

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.25 of 2014**

Arising Out of PS. Case No.-40 Year-2011 Thana- KHARHAGPUR District- Munger

Md. Ziarul, son of Md. Abul, resident Of Village- Dariyapur, Police Station-
Kharagpur, District- Munger

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Abdul Manan, Adv

Mr. Binay Kumar, Adv

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

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

And

HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR)

Date : 04-04-2022

Heard the parties.

2. The appellant Md. Ziarul in this appeal has challenged the judgment of conviction dated 11th of December, 2013 and the order of sentence dated 12th of December, 2013 passed by the learned 1st Additional Sessions Judge, Munger in connection with Sessions Trial No. 554 of 2011, arising out of Kharagpur P.S. Case No. 40 of 2011.

3. By the aforesaid judgment dated 11th of December, 2013, the appellant has been convicted for



the offence punishable under Section 302 of the Indian Penal Code (for short I.P.C).

4. After hearing the convict on the point of sentence, vide consequential order dated 12th of December, 2013, the Trial Court sentenced the appellant to undergo imprisonment for life and a fine of Rs. 5000/- for the offences punishable under Section 302 of the Indian Penal Code and in case of default in payment of fine, further sentenced to undergo imprisonment for fifteen days.

5. The Sessions Trial in which the impugned judgment and order was passed relates to the First Information Report (in short 'F.I.R') that had been registered on 15.02.2011 in Kharagpur P.S. Case No. 40 of 2011 under Section 302 of the Indian Penal Code in respect of the incidence that had taken place at village Dariyapur.

6. The prosecution case recapitulated as hereunder is based on the fardbeyan of Md. Mannan Sah



(P.W. 10), grand-father of the victim who has stated that his grand-daughter namely Sajda Khatoon was married with the appellant eight years prior to the date of occurrence according to the muslim rites and customs. The bride-groom lived happily for about four years but thereafter a dispute arose between them which was being compromised by a panchayati. On 14.02.2011, the maternal aunt of the deceased namely Rukhsana Khatoon (P.W 2) who was also residing in the same village had informed the informant that his grand-daughter has died. On receiving such information, the informant reached at the village Dariyapur along with Md. Israil (not examined), Aziz Sah (not examined) and Md. Maneer (P.W 5). The informant has been informed by the co-villagers that his grand-daughter has been killed by her husband, the appellant of this case on 14.02.2011 at about 4:00 A.M by strangulating her neck and he has fled away with his six years old son after committing the occurrence. The victim was pregnant.



The informant claims that in the background of some earlier dispute, his grand-daughter has been killed.

7. Mr. Md. Mozammil (not examined), P.S.I of P.S. Kharagpur has recorded the fardbeyan of the informant on 15.02.2011 at about 12:30 P.M. at Village-Dariyapur. Thereafter, a formal F.IR was recorded and investigation was accordingly initiated.

8. After completing the investigation, charge-sheet has been submitted against the appellant after finding the case true against him. Thereafter, the case was committed to the Court of Sessions for trial and disposal. The charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried. His defence is that he has falsely been implicated in this case and the occurrence did not take place in the manner as alleged by the prosecution.

9. After hearing the parties, learned Trial Court concluded that appellant Md. Ziarul has committed murder of his wife Sajda Khatoon. Accordingly, the



appellant was convicted and sentenced as indicated in the opening paragraph of the judgment.

10. We have heard learned counsel for the appellant as well as learned A.P.P for the State.

11. It is submitted by learned counsel for the appellant that most of the P.Ws are not the eye witnesses to the occurrence as they themselves have stated that they all have heard that appellant had killed his wife Sajda Khatoon and when they went to the house of the appellant they had seen the dead body of the victim lying at the verandah of the house of the appellant. All the witnesses have not seen the actual killing but had only heard that the deceased who was wife of the appellant was killed by the appellant, they should be treated as hearsay witnesses and their evidences should not be relied for convicting the appellant on the charge of murder of his own wife. It is further submitted that the victim died due to falling from the ladder.



12. The further submission of the learned counsel for the appellant is that the Doctor (P.W. 4) who has conducted the autopsy of the victim, in his cross-examination has stated that both wounds may be caused due to falling on the earth. It is also submitted that it is the settled principle of law that the prosecution must prove and establish its case on its own evidence and that too beyond shadow of reasonable doubts. In this case, there is no evidence either direct or indirect to prove that it was the appellant who had throttled the deceased. Therefore, it shall not be safe to come to a finding that the appellant was the author of the murder. As regards, the findings of the learned Trial Court itself do not not rely upon the direct evidence and so conviction is based on circumstantial evidences only.

13. The other contention of the learned counsel for the appellant is that the circumstance considered by the learned Trial Court was only that the deceased was wife of the appellant and she was found



dead at the verandah of the appellant. It will not lead to a conclusion that it was the appellant being husband who had committed murder.

14. As against this, learned A.P.P for the State contends that though there is no direct evidence to prove and establish the prosecution case, there are such circumstances so as to complete the chain of events indicating that appellant had committed murder in the manner as alleged.

15. To substantiate the charge levelled against the accused, altogether eleven witnesses have been examined on behalf of the prosecution.

16. P.W. 1, Md. Kalam Hussain is the co-villager who has been examined as an independent witness. He has identified his signature on the inquest report which has been marked as Ext-1. He claimed that he had no knowledge about the occurrence and he had heard about the occurrence to someone. He is not an eye witness to the occurrence.



17. P.W. 2 Rukhsana Khatoon is the maternal aunt of the victim and resides in the village of the deceased. She had informed the informant about the murder of his grand-daughter. During cross-examination, she has denied to have explained the manner of committing death of the deceased Sajda Khatoon. It would be proper to mention that this witness is close relative of the deceased and she may be a star witness to through the light about the alleged occurrence. It transpired from her evidence that she is not the eye witness to the occurrence and she narrated about the occurrence on the basis of hearsay.

18. P.W. 3 Mr. Munna is the unfortunate father of the victim girl. He has stated in his evidence that on reaching at the place of occurrence in village Dariyapur, he saw that his daughter was lying dead and blood was oozing from her nose. He also found a mark on the neck of the deceased. He suspected that the deceased might have been killed by throttling. He has



stated in his evidence that his relationship with his son-in-law, the appellant was not cordial for the last 3-4 years and this might be a reason for killing of his daughter by the appellant. He is also not an eye witness to the occurrence.

19. P.W. 5 Md. Maneer Sah, P.W. 6 Sabeena Khatoon, P.W. 7, Saibun Nisha, P.W. 8, Bano Khatoon, P.W. 9, Julekha Khatoon and P.W. 11 Shakeela Khatoon are the relatives and interested witnesses who stated about the occurrence on the basis of hearsay.

20. P.W. 10 Md. Mannan is the star witness of the prosecution in respect of this occurrence. He is the informant and unfortunate grand-father of the deceased. He has stated about the occurrence that he came to know about the death of his grand-daughter through a mobile call. On receiving such information, he reached at the matrimonial house of his grand-daughter of Village-Dariyapur and saw the dead body of his grand-daughter. He saw that the dead body was lying in the verandah.



He has stated that he is not the eye witness to the occurrence.

21. P.W. 4 is Dr. Vijay Kumar who conducted the autopsy of the victim and found following antemortem injuries on the body of the deceased:-

"1. Externally there was abrasion with bruise three in numbers seen in (Lt) side of the neck in arterial triangle. Size 1" x 1", 1/2".

(Lt) side of the mandible 3" below the (Lt) ear to be size 1/2" x 1/2" caused by finger pulp and nail.

2. Open mouth

Tangle protruded & clench between tooth.

3. UT-Gravid

16 WK-20 WK

Pregnancy, male child seen.

3. Cause of death in my opinion due to Vasovagal attack due to throttling.

Time since death within 24 hours."

22. This witness in his cross examination has stated that both the injuries were simple in nature and may be caused due to falling on the earth.

23. It would be proper to mention here that the Investigating Officer of this case was not examined in spite of taking all efforts by the learned Trial Court.



Due to non-examination of the I.O., the defence became prejudiced.

24. It is the admitted fact that the death of the deceased was unnatural. It is also the admitted fact that all the prosecution witnesses who adduced their evidences to support the prosecution case are interested witnesses and are related with the deceased and the informant who are not the eye witness to the occurrence and their evidences are based on hearsay.

25. Now, we shall proceed to take into consideration the nature of evidences brought on record and see whether the evidence brought on record prove and establish the charge levelled against the appellant beyond shadow of reasonable doubts or not.

26. It is evidently clear that all the witnesses examined by the prosecution are not the eye witnesses to the actual killing and their versions cannot prove and establish that it was the appellant who had committed murder of his own wife. It is also evidently clear from



the impugned judgment that the learned Trial Court though did not find direct evidence on record to prove and establish the prosecution case, its conviction is based on circumstantial evidences which, according to him were (i) dead body of the deceased was found lying in the house of the accused (ii) the deceased died on account of antemortem injuries and (iii) the accused Md. Ziarul was not present there just after the occurrence.

27. It is a well settled principle of law that when a case rests upon circumstantial evidence alone to base conviction, such evidence must satisfy that circumstances from which an inference of guilt is sought to be done must be cogently and firmly established, such a circumstances should be of definite tendency unerring pointing towards guilt of the accused, the circumstances, taken cumulatively should form a chain to complete that there is no escape from conclusion that within all human probabilities, the crime was committed by the accused and none else and the circumstantial evidence in order to



sustain conviction must be completed and incapable of explanation and any other hypothesis of the guilt of the accused and such evidence should not only be consistent with the guilt of the accused but should be inconsistent with his innocence.

28. In this case, the P.W.s deposed that there were many occasions to quarrel between the deceased and the appellant on account of trivial matters. In this respect, a panchayati was conducted but there was no consistent evidence about the conflicts between couples and conflicts were happened when and where.

29. It is well settled principle that the prosecution has to stand its own legs and it cannot rely on weakness if any in the defence. The provision of Section 106 of the Indian Evidence Act has no application to the facts of the instant case because initially the burden of proving the facts that appellant had committed murder of his wife is not discharged by the prosecution. Section 106 of the Indian Evidence Act



cannot be attracted unless the initial burden of establishing the guilt of the accused is *prima facie* discharged by the prosecution. If we see evidence of the prosecution then it is clear that there is no evidence to prove that the appellant was seen at any time before or at the time of incidence or after the incidence at the place of occurrence where the place of occurrence is of easy access to the public. The evidence regarding presence of the appellant on the scene of the occurrence is totally missing and therefore in absence of any *prima facie* evidence against the appellant under Section 106 of the Indian Evidence Act, it has no application in the instant case. Mere absconding of the accused cannot form the fulcrum of a guilty mind in murder cases.

30. On a careful consideration of the evidences brought on record, arguments of the learned counsel for the appellant as well as learned A.P.P for the State, we are of the view that prosecution miserably failed to prove and establish the charge levelled against the



appellant beyond shadow of reasonable doubt.

Therefore, this appeal appears to have merits.

31. In the result, this appeal is allowed.

32. The judgment of conviction dated 11th of December, 2013 and the order of sentence dated 12th of December, 2013 passed by the learned 1st Additional Sessions Judge, Munger in connection with Sessions Trial No. 554 of 2011, arising out of Kharagpur P.S. Case No. 40 of 2011 is quashed and set aside.

33. The appellant is acquitted of the offence punishable under Section 302 of the Indian Penal Code and he is directed to be set free forthwith.

34. Since the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case.

(Sunil Kumar Panwar, J)

A.M. Badar, J

(A.M. Badar, J)

Shageer/-

AFR/NAFR	NAFR
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