

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.908 of 2023

Arising Out of PS. Case No.-311 Year-2021 Thana- BANIAPUR District- Saran

Md. Tahid @ Md. Tahir S/o Hafij Miya R/o Village- Pirouta, P.S- Baniyapur,
Distt.- Saran at Chapra.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant/s : Ms. Rajani Kumari, Advocate

For the Respondent/s : Ms. Shashi Bala Verma, APP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

7 08-04-2024 This appeal arises out of the judgment dated 01.07.2023 passed by learned 12th Additional Session Judge, Saran at Chhapra in Sessions Trial No. 63 of 2022 arising out of Baniyapur P.S. Case No. 311 of 2021.

2. By the judgment under appeal (hereinafter referred to as the ‘impugned judgment’), the learned trial court has held that the prosecution has failed to establish the guilt of the accused persons beyond all reasonable doubts, the prosecution failed to establish that it were the accused persons who committed the occurrence, therefore in absence of any cogent evidence against them, the learned trial court has acquitted the accused persons of the charges under Sections 302/34 and 120B



of the Indian Penal Code (in short 'IPC') giving them benefit of doubt.

3. As per the prosecution story, which is based on the written report of the occurrence by Md. Tahid (PW-6), on 15.08.2021 at about 12 noon, his wife Taimul Khatun aged about 45 years had gone to bring fodder for the she-goats but she did not return till 6:00 pm in evening whereafter all the family family members started searching her. He alleged that in course of search at about 6:45, he reached in the *khajurbanni* of Shatrudhan Sharma situated south to the village Pirauta where he found the dead body of his wife in a mangled condition. The wife of the informant had suffered several injuries on her head and face by sharp edged weapon and she had been killed by some unknown criminals.

4. On the basis of the written report of Md. Tahid, a formal FIR was registered giving rise to Baniyapur P.S. Case No. 311 of 2021 dated 16.08.2021 under Sections 302/34 IPC. After investigation, Police submitted a charge-sheet against the accused persons, namely, Aslam Ali and Alhamadin Miya vide Charge-sheet No. 10 of 2022 dated 20.01.2022 for the offence under Sections 302 and 120B IPC. After submission of charge-sheet, cognizance of the aforesaid offences were taken.



5. Since the offence under Sections 302 and 120B IPC were sessions triable, the learned Magistrate committed the records to the court of sessions.

6. Charges were framed against the accused persons under Sections 302/34 and 120B IPC. The accused persons denied the charges and they claimed to be tried.

7. The prosecution examined as many as eight witnesses and exhibited five documents to substantiate the charges. Chand Mohammed (PW-1), Shakina Khatun (PW-2), Rabiya Khatun (PW-3), Salma Khatun (PW-4), Manan Hussain (PW-5), Md. Tahid (informant) (PW-6), Md. Azad Khan (PW-7) and Arjun Kumar-Doctor (PW-8) were examined. The following documents were marked exhibits:-

(i) Exhibit '1' - Signature of Md. Tahid (informant) on *fardbeyan*

(ii) Exhibit '1/1' - Signature of the witness Mukesh Shah on *fardbeyan*

(iii) Exhibit '1/2' - Signature of Md. Ahmad Hussan on *fardbeyan*

(iv) Exhibit '1/3' - Signature of witness Maheshwar Shah on *fardbeyan*

(v) Exhibit '2' - Charge-sheet

(vi) Exhibit '3' - Formal FIR



(vii) Exhibit '4' - Signature of Kishori Chaudhary on
fardbeyan

(viii) Exhibit '5' - Postmortem report

8. After evidence of the prosecution witnesses, the statement of the accused persons were recorded under Section 313 of the Code of Criminal Procedure (in short Cr.P.C.) on 04.03.2022. The accused persons pleaded innocence.

9. The learned trial court has dealt with the evidences of all the prosecution witnesses one by one. In course of trial, the PW-1 came with a statement that Aslam Miya had illicit relationship with his sister which was opposed by this witness whereupon the accused abused him. On 14.08.2021, accused Aslam Miya, Alhamadin Miya and Mulazim came to the house of the witness and committed *dhakka-mukki* and threatened Taimul Khatun. He has stated that on the next day, his mother went to collect fodder for the she-goats, the accused cut her face by sharp cutting weapon. In course of his cross-examination, he has stated in paragraph '9' that he has knowledge as to who committed murder of his mother. He has stated that he had full knowledge about all the occurrence on 15.08.2021 but his sense was not working so he did not inform to the Police. After six to seven days of the marriage of his sister, the name of the accused persons transpired in this case. In paragraph '6' of his cross-



examination, this witness has stated that he had caught Aslam with his sister in the night at about 10-11 pm but in this regard no information was given to the Police Station. He has specifically stated that he has knowledge as to who killed his mother and he had not seen the occurrence.

10. Shakina Khatun (PW-2) is an agnate of the deceased who has given a different version. According to her, money of Taimul Khatun (deceased) had gone missing, whereupon she had asked to stop Alhamadin Miya and Aslam Mia on way and Aslam Miya and Alhamadin Miya threatened her to kill. In paragraph '11' of her cross-examination, she has stated that after 2-3 days, they had a suspicion against Alhamadin and Aslam. Both of them were present among the people who had gone to see the dead body of the deceased and they were also present in the marriage of Khudaina. In paragraph '13' of her cross-examination, she has specifically stated that there was a decision that first of all the marriage of Khudaina be performed then the name of the accused persons will be given in the case.

11. Rabia Khatun (PW-3) has also come out with the story of missing of money of the deceased whereupon the accused persons had threatened her. In paragraph '7', she has stated that after three months with the agreement of the family persons, name of the accused persons was given in the case.



Police had recorded her statement three days after the occurrence. She has stated that on the said day, she had informed Police about the name of the accused persons. Contrary to her evidence, the I.O. (PW-7) has stated in his deposition in paragraph '11' that prior to supervision by Dy.S.P., the witnesses whose statements were recorded by him had not taken name of the accused persons. PW-7 has contradicted the informant (PW-6) and has said that his statement in court that he had disclosed the name of the three accused persons before Police is not correct.

12. Salma Khatun (PW-4) has stated that one day prior to the occurrence her aunt (deceased) had a quarrel with the accused persons on the missing of the money and for that reason, the accused persons have committed the occurrence. She has stated in paragraph '10' of her deposition that when her uncle had lodged this case, he had not given name of the accused persons and after three months, her uncle had given the name of three persons to the Police.

13. Manan Hussain (PW-5) has not given any motive behind the occurrence. He has stated that after fifteen days of the murder of his mother, he came to know that accused persons had killed his mother. He has disclosed the name of one Kedar Singh, who is a co-villager and has stated that it was said Kedar Singh



who had told that the accused persons had killed his mother. He has stated that Kedar Singh had not informed this to the Police In the trial, Kedar Singh has not been examined.

14. Md. Tahid (PW-6) is the informant of the case, who has stated in paragraph '3' of his examination-in-chief that one day prior to the occurrence, his wife was abused by Alhamadin Miya, Aslam Miya and Mulazim Hussain. He has stated about the missing of money of his wife. He has stated in his cross-examination that in his written information to the Police, he had given the name of Alhamadin Miya, Aslam Miya and Mulazim Hussain but his evidence has been contradicted by the I.O. (PW-7) and he has stated that what has been stated by Md. Tahid, in the court as a witness, is not correct.

15. Md. Azad Khan (PW-7) is the I.O. of the case. He has given the description of the place from where the dead body of the deceased was recovered. He has stated that on 25.10.2021 he had recorded further statement of the informant and he has further stated that he had submitted the charge-sheet. This witness has proved his writing and signature on the charge-sheet. In his cross-examination, he has stated that the witnesses who were examined by him had not disclosed the name of the accused persons.

16. Dr. Arjun Kumar (PW-8) is the Doctor who



conducted autopsy on the dead body. He had found ten injuries on the dead body of Taimul Khatun, out of which five injuries were caused by sharp cuttings weapon. There were two wounds entry and exit wound which were caused by firearm. There was no sign of sexual assault on the dead body. Actual time could not be said by this witness but he said that the time range of death is between 25-30 hours. The postmortem was conducted on 16.08.2021 at 11.40 am.

17. The learned trial court having examined the evidences on the record found that according to PW-1, the motive behind the occurrence is that accused Aslam had illicit relation with his sister and when the deceased kept eye on her daughter, accused persons had threatened her. The other prosecution witnesses, including the informant, deposed that the deceased had lost her money. She had asked the accused persons to stop their way and upon this, the accused persons had threatened her. While PW-1 has stated that he had caught red-handed Aslam with his sister about 7-8 days prior to the occurrence but he had not reported it to the Police, the informant (PW-6) deposed that one day prior to the occurrence, money of his wife was lost, there was a quarrel in which abusing and *dhakka-mukki* had taken place between his wife and accused persons, leading to the threat given by the accused persons to his



wife. The learned trial court has found that different witnesses have deposed different reasons behind the occurrence.

18. We have carefully perused the prosecution evidences on the record and are of the considered opinion that the finding of the learned trial court on this issue is a correct view.

19. We have also found that the Police had called dog squad but it could not catch or smell anyone though the accused persons were present. Evidence has come that after 2-3 months, the informant and prosecution witnesses raised a doubt against the accused persons and with an understanding among the family members, the name of the accused persons was given in this case.

20. We find from the evidence of the I.O. (PW-7) that the informant (PW-6) had falsely deposed in course of trial and made certain statements which he had not made before Police in course of investigation. Similarly, the prosecution witnesses who are the family members of the deceased had not disclosed the name of the accused persons in course of investigation before PW-7. PW-2 has gone to the extent of saying that the name of the accused persons were given on the basis of suspicion and PW-3 has stated that the name of the accused persons were given with the agreement of the family members after 3 months and PW-4



has disclosed that the name of the accused persons were given on the basis of information given by one Kedar Singh of the village but the said Kedar Singh has not been examined and he never informed Police about his knowledge of the occurrence.

21. We are of the considered opinion that it is one of those cases in which the judgment of the acquittal recorded by the learned trial court needs no interference.

22. This appeal has no merit, it is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

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