

(2012) 06 PAT CK 0033

In the Patna High Court

Case No : Criminal Appeal (DB) No. 1023 and 1073 of 2009

Kartal Das, Guddu Das and Lalmuni Devi

APPELLANT

Vs

The State of Bihar
 Gautam Das Vs State of Bihar

RESPONDENT

Date of Decision : 20-06-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2012) 4 PLJR 143

Hon'ble Judges : Shyam Kishore Sharma, J; Amaresh Kumar Lal, J

Bench : Division Bench

Advocate : Raghav Prasad and Mr. Manoj Kumar Yadav, for the Appellant;
Abhimanyu Sharma, APP, Mr. Ashwimi Sinha, APP and for the informant Mr.
Jitendra Nath Tiwary, for the Respondent

Final Decision : Allowed

Judgement

Shyam Kishore Sharma, J.—Cr. Appeal No. 1023 of 2009 (D.B.) filed by Kartal Das, Guddu Das and Lalmuni Devi and Cr. Appeal No. 1073 of 2009 (D.B.) filed by Gautam Das have been taken up together because both the appeals arise out of one judgment of conviction dated 16.11.2009 and order of sentence dated 18.11.2009 passed by learned Additional Sessions Judge-I, Danapur (Patna) in Sessions Trial No. 1122 of 2007 holding the appellants guilty under Sections 302/34 and 201/34 IPC and sentencing each of them to undergo rigorous imprisonment for life with a fine of Rs.3000/- and seven years with a fine of Rs.1000/- respectively. It is relevant here to mention that appellant Kartal Das is the father of other appellants. An occurrence of 21/22.8.2002 has led to these appeals. Informant Arjun Das Mishra (P.W. 11) reported to the police through his written application that his daughter Renu Kumari (deceased) was married with Gautam Das, elder son of Kartal Das on 15.5.1989. Soon after the marriage Kartal Das, Lalmuni Devi, Gautam Das, Guddu Das and Uma Kumari started raising demands of either Rs.50,000/- or Rs.70,000/- and when the amount was not paid within time then the informant's daughter was ill-treated. On 19.7.2002

the informant has given Rs.20000/- and he has promised to pay residue amount later on, but unfortunately the informant's daughter was assaulted, burnt and the dead body was made to disappear in the night of 21/22.8.2002. The informant after receiving the information on 24.8.2002 reported the matter to the police. The written report resulted into Naubatpur P.S. Case No. 149 of 2002 dated 25.8.2002 under Sections 302/201/34 IPC. An investigation proceeded and in course of investigation a dead body of a lady was recovered and it was claimed that the dead body was of the deceased of the case. The inquest report of dead body (Ext. 5) was prepared. It was sent to post-mortem. The post mortem was held and post-mortem report (Ext. 4) was prepared. Formal FIR (Ext. 6) has been recorded on the basis of written report (Ext. 1). After investigation charge-sheet was submitted. Cognizance was taken and the case was committed to the Court of Sessions where the charge u/s 302/34 and 201/34 was explained to the four accused persons. They were put on trial and by the judgment impugned the Court below has held all the appellants guilty against which the instant appeals have been filed.

2. This Court is required to see as to whether the material evidence brought on the record was enough to hold the accused persons guilty or not.

3. The defence of the accused-appellants was that the prosecution has failed to prove the genesis of the occurrence, cause of occurrence and manner of occurrence as well as place of occurrence. Most of the witnesses examined were impartial and neutral witnesses but they have not supported the prosecution case and the prosecution has declared them hostile. I. O. has been unable to establish the place of occurrence where the alleged occurrence was committed. The claim of the informant of identifying the deceased has been falsified totally by the doctor who has stated that corpse was unidentifiable. The original inquest report was withheld. No explanation was furnished by the prosecution as to why the original inquest was not brought on the record. The letters (Ext. 2 to 2/4) which were subsequently brought in the evidence were fabricated and even these letters also do not show that the accused were assaulting and demanding money. The motive has also been challenged and it has been submitted that the informant had only two daughters. The deceased was one of them. Therefore, there was no occasion for the accused to kill her which was capable of laying golden eggs. Regarding P. W. 11 it has been stated that he was not examined u/s 161 Cr.P.C. Therefore, his evidence was also of no use of the prosecution.

4. In order to substantiate the charge, the prosecution has examined sixteen witnesses. They examined: P. W. 1 Surya Narain Das, P. W. 2 Shanti Devi, P. W. 3 Champa Devi @ Basanti Devi, P. W. 4 Prani Devi, P. W. 5 Lalita Devi, P. W. 6 Jheegan Yadav, P. W. 7 Ashok Kumar Singh, P. W. 8 Rajendra Das, P.W. 9 Prem Narain Das, P. W. 10 Mahavir Chaudhary, P. W. 11 Arjun Das Misra, P. W. 12 Upendra Misra, P. W. 13 Pramod Kumar, P. W. 14 Annu Mian, P. W. 15 Dr. Narendra Kumar Singh, and P. W. 16 Etwa Bhagat.

5. P. Ws. 1, 2, 3, 4, 5, 6, 8, 9, 10, 13 and 14 have not supported any part of the

allegation and the aforesaid witnesses have been declared hostile by the prosecution.

6. P. W. 7 has been examined and he has claimed that at the behest of Gautam Das he has carried Renu Devi to PMCH. Except this narration he has not stated anything. The evidence of P. W. 7 is of no help to the prosecution.

7. The material witnesses examined by the prosecution are P. W. 11 (informant and the father of the deceased) and P. W. 12 (brother-in-law of P. W. 11). P.W. 12 deposing as a witness in para 5 has stated that his statement was not taken by the Officer-in-Charge. Therefore, this witness (P. W. 11) was not examined by the police and he has deposed for the first time before the Court. Even according to his statement he is not a witness to the occurrence.

8. P. W. 11, thus, is the sole witness who has been relied upon by the prosecution. His daughter Renu Kumari was married with Gautam Das @ Baban Das on 15.5.1989. She was burnt, tortured by her in-laws and demands of either Rs.70,000/- or Rs.50,000/- was paid. She used to inform the informant through letters. The informant received information on 24.8.2002 that Renu has been killed and the dead body has been made to disappear. On getting this information on 25.8.2002 the informant went to the house of in-laws of his deceased daughter and found her dead body in a canal. The dead body was identified by him. Police came and written report by P. W. 11 was given to it. The informant in para 12 has stated that his daughter was bearing a sari which was given by him. The attention about this statement was drawn but P. W. 16 has controverted the evidence of the informant in para 5 by saying that P.W. 11 has stated that sari of the deceased was not of her.

9. The evidence of the doctor is that skin was peeling of at places all over the body. Face was not demarcated well due to decomposition of the body. In para 3 he has stated that cause of death was due to asphyxia as a result of throatling. But in para 6 of cross-examination the doctor has stated that "face was not such which was identifiable due to decomposition of the body. There was want of skin also on the face."

10. On the factum of the identification of the dead body the evidence is only of P. W. 11 who has claimed to have identified the dead body with the assistance of a sari which he has given to his daughter but this fact was not stated by P. W. 11 to P. W. 16 rather version given by P. W. 11 to P. W. 16 was that sari which the deceased was bearing was not of the deceased. Therefore, the sari which has been utilized as a source of identifying the corpse has not been established rather the evidence of the doctor has given complete go by when he has stated that the dead body was not identifiable. For proving the charge of murder recovery of the dead body is relevant. It is not at all mandatory that corpse delicti is found. In absence of corpse also there may be conviction. When the evidence is that the dead body has been recovered then this evidence becomes paramount that the dead body was of nonelse but of the deceased and if this fact

has not been brought on the record then it cannot be said that the dead body has been identified. The source of identification by sari has also been contradicted by the informant and the Investigating Officer and if that contradiction is taken then it is apparent that no evidence at all has been brought on the record to establish that corpse delicti was of Renu Kumari. Regarding motive of killing it has come in the evidence that the accused persons were demanding money. On that charge also no witness has come to depose. The witnesses examined by the prosecution have given complete go by either on the charge of demanding money or charge of committing torture. On the basis of such sketchy evidence it cannot be said that the prosecution has succeeded in proving the charge.

11. In the result, both the appeals are allowed. The impugned judgment of conviction and order of sentence is set aside. The appellants are acquitted from the charge and appellants Kartal Das, Guddu Das and Lalmuni Devi are ordered to be discharged from the liabilities of their bail bonds. Appellant Gautam Das of Cr. Appeal No. 1073 of 2009 who is in custody, is directed to be released forthwith, if not required in any other case.