

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.936 of 2012

Arising Out of PS.Case No. -78 Year- 2009 Thana –Sadar (Dagarwa) District- PURNIA

Sk. Jamil S/o Late Sk. Amiruddin R/O Vill-Meera Fulpur, P.S.-Sadar (Dagarwa),
Distt-Purnea

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Ms. Smriti Singh (A/C)

For the Respondent/s : Mr. Satya Narayan Prasad, A.P.P.

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 25-01-2018

Heard Ms. Smriti Singh learned *amicus curiae* for the appellant as well as learned APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 16.07.2012 and order of sentence dated 23.07.2012 passed by the Adhoc Additional Sessions Judge no. 3, Purnea in Sessions Trial no. 622 of 2009 arising out of Sadar (Dagarua) P.S. Case No. 78 of 2009, whereby the learned trial court convicted the appellant for the offence punishable under Section 302 of the Indian Penal Code and sentenced him to undergo R.I. for life and also slapped him with a fine of Rs. 1,00,000/- and in default of payment of fine to undergo



R.I. for two years under Section 302 of the Indian Penal Code.

3. The factual matrix of the case is that Sadar (Dagarua) P.S. Case No. 78 of 2009 was instituted under Section 302 of the Indian Penal Code against accused Sk. Jamil on the basis of fardbeyan of Dafadar-12, Luxman Prasad Yadav S/o Chunni Lal Yadav recorded on 25.02.2009 at 09:45 AM at Village Meera Fulpur by S.H.O. Dagarua with the allegation, in succinct that on 25.02.2009 at around 07:30 AM, he got information that Sk. Jamil has committed murder of his wife namely, Anwari Khatoon at his house by assaulting her by means of spade. On the said information, he rushed to the house of Sk. Jamil and found the blood drenched dead body of Anwari Khatoon lying on chowky in the room of Sk. Jamil sustaining injury on her nose, cheek and head with profuse bleeding from mouth and head. Sk. Jamil was also present there. He learnt there that Sk. Jamil was skeptical about extramarital affair of his wife Anwari Khatoon with one Tawrej. In the evening of 24.02.2009, the said Tawrej has also visited to his wife resulting into altercation between the couple and due to aforesaid reason, on 25.02.2009 at around 06:00 AM, Sk. Jamil committed murder of his wife by assaulting her by means of spade. On quizzing, Sk. Jamil also divulged him that he was fed up of his ignominy due to illicit affair of his wife with Tawrej and his wife



did not mend her ways despite hectic persuasion made by him so he committed murder of his wife.

4. The aforesaid case was investigated by the police and on visiting the place of occurrence, preparing the inquest report, recording statement of witnesses and obtaining the postmortem report and on conclusion of the investigation, I.O. submitted chargesheet against the accused Sk. Jamil under Section 302 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the Adhoc Additional Sessions Judge no. 3, Purnea for trial.

6. Charge against accused Sk. Jamil was framed under Section 302 of the Indian Penal Code. Charge was read over and explained to him to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether twelve prosecution witnesses namely, Md. Insar as PW-1, Md. Haquim as PW-2, Md. Zulfikar Ali as PW-3, Md. Shefat as PW-4, Md. Syed Mister as PW-5, Md. Abdul Gani as PW-6, Syed Asdul Hussain as PW-7, informant



Luxman Prasad Yadav as PW-8, Dr. Indra Narayan who conducted autopsy of the cadaver of the deceased as PW-9, I.O. Tarkeshwar Prasad Singh as PW-10, mother of the deceased namely, Mehar Banu as PW-11 and father of the deceased namely, Md. Kamruzama as PW-12. Out of the aforesaid witnesses, PWs-1, 2, 4, 5, 6 and 7 turned hostile. In documentary evidence, the prosecution has filed and proved certain documents.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. In buttress of its case, the accused has neither adduced any ocular nor documentary evidence.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Sk. Jamil has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned *amicus curiae* for the



appellant that there is no eye witness of the occurrence. PW-3 (Md. Zulfikar Ali) who happens to be minor son of the deceased though has claimed himself to be eye witness of the occurrence, but in his cross-examination, he has candidly stated that he was playing near his village at the time of occurrence. Informant has stated in his examination-in-chief that when he arrived at the place of occurrence, Sk. Jamil was present there and he confessed his guilt before him but he refused to identify the appellant (Sk. Jamil) in the dock and has also stated in his testimony that he had signed on his *fardebayan* at the instruction of SHO without going through it and the said *fardebayan* was never read over to him. He has also not named the appellant in his examination-in-chief. It is further submitted that as per the statement of PW-3, besides his father, his uncles and others have committed murder of his mother and his uncle Jabbar was having land dispute with the deceased, but the aforesaid persons have not been made accused in the case which creates serious doubt about the prosecution case. PWs-11 and 12 who happen to be mother and father respectively of the deceased are the hearsay witnesses. At one place, they have stated that they have got knowledge of murder of their daughter from their grandson PW-3 (Md. Zulfikar Ali) but at another place PW-11 has stated that our grandson had given information of the occurrence



on the mobile of the PCO owner Md. Server through Gram Pradhan of the Fulpur. Moreover, PW-3 (Md. Zulfikar Ali) has also not corroborated the divulgence of the aforesaid facts either to the PWs-11 and 12. Thus, the aforesaid contradictory statement of PWs-11 and 12 is not admissible in evidence. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellant beyond all reasonable doubts by adducing convincing, cogent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellant is liable to be set aside and the appellant is entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that PW-3 (Md. Zulfikar Ali) who happens to be son of the deceased was present at the place of occurrence at the time of occurrence and happens to be eye witness of the occurrence and he has fully supported the prosecution case. The prosecution case also stands corroborated by informant (PW-8) and PWs-11 and 12. It also stands corroborated by the medical evidence and after correctly appreciating the facts and evidence on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence which is liable to be



upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of record, it appears that to substantiate its case, the prosecution has examined ten material witnesses in the case. Out of them, PWs-1, 2 and 4 to 7 turned hostile. PW-8 who happens to be informant of the case also does not happen to be eye witness of the occurrence as he was not present at the place of occurrence at the time of occurrence rather had arrived there learning the happening of the occurrence later on and PWs-11 and 12 who happen to be parents of the deceased are also not eye witnesses of the occurrence rather hearsay witnesses as they have initially stated that they have got information of the incident from her grandson (PW-3). The only witness of the case left is PW-3 (Md. Zulfikar Ali) who claims himself to be eye witness of the occurrence by stating in his examination-in-chief that at the time of occurrence, he was sleeping on the bed near his mother along with his two brothers. His father arrived there armed with Dabiya and started assaulting his mother. Witnessing the aforesaid assault, he stepped out of the house making alarm. Responding the same, passerby namely Asdul arrived there and took his father out of the house and snatching the said Dabiya from him hurled it away. Then he entered into the house and locking the



door of his mother from outside rushed to call the doctor. In the meantime, Asdul released his father, who followed him and took key of the room from him assuring him to not kill his mother. Thereafter, he arrived at his house and again started assaulting his mother by means of spade. Thereafter, his uncles Jabbar, Tamij, aunt Rehana, son of his uncle Firoj, Phupha Hakim and Riyasat, Afzal and Gannu also assaulted his mother. They kept her assaulting even after her death. There was land dispute between Jabbar and his mother. But in paragraph 9 of his cross-examination, said witness has stated that on the fateful morning, he was playing near his village. The aforesaid statement of PW-3 completely rules him out to be eye witness of the occurrence and witnessing of the occurrence of assaulting his mother by his father and others as stated by him in his examination-in-chief. As as per his aforesaid statement, he was not present at the place of occurrence at the time of occurrence rather was playing in his nearby village. Moreover, as per the statement of the aforesaid witness besides his father, his aforesaid uncles, aunt, son of uncle and others also assaulted his mother and kept her assaulting even after her death and there was land dispute between his uncle Jabbar and his mother. But the aforesaid persons have not been made accused in the case which creates serious doubt about the prosecution case.



15. Though, the learned trial court has observed that the said witness was speaking regarding the previous day and not regarding the fateful day and brushed aside the aforesaid contradiction made by the said witness on the ground that on the date of giving aforesaid statement before the court just after the aforesaid statement, the witnesses had himself clarified that day as day preceding to fateful day in the dock but the said statement could not be recorded by him due to uproarious scene created by the defence and he kept it in his memory to use it whenever and wherever required. But, the aforesaid act of learned trial court is not appreciable as if he could not recorded the aforesaid statement of PW-3 due to din and melee created by the defence on the very date of giving statement by said witness. He ought to have re-examined him on that very day or on the next day even as a court witness but he did not do so. Hence, the aforesaid finding of trial court is against the law and not acceptable.

16. The informant (PW-8), though has stated in his fardbeyan that learning the incident of murder of Anwari Khatoon by her husband Sk. Jamil (appellant) at her house, he rushed there and found the blood drenched dead body of the Anwari Khatoon lying on the cot sustaining injury on several parts of her person and also found the appellant present there who confessed committing



the occurrence due to his misgiving of extramarital affair of his wife (deceased) with one Tawrej before him. But in paragraphs 3 and 4 of his examination-in-chief itself he has vented his ignorance about assailant of the deceased and cause of her murder. In paragraph 5 of his examination-in-chief, he has even denied to identify the appellant in dock and in paragraph 7 of his cross-examination, he also denied to have witnessed the appellant ever before and he also denied to be aware of the name and address of the appellant. In paragraph 9 of his cross-examination, he has stated that he has put his signature on his fardbeyan on the instruction of SHO Dagarua at the P.S. without reading the same. The SHO had also not read it over to him. In paragraph 10 of his cross-examination, he has further stated that he heard the name of Anwari Khatoon for the first time at the police station. Thus, from perusal of aforesaid testimony of the informant, it appears that he has not supported the aforesaid case of the prosecution as alleged by him in his fardbeyan rather has stated quite contradictory to his statement given in fardbeyan regarding his knowledge about committing murder of deceased by the appellant, identification of the deceased and appellant at the place of occurrence, cause of murder of the deceased and assailant of the deceased.

17. PW-11 (Mehtar Banu) and PW-12 (Md.



Kamruzama) who happen to be parents of the deceased are not the eye witness of the occurrence as PW-11 in paragraphs 3 and 4 of her examination-in-chief and PW-12 in paragraph 3 of his examination-in-chief has unequivocally stated that at the time of occurrence, they were present at their house at Katihar and their grandson Md. Zulfikar Ali (PW-3) gave information of the incident to them on mobile to the effect that his father Sk. Jamil has committed murder of his mother assaulting her by means of Dabiya and Kudal (spade) then on getting the aforesaid information, they rushed to the place of occurrence. But PW-3 (Md. Zulfikar Ali) has not corroborated the factum of divulgence of the aforesaid facts to the aforesaid witnesses by him and due to non-corroboration of the aforesaid fact by PW-3 (Md. Zulfikar Ali), the aforesaid evidence of PWs-11 and 12 even as hearsay witnesses is not admissible in the eye of law. Moreover, though in examination-in-chief PW-11 has stated that she got information of murder of the deceased by the appellant through her grandson Md. Zulfikar Ali (PW-3), but in quite contradiction to the aforesaid statement, she has stated in paragraph 10 of her cross-examination that her grandson Md. Zulfikar Ali (PW-3) gave information of the incident on the mobile of PCO owner of her village namely, Md. Server through Gram Pradhan, Fulpur. Moreso, the aforesaid Gram Pradhan, Fulpur and



PCO owner Md. Server have not been examined by the prosecution in corroboration of the aforesaid statement of PW-11. Aforesaid aspect of the case also creates serious doubt about credence of PWs-11 and 12.

18. As per statement of PW-3, appellant and 8-9 other accused persons assaulted the deceased and they kept her assaulting even after her death. But, from perusal of statement of doctor Indra Narayan (PW-9) and postmortem report (Ext-4), it appears that the doctor has found only three injuries on the person of the deceased, one sharp cut injury on her cheek, second injury on head and third sharp cut injury on her right forearm near wrist. Thus, the aforesaid ocular evidence of the prosecution also does not stand corroborated by the medical evidence.

19. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to bring home the charge levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial court is set aside and the appellant is acquitted of the charge levelled against him. As the appellant is in custody, he is directed to be released forthwith from



the custody, if not wanted in any other case. Accordingly, this Criminal Appeal is allowed.

20. Let a copy of the first and last page of this judgment be handed over to the learned *amicus curiae*, Ms. Smriti Singh and learned *amicus curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J)

(Prakash Chandra Jaiswal, J)

rohit/-

AFR/NAFR	AFR
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