

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.683 of 2023

Arising Out of PS. Case No.-598 Year-2021 Thana- KAHALGAON District- Bhagalpur

Sanjay Kumar Sah @ Sanjay Sah, S/o Late Masudan Sah, R/o Village-
Chnnau, P.S.- Rasalpur, Distt.- Bhagalpur.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Fantush Sah @ Jai Kant Kumar, S/o Bishan Sah @ Vishwanath Sah, R/o
Village- Ghanaura, P.S.- Rasalpur Ekchori, Distt.- Bhagalpur.
3. Manni Sah @ Manmohan Sah, S/o Late Parmeshwar Sah, R/o Village-
Ghanaura, P.S.- Rasalpur Ekchori, Distt.- Bhagalpur.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Kamal Kumar Sinha, Advocate Mr. Kartik Kumar Sinha, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP
For the Respondent No.2 to 3 :		Mr. Praveen Kumar, Advocate Mr. Raushan Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE A. ABHISHEK REDDY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)



Date : 27-02-2024

We have heard Mr. Kamal Kumar Sinha, the learned Advocate for the appellant/applicant, who has challenged the judgment of acquittal dated 02.05.2023 passed by the learned 17th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 152 of 2022 (Reg. No. 3851 of 2021), arising out of Kahalgaon (Rasalpur) P.S. Case No. 598 of 2021, under appeal as the respondents have been acquitted without any reason.

2. The appellant/applicant is the husband of the deceased.

3. Mr. Praveen Kumar, the learned Advocate has appeared on behalf of respondent Nos. 2 and 3. The State has been represented by Mr. Bipin Kumar, the learned APP.

4. A case was registered at the instance of the appellant. He lodged the *fardbeyan* at Mayaganj Hostpital, Police Camp Bhagalpur, on 09.09.2021 at 09:



45 AM, alleging that on the previous date, i.e., on 08.09.2021, while he along with his wife (deceased) were going to the Bank, his wife was assaulted by the respondents and others, as a result of which, she became seriously injured. Seeing her own family members assaulting her, the appellant/informant/P.W. 3 ran away. On *hulla*, many persons of the neighbourhood arrived, who saw the occurrence.

5. The cause of occurrence, as stated in the FIR was a land dispute.

6. The appellant stayed in a hut constructed over a land belonging to the father of the deceased, which was objected to by respondent no.2. He has further stated in the FIR that the police of Kahalgaon (Rasalpur) P.S. had brought the deceased while she was injured and admitted her in hospital. She was, thereafter, referred to Bhagalpur Hospital. The deceased died in the night only, by around 6 to 7 PM.

7. On the basis of the afore-noted *fardbeyan*



statement of the appellant/P.W. 3, a case vide Kahalgaon (Rasalpur) P.S. Case No. 598 of 2021, dated 09.09.2021, was instituted for the offences under Sections 147, 148, 149 and 302 of the IPC.

8. The police, after investigation, submitted charge-sheet against the respondents who were put on Trial.

9. The learned Trial Court, after having examined eight witnesses on behalf of the prosecution and four witnesses on behalf of the defence, acquitted the respondents of the charges.

10. The reasons given by the Trial Court for acquitting the respondents are that according to the appellant/P.W. 3, he had informed Bajrangi Harijan (P.W. 1) on telephone about the occurrence. However, P.W.1, at the Trial, claims to be an eyewitness to the assault.

11. The Trial Court took note of the fact that wife of P.W. 1 and respondent no.3 had contested



for the post of *Sarpanch*. The other ground for disbelieving the prosecution case by the Trial Court is that according to the appellant, all the accused persons, including the respondents, assaulted the deceased by means of *Khanti*, Spade, iron rod etc., but those injuries were not found on the person of the deceased.

12. From the perusal of the *post-mortem* report and the evidence of the Doctor, we have found that there are certain bruises on the forearm of the deceased, but those were opined to be simple in nature. The death was caused because of heamorrhage and shock. The Doctor could easily identify the fracture of tibia and ulna.

13. The Trial Court further found the conduct of the appellant to be different from what a husband would normally do. He did not seek help from the neighbourhood and he received no injuries on his person.

14. These grounds commended to the Trial



Court that the allegations were exaggerated and that there could be a possibility of the deceased dying in some other transaction.

15. The evidence of the defence witnesses were also taken into account by the Trial Court. All those witnesses have, in unison, stated that they had not seen the occurrence and there could be a possibility of the deceased having died because of some road accident.

16. Within few minutes of the telephone call by the appellant, the police had arrived and had taken the deceased for treatment to a Hospital at Kahalgaon, but no FIR was registered. With such serious assault on a lady, who had to be taken to the hospital with the aid to the police, not lodging a case by the police or the appellant, disclosing such facts before the police on 08.09.2021, assumes lot of significance and makes the prosecution case very doubtful.

17. With this view of the Trial Court, we have examined the evidence of all the witnesses in



detail.

18. There is some force in the reasoning given by the Trial Court that if the victim was taken to hospital at the instance of the police, it was expected that FIR would be lodged on 08.09.2021 only.

19. On a careful perusal of deposition of the investigator, namely, Akhilesh Kumar Verma (P.W. 8), it would appear that there was a station diary entry with respect to the appellant and the deceased, namely, SDE 253 of 2021; but the same was neither looked into by the investigator nor was it brought on record as the first information about the occurrence to the police. The investigator has of course not found any evidence of either assault or of any accident at the place of occurrence. He has denied the suggestion that his investigation is faulty and that he had never visited the place of occurrence.

20. However, we find from his deposition that the statement of the local persons were not



recorded by him. Even the Doctor was not examined by him. He had neither seen the victim/deceased in the hospital while she was being treated or after her death.

21. The investigation, therefore, is absolutely shoddy.

22. We have given our anxious consideration to the facts of this case and have found that there are certain reasons for doubting the prosecution case, especially with respect to the accusation against the respondents: one of whom is the own brother of the deceased and the other, her own uncle. There could be a family dispute but then that could also to be the reason for falsely framing the respondents.

23. The occurrence of assault took place at about 2 O'clock in the afternoon on 08.09.2021. According to the FIR, the deceased was admitted in the hospital by around 6 to 7 PM. Before that, the police party had arrived and had taken the deceased while she



was still alive, to the police station and then to a local hospital, where she was administered some injection.

24. There is nothing on record to indicate the time of death of the deceased. The inquest was performed at about 09:50 PM. The foregone conclusion, therefore, is that the death must have taken place before 09:50 PM on 09.09.2021.

25. However, we find that the dead-body was sent to the morgue for *post-mortem* examination at around 01:30 PM. The *post-mortem* examination was undertaken at 02:30 PM. By that time, *rigor mortis* was available in the dead-body.

26. Taking into account that the occurrence is of the first week of September, the time of death would fall somewhere in the wee hour of 09.09.2021. The Doctor, perhaps, found that the time of death to be within 12 to 24 hours prior to the time of *post-mortem* examination.

27. If the opinion of the Doctor with



respect to the time of death is accepted, then, perhaps, the deceased had died sometimes after the mid-night of 08.09.2021. In the event of a victim of assault having been brought to the hospital at the instance of police, the FIR would have been registered immediately, even before the death.

28. All these facts cumulatively indicate that there could be a possibility of false implication.

29. The deceased was a physically challenged person. She had suffered fracture in her body. The death, *prima facie*, does not appear to have been caused by any accident; but there are serious doubts about the correctness of the prosecution version so far as the accusation against the respondents are concerned.

30. The Trial Court, therefore, was left with no other option but to give benefit of doubt to the respondents taking into account the family background and the ensuing enmity.



31. Considering the facts of this case in totality, we do not find the opinion and conclusion of the Trial Court to be perverse or worth interference.

32. For the afore-noted reasons, we dismiss the appeal.

(Ashutosh Kumar, J)

(A. Abhishek Reddy, J)

manoj/Praveen-II

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