
(2002) 05 PAT CK 0059
In the Patna High Court
Case No : Criminal Appeal No. 49 of 1996

Arun Kumar Sharma

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-05-2002

Acts Referred:

Citation : (2002) 05 PAT CK 0059

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Arun Kumar Sharma Vs. State of Bihar, (2010) CriLJ 428 : (2009) 2 DMC 826 : (2009) 13 JT 88 : (2009) 13 SCALE 124 : (2010) 1 SCC 108 : (2009) 14 SCR 1023 : (2010) 1 UJ 132

B.K. Jha, J.—This appeal arises from the judgment of the learned Additional Sessions Judge-Ist, Munger dated 11.12.1995 passed in Sessions Case No. 554 of 1994 whereby the sole appellant has been convicted u/s 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life.

2. The case of the prosecution as contained in the fardbeyan (Ext. No. 3) of the informant, Leeladhar Pradhan is that his daughter Smt. Shushma Devi was married with the appellant Arun Kumar Sharma, son of Sitaram Sharma of Pachna Road, Lakhisarai Bazar, District Munger about four years back to the occurrence. After marriage this appellant started putting pressure upon her to bring one motorcycle and one colour T.V. from her father and used to threaten oust her from the house in case of non-fulfilment of dowry demand. Whenever the daughter of the informant used to visit the house of the informant she complained about the dowry demand and her torture at the hands of her husband-appellant and in-laws, Sitaram Sharma and Gayatri Devi. About 8-9 months before the occurrence deceased Shushma Devi was brutally assaulted by them for non-fulfilment of their dowry demand for which a panchaiti was convened in which the informant expressed his inability to fulfil their dowry demand.

The further case of the prosecution is that on 17.6.1994 at about 6 a.m., Anil Kumar Pradhan P.W. 1, son of the informant Leeladhar Pradhan, visited the place of his sister along with some articles. He noticed there that the appellant-husband, father-in-law, Sitaram Sharma and mother-in-law, Gayatri Devi were assaulting his sister, Shushma Devi brutally and this appellant was pressing her neck and after few moments his sister died. Thereafter, Anil Kumar Pradhan, P.W. 1, rushed to his house by raising halla and narrated the whole incident of murder of his sister. The informant along with his wife went to his daughter's place and saw the dead body of his daughter lying in the baramdah inside the house and the villagers were present there.

3. On the same day, i.e. 17.6.1994 at 9 p.m., a telephonic information in this regard was received at Lakhisarai P.S. On the basis of the information received Station Diary Entry No. 516 (Ext. No. 5) was made. Thereafter the Officer Incharge of Lakhisarai P.S., Devanand Prasad, P.W. 7 along with Sub-Inspector of Lakhisarai P.S., Pradip Narayan Singh P.W. 5, the I.O. of this case and others went to the place of occurrence. The fardbeyan (Exb No. 3) of the informant Leeladhar, Pradhan, P.W. 4 was recorded on the basis of which a formal F.I.R. (Ext. No. 7) was drawn up and a case under Sections 304(B), 498(A)/34, I.P.C. was instituted against the three accused persons, namely Arun Kumar Sharma, the husband-appellant of the deceased, father-in-law Sitaram Sharma and mother-in-law Gayatri Devi. The investigation of the case was entrusted to P.N. Singh, SI of Lakhisarai P.S., P.W. 5. Thereafter police held inquest on the dead body of the deceased Shushma Devi and accordingly inquest report (Ext. No. 8) was prepared. Thereafter the dead body was sent for post-mortem examination and on 18.6.1994 an autopsy was held by P.W. 2, Dr. Dharm Nath Choudhary. The police received the post-mortem report (Ext. No. 1).

4. On completion of investigation, the I.O., P.W. 5, Pradeep Narayan Singh charge-sheeted all the three accused for trial under Sections 304B and 498A/34, I.P.C. Accordingly cognizance was taken and the case of all the three accused was committed to the Court of Sessions for trial. Ultimately, the charges under Sections 302 and 302/34, I.P.C. were framed against the accused-appellant Arun Kumar Sharma and all the accused three persons respectively and all were tried for the charges framed against them.

5. The trial Judge convicted the appellant u/s 302, I.P.C. and awarded life sentence. He acquitted rest two accused, Sitaram Sharma and Gayatri Devi of the charge framed against them.

6. The defence of the appellant is a plea of innocence and false implication. His specific defence is that a few days before her death the deceased Shushma Devi had entrusted her all ornaments to her father, the informant Leeladhar Pradhan P.W. 4, for safe custody who in turn utilised her ornaments in his business. Thereafter on repeated demand for the return of ornaments her father did not return and so she committed suicide by hanging herself with fan.

7. In the eventual trial, prosecution has examined altogether 8 witnesses. P.W. 1 Anil Kumar Pradhan, son of the informant Leeladhar Pradhan, P.W. 4 is the sole eye-witness to the occurrence, P.W. 2 is Dr. Dharm Nath Choudhary who conducted post-mortem examination on the dead body of the deceased Shushma Devi, P.W. 3 is Om Prakash Vidyalkar. He has stated that on 17.6.1994 he learnt about the occurrence from P.W. 1 Anil Kumar Pradhan. Then he went at his house and from there he along with Anil Kumar Pradhan, P.W. 1 and his parents came at the place of occurrence and saw the dead body of Shushma lying there. The villagers were also present there. At about 9 p.m. police came there, prepared inquest report and he along with one Shrawan Kumar put signatures (Ext. Nos. 2 and 2/1). P.W. 6 Bipin Bihari Prasad, the then A.S.I, of Lakhisarai P.S. is a formal witness and has proved fardbeyan of the informant and inquest report of the deceased Shushma Devi (Ext. Nos. 3 and 8 respectively). P.W. 8 Suresh Prasad is also a formal witness and has proved marriage invitation card of the deceased Shushma Devi (Ext. No. 9).

8. P.W. 4 Leeladhar Pradhan, the informant, the father of the deceased Shushma Devi, supporting the averments made in his fardbeyan (Ext. No. 3) in toto has stated that on 17.6.1994, his son Anil Kumar Pradhan, P.W. 1 at about 6 a.m. visited the place of his sister along with some articles. Just after 30-45 minutes he came back and informed him that the appellant, father-in-law Sitaram Sharma and mother-in-law Gayatri Devi assaulted brutally to his sister and the appellant Arun Kumar Sharma pressed her neck and she died. On receipt of this information, he along with his wife, his son Anil Kumar Pradhan, P.W. 1 and Om Prakash Vidyalkar, P.W. 3 went at the residential place of the appellant and found the dead body of his daughter lying in the Baramdah inside the house. The villagers were also present there. At about 9 p.m. police came and Devanand Prasad, A.S.I. Lakhisarai P.S. recorded his statement (Ext. No. 3) and he along with witnesses, Om Prakash Vidyalkar P.W. 3, Kanhaiya Lal Dalmiya and Raj Kumar Singh signed the fardbeyan. He has further stated that he also made a Protest Petition owing to dormant activity and investigation on the part of the police. He has proved his signature on the Protest Petition (Ext. No. 2/2). He has further stated that the Officer Incharge recorded his further statement.

9. P.W. 1 Anil Kumar Pradhan, son of the informant Leeladhar Pradhan, P.W. 4, is the sole eye-witness to the occurrence. His evidence is that his sister Shushma Devi was married with the appellant on 20.11.1989. On 17.6.1994 he went to his sister's place with some articles and he noticed that the appellant, Arun Kumar Sharma and her father-in-law Sitaram Sharma and mother-in-law Gayatri Devi were assaulting his sister with slaps and the appellant was pressing her neck. She fell down and he rushed towards his house raising alarm. On way he met Om Prakash Vidyalkar P.W. 3 and told him about the occurrence. He came to his house and narrated about the entire occurrence to his parents who in turn went to the place of occurrence. In the night about 9.30 p.m. police recorded the fardbeyan of his father, prepared the paper of the dead body and also took down his statement.

10. P.W. 2 is Dr. Dharm Nath Choudhary who held post-mortem examination on the dead body of Shushma Devi on 18.6.1994 at 3 p.m. and found the following ante-mortem injuries on her person :

(i) Multiple bruises over front of neck varying in sizes $3/4''$ - $1/2''$ x $1/4''$.

(ii) On dissection ecchymosis was found present. There was extravagation of blood in the soft tissues of neck with fracture of hyoid bone of trachea.

In his opinion the death was due to asphyxia as a result of above injury due to forceful pressure over the neck. He further found the time elapsed since death was 36 hours. According to him the said injury on neck is possible only if the neck is pressed by hands. He has proved post-mortem report (Ext. No. 1). In cross-examination he has stated that he did not find any injury on other portion of the body except injury mentioned in the post-mortem report. He has further stated that trachea was not found disturbed. Tongue was not found protruded. Eye balls were also not found protruded. According to him such injury is not possible in case of suicide by hanging. In the present case, there was no ligature mark and hence case of hanging is ruled out. He has further stated that such bruises are not possible if the victim hangs herself by a rope.

11. P.W. 5 Pradip Narayan Singh, the then A.S.I, of Police Lakhisarai P.S. is the I.O. of this case. His evidence is that after making S.D. Entry No. 516 dated 17.6.1994 by the literate Constable, Maheshwari Mandal (Ext. No. 5) he along with other police officials went to the place of occurrence. There the Officer Incharge of Lakhisarai P.S., Devanand Prasad recorded the fardbeyan of the informant Leeladhar Pradhan, P.W. 4 (Ext. Md. 3) which also bears his endorsement (Ext. No. 6). On the basis of fardbeyan a formal F.I.R. was drawn up (Ext. No. 7) and he was entrusted with the investigation of this case. Thereafter inquest report of the dead body of Shushma Devi was prepared by B. Prasad, A.S.I. of Lakhisarai P.S. (Ext. No. 8). He inspected the P.O. and recorded the statements of other witnesses, namely Om Prakash Vidyalankar P.W. 3, Shrawan Kumar and Anil Kumar Pradhan, P.W. 1. After investigation of the case, he submitted the charge-sheet. In cross-examination he has deposed that the S.D. Entry number in question does not contain the name of the informer nor the name of the police officer who had received the telephonic information.

12. P.W. 7, Devanand Prasad, the then Officer Incharge of Lakhisarai P.S. has stated that on 17.6.1994 at 21 hours a telephonic information was received at the police station that a dead body of a woman alleged to have been murdered by Strangulation was lying on Pachana Road Mohalla, Lakhisarai with a request for immediate action. On receipt of the information S.D. Entry No. 516 was made by the literate Constable, Maheshwari Mandal. He along with other police officials arrived at the place of occurrence and the fardbeyan of the informant Leeladhar Pradhan, P.W. 4 was recorded by ASI V.V. Prasad on his dictation and was signed by the informant (Ext. No. 2/3). Thereafter inquest report was prepared on his dictation by V.V. Prasad (Ex. No. 8). He has further stated that reddish marks

were visible on the both sides of the neck of the deceased and Pradip Narayan Singh, P.W. 5 was entrusted with the investigation.

13. On the other hand, defence in support of his case, examined two witnesses, namely D.W. 1 Veena Devi and D.W. 2 Narmada Devi. D.W. 1, Veena Devi has stated that on 17.6.1994 at about 8 a.m. she had gone to the house of the deceased, talked and had taken tea together. In cross-examination she has stated that on 17.6.1994 at about 3 p.m. police has come at the house of the accused, she went there and found the dead body of Shushma lying, having no injury on her person. D.W. 2 Narmada Devi, the maternal grandmother of the accused-appellant Arun Kumar Sharma, has stated that on the fateful day she had gone to the house of the appellant, the deceased Shushma had provided her husband with breakfast and sent her husband on duty. Thereafter she cooked meal and after taking bath she went inside her room along with her son. She bolted the door. On hearing the crying of the son of the deceased she requested her to open door but of no effect. She raised alarm whereupon two persons came, pushed the door as a result of which Chhitkni of the door was broken and the deceased was found hanging with fan. She has further stated that ornaments taken by her father were not returned to her on demand, so she committed suicide.

14. As stated above, the prosecution rests on the sole testimony of P.W. 1 Anil Kumar Pradhan, who is eye-witness to the occurrence. His evidence is that on 17.6.1994 at about 6 a.m. when he visited the house of her sister with some articles he saw the appellant strangulating her neck as a result of which she died. He returned back to his house and narrated about the occurrence to his parents and Om Prakash Vidyalkar P.W. 3. The murder of Shushma Devi by strangulating also finds support from the medical evidence of Dr. D.N. Choudhary, P.W. 2. He found multiple bruises over the front of her neck varying in sizes 3/4" - 1/2" x 1/4". According to him all these injuries were possible if the neck is pressed by hand. On dissection he found ecchymosis as well as extravagation of blood in the soft tissues of neck with fracture of hyoid bone of her trachea. According to him the death was due to asphyxia as a result of above injuries due to forceful pressure over the neck. He has further clearly stated that tongue was not found protruded, eye-balls were also not found protruded and such type of injury was not possible in case of hanging. He has further stated that there was no ligature mark on the neck of the deceased so it was not a case of hanging.

15. It may be pointed out here that in case of hanging ligature mark assumes the highest position immediately. But in case of strangulation ligature is not so suddenly applied as in hanging. In the present case, the Doctor did not find any sign of ligature on the deceased Shushma Devi. Further on visit of the P.O., the I.O. did not find any objective finding. The Chhitkni which is alleged to have been broken at the time of the opening of the door was not found as such by the I.O. Further, the two persons, namely Biltu Mandal and Rarn Bilash, resident of

Pachna Road, Lakhisarai who broke open the door and witnessed the dead body of Shushma Devi have not been examined by the defence. Further, the defence version that the father of the deceased Shushma Devi did not return her ornaments and so she committed suicide has not come in the statement of the appellant recorded u/s 313, Cr.P.C.

16. Learned Counsel for the appellant contended that there is inordinate delay of more than 15 hours in lodging the First Information Report. The occurrence took place at about 6 a.m. on 17.6.1994 and F.I.R. was lodged on the same day at 9.30 p.m. while the P.O. was situated at the distance of only two and half kilometres from the police station for which no explanation has been given. In this connection, he has placed reliance on the case of Ronal Kiprono Ramkat Vs. State of Haryana, wherein "due to delay in lodging the F.I.R., the case was not found proved".

17. It has come in the evidence that when P.W. 1 Anil Kumar Pradhan informed the informant Leeladhar Pradhan P.W. 4, about the murder of his daughter, he along with other, came at the place of occurrence, saw the dead body of his daughter. It is in that state of mental agony he failed to put the law in motion immediately. In the absence of plausible explanation for this the prosecution case cannot be doubted.

18. Learned Counsel for the appellant further submitted that there is inordinate delay of five days in sending First Information Report to the Magistrate and for which there is no explanation. In this connection he has placed his reliance on the case of Jang Singh and Others Vs. State of Rajasthan, wherein "delay of three days in sending F.I.R. to the Magistrate without explanation has been held to be fatal".

19. In this connection, I refer the case of State of U.P. v. Gokaran & Ors., reported in AIR 1985 Supreme Court 131, wherein their Lordships have held that "Where the steps in investigation by way of drawing inquest report and other panchnamas started soon which would only follow the handing over of F.I.R., the delayed receipt of special report, by the District Magistrate could not enable the Court to dub the investigation as tainted nor could the F.I.R. be regarded as antetimed and ante-dated".

20. Having regard to the above discussions we are of the view that prosecution has succeeded to establish beyond reasonable doubts the guilt of the appellant. The order of conviction and sentence passed by the learned trial Judge requires no interference.

21. In the result this appeal is dismissed and the order of conviction and sentence passed by the trial Judge against the appellant Arun Kumar Sharma is confirmed.

Narayan Roy, J.

22. I agree.