

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.739 of 2017

Arising Out of PS. Case No.-5 Year-2015 Thana- MANSAHI District- Katihar

=====

1. Rahman Son of Late Idrish Ali,
2. Nasima Khatoon, W/o Rahman, Both are Resident of Village- Bhermara,
Masjid Tola, P.S.- Mansahi, District- Katihar.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

Legality and sustainability of conviction – incriminating circumstances appearing from the prosecution’s evidence shall be placed and pleaded in the statement recorded under section 313 of the Code of Criminal Procedure, 1973 - the victim’s husband was the first person who informed the victim’s brother about the occurrence and in telephonic information he made direct allegations against the appellants. Though he went hostile but his evidence is sufficient to prove the victim’s unnatural death by sustaining several injuries at the alleged place - Section 106 of the Evidence Act constitutes an exception to Section 101 of the Evidence Act – Appellants remained mum during trial to show that someone else other than them was/were involved in the alleged crime, so an inference of appellants involvement in alleged crime is drawn against them in the light of the provisions of Section 106 of the Evidence Act – the victim’s house and the appellants’ house have some porch and furthermore, they had tense relation with the victim and after her elimination, appellants would be benefited in respect of property matter of the victim which can be deemed the most credible reason on part of appellant to commit the murder of the victim.

Cases referred:

- i. (2021) 10 SCC 725 (Nagendra Shah vs. State of Bihar)

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.739 of 2017

Arising Out of PS. Case No.-5 Year-2015 Thana- MANSAHI District- Katihar

1.

Rahman Son of Late Idrish Ali,
2.

Nasima Khatoon, W/o Rahman, Both are Resident of Village- Bhermara, Masjid Tola, P.S.- Mansahi, District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s

:

Mr. Bhola Prasad, Advocate
Mr. Sanjeev Kumar Singh, Advocate

For the Respondent/s

:

Mr. Dilip Kumar Sinha, Addl. P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE SHAILENDRA SINGH)

Date : 17-02-2024

Heard Mr. Bhola Prasad, learned counsel appearing on behalf of the appellants and Mr. Dilip Kumar Sinha, learned Additional Public Prosecutor for the State.

2. The instant appeal has been directed against the judgment of Conviction dated 03.06.2017 and Order of Sentence dated 09.06.2017 passed by the learned Sessions Judge, Katihar in Sessions Trial No. 143/2015 arising out of Mansahi P.S. Case No. 05/2015 whereby and whereunder both the appellants have been held guilty for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code (hereinafter referred to as



‘IPC’) and accordingly the appellants have been convicted and sentenced to undergo rigorous imprisonment for life with a fine of Rs. 10,000/- and in failure to deposit the fine, they have been directed to further undergo additional simple imprisonment for a period of six months.

Prosecution Story:-

3. On 10.01.2015 in the morning, the informant, who is stated to be brother of the deceased, got the information through a mobile communication that his sister named Noor Jahan Khatoon (hereinafter referred to as ‘victim’) had been killed, thereafter he went to the place of occurrence and found his sister lying in dead condition and then he inquired into the matter of death of his sister from the victim’s husband named, Alauddin who told him that his wife, the victim, had been firstly tied to a pole and thereafter, assaulted by his brother Rahman and his wife Nasima Khatoon which resulted in death of the victim.

4. The informant recorded his *fardbeyan* (Exhibit ‘1’) describing the above allegations, on that basis the formal FIR bearing Mansahi P.S. Case No. 05/2015 was registered for the offences under Sections 342, 343, 324, 302 and 34 of IPC which set the criminal law in motion.



5. After the completion of investigation, the appellants were chargesheeted by the police for the offence under Section 302 read with 34 of IPC and the learned Magistrate took cognizance of the said offence vide order dated 30.03.2015 and thereafter, finding the case to be triable by the Court of Sessions, committed it to the Court of Sessions for trial.

6. The appellants stood charged for the offence punishable under Section 302 read with 34 of IPC that was read over and explained to them in Hindi to which they denied and claimed to be tried.

7. During trial, before the trial Court the prosecution examined the following witnesses:-

PW-1:- Md. Jakir Hussain

PW-2:- Md. Mustafa

PW-3:- Md. Alauddin

PW-4:- Md. Altaf Hussain

PW-5:- Dr. Tanvir Haider (Observer of the postmortem examination)

PW-6:- Md. Sanaullah (Brother-in-law of the deceased)

PW-7:- Binod Kumar Singh (The Investigating Officer)



PW-8:- Dr. Sushil Kumar Gupta (The Doctor who conducted the postmortem examination on the body of the deceased)

8. In documentary evidence the prosecution proved the following documents and got them exhibited as under:-

Ext.-1:- Signature of a witness on *Fardbeyan*

Ext.-1/1:- Signature of one Md. Sanaullah on *Fardbeyan*

Ext.-2:- Postmortem Report of the deceased

Ext.-2/1:- Signature of a witness on the Postmortem Report.

Ext.-3:- *Fardbeyan* by S.I. B.K. Singh

Ext.-4:- Formal F.I.R.

Ext.-5:- An endorsement on *Fardbeyan*

Ext.-6:- Memo of Arrest of accused Rahman

Ext.-7:- Memo of Arrest of accused Nasima Khatoon

Ext.-8:- Inquest Report's carbon copy

Ext.-9:- Forwarding letter for Viscera

Ext.-10:- Forwarding letter for Histopathological test

9. After the completion of prosecution's evidence, the trial Court recorded the statements of the appellants in which the main incriminating circumstance appearing against them from the prosecution's evidence was explained to them which was denied



by the appellants and they claimed themselves to be innocent but did not make any specific plea of defence while recording their statements under Section 313 of Cr.P.C.

10. The appellants produced and examined one witness namely, Mazarul Haque in their defence.

11. While convicting the appellants the learned trial Court mainly placed reliance upon the testimony of PW-3, PW-4, PW-6 and PW-8 and deemed the evidence given by non-official witnesses PW-4, PW-6 to be trustworthy and also took into account the medical findings given in the postmortem report regarding the cause of death of the deceased as being corroborative evidence to the prosecution's allegation.

Arguments advanced on behalf of the appellants:-

12. Mr. Bhola Prasad, learned counsel appearing for the appellants submits that in the instant matter there is no eye-witness of the alleged occurrence of murder, though, PW-3 is said to be an eye-witness but before the trial Court he did not give any evidence suggesting the involvement of the appellants in the alleged crime and he denied to have any knowledge of the culprits who were involved in killing the victim. It is further submitted that the informant is not an eye-witness and he levelled allegations in his *fardbeyan* mainly on the basis of the communication received by



him on mobile phone from PW-3 who was declared hostile, hence, the foundation of the prosecution's allegations remained unestablished. As per the allegation made by the informant, the victim was brutally assaulted by the appellants but the doctor, PW-8, who conducted the postmortem examination, opined the cause of death of the victim due to *Asphyxia* as a result of strangulation by ligature which is completely against the allegation of assault. The learned trial Court placed reliance upon the evidence of PW-6 while he was not a chargesheet witness, in fact the deceased committed suicide which gets support from the ligature mark found on her neck as per the postmortem report. It is further submitted that PW-1, PW-2 and PW-3 are said to be independent witnesses but they went hostile and their evidence do not help the prosecution but even then the learned trial Court placed reliance upon them. Learned counsel further submits that both the appellants are very old persons and they have served about seven years in jail.

Arguments advanced on behalf of the State:-

13. Mr. Dilip Kumar Sinha, learned APP appearing for the State submits that the instant matter relates to brutal murder which was committed by the appellants on account of a property dispute as the victim's husband is a blind person and in order to



grab the property of the victim's husband, the appellants firstly tied the victim to a pole inside their home and then badly assaulted her which resulted in her death and in this regard the external injuries found on the body of the victim described in the postmortem report are very relevant and before the trial Court the prosecution succeeded to prove the guilt of the appellants for the offences charged.

14. First of all we would like to discuss the evidence deposited by the main prosecution witnesses.

15. PW-1, Md. Jakir Hussain, who is said to be an eye-witness of the occurrence of assault allegedly committed by the appellants with the victim, went hostile and denied to have any knowledge of the occurrence and even did not remember to have recorded his statement before the police.

16. PW-2, Md. Mustafa, who is said to be the co-villager of the appellants, deposed that the victim Noor Jahan Khatoon had died, he saw the victim lying in dead condition in the house of her husband and the appellant Rahman is own brother of the victim's husband. He further deposed that a *Panchayat* meeting was held regarding the occurrence in which he also participated as a *Panch*. Though, this witness was declared hostile but his evidence is relevant to show that the victim died an unnatural death.



17. PW-3, Md. Alauddin is an important witness of the prosecution as according to prosecution story he was the first person who informed to the victim's brother about the commission of the alleged occurrence who lodged the FIR. Though, this witness was declared hostile but he proved the factum of unnatural death of the victim, who was his wife and in this regard his evidence goes in favour of the prosecution.

18. PW-4, informant, deposed that the FIR was lodged by him, on 10.01.2015 in the morning at 6:00 A.M., the victim's husband namely, Alauddin informed him through mobile communication that his sister i.e. victim had been brutally assaulted and then he (PW-4) asked his brother-in-law namely, Sanaullah to go at victim's house and told him that he was also coming and when he reached there, he saw his sister lying dead at her *sasural* and thereafter, he inquired into the matter from the victim's husband who then told him that the appellants firstly tied the victim to a pole and thereafter started assaulting her and he noticed some black spot at the neck of the victim. This witness further deposed that the appellants killed the victim in order to grab her property. He further deposed in the cross-examination that a land dispute between the victim's husband and the appellant (Rahman) had been running for past five years. From the evidence



of this witness, it is clearly evident that the victim was found lying in dead condition in the house of her husband having several injuries on her body and there was a property dispute in between the victim's husband and the appellants and the said dispute can be deemed to be the genesis of the occurrence.

19. PW-5, is said to be present at the time of postmortem examination at Sadar Hospital, Katihar that was conducted by Dr. S.K. Gupta (PW-8) and he was present as an Observer at the time of postmortem examination.

20. PW-6, Md. Sanaullah is the star witness of the prosecution as he is said to be an eye-witness of the alleged occurrence and he is brother-in-law of the informant. He deposed that on 09.01.2015, he went to the house of the victim and at that time, he found the victim cooking meal and then he was made aware by the victim that a piece of land measuring one *Bigha* had been given on contract farming by the victim, owing to that reason, a dispute arose in between the appellant Rahman and the victim. The witness further deposed that when he visited the house of the victim, the appellants came there and tied the victim to a pole and started assaulting her then he tried to stop them and asked them to hold a *Panchayat* meeting and thereafter, the accused fled away and after that he returned to his village. The witness deposed



in the cross-examination that his house is situated about four kilometers away from the house of the victim and he did not file any case regarding the incident which had taken place before him and nor informed his brother-in-law (Informant) about the said occurrence. From the evidence of this witness one thing is quite clear that there was some tension in between the victim and the appellants on account of the contractual farming of a *Bigha* land given by the victim.

21. In the instant matter the evidence of Investigating Officer, who was examined as PW-7, is very important particularly with regard to the place of occurrence. He deposed in the paragraph No. '8' of examination-in-chief that he inspected the place of occurrence and found that the place of occurrence was *Verandah (Portico)* of the house of the appellants and victim's husband, from this statement one thing is quite clear that the appellants and victim's husband are having same *verandah (Portico)*.

22. PW-8, Dr. Sushil Kumar Gupta conducted postmortem examination over the body of the deceased. He found the following external injuries on the body of the deceased:-

(i) Well defined linear ligature mark reddish black in colour 2 mm size running horizontally on the upper part of the



neck from level of back of angle of left mandible to the level of back of angle of right mandible.

(ii) An abrasion on the right forearm just above the wrist joint, 2 cm in size incircling the forearm merely completely.

(iii) Fracture of forearm bone right side.

(iv) One abrasion on the left forearm just above the wrist joint incircling the forearm 2 cm in size

(v) External genetalia.

PW-8 opined the cause of death of the deceased due to *Asphyxia* as a result of strangulation. The witness proved the postmortem report which was marked as Ext.-2.

23. The appellants produced one witness namely, Mazarul Haque in their defence who was examined as DW-1. He deposed that he knew the appellants, victim and victim's husband who is blind. He further deposed that the victim remained some unwell and he went to the house of the victim and saw her dead body but did not find any mark of injury over her body. The said statement is completely contradictory to the evidence given by the PW-8 as several injuries were found on the body of the deceased which were not disputed by the appellants.



Analysis:-

24. Heard both the sides and perused the evidences available on the case record of trial Court and also gone through the statement of the appellants.

25. The medical evidence given by PW-8 is sufficient to prove an unnatural death of the victim by sustaining several injuries. Altogether five external injuries were found on the body of the victim which suggest that she was brutally assaulted that resulted in several injuries to her. As per allegation made in the FIR, the appellants firstly tied the victim to a pole and thereafter assaulted her badly. The learned trial Court held the appellants guilty for the alleged occurrence and in result convicted them for the offence punishable under Section 302 read with 34 of IPC. Now, this Court has to decide the legality and sustainability of the appellants' conviction and find out whether the evidences adduced by the prosecution inspire confidence and are sufficient to justify the conviction of the appellants for the alleged offences for which they were charged.

26. As per the evidence of PW-4 and PW-6, there was not a good relation in between the victim and the appellants on account of a land dispute and for rebutting the said tense relation, no evidence was brought by the appellants except the examination of DW-1, who does not seem to be reliable as he made



contradictory statements regarding the presence of the injury marks over the body of the deceased as discussed above. The appellants did not succeed to elicit any fact from the cross-examination of PW-4 and PW-6 to rebut the inimical term which was between the appellants and the victim.

27. Admittedly, victim's husband is blind by birth and the victim was the person who controlled and managed all affairs of her house including the outside affairs, so one can easily get control over her property by eliminating her.

28. In the present matter PW-6 is a star witness of the prosecution as he visited the victim's house on 09.01.2015, just one day before the death of the victim. He deposed that the victim was preparing meal when he visited her house and she revealed that she had given her one *Bigha* land on contract farming which caused a dispute in between her and the appellants. He further deposed that when he was present at the house of the victim then suddenly the appellants came there and forcefully tied the victim to a pole and thereafter started assaulting her, he tried to stop them and persuaded them to hold a *Panchayat* meeting but thereafter the appellants fled away. He further deposed that the said incident was informed by him in his village and on next day he got a telephonic information that the victim had died. Though, as per the statement



made by this witness in the cross-examination he did not disclose the incident which had taken place on 09.01.2015 to the informant who happens to be brother-in-law of this witness but merely by this fact the evidence of this witness cannot be deemed to be unreliable as the incident was informed by him in his village. As per the statement made by this witness in the cross-examination, the house of this witness is situated just four kilometers away from the house of the victim. So it was very natural for him to go at the victim's house on hearing some tense atmosphere in between the appellants and the victim. The learned trial Court rightly placed reliance upon the evidence of this witness.

29. As per FIR, the victim's husband was the first person who informed the victim's brother about the occurrence and in telephonic information he made direct allegations against the appellants. Though he went hostile but his evidence is sufficient to prove the victim's unnatural death by sustaining several injuries at the alleged place.

30. As per the evidence of Investigating Officer (PW-7), the alleged incident of brutal *Marpit* took place in the *verandah* (Porch) of the appellants' house and in this regard the statement of PW-7 made in paragraph No. '8' of his examination-in-chief is relevant.



The victim's husband is blind by birth and there is no material or evidence to show any dispute between him and his wife (victim) so he had no reason to get his wife assaulted with the help of others. The appellants had sufficient opportunity to assault the victim as according to the evidence of investigating officer, the victim's house and the appellants' house have same porch and furthermore, they had tense relation with the victim and after her elimination, they would be benefited in respect of property matter of the victim which can be deemed the most credible reason on their part to commit the murder of the victim.

31. If the victim was assaulted by someone else other than the appellants then such incident and the details of the culprits must have come in the knowledge of the appellants. But in this regard no defence was taken by the appellants nor any statement was made by them to explain the incriminating circumstance appearing against them from the prosecution's evidences while recording their statement under Section 313 of Code of Criminal Procedure.

32. Hon'ble Apex Court in the case of **Nagendra Shah v. State of Bihar** reported in **(2021) 10 SCC 725** observed that *"Section 106 of Evidence Act constitutes an exception to Section 101 of the Evidence Act. Section 106 of Evidence Act will apply to*



those cases where the prosecution has succeeded in establishing the facts from which a reasonable inference can be drawn regarding the existence of certain other facts which are within the special knowledge of the accused. When the accused fails to offer proper explanation about existence of said other facts, the Court can always drawn an appropriate inference”.

33. In the instant matter, in view of the above discussed evidences it can be safely said that the prosecution succeeded in establishing the brutal assault committed upon the victim in the porch of the appellants’ house and tense relation in between the victim and the appellants on account of property dispute. If the victim was assaulted by someone else, then the appellants must have disclosed the details of such miscreants as it is not believable that some other person had assaulted the victim in the porch of the appellants’ house without their knowledge.

34. In the light of above discussed circumstances appearing against the appellants from the prosecution’s evidences, this Court forms the opinion that the appellants had tense relation with victim and they would be most benefited after the death of the victim as victim’s husband is blind and there was no one except the victim to manage all affairs of her house including property matters and it is not believable that someone else other than the



appellants had assaulted and killed the victim without the knowledge of the appellants because the place of occurrence is said to be the porch of the appellants’ house as per the evidence of I.O., who inspected the place of occurrence and the appellants remained mum during trial to show that someone else other than them was/were involved in the alleged crime, so an inference of appellants’ involvement in the alleged crime is drawn against them in the light of the provisions of Section 106 of the Evidence Act. The learned trial Court rightly convicted the appellants for the alleged offences for which they were charged and there is no infirmity and illegality in the Judgment and Order impugned, this Court finds no merit in this appeal, so it stands dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	26.02.2024
Transmission Date	26.02.2024

