

(2023) 09 PAT CK 0001

In the Patna High Court

Case No : Criminal Appeal (DB) No. 52, 248 Of 2018

Girja Chaudhary

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 01-09-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 120B, 302
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 106

Citation : (2023) 09 PAT CK 0001

Hon'ble Judges : Sudhir Singh, J;Chandra Prakash Singh, J

Bench : Division Bench

Advocate : Bipin Kumar, Ajay Kumar Sinha, Abhimanyu Sharma

Final Decision : Dismissed

Judgement

1. The criminal appeals arise out of common judgment of conviction dated 30.11.2017, and the order of sentence dated 06.12.2017, hence they have been heard together and are being disposed of by this common judgment.

2. Both the criminal appeals have been preferred against the judgment of conviction dated 30.11.2017 and the order of sentence dated 06.12.2017 passed by Sri Sachchida Nand Singh, Additional District and Sessions Judge 1st, Gaya in Sessions Trial No.60 of 2016 (S.J.)/ 34 of 2016 arising out of Wazirganj P.S. case No.357 of 2015, whereby and whereunder the appellants of both criminal appeals have been convicted under Sections 302/34 of the Indian Penal Code (referred to 'I.P.C.') and have been sentenced to undergo rigorous imprisonment for life with fine of Rs.10,000/-each for the offence under Sections 302/34 of I.P.C. and in default of payment of fine, further undergo rigorous imprisonment for six months. The appellants have further been sentenced to undergo rigorous imprisonment for life for the offence under Section 120(B) of I.P.C. Both the sentences have been directed to run concurrently.

3. The prosecution case, as per the written report of informant Kedar Chaudhary

(PW1) recorded by S.I. Santosh Kumar, Wazirganj P.S. on 25.08.2015 at about 5:45 a.m. at Pranpur village near dead body of deceased in the house of accused Girja Chaudhary, in which the informant stated that he performed marriage of his youngest daughter, namely, Munni Devi with Satendra Chaudhary son of Girja Chaudhary of village Pranpur, P.S.Wazirganj, District Gaya about 20 years ago. After marriage, his daughter Munni Devi was residing with her husband in matrimonial house and from wedlock his daughter blessed with a son, aged about 10 years. His daughter has a Nanad, namely, Rubi Devi, wife of late Vinod Chaudhary, village Dadha, P.S. Fatehpur, District Gaya. Father-in-law of his daughter wanted to give landed property and house to his daughter Rubi Devi. So daughter of informant always protested this transaction. So Girja Chaudhary, Rubi Devi and her in-laws used to torture and beat the daughter of informant and they threatened to kill her and after assaulting ousted her from the matrimonial house. His daughter Munni Devi complained this matter to him. It is further alleged that on 24.08.2015, his son-in-law Satendra Chaudhary and his Nati, namely, Nigam Kumar came at his village for taking scholarship and his daughter Munni Devi was residing in her matrimonial house at village Pranpur alone. On 24/25.08.2015 in the night at about 12/01 O' clock, father-in-law of his daughter, namely, Girja Chaudhary gave message by mobile phone that theft took place in his house and his daughter was murdered by cutting neck. After receiving information, he alongwith 20-25 people reached village Pranpur in early morning, then he saw that neck of his daughter was cut and she was lying on a cot in dead condition at her matrimonial house. The informant claims that his daughter was murdered by her father-in-law Girja Chaudhary, mother-in-law Dhano Devi, both resident of village Pranpur, P.S. Wazirganj, District Gaya, her Nanad Rubi Devi and Bhaisur of Rubi Devi, namely, Umesh Chaudhary, both resident of village Dadha, P.S. Fatehpur, District Gaya alongwith other 3-4 unknown miscreants with conspiracy to grab the land and share in the matrimonial house of Munni Devi and they are falsely blaming that theft took place in the house while all things of the house are in order and nothing was stolen. So the informant has strong belief that his daughter Munni Devi was murdered by the above named accused persons by cutting throat with Pasuli.

4. On the basis of aforesaid written report of informant, Wazirganj P.S. case No.357 of 2015 was registered. After completion of investigation, the police submitted charge sheet and thereafter cognizance was taken by the Jurisdictional Magistrate and thereafter the case was committed to the court of Sessions. Charges were framed against the appellants to which the appellants pleaded not guilty and claimed to be tried.

5. During trial, the prosecution examined altogether ten witnesses, namely, Kedar Chaudhary-informant (PW1), Sunita Devi (PW2), Nita Devi (PW3), Shanti Devi (PW4), Nigam Kumar (PW5), Ramashish Chaudhary (PW6), Munshi Rajbanshi (PW7), Dr. Sunil Kumar Prasad (PW8), Daroga Chaudhary (PW9) and Satendra Chaudhary (PW10). In support of its case, the prosecution has also produced exhibits as Ext.1 (signature of informant Kedar Chaudhary on

fardbeyan), Ext.2 (postmortem report of deceased Munni Devi), Ext.3 (fardbeyan of informant Kedar Chaudhary), Ext.4 (formal F.I.R.). The defence has not produced any oral or documentary evidence in support of its case. After conclusion of the trial, the learned Trial Court convicted and sentenced the appellants in the manner as indicated above.

6. Learned counsel for the appellants has submitted that the trial of the instant prosecution suffers from several infirmities that have been overlooked by the learned trial Court and therefore, the impugned judgment is not sustainable in the eyes of law. It has been submitted that there is no eye witness on record to connect the appellant with the alleged crime. Further, it was also stated by him that PW 1, PW 5 and PW 6 have seen a ladder at the place of occurrence, which indicates that theft has been committed in the house. Also, the prosecution in the present case has failed to prove its case beyond reasonable doubt against the appellants. Thus, in the absence of sufficient material on record the conviction of the appellants cannot be sustained and, therefore, finding of the learned trial Court is bad in law, wrong on facts, bereft of legal reasoning, devoid of merit and the judgment of conviction and order of sentence are fit to be set aside.

7. Learned APP for the State, on the other hand, has submitted that the judgment of conviction and order of sentence under challenge require no interference as the prosecution has been able to prove the case beyond all reasonable doubts. It has been further submitted by him that the Investigating Officer (PW 9) has neither found any ladder nor any sign of theft at the alleged place of occurrence. Also, the manner in which the victim was done to death is in corroboration with the post mortem report (Exhibit 2). It has been contended that on the date of occurrence, the husband and son of the deceased were not present in the house and only accused persons were present there and thereby they got the opportunity to kill their daughter in law. Moreover, in the present case, when the offence has been committed in the matrimonial home of the deceased where the appellants and the deceased were residing together, the burden under Section 106 of the Evidence Act was heavy upon the appellants to explain as to how the victim sustained so many grievous injuries and died. And no such explanation was given by the appellants regarding her death. It was further submitted that the chain of circumstantial evidence has very well been proved by the prosecution. As such, there does not remain any hiatus in the chain of circumstances and that guilt of the appellants has been satisfactorily proved by the evidence adduced during the course of trial and there is no infirmity in the judgment of conviction of the learned trial Court.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and upon thorough examination of the entire material available on the record, the following issues arise for consideration in the present appeal:

(I) Whether the defence that thief had committed theft and murdered the daughter-in-law (deceased) of the appellants can be taken into consideration?

(II) Whether the conduct of the appellants is justified in not informing the police regarding the unnatural death of their daughter-in-law?

(III) Whether the appellants have discharged their burden as to the death of their daughter in law in their house in light of Section 106 of the Indian Evidence Act?

9. With reference to issue no. I, it is pertinent to note that it was deposed by the Investigating Officer (PW9) in para no. 1 of his examination in chief that he had investigated the place of occurrence i.e. the house of the appellants which was made of tile (khapra) and in the room all the things were found in order, a machan (rack) was also found in which all the household articles were stored. Also, it was deposed by PW 1 and the Investigating Officer (PW 9) in their examination in chief that the tile (khapra) of the house was also found intact. Hence, in light of the above mentioned facts, it is apparent that no thief has entered and committed theft in the house of the appellants and it was the accused persons who were only present in the house where the deceased was found dead.

The attention of this Court has further drawn towards the fact that as regard to the statement made under Section 313 Code of Criminal Procedure, appellants have not given any explanation stating as to how their daughter in law was done to death, they did not even mention about the arrival of a thief or commission of theft in their house. At this juncture, it is relevant to take note of the decision of the Hon'ble Supreme Court in the case of Vasa Chandrasekhar Rao versus Ponna Satyanarayana reported in (2000) 6 SCC 286, wherein it was observed that:

"It is to be noted that when these circumstances were put to the accused through his examination under Section 313 of the Code of Criminal Procedure, the accused merely denied the same and such denial would be an additional link in the chain of circumstances to bring home the charge against the accused."

Hence, it was the duty of the appellants to explain the incriminating circumstance proved against him while making a statement under Section 313 and such failure on part of the appellants in furnishing any explanation when incriminating circumstance was put before them is an additional link in the chain of circumstances to sustain the charges against him.

Therefore, in light of the above discussions, it is clear that neither the Investigating Officer has found any sign of commission of theft nor any such defence has been taken by the appellants under Section 313 Cr.P.C.

Accordingly, the issue no. I is decided in negative.

10. With reference to issue no. II, it is found that no evidence has been produced by the defence to show that the in-laws (appellants) had taken any active step to inform the police about the murder of their own daughter-in-law in her matrimonial home. Rather, it is noticable that the father of the deceased has lodged the F.I.R. Further, it is also apparent from the material available on record

that the appellants being the in-laws of the deceased had left her in a pool of blood, not even bothering to take her to the hospital. Such conduct on the part of the appellants appears to be quite unnatural and has no reasonable explanation except on the hypothesis that they are guilty. Thus, it further furnishes the chain of evidence pointing towards the guilt of the appellants.

Accordingly, the issue no. II is decided in negative.

11. With reference to issue no. III, it is apparent from the fardbeyan and deposition of prosecution witnesses that the appellants and their daughter in law (deceased) resides in the same house where the deceased was done to death. Thus, in light of this fact, burden of Section 106 of the Evidence Act operates on the appellants in the present case as facts regarding the commission of murder in their house is especially within their knowledge. It would be relevant to take note of the decision of the Hon'ble Supreme Court in the case of Trimukh Maroti Kirkan versus State of Maharashtra reported in (2006) 10 SCC 681, wherein it was observed that:

"14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. The law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty at all on an accused to offer any explanation."

Hence, in light of the above discussions and having perused the relevant facts and circumstances of the case wherein the deceased was done to death in the

secrecy of house of the appellants, this Court is of the opinion that the chain of events are sufficient to attract the application of Section 106 of the Evidence Act. Also, it would be relevant to take note of the decision passed in the case of, Sabitri Samantaray versus State of Odisha reported in 2022 SCC OnLine SC 673 where in para no. 19, the three judges bench of the Hon'ble Supreme Court has observed that:

"Thus, although Section 106 is in no way aimed at relieving the prosecution from its burden to establish the guilt of an accused, it applies to cases where chain of events has been successfully established by the prosecution, from which a reasonable inference is made out against the accused. Moreover, in a case based on circumstantial evidence, whenever an incriminating question is posed to the accused and he or she either evades response, or offers a response which is not true, then such a response in itself becomes an additional link in the chain of events."

In light of the above discussion, it has been taken note that for the application of Section 106 of the Evidence Act, it is to be first analyzed that whether the chain of events has been established by the prosecution or not. In the case at hand, the prosecution has already proved that the conduct of the appellants is quite doubtful and unnatural, and the fact that the deceased was done to death in her matrimonial home i.e. the house of the appellants has so far been established by the prosecution. Further, motive of the appellants is clearly pointed out by the prosecution, as in the fardbeyan and the deposition of the prosecution witnesses, it is stated that the appellants wanted to give their property to their daughter (Rubi Devi) and the deceased (daughter-in-law) always protested this transaction, so the appellants used to torture her, beat her, and also threatened to kill her. In the case of Prem Singh versus State (NCT of Delhi) reported in (2023) 3 SCC 372, it was observed by the Hon'ble Supreme Court that when motive is proved in a case based on circumstantial evidence, it supplies additional link in the chain of circumstances.

The attention of this Court has further drawn towards the fact that the medical evidences are also in corroboration with the alleged occurrence as the Doctor (PW 8) has stated in medical report (Exhibit 2) that the ante-mortem injuries on her right ear, right shoulder, left index finger, chin and neck are caused by the sharp cutting heavy weapon and her death is caused due to the injuries on neck. In the instant case, the prosecution had thus succeeded in establishing the intention of the appellants for the commission of the offence. Such an intention, when analyzed in the light of the fatal injuries sustained by the deceased at the house of the appellants, certainly makes out a strong case that death of the deceased was indeed caused by the appellants. Therefore, the prosecution had successfully established the chain of events and the burden was on the appellants to prove it otherwise, but the appellants have not given any response or explanation in regard with Section 106 of the Indian Evidence Act and such failure on the part of the appellants would become an additional link in the chain

of events.

Accordingly, the issue no. III is decided in negative.

12. Considering the totality of the facts and circumstances, on the basis of the evidence adduced by the prosecution, as placed on the record and in view of above discussion, this Court is of the considered opinion that various circumstances in the chain of events have ruled out the reasonable likelihood of innocence of the appellants. Above circumstances when cumulatively taken together, it can be easily deduced that the entire sequence of events strongly point towards the guilt of the appellants, and the appellants have failed to offer any credible defense in this regard. Thus, we do not find any infirmity in the judgment of the learned trial Court.

13. Accordingly, both the criminal appeals stand dismissed and the judgment of conviction dated 30.11.2017 and the order of sentence dated 06.12.2017, passed by Sri Sachchida Nand Singh, Additional District and Sessions Judge 1st, Gaya in Sessions Trial No.60 of 2016 (S.J.)/ 34 of 2016 arising out of Wazirganj P.S. case No.357 of 2015 are affirmed.

14. Since appellant Dhano Devi of Criminal Appeal (DB) No.52 of 2018 is on bail, her bail bonds are, hereby, cancelled. The trial Court is directed to take immediate steps for sending the appellant in jail custody for serving the remaining sentence.