had examined Jitendera Gupta (DW 1), who deposed at the trial that the relationship between the deceased and her in-laws was very cordial. It can be easily inferred from the deposition of DW 1 that, according to him, these appellants were not in the house when the occurrence had taken place and they were in their agricultural field at the time of occurrence.

14. Taking into account to totality of the facts and circumstances and the evidence adduced at the trial, we are of the view that the prosecution cannot be said to have established, based on circumstantial evidence, that murder of the deceased by these appellants could be the only hypothesis excluding possibility of any other eventuality. It is not a case of completion of chain of circumstances. There is only one circumstance, which the prosecution has proved, i.e., the death of the deceased by burn injuries in the house of her in-laws. The said sole circumstance, in our considered opinion, cannot be said to be conclusive evidence to prove the guilt of these appellants for commission of offence punishable under Section 302 of the IPC. They accordingly deserve to be acquitted of the said charge by giving them benefit of doubt.



15. Accordingly, the impugned judgment of conviction dated 29.07.2019 passed by the learned Additional Sessions Judge-IV, Gaya, in Sessions Trial No. 338 of 2016/523 of 2016 arising out of Sherghati P.S. Case No. 88 of 2015, is hereby set aside. The appellants stand acquitted of the charge of commission of offences punishable under Section 302/34 of the IPC giving them benefit of doubt. The order of sentence dated 07.08.2019 also stands set aside.

16. This appeal is allowed.

17. The appellant No.1, namely, Manoj Chaudhary, is in custody. Let him be released forthwith, if not required in any other matter. The appellant No.2, namely, Lal Muni Chaudhary, is on bail. He stands discharged from the liabilities of the bail bonds and the sureties, if any.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Pawan-Kundan

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.08.2023.
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