

(2017) 04 PAT CK 0019

In the Patna High Court

Case No : Criminal Appeal (DB) Nos. 227, 178 Of 2013

Sudama Choudhary S/o Laxman Choudhary

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 12-04-2017

Acts Referred:

Code Of Criminal Procedure, 1973 (CrPC) — Section 161, 313

Evidence Act, 1872 — Section 106

Indian Penal Code 1860, (IPC) — Section 34, 302

Citation : (2017) 3 PLJR 503

Hon'ble Judges : Kishore Kumar Mandal, Sanjay Kumar

Bench : DIVISION BENCH

Advocate : Baxi S.R.P. Sinha, ??Rajiv Ranjan, ??S.N.Prasad, ??Ajay Mishra,

Final Decision : Dismissed

Judgement

1. These appeals arise out of the judgment and order dated 29.01.2013 and 31.01.2013 respectively passed by Adhoc Additional Sessions Judge III, Aurangabad in Sessions Trial No. 214 of 2011 / 38 of 2011 whereby the trial court convicted the appellants under Section 302 / 34 of the Indian Penal Code and sentenced them to undergo R.I. for life with fine having default clause. The sentences so imposed on them were directed to run concurrently.

2. The informant of this case is a village Chowkidar (P.W.4) who in course of duty got an information regarding murder of the deceased in the house of one Laxman Chaudhary. He

reported the matter to the S.H.O of Daudnagar Police Station over mobile and proceeded to take stock of the occurrence. The Police also reached at the place of occurrence and recorded his Fardbeyan Ext. 1 wherein it is stated that the widow of deceased has been murdered by her family members. The husband of the deceased had died two years ago and she along with her four minor children was residing with her father-in-law, Laxman Chaudhary. Her father-in-law had given 1 " bigha more land in the share of the deceased as per the decision of the Panches. The elder brother of her husband was nursing grudge for which family quarrel used to take place. The informant has further stated that on account of family dispute, the appellants (the elder brother and his two wives) committed murder and sacked the dead body with intention to conceal it. In the meanwhile, the neighbours caught all the three accuseds. On the basis of Fardbeyan, the present case bearing Daudnagar P. S. Case No. 12 of 2011 was registered under Section 302 / 34 of the Indian Penal Code. The Investigating Officer, in course of investigation, seized the dead body as per seizure list (Ext. 4), prepared inquest report (Ext. 6) and sent the dead body for post mortem examination. He arrested all the three appellants as per arrest memo (Ext. 5). Upon conclusion of the investigation and finding the allegation true, the charge-sheet was laid against the appellants whereupon cognizance was taken and the case, on commitment, came on the file of the trial Judge. The trial Judge after hearing both sides framed charges against the appellants. The charges so framed were read over to the appellants who pleaded their innocence.

3. To further the prosecution case, the prosecution examined seven witnesses besides exhibiting documents. P.W. 1 Pooja Kumari and P.W. 2 Laxman Chaudhary are the daughter and

the father-in-law respectively of the deceased. P.W. 3 Ramjanam Chaudhary is the co-villager of the deceased. P.W. 4 is the Chowkidar and informant of this case. P.W. 5 Kirtu Rawani is a witness of seizure list. P.W. 6 (Dr. Raj Kumar Prasad) is the Doctor, who conducted autopsy on the deceased and submitted post mortem report (Ext. 2). P.W. 7 Syed Ali Ahmed is the Investigating Officer, who after investigation laid charge-sheet. On appraisal of the evidence adduced by the prosecution, the learned trial judge found the charge proved beyond shadow of reasonable doubt and convicted the appellants in the manner stated above.

4. We have heard Mr. Baxi S.R.P. Sinha, the counsel for the appellants and Mr. S.N. Prasad, APP for the State.

5. While criticizing the impugned judgment, Mr. Baxi has urged that this is a case based on circumstantial evidence. There is absolutely not a single eye-witness to support the prosecution case. The appellants have been implicated only on account of being family members with whom a family dispute was allegedly going on. The daughter and the father-in-law of the deceased have not supported the prosecution case showing the complicity of the appellants in the murder of deceased. The prosecution has failed to prove the manner of occurrence as also the place of occurrence. In the evidence of the witnesses, it has come that the deceased was residing with her father-in-law Laxman Chaudhary. The appellants were residing separately having no concern either with Laxman Chaudhary or the deceased. The informant is not an eye-witness and has given a hearsay account in the Fardbeyan. The prosecution has failed to prove the chain of circumstance whereunder the appellants have been held guilty.

6. The learned APP for the State, on the other hand, supported the impugned judgment. He submits that the prosecution

has proved the case by convincing and reliable evidence. The occurrence took place within the four walls of the joint residential house of the appellants and the deceased. The law enjoins the appellants to explain the circumstances in which the dead body was sacked after her murder. The appellants were at inimical terms on account of the land dispute. All the appellants were present and they were apprehended by the local people and subsequently handed over to the custody of police. The prosecution has proved the case beyond shadow of doubt and the court below rightly convicted the appellants.

7. In view of the submissions made by both the parties, we shall now examine the evidence on record to find out as to whether the prosecution has been able to prove the guilt of the appellants.

8. The homicidal death of deceased is not much in dispute.

The informant, on getting information, reached at the place of occurrence and saw the dead body sacked in a bag and blood was flowing through the drain of the residential house of the appellants.

The Investigating Officer (P.W. 7) immediately reached at the place of occurrence at 10.30 A.M. and recorded Fardbeyan of the informant. He seized the dead body packed in a blood stained gunny bag and a Dabia (sharp cutting heavy weapon) from the house of Laxman Chaudhary. He sent the dead body for post-mortem examination. The Doctor (P.W. 6) conducted the post mortem examination on the same day at about 4.45 P.M. In course of evidence, he has proved the post mortem report as Ext. 2 wherein he has found and mentioned the following ante mortem injuries:-

"(1) Incised wound of size 1 1/2" x 1/2" x 1/2" above the right clavicle. (2) Incised wound of size 1 1/2" x 1/2" x 1/2" above the left clavicle. (3) Incised wound semi lunar shape at the upper part of neck at the level of thyroid cartilage extending from the left angle of mandible to the right ear label

transacting skin, neck muscles, great vessels and nerves, Trachea esophagus. Neck is attached to the skull only posteriorly with the skin and cervical vertebrae.

Cause of death:- The above mentioned injuries nos. (1), (2) and (3) led to hemorrhage shock cardio respiratory failure and finally death. Time elapsed since death to postmortem done- within 24 (twenty four) hours."

The doctor has further stated that the injuries were caused by sharp cutting weapon and it may be "chura". The evidence of Doctor and the informant as also the post mortem report clearly establish that the death was homicidal caused on the date and time of the occurrence as alleged by the prosecution.

9. The evidence of P.Ws. 1 and 2, who are minor daughter and father-in-law of the deceased, is consistent on the point of homicidal death of deceased in their house. But, none of them has stated about the manner of assault caused by any of the appellants. These two witnesses and the appellants reside in the same house.

10. In the evidence of the informant as well as the Investigating Officer, it has also come that deceased and the appellants were residing in the same house having one common Aagan in the middle. The Investigating Officer (P.W.7) at paragraph 6 has stated about the topography and location of the room and Aagan of the appellants. The witnesses P.Ws. 1 and 2 were declared hostile as they refused to narrate manner of assault committed by the appellants and denied their statement given before Police.

11. In cross-examination, P.W. 2 has admitted that the deceased was his widow daughter-in-law, who was residing separately in the house. He has stated that he had given 1 " bigha excess land in partition and she was murdered in the room in which she was residing. This witness was joint in mess with the deceased and her children and he was separate from his second son and his

two wives i.e. the appellants.

12. From the evidence of P.W. 2, this much is established that after the death of husband, the deceased along with her minor children was residing with her father-in-law quite separate from the affairs of the appellants and she was given 1 - bigha more land in her share by her father-in-law. P.W. 3, Ramjanam Chaudhary is the resident of the same village and in his evidence, he has stated about the hearsay account of the occurrence by stating that the appellant Sudama Choudhary committed the murder of deceased. He visited the place of occurrence and saw the dead body sacked in a bag kept at the door of the appellant Sudama Choudhary. A large number of person had assembled at the place and the appellants were taken into custody by Police. He has further stated that the weapon of assault was recovered by Police from the place of occurrence. In cross-examination, he has stated that the appellants and the deceased had common Aagan and they were residing in the same house by fencing the Aagan. P.W. 4 is the informant (Choukidar) on whose information, Police reached there and recorded his statement. In his Fardbeyan, he has stated that at the time of his arrival, the father-in-law of deceased was not at the place of occurrence and the police arrested all the three appellants from their house. The defence at the time of cross-examination has given suggestion that some unknown persons snatched her ornaments and committed murder of the deceased. The defence has further given another suggestion that the miscreants killed the deceased believing her to be a witchcraft-practitioner (Daien). P.W. 5 is also one of the co-villagers of deceased in whose presence, seizure list (Ext. 4) was prepared. In his evidence, he has stated that he had affixed thumb impression on the seizure list. This witness has been declared hostile by the

prosecution as he did not support the prosecution case on the point of seizure. The Investigating Officer (P.W. 7) in course of his evidence has stated that he immediately visited at the place of occurrence on getting information about the murder in the house of the appellants. He noticed that profused blood was flowing in the drain coming out from the house of the appellants and the villagers were catching hold of all the three appellants at the time of his arrival. He has further stated that the Farbdyan of the informant was recorded by Brajesh Kumar in his presence and it was endorsed by him. The endorsement has been marked as Ext. 1/1. He has further proved the formal F.I.R. as Ext. 3. He seized a bloodstained Dab (weapon) and the dead body sacked in a bag in the house of Laxam Chaudhary. The seizure was made in presence of the appellant Sudama Choudhary and a copy of which was given to him under the signature of appellant Sudama Choudhary. He had arrested all the three appellants and sent the dead body for post mortem examination after preparing inquest report (Ext. 6). He has recorded the statement of witnesses and also the defence version who disclosed that after committing murder of deceased, sacked the dead body in a bag. The Investigating Officer at paragraph no. 6 has narrated about the location of the rooms inside the residential house of the appellants and the deceased. He has stated that the house in question is grilled from front side having an entry to the "Angan" through a verandah. There are two rooms i.e. one each side of angan towards south and north. It is not in dispute that the appellants and the family of deceased were occupying their rooms separately in the same residential premises having one entry. The presence of all the appellants in the house is also not in dispute. The evidence on record establishes the fact that the neighbours caught hold of all the appellants and handed over to the

custody of police on their arrival at 10.30 A.M. The daughter of deceased P.W.1 has turned hostile and has denied her presence in the house at the relevant time. Another family member (P.W. 2) father of appellant (Sudama Choudhary) has also turned hostile but in evidence he has admitted the murder of deceased in the residential house. He has stated that at that time he had gone to the field. It is not difficult for us to find reasons for turning P.W. 1 and P.W. 2 hostile. It shall be dealt with later.

13. Thus from the evidence on record, it is established beyond any shadow of doubt that there was none in the residential house except the appellants, the deceased and her minor children when she was done to death inside the house.

14. Now, we proceed to consider as to who is / are responsible for the homicidal death of the deceased.

15. In the evidence of prosecution witnesses, we find that both the family members P.Ws. 1 and 2 have turned hostile and denied about their presence in the house. The defence has not asserted about their presence in the house also. In their cross-examination, there is no suggestion either on their presence or absence in the house at the relevant time. The defence has given suggestion to the informant that unknown miscreants snatched ornaments and committed her murder. Their another suggestion to the informant is that the criminal killed the deceased believing her as a Daien (witchcraft practitioner). We do not find any force in the suggestion of appellants that the deceased was killed by any miscreants or criminal. It cannot be assumed for a moment that any miscreant after committing murder of deceased will pack the dead body in a bag and keep at the gate of one of the rooms of appellants. The appellants have not narrated about any incident in their house at relevant time in their statement given under Section

313 Cr.P.C. They have simply pleaded their innocence.

16. In the evidence of Investigating Officer (P.W. 7), it is found that he immediately (within an hour) reached at the place of occurrence and recorded the statement of informant and the witnesses. As the daughter (P.W. 1) and father-in-law (P.W. 2) of deceased were declared hostile by the prosecution, the prosecution drew attention of P.Ws. 1 and 2 towards their statement given before Investigating Officer under Section 161 Cr.P.C. The Investigating Officer (P.W. 7) at paragraph 7 has stated that the witnesses P.Ws. 1, 2 and 3 had stated about the complicity of the appellants in the murder of the deceased. They had stated that female members had quarreled in the morning and the appellant Sudama Choudhary had uttered to teach her lesson and thereafter, all the appellants committed her murder. The daughter and father-in-law of deceased at the time of their evidence were aged about 15 years and 75 years respectively. There is no other members in the family except the appellants and three more minor children of the deceased. From the records, we find that all the appellants are in custody since the date of occurrence. The only male member Laxman Chaudhary (the father-in-law of deceased) was aged about 75 years at that time and he was carrying liabilities of all the minor children on his head. At the age of 75 years, when there was none to look after him or the minor children of deceased, the conscious of P.W. 2 (Laxam Chaudhary) would have shaken and he might have decided not to get the appellants convicted. The daughter of the deceased (P.W.1) was minor and was supposed to act and depose as per wishes of her grandfather, the only person to take care of her and other children who had turned orphan. In such circumstance, it cannot be ruled out that the P.Ws. 1, 2 and 3 did not support the prosecution case only to save the appellants from

the ordeal.

17. Thus, from the evidence emerging from the record, the following circumstances emerge against the appellants:-

(i) The husband of deceased died just 2 years ago earlier from the occurrence leaving behind minor children.

(ii) The father-in-law had given 1 - bigha excess land in the share of deceased which was the bone of contention.

(iii) The appellants were residing separately from the deceased and her father-in-law (Laxam Chaudhary) in the same residential house having common Angan and one entry.

(iv) The appellants used to quarrel with the deceased.

(v) The deceased was done to death in the day light at 9 A.M. by a sharp cutting weapon within the residential house.

(vi) There was none in the house except the appellants.

(vii) The dead body was found concealed packed in a gunny bag and kept in one of the rooms.

(viii) The villagers assembled immediately and caught all the appellants.

(ix) The informant and Investigating Officer saw blood flowing through a drain coming out from their house.

(x) Blood stained weapon was recovered from the house of the appellants.

(xi) The female appellants had quarrelled with the deceased preceding to the occurrence and the

appellant (Sudama Choudhary) had uttered to teach her lesson.

(xii) There is no evidence on record to show that any miscreant entered into the house, snatched her ornaments and killed her for any reason(s).

(xiii) Perusal of the numbers of ante mortem injuries mentioned in autopsy report read with statement of P.W 6 and packing the dead body in a bag establish beyond reasonable doubt that the crime could not have been committed by one person alone.

(xiv) The appellants have failed to disclose as to how deceased had died which was especially within their knowledge.

18. The above chain of circumstances suggest and establish the fact that it was none else than the appellants who in furtherance of their common intention committed murder of the deceased. In this regard, we would like to refer the rulings of the Hon"ble Apex Court reported in Jagdish Vs. State of Haryana (2010)1 S.C.C. (Cri.) 21 wherein it has been observed "..... the appellant and the deceased family members were the only occupants of the room and it was therefore incumbent on the appellant to have tendered some explanation in order to avoid any suspicion as to his guilt."

19. All the appellants were present in the house. There was no other except the deceased and her minor four children. So, the burden lies on the appellants to explain the circumstances leading to her homicidal death in view of Section 106 of Evidence Act. In such type of case like the present one, the Apex Court in Trimukh Maroti Kirkan Vs. State of Maharashtra, 2006 (10) S.C.C. 681

held as under:-

"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."

20. On consideration of submissions made on behalf of both sides and analyzing the evidence on record, we find that the prosecution has established the chain of circumstances against all the appellants which only prove their guilt beyond shadow of doubt.

21. For the reasons stated above, we do not find any merit in these appeals. Both the appeals are dismissed.