

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.830 of 2017

Arising Out of PS. Case No.-164 Year-2015 Thana- BHARGAMA District- Araria

Rajesh Das, S/o Nageshwar Das, Resident of Village - Kushmaul, Ward No. - 9, P.S. - Bhargama, District - Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 391 of 2017

Arising Out of PS. Case No.-164 Year-2015 Thana- BHARGAMA District- Araria

1. Nageshwar Das, S/o Late Mahanti Das
2. Shyama Devi, W/o Nageshwar Das, Both residents of Village - Kushmaul, Ward No. - 9, P.S. - Bhargama, District - Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :
(In CRIMINAL APPEAL (DB) No. 830 of 2017)
For the Appellant/s : Mr. Anil Prasad Singh, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP
(In CRIMINAL APPEAL (DB) No. 391 of 2017)
For the Appellant/s : Mr. Anil Prasad Singh, Advocate
For the Respondent/s : Mr. Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE KHATIM REZA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 22-04-2024

Both the appeals (three appellants in all)

have been heard together and are being disposed of by



this common judgment.

2. We have heard Mr. Anil Prasad Singh, the learned Advocate in both the appeals for the three appellants in all and Mr. Dilip Kumar Sinha, and Mr. Ajay Mishra, the learned APPs for the State.

3. All the three appellants have been convicted under Section 302/34 of the Indian Penal Code, *vide* judgment dated 20.02.2017 passed by the learned Additional District & Sessions Judge-III, Araria in Sessions Trial No. 668 of 2015/01 of 2016 arising out of Bhargama P.S. Case No. 164 of 2015. By order dated 28.02.2017 they have been sentenced to undergo R.I. for life. Appellant/Nageshwar Das in Cr. APP. (DB) No. 391 of 2017 has also been saddled with a fine of Rs. 50,000/- which would be treated as compensation to the son of the deceased. For the failure to pay the afore-noted amount, it would be recoverable as land revenue.

4. The deceased/Manju Devi was found



dead in front of her house with her throat slit. Alongside the dead-body, a dabiya (a sharp cutting weapon) was also found.

5. The father of the deceased, viz., Bineshwar Das @ Bishan Das (P.W. 1) had lodged the FIR on 21.08.2015 alleging that his daughter (deceased) was married about ten years ago with one Shrawan Das. After the marriage, the deceased had been staying in her matrimonial home happily. Because Sharwan Das was a poor person, he always remained outside his house for earning his livelihood. At the time of occurrence, he was stated to be working at Punjab. On 21.08.2015, P.W. 1 learnt at about 05:00 A.M. in the morning that in a family dispute, his daughter (deceased) has been killed by the appellants. On such information, he went to the matrimonial home of the deceased and found the dead-body of the deceased lying in front of the house of the appellants. Her neck was found to be cut. She had bled profusely. The



deceased had a three years old son, *viz.*, Shankar and presently she had been carrying pregnancy of six to seven months. It was further alleged in the FIR that several persons of the village assembled at the place of occurrence and saw the dead-body.

6. On the basis of the aforementioned written report lodged by P.W. 1, a case *vide* Bhargama P.S. Case No. 164 of 2015, dated 21.08.2015 was instituted for investigation for the offences under Section 302/34 of the IPC.

7. The police after investigation submitted charge-sheet against the appellants, whereupon they were put on Trial.

8. The Trial Court, after having examined six witnesses on behalf of the prosecution and three on behalf of the defence, convicted and sentenced the appellants as aforesaid.

9. Mr. Anil Prasad Singh, the learned



Advocate for the appellants has submitted that the Trial Court has gone only on conjectures and surmises and has not appreciated the evidence of the witnesses in the correct perspective. There is no eye-witness to the occurrence and in the absence of any evidence with respect to ill-treatment to the deceased, the case had to be treated as one under Section 302, where the prosecution was required to prove the charge beyond all reasonable doubts.

10. He has further submitted that the appellants were falsely framed by one Ramji Das, who is the own brother of appellant/Nageshwar Das, who actually had given wrong information to P.W. 1 about the occurrence. Evidence is available on record to indicate that Ramji Das and appellant/Nageshwar Das were on litigating terms and in fact, at the instance of Ramji Das, the appellants were arrested by the villagers, kept confined after tying them to a pole and thereafter being handed over to the police.



11. Suggestions have been given to the witnesses that the informant (P.W. 1) wanted to trade off the death of his daughter and wanted appellant/Nageshwar Das to part with the family property, which otherwise would have been inherited by Shankar, the son of the deceased. But on refusal of the family to do so, this false case has been instituted.

12. Apart from this, it has been submitted that important witnesses like the Chowkidar and Ramji Das have not been examined at the Trial. Thus, there is no eye-witness to the occurrence and the accusation against the appellants is based solely on presumption that the deceased was killed because her husband gave his earnings to her only and not to his parents.

13. As opposed to the afore-noted contentions, the learned APPs appearing in these two appeals have submitted that there is a strong circumstantial evidence against the appellants. The appellants were arrested immediately after the



occurrence. The throat of the deceased was slit by a dabiya (a sharp cutting weapon). The blood-stained dabiya was left behind at the scene of occurrence. None of the appellants were available in the house when the police had visited the house. They were arrested only thereafter at the instance of the villagers. The appellants resided in the same house. Though an attempt was made to put up a case that appellant/Nageshwar Das and his wife Shyamala Das had been residing at Supaul but the immediate arrest of both the appellants along with appellant/Rajesh Das by the villagers completely belied the assertion of the appellants of their residing outside the house. It was not even a case of burglary, as there was no evidence of any forcible entry of any miscreant or of ransacking of the house of the deceased.

14. The learned APPs though have admitted that the Trial Court did not await the forensic report about the blood-stained earth and the blood



smeared on the dabiya which was seized by the investigator (P.W. 6) but that would not be a ground to reject and discard the prosecution case.

15. After having gone through the records of this case and the deposition of witnesses in detail, a few striking features which strike at the root of the prosecution case, have been noticed by us.

16. The written report was lodged by P.W. 1, who had clearly stated that right since her marriage, the deceased was living happily in her matrimonial home. The other fact which is borne out from the evidence that the house of the appellants is situated nearby the house of P.W. 1, but in a different ward. In the FIR, there was no disclosure by P.W. 1 about the person who had disclosed to him about the death/murder of the deceased. However, later during Trial, he candidly spoke about Ramji Das, brother of appellant/Nageshwar Das and one Gulab Das, who also is related to appellant/Nageshwar Das of having come



to his house on bicycle to inform him that the deceased had been murdered by appellant/Rajesh Das.

17. The Second aspect of the matter is that Vivek Kumar and Bishan Das (P.Ws. 2 and 3) are the neighbours of the deceased. They have also not spoken about any bad relation between the appellants and the deceased.

18. From their evidence, it could be gleaned that there were three parts of the house, out of which, one was occupied by the deceased, whereas the two other parts were occupied by the appellants. The parents-in-law of the deceased resided in the room which was in the front of the house. The house had a common courtyard, but the mess of the appellants and the deceased was separate.

19. Both the afore-noted witnesses were absolutely clear in their deposition before the Trial Court that they had never heard of any ill-treatment to the deceased for any reason whatsoever. However, they



have only guessed that perhaps the appellants were not happy with the deceased because she was the recipient of the income of her husband and nothing was given by her husband to his parents. That the relationship between the couple was very cordial is evident from the fact that at the time of the death, the deceased was carrying a pregnancy of six to seven months and also had a child of about three years in her lap.

20. Had there been any dispute between the appellants and the deceased along with her husband, it would have caught the attention of the neighbours and the villagers. There is nothing on record to indicate any sour relationship which would have prompted the appellants to have killed the deceased.

21. Urmila Devi (P.W. 4) is also a neighbour of the appellants. She has deposed that early in the morning of 21.08.2015, Ramji Das had told her and others that appellant/Rajesh Das had killed his sister-in-law. Getting that information, P.W. 4 along



with others went to the matrimonial home of the deceased and found her dead-body with her throat slit. She also claims to have seen the dabiya near the dead-body. She could not know as to why the deceased was killed. When she had arrived at the P.O., the police had already arrived there and had arrested the appellants. She had also no idea whether the appellants were residing in the same house or had been living separately at Supaul, even temporarily.

22. On going through the deposition of the aforementioned four witnesses, it becomes very clear that all of them, for some reason or the other, claimed that the appellants were arrested and kept confined and were handed over to the police.

23. However, if the evidence of the investigator (P.W. 6) is to be believed, he had reached the P.O. on telephonic information that a lady has been killed by the inmates of the house. When he went to the P.O., he found the dead body and learnt from the



villagers that it was the dead body of Manju Devi. Before proceeding for the P.O., he had recorded an entry in the station-diary regarding such information and was led to the P.O. by the local Chowkidar. He conducted the inquest proceedings and sent the dead body for post-mortem examination. The inquest was signed by Chandrashekhar Yadav and Binod Yadav, none of whom have been examined at the trial. It was at that time that P.W. 1 had arrived at the scene and had handed over a written report arraigning the appellants as the accused persons. The investigator had seized the blood-stained earth and the weapon of assault viz. dabiya in front of two of the independent persons and had prepared a seizure list. Immediately thereafter, he had come back to the police station for lodging the formal FIR and taking over the investigation of the case.

24. It was only at 01:30 in the day that he came back to the P.O. again and recorded the further



statement of P.W. 1. Till such time, the appellants were not arrested. Had the story of the appellants being arrested there and then, been true, P.W. 6 would have said so.

25. On the contrary, he has stated in his cross-examination that at about 4 O' Clock in the evening of the same day, he was telephonically informed that the appellants have been held captive by the villagers of Kushmaul and they are kept in confinement in the house where the murder had taken place. On such information, he went to the P.O. again and arrested the appellants thereafter.

26. This twist in the tale provided the window to the appellants to urge before us that none of the appellants were present in the house when the police or the witnesses had come.

27. In fact, the investigator based his information about the appellants residing in the same house only through the mouth of villagers. Surprisingly,



no person of the village who had kept the appellants captive before they were handed over to the police, was interrogated. He has also admitted in his cross-examination that when did the occurrence take place could not be known as nobody of the village had any idea about it.

28. In this context, it would be relevant to see the post-mortem report and the evidence of the doctor (P.W. 5), who had conducted the post-mortem examination. The post-mortem was held on 21.08.2015 and P.W. 5 had found seven incised wounds on the person of the deceased. The time fixed for death was within 48 hours.

29. Thus, for all practical purposes, the deceased must have been killed in the night intervening between 20th and 21st of August, 2015.

30. In this background, there could be a possibility of the deceased being killed by somebody else. Even if appellant/Rajesh Das for some reason or



the other had killed the deceased, it was required to be proved by the prosecution. The motive introduced in the case does not appear to be plausible. If the deceased and her husband did not have good relations, the appellants may have expected the money to come to them if the deceased were not living.

31. That was not the case.

32. Shrawan, the husband of the deceased had good relations with his wife. He used to send his earnings to her only. Killing the wife of Shrawan behind his back would not have made anyone of the appellants any beneficiary of his income, who himself was a poor person and had to survive by working outside.

33. There could be a possibility of some domestic squabble in which the deceased was killed but then that would again only be an inference or a conjecture and a decision in a criminal case cannot solely depend on such inference.



34. That the appellants were not there in the house shortly before the occurrence clearly appears from the fact that they were apprehended sometimes later. Had they been residing in the house, they would have been arrested at the time when the investigator had visited the house first. The investigator heard on telephone that the appellants have been kept captive. It was only then that the arrest was effected.

35. How could it be then denied that the appellants had come to their house after hearing the news of the murder of the deceased, when they were framed by the local persons, especially the brother of appellant/Nageshwar with whom Nageshwar had litigation. No other neighbour of the deceased had anything to say except the own brother of the appellant/Nageshwar Das.

36. One of the witnesses has even gone to the extent of stating that after getting the appellants arrested by the villagers and thereafter by the police,



Ramji Das fled away.

37. Did he flee away out of remorse or that he did not want to show his face to his family?

38. If he were so sure about the appellants having killed the deceased, he should have come to the witness-stand to say that the deceased was murdered.

39. P.W. 4 was told by Ramji Das that appellant/Rajesh Das had killed the deceased. If this were true, then there was no necessity of framing the parents-in-law of the deceased. Obviously, therefore, Ramji was trying to avenge his own enmity with his brother Nageshwar. At least, it creates a serious doubt about the accusation.

40. This becomes even more stark when the evidence is replete that the relationship between the deceased and her spouse as also with her in-laws was cordial.



41. The deceased had been living without her husband for a long time. Sometimes before the occurrence, the husband of the deceased had gone to Punjab. There is nothing on record to indicate any special reason for the occurrence to have taken place sometimes in the night of 20th and 21st August, 2015. There could then be a possibility of the deceased having been killed at the hands of criminals, who may have visited the house thinking that the deceased was residing there alone and had received money from her husband which was sent from Punjab.

42. The weapon of assault otherwise would not have been found near the dead body of the deceased.

43. Did the deceased inflict the injuries herself? No, it does not appear to be so as the post-mortem report reveals several cut and incised injuries all around the neck. This could not have been self inflicted. Obviously, therefore, the deceased was



murdered but by whom is the question which beckons an answer.

44. Had it been a case of disturbed marital relationship and torture of the deceased soon before her death, perhaps there could be some presumption of the deceased being killed. Not a single witness including P.W. 1, the father, has spoken about any ill-treatment to the deceased in the past ten years. The houses of the witnesses and the deceased are situated close-by. Bad treatment in the matrimonial home would have filtered through and would have been known by the father of the deceased, if at all it existed.

45. In this perspective, the evidence of the defence witnesses especially of D.W. 2, who is the husband of the deceased, assumes relevance. All of them have suggested that the deceased was killed by some miscreants in the dead of the night or in the wee hours.

46. Under such circumstances, the



prosecution was under an obligation to prove that only the appellants and nobody else had killed the deceased.

47. Merely relying on a circumstance that the appellants are related to the deceased and that they, for most of the times, stayed in the house with common courtyard, would be too naive a proposition to justify the conviction of the appellants for the charge of murder.

48. For the aforementioned reasons, especially the failure of the prosecution to prove the case beyond all reasonable doubts, we are left with no alternative but to give benefit of doubt to all the three appellants and acquit them of the charge of murder.

49. Appellants/Nageshwar Das and Shyamla Devi are on bail. Their liabilities under the bail bonds are discharged.

50. Appellant/Rajesh Das is in custody. He is directed to be released from jail forthwith, if not



wanted in any other case.

51. Both the appeals stand allowed.

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

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

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

(Ashutosh Kumar, J)

(Khatim Reza, J)

manoj/krishna

AFR/NAFR	NAFR
CAV DATE	NA
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