

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.221 of 2001

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Salim Shah @ Md. Salim Shah, Son of Late Kitab Ali Khan, Resident of
Village-Aliganj, P.S.-Chandauti, District-Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Harshvardhan Shivsundaram, Adv.

For the State : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 30-09-2024

Heard Mr. Harshvardhan Shivsundaram,
the learned Advocate for the sole appellant and Mr. Dilip
Kumar Sinha, the learned Addl. Public Prosecutor for the
State.

2. The appellant/Salim Shah @ Md. Salim



Shah has been convicted for the offence under Section 302/34 of the Indian Penal Code (*in short the IPC*) vide judgment dated 17.04.2001 passed by the learned 7th Addl. District & Sessions Judge, Gaya in Sessions Trial No. 327 of 1999/543 of 1997, arising out of Chandauti P.S. Case No. 153 of 1996. By the same order, he has been sentenced to undergo R.I. for life, to pay a fine of Rs. 1,000/- and in default of payment of fine, to further suffer R.I. for a period of one year for the offence under Section 302/34 of the IPC.

3. The appellant was put on trial along with one Guddu Mian @ Esteshan.

4. Aforesaid Guddu Mian @ Esteshan was convicted for the offence under Section 411 of the IPC only and was sentenced to undergo R.I. for two years for the said offence.

5. One Shakila Khanam, the wife of Md. Khaleel (P.W. 2), is said to have been slashed to death in the night intervening between 25th and 26th of



September, 1996.

6. A peculiar story has been narrated by P.W. 2 in the *fardbeyan*, which was lodged on 26.09.1996 at about 05:30 A.M. in the morning at his residence. He has alleged that about 15 - 20 days ago, one Muniya came to work in his house as a maid. Her activities were suspicious but because she was good at her work, she was allowed to continue as a maid in the house of P.W. 2. On 25.09.1996, aforesaid Muniya had stayed back and offered milk to the entire family. The taste of milk was bitter. However, no doubts were raised as P.W. 2 was of the opinion that perhaps because of the bourn-vita in the milk, it was tasting differently. All the family including minor children of P.W. 2, thereafter, went to sleep. P.W. 2 got awakened at about 05:30 A.M. in the morning, when he found that the articles in his house were all scattered. He came out of his room and found that his wife's neck was slashed and she was lying dead near the tube-well in the



courtyard of the house. He became unconscious. After regaining sense, he saw that many persons had assembled at his house. The police party also had arrived. He had doubts against his neighbour, namely, Md. Ayub and his two sons, namely, Bablu and Pintu. Later, he also realized that some cash from his house, silver jewellery and clothes were also missing. He, therefore, suspected that his maid/Muniya along with others has ransacked the house and had killed his wife.

7. On the basis of the afore-noted *fardbeyan* statement, a case *vide* Chandauti P.S. Case No. 153 of 1996 was registered for investigation for the offences under Sections 381, 302 and 34 of the IPC.

8. Later, during the course of investigation, it appears that one one of the minor daughters of P.W. 2, namely, Jehan Ara Khanam (P.W. 1) disclosed after a month of the occurrence that she had also got up from her sleep and had seen the appellant killing her mother. He was accompanied by Muniya and two or three others.



9. It appears that based on the statement of Jehan Ara Khanam (P.W. 1), the investigation proceeded against the appellant and Muniya.

10. On finding the house address of Muniya, her house was raided, but she could not be found. From her house, a lady's watch was recovered, which was identified to be of the deceased by P.W. 2. It was also learnt during the investigation that Muniya had a brother named Guddu, who had a tainted background and was accused in several criminal cases.

11. Hence, the appellant and Guddu were charge-sheeted and both of them were tried together.

12. The Trial Court, after having examined nine witnesses on behalf of the prosecution, convicted and sentenced the appellant as aforesaid.

13. There are few starkly noticeable aspects of the case. The occurrence is of the year 1996. P.W. 2 has gone on record saying that he had married somebody in the year 1960. He had married the



deceased sometimes in the year 1980 after divorcing his first wife. P.W. 2 thereafter had married again, perhaps, during the lifetime of the deceased, who had been residing in the same house. This disclosure is by Jehan Ara Khanam (P.W. 1), who is the minor daughter of P.W. 2. The deceased was earlier married to somebody else, who had died in harness. The deceased thus got a job on compassionate ground. P.W. 2 had purchased a parcel of land in his and Shakila's (deceased) joint name. Majority of the funding for that purchase was by the deceased. P.W. 2 had spent only ten thousand towards that purchase.

14. Another disturbing feature of the case is that one Md. Nabijaan (P.W. 7) was also residing in the same house. The records reveal that Md. Nabijaan was residing in the house and was dining in the same kitchen for which he paid Rs. 15,000/- per month to P.W. 2. For all practical purposes, he was the house-guest of P.W. 2 and the deceased.



15. The appellant served as a *Chowkidar* under P.W. 2. The deceased also was in employment and was working with P.W. 2. P.W. 2 always chastised the appellant. He had a fight with him sometimes ago. The deceased also had a fight with the appellant at some point of time. The appellant regularly visited the household of P.W. 2, perhaps, in course of official business.

16. These set of facts point towards a totally different picture.

17. We have noticed that though the *post-mortem* examination was done on the dead-body, but the same could not be proved as the person conducting the same has not been examined. The *post-mortem* report clearly proves that the deceased died of stab injuries. She had suffered an incised wound of size of 8" x 2" on the front of the neck extending to the right and the left side of the neck. There was damage all around the neck. The subcutaneous tissues, muscles, larynx and



trachea were found to be cut. The area between the third and fourth cervical vertebrae was also found to be partially cut. Blood clots were found over the wound. The mouth of the dead-body was found to have been stuffed with a piece of cloth. The cause of death was opined to be shock and haemorrhage because of the afore-noted injuries. The time of death was fixed within 12 to 16 hours of the *post-mortem* examination.

18. That the deceased was killed is beyond doubt.

19. Who killed her is the question.

20. The facts which emerge from the evidence of the witnesses provide a welter of confusing information, which do not pointedly indicate towards the complicity or participation of the appellant.

21. P.W. 2, during his cross-examination, admitted that the deceased was his second wife, who had got employment on compassionate ground on the death of her first husband. P.W. 2 had children from his



first wife, all of whom were married. He had children from the deceased wife also. Much later, he had married for the third time.

22. The entire evidence of P.W.2 regarding the family having been given contaminated milk to drink by *Muniya* remained unproved.

23. Even children of the house had consumed the milk. There was no effect of that milk on anybody including P.W. 2 and her minor daughter/P.W. 1, as also his young son/Shamshul Haque (P.W. 6), except that P.W. 2 could not get up when all this was happening in his house. He has further admitted that after consuming milk, he went off to sleep along with the deceased.

24. In the absence of any evidence with respect to milk having been mixed with any stupefying substance and it having had effect on the members of the family, it appears to be rather strange that the victim/deceased would be found slashed to death in the



courtyard near the tube well, without P.W. 2 getting up.

25. Before, P.W. 2 could regain his consciousness, many people had already assembled including the Investigator, *viz.*, Rajendra Tripathi (P.W. 8).

26. P.W. 8 has offered nothing to the Trial Court except for giving the topography of the house in which the murder had taken place and the fact that Muniya was known to have a brother with a criminal background, *viz.*, Guddu and in whose house, a lady's watch was found. Beyond this, P.W. 8 said nothing for the Court to come to any definitive finding about the assailants of the deceased.

27. The investigation does not appear to have been done at all.

28. It was only after several days of the occurrence that Jehan Ara Khanam (P.W. 1) claimed that she was awake at the time when the deceased was being killed by the appellant and Muniya.



29. This disclosure of P.W. 1 is difficult to believe for the reason of her having kept it close to her heart for so many days; nearly a month. The explanation of P.W. 1 being afraid of disclosing such fact does not appear to be acceptable at all. According to P.W. 1, the appellant had earlier and later also threatened her that if she spilled out, the family would be harmed. The appellant was not a stranger to the family. He worked as a *Chowkidar* under P.W. 2. Where was the reason for P.W. 1 to fear him?

30. According to the evidence of both, P.Ws. 2 and 1, the appellant often visited the house, though not very frequently. The deposition of P.W. 1 further reveals that the third wife of her father was also residing in the same house. In this background, several suggestions were given to P.W. 2, viz., that he himself had killed the deceased for appropriating the property, which was in the joint name of P.W. 2 and the deceased and in the purchase of which, the maximum funding was



made at the behest of the deceased. The relationship of P.W. 2 with the deceased though has been projected to be cordial, but the presence of the third wife in the same house has been admitted by P.W. 1.

31. The Investigator completely abandoned his responsibility and duty in not finding out the number of family members present in the house at the time of murder.

32. Similar but confusing statements have been made by Shamshul Haque (P.W. 6), Md. Nabijan (P.W. 7) and others also.

33. Thus, for all practical purposes, the only evidence on record against the appellant is the disclosure of P.W. 1, which is not readily acceptable.

34. P.W. 2 never even doubted the hand of the appellant; rather he had doubts on his neighbour/Md. Ayub and his two sons.

35. No investigation also was made on that line.



36. The *post-mortem* report, as noted above, could not be proved.

37. The circumstances readily admit of many postulates, which cannot be completely ruled out. Precisely for this reason, it appears that the appellant was granted bail after his conviction way back in the year 2001.

38. The evidence is absolutely deficient and incoherent for us to justify this conviction.

39. We find that the Trial Court has relied on reasonings, which, again, are not appropriate in the facts of the case.

40. We, thus, set aside the conviction and sentence, referred to above, and acquit the appellant of the charge, giving him the benefit of doubt.

41. The appeal stands allowed.

42. Since the appellant/Salim Shah @ Md. Salim Shah is already on bail, he is discharged from the liabilities of his bail-bonds.



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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Praveen-II/Manoj

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