
(2008) 01 PAT CK 0110

In the Patna High Court

Case No : Deth Reference No. 5 of 2006 and Criminal Appeal No. 851 of 2006

Surendra Mahto

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-01-2008

Acts Referred:

Citation : (2008) 01 PAT CK 0110

Final Decision : Dismissed

Judgement

Shiva Kirti Singh and Shailesh Kumar Sinha, JJ.—The death reference and the criminal appeal have been heard together as they relate to the same accused, Surendra Mahto who was tried along with one Manoj Kumar Pandit for the offence u/s 376 and 302/34 of the IPC relating to rape on Ranju Devi, wife of the appellant and her murder. By the judgment under appeal dated 24th of July, 2006 the learned Additional Sessions Judge, FTC-III, Samastipur has convicted the appellant for the offence u/s 302 IPC and awarded death sentence. He has been further convicted for the offence u/s 376 read with Section 34 of the IPC and awarded imprisonment for life. The other accused, Manoj Kumar Pandit was also convicted for the offence u/s 302/34 and 376 of the IPC and awarded imprisonment for life. It appears that he has not preferred any appeal against his conviction so far.

2. The prosecution case as appearing from the fardbeyan of the informant, Ranju Devi who subsequently died, in short is that on 13.12.2001 she went from the village of her husband to meet her mother. When she and her husband reached the market place in the village, Sakhmohan at about 2:00 P.M., her husband stopped in the way after crossing Rampur Ghat. She met her mother in the Pethia (Market), soon her husband came there and asked her to return to his place. In the way her husband's friend, co-accused, Manoj Kumar Pandit met them in the way at village, Karak Pethia. He bought some Kachari which she refused to eat but he and her husband ate Kachari and also went to a nearby place to have wine together. Soon it was 5:00 P.M. and hence she asked her

husband to make hurry to reach home but he replied that he would stay at the place of his friend, Manoj Kumar Pandit. Manoj proceeded early and the informant and her husband left thereafter. When they crossed the railway crossing in the south of village, Karaka, her husband brushed aside her objections and forced himself upon her to have sexual intercourse in a nearby banana field. From there they proceeded for village, Aka Bishanpur that is the village of co-accused, Manoj Kumar Pandit who also joined them at the embankment of village Desari. From there they went together and after some time her husband expressed the necessity of attending call of nature. She wanted to remain on the embankment with Manoj but she was persuaded to go with her husband at the bank of the river. There she was forcibly undressed by her husband. On protest he closed her mouth and loudly called the co-accused who came running and over powered her hands and pressed her mouth. Thereafter she was sexually assaulted by her husband. He then pressed her hands and mouth and the co-accused also assaulted her sexually. Thereafter co-accused, Manoj Kumar Pandit tied her hands with a fine plastic rope and closed her mouth with his hands. Her husband, the appellant took out a knife and gave three blows at her neck with an intention to kill her. As a result the neck began to bleed profusely. Thereafter both the accused threw her into river. She went inside the water and remained inside for some time and when the accused persons moved away then she could manage to come out of the river. She searched out two pieces of her clothes and after putting on the same she pressed her injurer neck with her hand and went running to the railway crossing. There the lady owner of the toddy shop offered her Sari and clothes to cover her body and also ignited fire to warm her up. Then she was taken to Desri Chowk where she was given some medicine etc by a local doctor and the local Choukidar informed the police station. She disclosed the reason behind the occurrence to be her husband's love affair with a girl in Delhi to which she had objected. The aforesaid fardbeyan appears to have been recorded by ASI, Vidya Sagar Paswan on 13.12.2001 at 2130 hours at village, Desari Chowk.

3. Further case of the prosecution as appearing from the records is that the injured informant, Ranju Devi was forwarded to Bibhutipur Primary Health Centre for medical check up and treatment and after the same she was referred to Samastipur Hospital also for treatment. Thereafter she came back to Vibhutipur Primary Health Centre and then to her parent's home where she appears to have died on 18.12.2001. On information the I.O. came to village, Sakhmohan and the inquest report (Exhibit-4) was prepared on 18.12.2001 at 1300 hours. The dead body was sent for post mortem examination at Sadar Hospital Samastipur which was conducted on 19.12.2001 at 9:30 A.M. After investigation police submitted charge sheet against both the named accused including the appellant. The case was committed to the court of sessions for trial. Both the accused pleaded not guilty to the charges and hence faced the trial. They were ultimately convicted and sentenced by the judgment and order under appeal.

4. The prosecution in order to prove its case has examined altogether 12

witnesses. Since Investigating Officer could not be traced in spite of efforts made by the trial court as mentioned in the impugned judgment itself, one, Md. Akbar Hussain has been examined as court witness No. 1 who has proved the writing of the I.O. in the case diary whose paragraphs 1 to 50 has been marked as Exhibit-7. The defence has not examined any witness. From the trend of cross-examination and arguments the defence of the appellant is that the deceased sustained injuries when she fell down into the river while she was boarding a boat and appellant has been falsely implicated because he had refused the request of his in-laws to live at their place. This appears from suggestion given to PW-7, Tara Devi, mother of the deceased. The father of the deceased, PW-9, Shambhu Mahto has also been suggested that he has implicated his son-in-law because of his refusal to live at his place. A suggestion was also given to him that the deceased had illicit relation with a co-villager but the same was denied by the witness. However, in the written statement filed on behalf of the accused a defence has been taken that the deceased was leading an immoral life in a brothel run by one Sushila Devi (PW-2) and she was assaulted there by some customer. No such suggestion, however, has been given to either PW-2 or her husband Hari Kishun Chaudhary, PW-3.

5. PW-1, Krishna Kumar has been declared hostile because he claimed that his signature was obtained on a blank paper and not on the fardbeyan. PW-2, Sushila Devi along with her husband PW-3, Hari Kishun Chaudhary runs a toddy shop at a distance of about 100 yards from the river bank. She has been declared hostile only in part when she refused to state in her deposition the name of the deceased and also the name of her father and husband and husband's friend who had assisted in commission of assault upon her. However, she has not been challenged in cross examination in respect of her statement that she has a toddy shop besides the embankment in her village, Karak and an injured woman had come to their shop with injury on her neck which was bleeding, the woman was dressed in petticoat only and her blouse had been wrapped around her neck; the injured woman stated before all that her husband had thrown her into the river after cutting her neck; that woman went with Chaukidar. PW-3 who is husband of PW-2 has also been declared hostile when like PW-2 he also stated in chief that the police had not interrogated him. Exhibit -7, the various paragraphs of case diary show that PW-2 and 3 had been interrogated by the police u/s 161 Cr.P.C.

6. PW-4, Shiv Shankar Poddar, has a shop at Arichak at a distance of two kilometers from Desari Chowk. He is of no help to the prosecution and has been declared hostile. PW-5, Dr. Ram Prakash Rai was one of the members of the Medical Board and had supervised the post mortem examination upon the body of the deceased. He has proved the post mortem examination report as Exhibit-1 and his signature over the same as Exhibit-2. According to him the actual post mortem examination was conducted by Dr. Anil Kumar, PW-11 who has also supported the postmortem report which shows three stitched wounds on the neck. According to the opinion of PW-11 the cause of death was both due to

shock and septicemia produced by the above mentioned anti mortem injuries.

7. PW-6, Dr. Ram Chandra Prasad was posted as a Medical Officer in Vibhutipur Primary Health Centre and on 14.12.2001 he examined the informant and found three cut injuries on the neck of the dimensions (i) 2"x 1/2" x 1/4" on right side of neck (ii) 1"x 1/2"x 1/4" on left side of neck and (iii) 1" x 1/2" x 1/4" on left side just below wound No. 2, all the three injuries were with clear margins. He had examined the injured at 7:30 A.M. She was in her senses and in his opinion the age of the injury was within 12 hours. In his opinion the injury No. 2 and 3 were simple in nature caused by sharp cutting weapon, may be dagger but he kept his opinion regarding nature of injury No. 1 reserved and referred the patient to Sadar Hospital Samastipur. He has clearly stated in cross examination that the said three injuries at a time can not be caused by fall even on broken glass.

8. PW-7, Tara Devi and PW-9, Shambhu Mahto , husband of PW-7 are mother and father of the deceased in this case. Their evidence supports the prosecution case that in the after-noon of 13.12.2001 the deceased had come to meet them at their village and had left with her husband, the appellant. Besides their being witnesses of the fact that the appellant was last seen with the deceased, his wife in the after-noon of the date of occurrence, they have also deposed that in the late evening at around 7:00 P.M. someone from Desari came on a motorcycle and informed them about the fact that their daughter, Ranju Devi , the deceased had been assaulted by her husband and was lying in injured condition at Desari Chowk. Both of them claimed to have gone and met the informant at Desari Chowk even before the arrival of the police. In substance they have given full account of the allegations made in the fardbeyan which they claim to have heard from their injured daughter, the deceased even before the police had arrived. They have supported that the informant gave her fardbeyan at Desari Chowk to the police and they took her for treatment to Vibhutipur Primary Health Centre and from there to Samastipur Sadar Hospital. The have also proved the fact that after treatment at the two hospitals named above they brought their daughter from Vibhutipur Hospital to their residence on the 5th day and on the next morning she died at 8:00 A.M.

9. PW-7 and 9 are parents of the deceased but they are neither inimical to the appellant nor they are interested to achieve any other purpose by supporting a false allegation against the appellant. Even then We have made a careful evaluation of their deposition and it is found that only some minor part of the evidence of PW-7, Tara Devi appears to be exaggeration under enthusiasm inasmuch as she has claimed that she and her husband were also examined by the I.O. just after recording of the fardbeyan and they put their signatures and thumb marks on such statements. Such exaggerated claim may be for various reasons but it is clearly separable as chaff from other material statements which are not only in tune with the fardbeyan but are also fully supported by the evidence of PW-9, the father of the deceased who has correctly stated that his

and his wife's statements were recorded by the I.O. two days after the occurrence. The aforesaid two witnesses are found to be reliable both in respect of the facts narrated by them regarding the deceased having left with her husband for her matrimonial home in the after noon of 13.12.2001 as well as in respect of the fact that they received information regarding their injured daughter and they went to meet her at Desari Chowk and they learnt about the entire occurrence from her mouth which included the role of this appellant and the other accused in the assault upon the deceased and other circumstances which clearly related to her subsequent death after five days, in spite of having received medical treatment at two hospitals, PW-9, Shambhu Mahto has also identified signature of Ranju Devi, the informant on the fardbeyan and also the signature of the other witness, Kishun Kumar Chaudhary as Exhibits 2/3 and 2/4. He was competent to identify those signatures because the fardbeyan was recorded and signed by the two persons in his presence.

10. PW-8, Roop Narain Jha, is a neighbour of the informant's parents. He has proved the inquest report as Exhibit-4. PW-10, Dr. Sunita Kumari had examined the informant for signs of rape on 14.12.2001 at 6:10 P.M. at Samastipur Hospital. She found no evidence of rape in the present condition as the lady aged about 30 years was habituated to intercourse but in paragraph-2 of her examination in chief she has stated that after rape, swimming in a river may possibly lead to removal of spermatozoa. She further admitted that she did not examine the clothes the patient was wearing. As already noticed PW-11, Dr. Anil Kumar had conducted autopsy on the body of the deceased. PW-12, Santosh Kumar Singh, is a formal witness who has proved the FIR as Exhibit-6.

11. On behalf of the appellant it was submitted that the allegations made by the deceased in her fardbeyan should not be believed because as per the suggestions she was not leading a chaste life. It was also highlighted that EW-2, Shushila Devi and her husband EW-3 have not supported the prosecution case inasmuch as they do not support that the injured informant disclosed her identity and the place and manner of the assault upon informant. Lastly, it was submitted that the place of occurrence has not been proved conclusively because the Investigating Officer could not be examined as a witness.

12. The main issue in this case is whether to place reliance upon the statement of the deceased as recorded in her fardbeyan or not. On a careful examination of all the relevant materials it is found that the fardbeyan given by the deceased before she was taken to hospital for treatment deserves to be relied upon in full. It was recorded by a police officer in presence of mother and father of the deceased i.e. PW-7 and 9. They have deposed in court to that effect and have also deposed that those facts were disclosed by the deceased while she was in injured condition to them even before the arrival of the police. The facts disclosed in the fardbeyan clearly relate to cause of death or circumstances leading to death of the injured informant. Section 32(1) of the Evidence Act which is an exception to the general rule that hearsay is not admissible evidence,

makes such statement of the deceased admissible. Such statements are relevant irrespective of the fact whether the person who made them was or was not, at the time of making such statement, under expectation of death. So far as reliability of such admissible evidence is concerned, the attending circumstances also clearly support the prosecution case.

13. The evidence of PW-7, Tara Devi and husband, PW-9, Shambhu Mahto, as noticed earlier are reliable and it discloses that in the after noon of 13.12.2001 the deceased had left for her matrimonial house along with her husband, the appellant. At that time she was hail and hearty and at about 7:00 P.M. on the same date these two witnesses who are parents of the deceased received information that their daughter was lying in an injured condition by the road side near Desari Chak. Further these witnesses have supported the prosecution case that the appellant had developed relationship with a girl at Delhi about which the deceased had given information to them sometimes ago. These two circumstances disclose that the appellant was last seen with the deceased before she was found in a serious injured condition with three knife injuries on her neck and the appellant had some motive to eliminate his wife, the deceased to have free relationship with another girl at Delhi, go a long way to support the prosecution case disclosed at the earliest by the informant to PW-2, the toddy shop owner as well as to her parents and the police.

14. Although PW-2, Sushila Devi, toddy shop keeper has been declared hostile in part, a careful examination of her deposition shows that she has supported the sub stratum of the prosecution case by disclosing that at the relevant time the injured lady came to her shop in injured condition with bleeding injuries on her neck and she had disclosed that she had been assaulted by her husband and thrown into the river. Such statement to PW-2 by the deceased, as per prosecution case was at the earliest opportunity when there was no external influence of any kind upon the informant. Even the fardbeyan has been recorded without any delay within two hours of the alleged occurrence when the police station is at some distance and the Chowkidar had to go to the police station so that police may come to Desari Chowk for recording the fardbeyan of the injured informant. In view of such prompt recording of fardbeyan and in view of allegations being supported even by the circumstantial evidence regarding the appellant being last seen with the deceased and the motive, We find no good reason not to place reliance upon the statement of the deceased recorded in the fardbeyan on which the signature of the deceased has been proved by the father, PW-9. As discussed earlier, such statement of the deceased is admissible u/s 32(1) of the Evidence Act. It is also found reliable.

15. On a careful perusal of the evidence of PW-7, 9 and on examining all the relevant aspects, We find that in this case there no motive on the part of the deceased or her parents to make false allegations against the appellant who happens to be husband of the deceased and the deceased had a five years old daughter from such husband. The materials on record also show that nobody

from the family of her husband attended the injured informant while she was under treatment. It has also come on record that the daughter of the deceased was still with the parents of the appellant.

16. So far as non examination of the Investigating Officer is concerned, it has already been noticed that in spite of all efforts made by the trial court he could not be traced. In such circumstances the prosecution in order to be fair has brought on record the relevant paragraphs of the case diary as Exhibit-7. It is further found that in the facts and circumstances of this case and considering its nature, the role of the Investigating Officer was largely formal. The entire prosecution story has been successfully disclosed and proved because of ability of the deceased to narrate the entire occurrence to the police as well as her parents in spite of having suffered three knife injuries on her neck as well as on account of circumstantial evidence adduced by her parents. Since such material evidence has been found reliable, non examination of the Investigating Officer in this case is of no consequence.

17. It was submitted on behalf of the appellant that as per medical evidence the deceased died due to shock and septicaemia caused by the injuries on neck but not entirely due to the injuries and therefore offence u/s 302 IPC is not made out. This submission is found meritless in the light of law laid down by the Hon'ble Supreme Court in the case of Patel Hiralal Joitaram v. State of Gujrat 2002 SCC (CrI) 1, relied upon by the learned State counsel. The cause of death has to be determined on broad probabilities and not on academic possibilities. In this case the cause of death is due to injuries which caused shock and septicaemia in spite of available medical treatment. Similar was the case mentioned above where injured developed septicaemia and died after 14 days.

18. In view of the aforesaid discussions and the entire materials on record which have been quite ably considered by the learned trial court, We are in agreement with the finding of the trial court that the charge against the appellant has been proved beyond reasonable doubts and he is guilty of the offence u/s 302 IPC as well as u/s 376/34 of the IPC because of his role in enabling his friend, co-accused, Manoj Kumar Pandit in committing rape upon the deceased. Hence the conviction of the appellant as made by the trial court is affirmed.

19. So far as award of death sentence to the appellant is concerned, it has been submitted on behalf of the appellant that he is a man aged about 30 years as noticed by the trial court and has parents and a daughter aged about 5 years to support. It has further been submitted that it may be somewhat a rare case but it is not rarest of the rare cases in which only death penalty may be awarded to a convict if the crime is found to be extremely brutal and the offender is found to be incapable of reformation.

20. It is settled proposition of law that award of death penalty is an exception and it should be awarded only in rarest of the rare cases. A perusal of the trial court order on the question of sentence shows that the trial court has kept in

mind all the relevant factors for awarding death sentence. It has noticed the leading cases on the principle governing the award of death sentence such as case of Bachan Singh Vs. State of Punjab, and Machhi Singh and Others Vs. State of Punjab, . The trial court has further prepared a list of aggravating circumstances as well as mitigating factors and thereafter it has held that aggravating circumstances are far more than the mitigating circumstances. It has noticed that it is uncommon that a husband will brutally assault his wife and reward his associate to let her be raped for assistance in the crime. It is further noticed that such murder is also betrayal of faith in a husband where victim is a defenseless wife.

21. We have also given our anxious consideration to the principles of law settled by the Apex Court. In the case of Machchi Singh (supra), Paragraphs 32 and 33 of the judgment provide guidelines as to when the civil society or the community may entertain sentiment against the convict so as to sanction the death penalty. Such sentiment may arise when the crime is viewed from the platform of the motive, or the manner of commission of crime, or the anti social or abhorrent nature of the crime. The instances given in respect of manner of commission of murder or the motive or the anti social nature of the crime etc are only illustrative. However, it is clear that inhuman acts of torture or cruelty in order to bring about victim's death or the diabolical or revolting manner of the crime may be relevant circumstances for award of death sentence. In this case, the manner of crime as narrated by the helpless informant disclosed cold blooded planning on the part of the appellant and his companion. Before inflicting three knife blows on the neck of his wife, the appellant not only undressed the lady and assaulted her sexually but also helped his accomplice and friend in committing rape upon her. Thereafter her hands were tied and then she was inflicted further knife blows on her neck and then she was thrown into the river. The entire sequence of events and use of rope for tying her hands indicate cold blooded planning. Hence the manner of the occurrence in this case is clearly diabolical, revolting and dastardly.

22. The motive for commission of murder is that the appellant had developed illicit relationship with a girl at Delhi and for that reason, forgetting that the deceased had five years old daughter from the appellant, he planned her murder and took help of the co-accused, a friend of his. Hence, the appellant planned a cold blooded murder, committed with deliberate design against a wife who had implicit trust in the appellant and obeyed his direction in going to the place of occurrence, a lonely flank of a river in the late evening hours of cold December day, in spite of her reluctance as disclosed in the fardbayan.

So far as anti-social or socially abhorrent nature of the crime is concerned, a crime of the present nature committed with a view to eliminate a legally wedded wife on account of relationship or infatuation with another woman is clearly most abhorrent and anti-social crime.

23. Conviction of the appellant already stands confirmed. On a careful analysis of

the relevant facts of the case and the legal principles noticed above it is found that on several yardsticks the decision of the trial court to award death penalty to the appellant is justified. We are aware that the appellant is only 30 years of age but We find that his actions as well as his background which is indicated by the fact that he took help of a friend to perpetuate such a crime against his wife do not show any reasonable chance of his reformation or that he would be responsible in the matter of maintaining his daughter or family, hence, We find no good reason to interfere with the punishment of death sentence granted to the appellant by the learned trial court. Hence, the death reference is answered in affirmative and the Criminal Appeal of the appellant is dismissed.