

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.169 of 1992

Arising Out of PS.Case No. – 108 Year- 1989 Thana - Barahara (Krishna Garh)
District- BHOJPUR

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Md.Jumadin @ Jumadin Mian, son of Md. Abdul Gaffar, resident of village-
Gundi, P.S.- Krishnagarh, District- Bhojpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Shri N. A. Shamsi, Adv.
: Shri S. Ehteshamuddin, Adv
For the Respondent : Shri Abhimanyu Sharma, APP.

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA
and
HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL ORDER

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 27-11-2014

Heard both the parties.

2. This appeal arising out of judgment of conviction and order of sentence dated 14.05.1992 passed by learned 6th Additional Sessions Judge, Arrah, Bhojpur in Sessions Trial no.36 of 1990 has to be allowed on the very evidence of the prosecution itself.


3. The prosecution case was that the deceased, who happened to be the wife of the informant Md. Usman, was keeping a watch on an orchard. Her meal used to be carried by her daughters and on the day of incident, her daughters who were examined as P.Ws.1 and 2, namely, Chandtara and Shamsun, had started from their house with the meals for their mother. When they reached the orchard, they found that their mother had been murdered and her

body was lying in a pool of blood. They rushed back to the house to inform their father P.W.3 Md. Usman, who lodged the report and on that basis, the investigation was taken up.

4. The dead body was sent to Dr. Akhauri Kailash Bihari, P.W.5 for autopsy and, as may appear from his evidence, he found a solitary ante-mortem wound of the following description : “An incised wound 4” x 1 ¼” x bone deep over the right side and front of neck extending from below the right ear to the front of the neck”.

On dissection, the doctor found all the deeper structures, like, major blood vessels, muscles, nerves, etc. cut with clots present in the wound. The other organs, like, lungs, heart were found normal. The uterus was found small and non-gravit. The death in the opinion of P.W.5 was on account of the injury which was caused by some sharp cutting weapon, may be, a Pasuli and further that the injury was sufficient in the ordinary course of nature to cause death.

5. There was a solitary question put to the doctor in cross-examination as to whether the injury could have caused the death instantly and his reply was in the affirmative. Thus, it was beyond pail of any doubt that the deceased could have made no statement to anybody and that appears the only probability also. If one could have considered the evidence of P.W. 1 Chandtara he could find her stating that when he reached into the orchard with



meals consisting of bread, vegetables and milk, she found her mother in a pool of blood and she was already dead. It has come in the evidence of the same witness P.W.1 that the distance between the place of occurrence and her house was one Kosh, i.e., about two miles. If the lady was already dead and the witnesses, like, Chandtara and her sister Shamsun were returning back to their house to inform their father about the incident of murder of their mother, it appears not acceptable that Md. Usman, the informant, could have revived the dead body by simply dropping a few drops of milk in the mouth of the dead body to make her mumble a few words, like, it was stated by him before the court. P.W.3 stated that the lady mumbled that she had been slit at her throat with the use of a weapon by the present appellant.

6. We have already referred to the evidence of P.W.1, the daughter of the informant, and the First Information Report was the version which was narrated by P.W.1 and P.W.2 to their father. They do not say that any drop of milk was dropped into the mouth of the deceased which revived her to mumble a few words. The above evidence of P.W.3 also appears absurd and not acceptable in view of the very evidence of his daughters that when they reached they had found their mother already dead. The doctor was also very categorical in stating to the court that the injury of the nature which was found by him could have caused instantaneous death.

7. Regarding being had to the nature of evidence, we find that the story which was propounded by the prosecution that the deceased had made a dying declaration regarding the cause of her death, appears an absurdity which could not be acted upon for convicting the appellant of an offence under Section 302 of the Indian Penal Code. The very circumstances upon which a dying declaration could be relied upon, like, the deceased was not mentally or physically fit to make a statement itself rules out accepting the statement as the oral dying declaration of the lady and, in our opinion, the judgment of conviction and order of sentences passed upon the appellant was against the weight of evidence which are available on record.

8. In the result, the appeal succeeds. The judgment of conviction and order of sentence passed upon the appellant is hereby set aside. He is acquitted of the charge, he had been found guilty of. The appellant is on bail. He need not surrender to his bond.

(Dharnidhar Jha, J)

V.K. Pandey / Kanchan

(Amaresh Kumar Lal, J)

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