

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3092 of 2017**

Arising Out of PS. Case No.-39 Year-2007 Thana- PRANPUR District- Katihar

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Bhaddo Mandal Son of Late Kishto Mandal Resident of Village-Surjana,
Police Station Pranpur, District Katihar Appellant

Versus

The State Of Bihar ... Respondent

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Appearance :

For the Appellant : Mr.Ajit Kumar Singh, Advocate
For the Respondent : Mr.Shyed A.Ahmad, Addl Public Prosecutor

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
C.A.V. JUDGMENT**

Date : 06-12-2021.

Heard learned counsel for the appellant as well
as learned counsel for the State.

2. This criminal appeal is directed against the judgment of conviction and sentence order dated 19.8.2017 and 22.8.2017 respectively passed by the Additional Sessions Judge cum Fast Track Court I, Katihar in Sessions Trial No. 56 of 2009/CIS No.(GR) No. 998 of 2007 by which the trial court has convicted the sole appellant under Section 306 of the Indian Penal Code and sentenced him to suffer eight years' rigorous imprisonment with fine of Rs.10,000/- and in default of payment of the fine the he has to undergo further imprisonment for the period of six months.

(3) P.W.10, Sagar Mandal, who is brother of the deceased, gave his *fard beyan* to the Sub Inspector, Panapur,



Katihar Police Station alleging therein that on 8.6.2007 at about 12 PM while he was at his house, all of a sudden he heard *hulla* that his sister Santoshi Kumari is lying dead in her house. Thereafter, he along with his mother Paro Devi (PW 8) reached her matrimonial house and found that his sister was lying dead in the Courtyard and on being asked, his brother-in-law Bhaddo Mandal (the appellant) told him that she committed suicide by hanging herself. Informant (PW 10) further alleged that he saw the deep black mark on the neck of the deceased. He has also alleged that his sister had been married with the appellant one year back and since then he was in the habit of assaulting her in the night after taking liquor and due to this they were not in talking terms. Informant (PW 10) doubted that his sister was strangled to death by the appellant and her mother and to give the colour of suicide, they hanged the dead body.

4. On the basis of the aforesaid fard beyan, Pranpur Police Station Case No. 39 of 2007 dated 8.6.2007 was instituted against the appellant and his mother under sections 302/34 of the Indian Penal Code. However, police after investigation submitted charge sheet No. 48 of 2007 dated 6.9.2007 for the offence under section 306 of the IPC. The court took cognizance of the offence and on 5.1.2009 the case was



committed to the Court of sessions.

5. In course of trial, prosecution examined, altogether, twelve witnesses. The prosecution got exhibited the signature of the then Officer in charge of the Pranpur Police Station on the formal *fard beyan* as *Exhibit-1*, signature of PW 2 Vijay Yadav on the *post mortem* report as *Exhibit-2*, signature of PW 3 Narain Parihar on the *post mortem report* as *Exhibit-2/1*, copy of *post mortem* report as *Exhibit 3*, signature of PW 10 Sagar Mandal on the *fard beyan* as *Exhibit-4*.

6. The statement of appellant was recorded under Section 313 of the Cr.P.C. in which he denied the prosecution story and claimed himself to be innocent. The trial court having considered the evidences available on the record convicted the appellant in the manner as stated above.

7. Learned counsel for the appellant assailed the impugned judgment of conviction and sentence order. He submits that the prosecution case is solely based on suspicion without any evidence to the effect that it was the appellant who instigated the victim to commit suicide. Learned counsel submits that in the case of abatement of suicide there must be proof of direct or indirect acts of incitement to the commission of suicide and only the fact that the husband treated the



deceased with cruelty, is not enough. He further submits that the case was initially instituted for the offence under sections 302/34 of the IPC, but police on going through the *post mortem report* and the supervision notes of the superior police officials during course of investigation, submitted charge sheet only for the offence under section 306 of the IPC. Even no charge was framed under section 306 of the IPC depriving the appellant of the opportunity to enter on his defence and disprove the presumption of suicide raised in the instant case under section 113A of the Evidence Act resulting in failure of justice. It is also the case of the appellant that the learned trial court has failed to appreciate the contradictory depositions of prosecution witnesses.

8. Per contra, learned counsel appearing for the State supported the impugned judgment of conviction and sentence order. He submits that there is consistency in the statements of prosecution witnesses on the point of abatement of suicide, as such, the trial court has rightly convicted the appellant for the offence punishable under section 306 of the IPC and there is no scope to interfere into the findings of the trial court.

9. In view of the rival contentions of the parties and on going through the Lower court records, I find that the doctor Dr.



Amar Kumar Deo (PW 13) who conducted post mortem report has supported the prosecution case. He has opined that the victim died of asphyxia caused due to hanging by neck. PW 8 Paro Devi mother of the deceased has also supported the prosecution case. She has stated that on hearing the information of death of her daughter, she had gone to the matrimonial house of her daughter. She saw the ligature mark on the neck of the deceased as well as wound mark on her back. PW 10, the informant has also supported the prosecution case. PW 11 Ram Swarup Paswan is the IO of the case. He has proved the place of occurrence. The testimonies of the aforesaid witnesses go to show that there is no variance in the testimonies of the aforesaid prosecution witnesses on the point of manner of occurrence and all the above stated witnesses have stated the manner of occurrence in which occurrence took place. Thus, the learned trial court has rightly convicted the appellant for the offence punishable under section 306 of the IPC.

10. So far as the quantum of sentence is concerned, admittedly, the appellant has suffered incarceration for more than 7 years including remission received from the Government, whereas the trial court has sentenced him to undergo rigorous imprisonment for 8 years and a fine of Rs.10,000/-. Since charge



proved against the appellant is of an abettor, this Court is of the view that if sentence is reduced to period already undergone that would meet the ends of justice.

11. With the aforesaid modification in sentence, this appeal stands dismissed.

12. Let appellant be set free forthwith, if not wanted in any other case.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
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