
(2002) 08 PAT CK 0033

In the Patna High Court

Case No : Criminal Appeal (DB) No. 468 of 1987

Om Prakash Sinha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 07-08-2002

Acts Referred:

Citation : (2002) 08 PAT CK 0033

Final Decision : Allowed

Judgement

P.K. Sinha and B.N.P. Singh, JJ.—The Appellant aforesaid has been convicted u/s 302 and 201 of the Indian Penal Code (hereinafter referred to as the Code") and has been sentenced to undergo imprisonment for life, and rigorous imprisonment for seven years, respectively, the sentences to run concurrently.

2. The fardbayan (Exhibit-1) in this case is by the landlord of the Appellant who has claimed that the Appellant used to live in his house since December last and his wife had come in the month of March. On 4.8.1995 at 6.00 A.M. he saw that the Appellant, carrying his wife on his hands, was about to take her away on a rickshaw. The Appellant informed that he was taking her to the hospital but the nearby ladies were telling that he had killed the wife. Being suspicious he went to the Patna Medical College Hospital first where he did not find the Appellant nor could get any information about his wife whereafter he went to Bansghat (cremation ground) and also made enquiries there but came to know nothing. On return in the way, at about 9.00 A.M. he met the Appellant who informed him that his wife had died and after post-mortem he had cremated her. Being doubtful as the wife was not ill and both used to quarrel earlier also, he lodged the first information report.

3. The defence of the Appellant, in course of trial, as coming out from the suggestions thrown at the witnesses as well his statements u/s 313 of the Code of Criminal Procedure, was that his wife was ill since before for which she was treated by the doctors. The Appellant claimed that in the early morning at 3.00-4.00 A.M. he had gone and woke up the neighbors and had informed them

that his wife was ill and, thereafter, he took her to Patna Medical College Hospital in the Emergency Ward where doctor declared her to be dead, after which he cremated her at Bansghat.

4. The prosecution in all has examined eleven witnesses. P.W. 8, Rajeshwar Thakur, is a formal witness who has proved an entry made in the births and death register of the Patna Municipal Corporation (Exhibit-6). P.W. 11 is Ram Chandra Singh, the Investigating Police Officer. Three witnesses have also been examined by the defence.

5. Now, a glance over the evidence of witnesses. P.W. 1, Pradeep Kumar, a neighbour living in the room contiguous to the room in which the Appellant was residing with his wife on the first floor, has said that at about 4.00 A.M. he heard a sound of a cry but when he came out he did not find anything whereafter he again slept. At 6.00 A.M. the Appellant woke him up, informing that his wife was ill at which he advised him to go to the doctor. When he got ready in the morning he came to know that the Appellant had gone with his wife but at the noon Police came and made enquiries when he came to know that wife had died and was cremated. This witness said that the relationship between the husband and wife was tense and the Appellant used to assault her. He also said that in the preceding evening he did not find the wife to be ill. This witness also informed that the informant, the landlord, lived on the ground floor. He also admitted that he had not told any one about their tense relationship or about assault of wife. He also admitted that he had no occasion to talk with his wife. P.W. 2, Neeraj Kumar Gupta, nephew of the informant is formal one who had signed over the first information report as a witness. P.W. 3 is the informant himself who said that on 4.8.1985 at 6.00 A.M. he was sleeping when the Appellant pounded upon his door and woke him up and informed that his wife was ill. The informant advised him to proceed to the hospital. He said that thereafter the Appellant took his wife on a rickshaw whose body was covered with a sheet. At about 8.00 P.M. the informant reached Patna Medical College Hospital in the Emergency Ward and came to know that no such patient had come whereafter he came to the "Bansghat" where he did not get any information about the wife. While returning he met the Appellant who informed that since the wife had died he had taken her to, and cremated at, the electrical-crematorium at Bansghat. This witness said that the Appellant was living in his house since March with his wife and earlier his wife was never ill. He denied that he had any difference with the Appellant on account of being landlord of the house. But this witness, in cross-examination admitted that the deceased before the occurrence was some what ill.

6. P.W. 4, Raj Kumar Prasad, another tenant living on the first floor, contiguously, said that at about 4.00 A.M. he heard the sound of cry whereafter he came out but did not hear anything thereafter. At 6.00 A.M. the Appellant came and asked him to see his wife who was not well. This witness went to the door of the room of the Appellant and found the wife sleeping. Appellant informed that he was taking her to the hospital as she was ill. This witness said that sometimes the

husband and wife quarreled relied but he did not know about the physical condition of his wife.

7. P.W. 5 is Sri Abinash Kumar Sinha, Judicial Magistrate of the first class, who had recorded statement of P.W. 6, Binod Kumar Verma, u/s 164 of the Code of Criminal Procedure (Exhibit-2).

8. P.W. 6, the uncle of the deceased, has said that on 5.8.1985 he had received a letter from the deceased (Exhibit-3) in which she had written about her husband assaulting her and about apprehension that she would be killed by burning. On 6.8.1985, in the morning, he read news of her death in a newspaper at which he went to his home and informed the people there. That day his relatives at Muzaffarpur also had received letters from the deceased (Exhibit-3/1 to 3/3). He and his father Saryu Prasad, P.W. 9, went to the Appellant's place where he was informed about the death and cremation. Here this witness has claimed that the Appellant six or seven months after marriage had demanded rupees fifteen thousand from his father and had written a letter in that context to him (Exhibit-4). According to this witness, about two and half months back he had come to Patna and had stayed in the house of the Appellant for some time when he saw an injury mark on the temple of Sandhya and was informed that the Appellant had assaulted her. This witness claimed that at that the Appellant ran to assault his wife with his "chappal". Sandhya also had shown other injury marks. This witness has also said as to how father and mother of Sandhya had come to Patna and were ill treated by the Appellant and how younger brother of Sandhya, Pramod Kumar, had come with some goods which he gave but he also was ill treated which he learnt from Pramod. However, this evidence is hearsay and so far this witness is concerned, that cannot be considered. He said that all the letters were given by him to "Daroga" who had prepared production list. This witness, in cross-examination, has admitted that about the ill-treatment of the wife he had not written any letter to some one at his house nor had received any letter from them, nor had made any complaint to any one else. This witness also admitted that the Investigating Police Officer had not demanded anything written by the deceased for comparing that with her handwriting in the letters. He admitted that earlier also he had received letters from the deceased. He denied the suggestion that those letters were fake and not written by his niece. He admitted not having produced the alleged letter of the Appellant demanding rupees fifteen thousand. Certain contradictions were also suggested to the witness from his earlier statement recorded u/s 164 of the Code of Criminal Procedure such as not having told about ill treatment of the brother of the deceased. About Exhibit-4 this witness said that he had brought that letter on the last day in the Court, which was in torn condition and pasted together. He denied the suggestion that the letter was fake and was not written by the Appellant. He admitted that Appellant sometimes used to write letters to him.

9. P.W. 6 is Tulsi Devi, mother of informant. She said that in the morning at about 3.00-4.00 A.M. she heard a cry "Baap re Baap, Nahi Bachenge",

whereafter she went inside her room. She claimed that the aforesaid she had told to the Police.

10. P.W. 9, Saryu Prasad, is grand father of the deceased. He has narrated as to how P.W. 6 had informed him about the death and how he had come to Patna when he came to know about the death and cremation. He also had gone to the Police Station where he gave the letters written by the deceased, to the Officer. He also has claimed that the Appellant used to ask his grand daughter to fetch rupees fifteen thousands from grandfather failing which she could be killed. He also said that when Om Prakash came to his house there also he assaulted his wife. He also said about visit of the parents of the deceased and claimed that the parents were not mentally fit after the occurrence. However, in cross-examination he admitted that they were not treated by any doctor. P.W. 10 is Mahendra Prasad, brother of the informant, who has said about the Appellant taking his wife (to hospital) at 6.00 A.M. At about 9.00 A.M. he met the Appellant who informed him about death of his wife, and her cremation. On being asked the Appellant told that in the night she had suffered pain in the abdomen and on way to the hospital, she had died.

11. P.W. 11 is Ram Chandra Singh, the Investigating Police Officer, who said that in the room of the informant he found nothing suspicious. He also admitted having gone to "Bansghat" and having inspected the register kept there, in entry No. 4324. He also proved production list, of two letters (Exhibits-3 and 3/1) which was marked Exhibit-4.

12. Here it may be mentioned that the entry in the official record of cremation kept at Bansghat in entry No. 4324 as noted in the register of the Municipality was brought on the record and marked Exhibit-6 which showed cremation of Sandhya Rani, wife of Om Prakash Sinha dated 4.8.1985. The cause of death was noted to be illness. This witness was also confronted with the contradictions in the previous statements made before him by different witnesses and he admitted that Tutsi Devi had not told that she had heard cry of "Baap re Baap" Nahi Bachenge", rather she had told that she had heard "Bachao, Bachao". This witness also admitted that grand father of the deceased, Saryu Prasad, P.W. 9, had not told him that Om Prakash used to assault even at his house for money or that P.W. 9 on return from Patna had told him about assault upon the wife.

13. This is all the evidence of the prosecution on the record.

14. On the other hand, defence had also examined some witnesses. D.W. 1, Nageshwar Singh, an employee of the Patna Medical College Hospital, has proved Exhibit-A and Exhibit-A/1, which are two different entries dated 27.5.1985 and 22.6.1985 relating to the treatment of Sandhya Devi in that hospital. He, similarly also proved another entry in another register, Exhibit-A/2, and the fourth entry in the register, Exhibit-A/3. P.W. 2, who was compounder with one Dr. Laxman Prasad Singh, has proved a prescription in this regard which is Exhibit-B.

15. This, obviously, is a case of circumstantial evidence. There is no direct evidence about this Appellant having Committed murder of his wife. It is well settled that in a case of circumstantial evidence all the links in the chain must be complete and the evidence on record must be incompatible with the innocence of the accused, establishing that the accused alone could have committed the crime. If any link in the chain is missing or if there is anything which is compatible with the innocence of the accused, benefit of that would accrue to him.

16. The learned Counsel for the Appellant, in course of arguments, has submitted that the prosecution has not even proved that the deceased was murdered. Sri G.P. Jaiswal, the learned Additional Public Prosecutor, on the other hand, said that it has come on the record that the husband was not treating the wife well and in the night her cry was heard by witnesses and in the morning, as per first information report, her covered body was seen being taken by the Appellant, on his hands, and soon thereafter, as per evidence, she was cremated. Learned Counsel also pointed out that the informant himself had gone to the hospital as well to the cremation ground and did not find that the lady was taken to the hospital or was cremated. Sri Jaiswal further argued that the letters on record further prove that the Appellant had in his mind to harm the deceased physically which, in so many words, were written by her in her letters and money was demanded which is also proved by the letter of her husband. In so far as the evidence of informant is concerned, in this regard, the informant has claimed that though the Appellant had gone on rickshaw with his wife purportedly to hospital but he had not reached there. The evidence of the informant on this point cannot be taken without a pinch of salt because not only that he has claimed in his, evidence that he did not find anything about the wife in the hospital but that he also did not find any trace about her at the cremation ghat. So far his enquiries are concerned, obviously his enquiry at cremation ghat has not been found to be correct in view of the register entry (Exhibit-6), aforesaid, which also stands confirmed from the evidence of the Investigating Police Officer. It will appear that on that day she actually was cremated there. Therefore, this evidence on the record makes the so called alleged enquiries made by the informant not free from doubt.

17. This could have been easily confirmed by the Investigating Police Officer by making enquiries at the hospital. He had made enquiries at the cremation ground but it does not appear that he had made any enquiry in the hospital. There is clear assertion of the Appellant in his statement u/s 313 of the Code of Criminal Procedure that he had taken his wife to the emergency ward where she was declared dead. Therefore, this link in the chain is too weak to be relied upon.

18. Learned Counsel for the Appellant has pointed out the conduct of the Appellant submitting that many witnesses had admitted that he had gone to them and had informed them about the illness of his wife and one witness also had come up to the door of his room. Two witnesses said that they had advised

him to take her to the doctor but no witness told that any one had volunteered to accompany him. Thereafter he took his wife on a rickshaw. It was argued that his action does not suggest that she was killed in the night. Though two witnesses have said about hearing the sound of cry in the night, but learned Counsel for the Appellant has submitted that part of evidence was not incompatible with the defence of the Appellant because a person, if suddenly afflicted with an ailment causing pain, his/her cry would not be abnormal. Even the evidence of the informant is not free from its own weakness. In the first information report he has stated that he saw the Appellant that morning when he was taking his wife, on his hands, to a rickshaw. But in his evidence he has admitted that prior to that the Appellant had woken him up by pounding upon his door and had informed him about illness of his wife at which he had advised him to take her to hospital. In evidence he has not said that the Appellant was taking her to rickshaw carrying her on his hands. Moreover, the Appellant in his examination u/s 313 of the Code of Criminal Procedure has described how his wife used to remain ill and how she was treated. Exhibit-A series show that on several occasions she was treated at Patna Medical College Hospital, Patna as out door patient in the months of May and June, 1985. We agree that on the aforesaid evidence it cannot be held beyond reasonable doubts that the prosecution has proved, by circumstantial evidence, that the lady was murdered or even that her death was unnatural.

19. In so far as the letters are concerned, Sri Jaiswal has argued that those letters were identified by the relatives of the deceased who were in a position to know her handwriting. Therefore, there was no need to send those letters to the handwriting expert particularly when the writer was no more alive. However, P.W. 6 has admitted that the deceased used to write letters earlier also. There is no evidence on the record that any attempt was made to locate her other writings. The witness who proved the letters was suggested that Exhibit-4 series were not written by the wife. Learned Counsel for the Appellant has argued that if the relatives were in a position to know the handwriting of the deceased, the husband also stood in the same position. The argument was that when the writing was so challenged, an attempt should have been made to find out other documents written by the deceased and to have the two compared by an expert. But that was not done at any stage, including during the investigation. There is another circumstance under which the letters in Exhibit-3 could not be taken into consideration. From the statement of the Appellant u/s 313 of the Code of Criminal Procedure it will appear that the learned trial Court had not put any question bringing to the notice of the Appellant the evidence in those letters, inviting his explanation. Any specific circumstance appearing in the evidence if not asked u/s 313 of the Code of Criminal Procedure, that part of the evidence has to be excluded from consideration. This was an important circumstance and the accused ought to have been asked his explanation about the same. For this, decision of the Apex Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, and of this Court in the case of Fatah Mian and Others Vs. State of

Bihar, , may be seen. Therefore, the prosecution under the circumstances cannot be given benefit of this piece of evidence.

20. In so far Exhibit-4 is concerned, that is alleged to have been written by the Appellant himself which has been denied by the Appellant. The admitted hand writing of the Appellant could easily have been obtained, but even then the doubt about the genuineness of the letter was not removed by the prosecution by having that examined by an expert. Besides that, learned Counsel has pointed out that out of the letters allegedly written by the wife only two were produced before the Investigating Police Officer and the rest, in the Court. Those other letters were on plain paper not accompanied with their envelopes.

21. In view of the aforesaid, we do not find that any of those letters could help the prosecution.

22. In the last, Sri Jaiswal also has argued that even if charge u/s 302 of the Code fails, the accused could be found guilty u/s 304B of the Code with the help of presumption as enumerated u/s 113B of the Evidence Act. Admitting that when charges have been framed only under Sections 302 and 201 of the Code, there could be no conviction u/s 4B of the Code but if the Court found that offence u/s 304B of the Code was made out, it could always remit the case to the lower Court to confront the accused with that position and ask him to rebut the presumption. For this learned Counsel has referred to a decision of the Apex Court in the case of Shamnsaheb M. Multtani v. State of Karnataka, (2001) 2 SCC 577

23. As we have already held that the prosecution has not proved beyond reasonable doubts that the lady was murdered or had died an unnatural death, there is hardly any question of considering as to whether or not the evidence on record brought home a charge u/s 304B of the Code. This being so, we find that the Appellant deserves benefit of doubt.

24. In the result, this appeal is allowed and the conviction and the sentences of the Appellant are hereby set aside. The Appellant is acquitted of the charges framed against him and is also discharged from the liabilities, of the bail bond.