

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.419 of 2016**

Arising Out of PS. Case No.-139 Year-2012 Thana- KHAIRA District- Saran

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Shailesh Rai S/o Late Ramayan Rai, R/o Village- Pithauri Natraha Tawkal  
Tola, P.S.- Baniapur, District- Saran.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Devendra Narayan Singh, Adv.  
For the Respondent/s : Mr. Bipin Kumr, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**  
**and**  
**HONOURABLE MR. JUSTICE NANI TAGIA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 12-01-2024**

1. We have heard Mr. Devendra Narayan Singh,  
  
the learned Advocate for the appellant and Mr. Bipin  
  
Kumar, the learned APP for the State.
2. The appellant, who is the husband of the  
  
deceased, is alleged to have slit the neck of his wife,  
  
namely, Kunti Devi (deceased).
3. The appellant has been convicted under  
  
Section 302 of the IPC vide judgment dated  
  
05.03.2016 passed by the learned Additional District  
  
& Sessions Judge V, Saran at Chapra in Sessions



Trial No. 545/2013 – Reg. No. 67/2014, arising out of Khaira (Nagra) P.S. Case No. 139/2012. By order dated 09.03.2016, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 20,000/- and in default of payment to further simple imprisonment for two years. The appellant has, but, been acquitted for the offence under Section 3/4 of the Explosive Substances Act, 1908 on account of paucity of evidence and no sanction having been obtained for proceeding against the appellant under the aforesaid section of Explosive Substances Act, 1908.

4. The F.I.R was lodged by the uncle of the deceased, namely, Chhotelal Rai (PW4) on 17.12.2012. He has alleged that on the previous night, the appellant who is the husband of the deceased and who has married another woman during the subsistence of his first marriage with the deceased, had come home and had slept in the room along with the deceased after dinner. Later in the



night at around 2.00 A.M., PW4 got up on some noise and saw that the appellant was trying to kill the deceased. He tried to prevent the appellant but the appellant got the better of him; slit the neck of his wife and ran away. He was attempted to be nabbed but the appellant was successful in running away. However, the local police arrested him at the Khaira Railway Station. The deceased was carrying pregnancy of eight months. PW4 did not know the reason for the deceased to be killed at the hands of her husband. In the house, there were some remains of explosion. Perhaps, the deceased had also lobbed a bomb but this was only the guesswork of PW4.

5. On the basis of afore-noted fardbeyan statement of PW4, a case vide Khaira (Nagra) P.S. Case No. 139/2012 dated 17.12.2012 was registered for investigation under Sections 302 IPC and Section 3/4 of the Explosive Substances Act, 1908.



6. The police after investigation submitted chargesheet against the appellant under Section 302 IPC as also Section 3/4 of the Explosive Substances Act, 1908.
7. The Trial Court, after having examined six witnesses on behalf of the prosecution, one Court witness, who is the daughter of the deceased, and three witnesses on behalf of the defence, though acquitted the appellant of the charge under Section of the Explosive Substances Act, 1908 but convicted him for the offence under Section 302 IPC and sentenced him as aforesaid.
8. The dead body of the deceased was subjected to postmortem examination on 17.12.2012.
9. The Doctor/ Surendra Mahto (PW5), who had conducted the postmortem examination found a sharp cut injury on the neck of the deceased. The injury though was found to be skin deep and there was no incision in the muscles of the neck but the trachea and oesophagus were found to be cut. The



further observation of PW5 is that the vertebra also was cut. Perhaps, the Doctor (PW5) meant medulla-oblongata but he has referred to it as vertebra. A dead fetus of eight months was found in the stomach of the deceased. The death was opined to be because of hemorrhage and shock due to sharp cut injury. The time of death was fixed between 10 to 12 hours from the time of postmortem examination.

10. It thus appeared that there can be no doubt about the deceased having been killed by slitting her neck.

11. The dead body of the deceased was found at about some distance from the house of the deceased but near the abandoned house of one Bibhuti Singh.

12. As the prosecution story goes, the deceased was dragged from her house and then killed behind the cow-shed of aforesaid Bibhuti Singh. Many persons, on the cry of help, had arrived



at the P.O. Those included PW4 (the informant) and PWs 1, 2 and 3 as well.

13. One of the cousins of the deceased, namely, Kamlesh Rai (PW1) had reached the place of occurrence while the appellant was assaulting the deceased by means of a knife. He had come to the place of occurrence with a torch in his hand and had seen the act of killing in the torch light. He had but no idea whether the knife used in the offence was seized by the police or not.

14. Similar statement has been made by Manoj Rai (PW2), who stands in the relation of the brother-in-law of the appellant. He had seen the deceased being killed by the appellant.

15. Similar is the statement of another eye-witness of the occurrence, namely, Patali Rai (PW3).

16. We have examined the deposition of PW4 in some greater detail and have found that he has given a consistent version of the occurrence. The appellant is said to have arrived at the house of the



deceased in the evening of 16.12.2012. PW4 and the deceased resided in the same house. The father of the deceased had died. The mother of the deceased also stayed in the same house but she has neither been examined by the police nor has been put on the witness stand to depose about the occurrence. At about 2 'O' clock in the night, he had heard the sound of an explosion. He got up only to hear the cries the deceased. He along with his nephew Monoj Rai (PW2), Kamlesh Rai (PW1), Jyoti Kumari (daughter of the deceased, who has been examined as Court witness), Patali Rai (PW3) and one Rajdeo Rai came out of the house and saw that the neck of the deceased was being cut by the appellant. Their attempts at saving the deceased proved unsuccessful. The appellant threatened him and others by wielding his knife. However by that time, many persons of the village had arrived at the P.O. Somebody had informed the police station. The police acted promptly and arrested the appellant



from Khaira Railway Station. He has also given explanation for non-examination of his wife and the aforesaid Rajdeo Rai, who had become paraplegic at the time of Trial.

17. The Investigator of this case, namely, Sri Ram Rai (PW) has confirmed that he he heard a rumour that a lady has bee killed in the village. He informed about such news to the officer-in-charge of the police station and proceeded for the P.O. The fardbeyan was registered by the then Officer-in-Charge of Khaira police station. He has identified the F.I.R and the signature of the Officer-in-Charge of Khaira police station (Ext. 3). An inquest report (Ext. 5) was prepared by him, a perusal of which would indicate that the dead body was found behind the cow-shed of Bibhuti Singh. The inquest report was signed by PW4 and one Rajdeo Rai, about whom, PW4 had clearly disclosed that he had suffered paralysis and, therefore, he could not be examined at the Trial. The house where the



deceased lived and had resided immediately before her being killed was inspected by him. He could find evidence of struggle, namely, broken pieces of bangles and clothings of women. There was a miasma emanating from the room in which the deceased had been residing. Perhaps, in the opinion of P.W. 6, a bomb also had been exploded.

18. None of the witnesses, however, were sure whether explosion of bomb was for the purpose of killing the deceased or perhaps for creating a smoke-screen for facilitating the dragging out the deceased from her house and then killing her at an abandoned place in the village.

19. Be that as it may, there would be no use of referring to any evidence of any explosion of bomb for the reason that the appellant has been acquitted for the offence under the Explosive Substance Act, 1908.

20. P.W. 6 admitted of not having interrogated



the mother of the deceased, but no reason has been given by him for not doing so. It is only through the mouth of one of the defence witnesses that we have been able to gather that the mother of the deceased was suffering from mental illness and for that reason also, the deceased lived in her parental home, may be for taking care of her ailing mother.

21. He has denied the suggestion that the deceased has been killed at the hands of P.W. 4 (informant) for the purposes of appropriating the family property, which otherwise would have gone in the share of the deceased.

22. The daughter of the deceased was examined as a Court witness, who has also testified to the fact that the appellant always fought with her mother and on the day of the occurrence, he had cut the neck of her mother. She had also got up from her sleep on that night and had seen the



occurrence. She has denied the suggestion that it was only on the asking of P.W. 4 that she had made such a statement.

23. The defence witnesses have tried to project a case that the appellant was deliberately called by P.W. 4 from Calcutta and was falsely made accused of killing the deceased, whereas the fact is that P.W. 4 himself had killed the deceased.

24. The suggestion of P.W. 4 having killed the deceased does not appear to have any substance.

25. For the last several years, the deceased had been residing in her parental home. Even the daughter of the deceased was being looked after by P.W. 4, which would appear from the statement of the Court witness, who has confirmed that she, in the night of the occurrence was sleeping with P.W. 4 and his wife.

26. All the witnesses have testified to the fact that the appellant had come to the house of the



deceased at about 04:00 P.M. on 16.12.2012. The occurrence took place in the night intervening between 16<sup>th</sup> and 17<sup>th</sup> of December, 2012.

27. The medical testimony is absolutely in conformity with the ocular version.

28. The argument on behalf of the appellant that only witnesses who are related to the deceased have been examined at the Trial and no independent person has been chosen by the prosecution, do not appear to be quite substantial. Though, many persons of the village had arrived at the P.O. but if the family members had seen the act of assault, merely because no independent person has been examined at the Trial, the prosecution case cannot be doubted for this alone.

29. We have also contemplated as to why the deceased would be killed by her husband.

30. As the evidence suggests, the appellant had married another lady during the subsistence of his



marriage with the deceased. But, there does not appear to be any evidence of any strained relationship between the husband and wife. The reason for our saying so is that the deceased was carrying a pregnancy of eight months.

31. Was the appellant fearful of increasing the number of his dependents or had fallen out with his wife ? Nothing is known about that.

32. In any view of the matter, in the event of four persons having seen the deceased being killed at the hands of her husband/the appellant and the medical testimony being in conformity with the ocular version of those witnesses, we have no reason to differ with the opinion rendered by the Trial Court, holding the appellant to be guilty under Section 302 of the IPC.

33. The conviction of the appellant and the sentence awarded to him is highly justified.

34. We have also found that the Trial



Court, finding no evidence with respect to explosion of any explosive substance has rightly acquitted the appellant for such charge.

35. The judgment and order of conviction and sentence is, thus, affirmed.
36. The appeal is dismissed.
37. Let the records of this case be returned to the concerned Trial Court.

**(Ashutosh Kumar, J)**

**( Nani Tagia, J)**

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