

Criminal Appeal (D.B.) No. 44 of 1999 (R)

[Against the Judgment of conviction and Order of sentence dated 10.12.1998 passed by learned 5th Additional District & Sessions Judge, Giridih, in Sessions Trial No. 256 of 1996]

Birju Yadav, Son of Late Madhav Mahto, resident of Village – Mahuari, P.S. – Gawan, District - Giridih.

... .. **Appellant**

Versus

The State of Bihar (Now Jharkhand) ... **Respondent**

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE PRADEEP KUMAR SRIVASTAVA

.....

For the Appellant : Ms. Srishti Mishra, *Amicus*.

For the Respondent : Mrs. Priya Shrestha, Spl.P.P.

.....

JUDGMENT

C.A.V. on 22.10.2024

Pronounced on 11.12.2024

Per Pradeep Kumar Srivastava, J.

- 1.** Heard learned counsel for the parties.
- 2.** The present appeal is directed against the judgment of conviction and order of sentence dated 10.12.1998 passed by learned 5th Additional District & Sessions Judge, Giridih in Sessions Trial No. 256 of 1996, whereby and whereunder, the appellant has been held guilty for the offence under Section 302 of the I.P.C. and sentenced to undergo rigorous imprisonment for life.

FACTUAL MATRIX

- 3.** The factual matrix giving rise to this appeal in a nut shell is that the informant's daughter Guddi Devi was

married with the present appellant. It is alleged that the present appellant had illicit relation with his *bhabhi*, which was frequently protested by his wife and she returned to her parental home. Informant Prayag Mahto (P.W.-6) along with his daughter Guddi Devi went to her matrimonial home on 16.06.1996 and on the next day i.e. 17.06.1996 at about 12 O' Clock, there was a Panchayati and in Panchayati, Guddi Devi has told her husband to get separate from his brother and *bhabhi* and asked for share in the property, but her husband, brother of husband and *bhabhi* did not agree to above proposal and asked her to go back. It is further alleged that the husband of Guddi Devi also started abusing her and due to that reason, no decision could be taken in the Panchayati and the informant returned back to Village – Khutta and stayed there in the night and Guddi Devi was left at her matrimonial home. On the next day i.e. 18.06.1996 at about 7 O' Clock, informant again went to the matrimonial home of his daughter Guddi Devi and found her dead. The dead body was lying on a Cot. He also noticed that there was black spot on the neck and it seems that she has been killed by strangulation. He asked about the reason of death of his daughter from her husband and brother of the husband, but no satisfactory reply was given.

4. On the basis of fardbeyan of the informant, Gawan P.S. Case No. 35 of 1996 was registered against the present appellant, his brother Barho Yadav and Munwa Devi, wife of Barho Yadav for the offence under Sections 302 / 34 of the I.P.C. and after conclusion of investigation, charge sheet was submitted against the accused Birju Yadav and Barho Yadav.
5. After cognizance, the case was committed to the Court of Sessions vide order dated 16.10.1996; where Sessions Trial No. 256 of 1996 was registered. The accused persons denied the charges and claimed to be tried.
6. In course of trial, altogether 10 witnesses have been examined by the prosecution including the I.O. and the Doctor. Apart from oral testimony of witnesses, following documentary evidences were also adduced by the prosecution:-

Exhibit-1	:	Signature of Kishun Prasad Yadav on the Inquest Report.
Exhibit-1/1	:	Signature of Balram Prasad on the Inquest Report.
Exhibit-1/2	:	Signature of Chandrika Yadav on Fardbeyan.

- Exhibit-1/3 : Signature of K.B. Singh on formal FIR.
- Exhibit-1/4 : Signature of K.B. Singh on formal FIR.
- Exhibit-2 : Post Mortem Report.
- Exhibit-3 : Fardbeyan.
- Exhibit-4 : Endorsement on Fardbeyan.
- Exhibit-5 : Inquest Report.
- Exhibit-6 : Formal F.I.R.

7. The learned trial court, after appraisal and evaluation of evidence led by the prosecution, found it is a case based upon circumstantial evidence and relied upon following circumstances against the appellant:-

- (a) There was dispute between accused person and deceased.
- (b) The dead body of deceased was found in the house of accused person.
- (c) The death was homicidal and not suicidal.
- (d) It is the accused Birju Yadav and non-else who has motive and occasion to kill her.

8. The trial court has also considered the following Panchsheel principles for proving the case based on circumstantial evidence:-

- (i) The circumstance from which the conclusion of guilt is to be drawn is fully established.
- (ii) The fact so established should be consistent with the guilt of the accused.
- (iii) The same should be of conclusive nature and tendency towards guilt of the accused.
- (iv) They should exclude every possible hypothesis except the one proved.
- (v) There must be a chain of evidence so complete as not to leave any reasonable ground for conclusion consistent with the innocence of the accused and must show that in all probability the act must have been done by the accused.

9. After scrutinizing the evidence led by prosecution, the learned trial court held the appellant Birju Yadav guilty for the offence under Section 302 of the I.P.C. and at the same time, it was also found that another co-accused Barho Yadav has no motive to eliminate the deceased. Hence, he was acquitted from the charges leveled against him.

10. Learned counsel for the appellant has assailed the impugned judgment and order on the following grounds:-

- (i) The appellant was by profession a driver and

working in Kolkata and he occasionally used to visit his home. The allegation of illicit relationship between the appellant with his *bhabhi* has not been proved by any cogent and reliable evidence.

- (ii) The informant himself has deposed that he has never inquired about such illicit relationship of the appellant with his *bhabhi* at any point of time.
- (iii) So far dispute of partition and separation of property is concerned, it is admitted that partition of property had taken place much prior to occurrence. The factum of alleged Panchayati has not been proved by the prosecution. Therefore, the very genesis and motive for occurrence has not been proved by prosecution beyond all reasonable doubt.
- (iv) The post-mortem report of the deceased as proved by P.W.-7 shows that face of the deceased found blue and swollen, mouth partly opened, tongue protruded and placed in between teeth, left eyes congested. Viscera were preserved, but no viscera report has been brought on record to prove the exact cause of death of the deceased.

- (v) P.W.-7 has also clearly stated the time elapsed since death to Post-mortem examination 60 to 72 hours and in his cross-examination, has reiterated that the death might have occurred on 16th, which clearly falsifies the prosecution story inasmuch as the informant himself stated that he brought the deceased to her matrimonial home on 16th and on 17th, there was Panchayati and on 18th dead body was found, whereas the post-mortem on the dead body of the deceased was conducted on 19.06.1996.
- (vi) The appellant has been convicted only on the basis of suspicion and scanty circumstances appearing against him.
- (vii) It is settled law that suspicion, howsoever strong, cannot substitute proof beyond reasonable doubt.
- (viii) The circumstances, on the basis of which the appellant has been convicted, have not been got explained in the statement of appellant recorded under Section 313 of the Cr.P.C. which also vitiates the trial.
- (ix) The prosecution has also failed in discharging its duty of proving the foundational facts beyond all reasonable doubt. Hence, the principles of

Section 106 of the Evidence Act cannot be applied in this case.

- 11.** The learned trial court has failed to take into notice the above glaring infirmities and defects in the prosecution evidence and arrived at erroneous finding while recording the guilt of the appellant for the offence of murder of his own wife. The appellant is innocent. Hence, he deserves acquittal. Accordingly, the impugned judgment and order is liable to be set aside by allowing this appeal.
- 12.** Learned counsel for the appellant has placed reliance upon the reported judgment of ***Ram Pratap Vs. State of Haryana*** reported in ***(2023) 2 SCC 345*** and ***Raja Naykar Vs. State of Chhattisgarh*** reported in ***(2024) 3 SCC 481***.
- 13.** Per contra, learned Spl.PP appearing for the State while refuting the aforesaid contentions raised on behalf of the appellant has submitted that the learned trial court has very meticulously and in threadbare manner appraised and evaluated the testimony of ocular witnesses particularly, the informant, who is unfortunate father of the deceased and other circumstances available on record conclusively proved by prosecution and get the same explained by the accused in his statement recorded under Section 313

Cr.P.C., but the accused has failed to offer any reasonable explanation against the incriminating circumstances appearing against him. There is no defence plea at all even by way of suggestion to the prosecution witnesses to cast any doubt in the prosecution version. The conviction and sentence of the appellant does not suffer from any illegality or infirmity calling for any interference. The points of argument raised on behalf of the appellant have no legal force to stand in the way of impugned judgment. Therefore, this appeal has got no merits and fit to be dismissed.

14. We have gone through the record of the trial court as well as the impugned judgment of conviction and order of sentence of the appellant in the light of contentions raised on behalf of the learned counsel for respective parties.

15. For better appreciation of the points raised on behalf of the appellant, we have to appraise the evidence of material witnesses at first.

16. P.W.-6 – Prayag Mahto is the informant-cum-father of the deceased. The relevant para of his evidence reads as follows:-

1. गुड्डी देवी उर्फ गुड़िया मेरी बेटी थी। इसका विवाह ग्राम महुवरी के बिरजू यादव के साथ किया था। मेरी बेटी को मार दिया। बिरजू यादव, बाढ़ो यादव

और मुनया देवी। तीनों मुदालय ने मिलकर उसको मार दिया। इस घटना का डेढ़ साल हो रहा है। एतवार को मैंने अपनी लड़की को उसके ससुराल महवरी पहुंचाया और सोमवार को पंचायती हुआ। पंचायती में मेरी बेटी ने पति को कहा अपनी भौजाई और भाई को छोड़ दो और मेरा हिस्सा बांटकर हमारे साथ रहो। इसपर मेरा दमाद बोला कि हिस्सा नहीं मिलेगा और तुमको जीवन से उठा देंगे। पंचायती में यह सभी बातें मेरे सामने हुई। मेरा दमाद बिरजू यादव हमको मारने दौड़ा और गाली गलौज किया। इसपर हम अपने समधी के यहां खूंटा गांव में चले गए और रात में वहीं रहे। बिहान भोरे मैं अपनी बेटी के ससुराल आए तो गुडडी को मरा देखें। गला में रस्सी का दाग देखा और उसको टट्टी हो गया था।

2. हम गांव गए और पुलिस को लाकर लाश के पास लाए और हम पुलिस को दो बार बयान दिए।

3. उपरोक्त तीनों मुदालय ने मिलकर मेरी बेटी का हत्या कर दिया।

4. मेरे दमाद का अपनी भौजाई से गलत रिश्ता था और उसे ही यह सबकुछ दे दिया करता था।

10. मेरी लड़की घटना के दस-पन्द्रह रोज पहले से अपने नैहर में थी। स्वतः एतवार को उसे ससुराल पहुंचाया था। नैहर में थी उसके तीन साल पहले वह ससुराल में ही थी।

14. घटना के चार दिन कि आठ दिन पहले बिरजू कलकत्ता से आया था। बिरजू कलकत्ता से आया सो खबर मेरे यहां भी चला गया।

16. जब खबर हो गया तो लड़की को हम पहुंचाने ले गए। बारह बजे दिन एतवार को पहुंचाया। दोनों गोतनी में बाता-बाती होने लगा। फिर कहते हैं तुरंत लड़ाई नहीं हुआ। एतवार को लड़ाई नहीं हुआ।

18. बिरजू कहा कि पंचायती होगा और हमको सोमवार को सुबह में नहीं जाने दिया। किस कारण पंचायती कर रहा है सो नहीं कहा। मुदालय के घर में ही पंचायती हुआ। चार-पांच गांव के लोग थे उनका नाम नहीं जानता।

20. पंचायती एक-डेढ़ घंटा हुआ। गुडडी चाहती थी कि वह अपने पति के साथ अलग रहे। पंचायती में कोई लिखा पढ़ी नहीं हुआ। बिरजू परिवार का चार आदमी ही था। बिरजू बाढ़े और दोनों की स्त्री। मुदालय लोग कि तुमको हिस्सा नहीं देंगे।

21. पुलिस को बयान नहीं दे सके कि मेरा दमाद बोला कि तुमको जीवन से उठा देंगे।

25. घटना के पहले ही हमको बेटी गोहार करती थी कि उसके पति का भौजाई से नाजायज संबंध है।

- 17. P.W.-1 Bandhu Mahto** is a local villager, who has seen the dead body of the deceased lying on a Cot at her matrimonial home. He has also stated that there was tense relation between Guddi Devi with husband Birju Yadav (appellant) and bhaisur Barho Yadav. He has also stated that there was no partition of landed property between two brothers.
- 18. P.W.-2 Birju Prasad Yadav**, who is also a local villager. He saw the dead body of the Guddi Devi lying on a Cot in the Courtyard of house of accused. He has also stated about tense relationship and scuffle between deceased and her gotni, bhaisur and husband.
- 19. P.W.-3 Kishun Yadav** - He is also a local villager and a witness of inquest report of the deceased and proved his signature on inquest report, which was prepared at the house of accused. He has also stated that the deceased was saying that she will not reside with her husband, bhaisur and gotni and asking for partition. In this regard, a Panchayati was also held.
- 20. P.W.-4 Indo Mehta** has been declared hostile by the prosecution and has denied any statement recorded by police.
- 21. P.W.-5 Balram Prasad Yadav** - He is also a local villager, who come to know about death of the

deceased on the next day morning and went to the house of Birju Yadav, where he saw the dead body lying on the Courtyard. He is also a witness of inquest report and proved his signature. In his cross-examination, he admits that partition of property was taken place between Birju and his brother about 5-6 years ago through Panchayati.

22. P.W.-7 Dr. Rajendra Choudhary has conducted autopsy on the dead body of the deceased on 19.06.1996 and found followings:-

“Rigor mortis present in lower limb. Hair, black and loosening. Foul smelling. Whole body was swollen. Body was in process of decomposed. Face-blue and swollen. Mouth – partially open. Tongue - protruded and placed in between teeth. Both eyes – closed. Left eye – congested conjunctive. Discharge of faces. Bruise on upper part front of the chest left side.

On dissection – Extra vesation of clotted blood into subcutaneous tissue of neck. Larynges and trachea in process of putrefaction. Hyoid bone – fractured. Lungs in process of putrefication. Heart - left side oupty, rigor side full of dark blood. Liver, spleen, kidney – in process of putrefication, stomach – empty. Uterus – NAD Urinary bladder – empty, scalp bone – intact. Brain – Liquefied.

The cause of death, according to Doctor’s opinion, was throttling leads to cordiosespirating failure. However, following viscera’s were preserved for chemical analysis. Pieces of heart, lung, spleen, stomach and it contains, one kidney and portion of intestine were preserved.

Time elapsed since death to P.M. examination 60 to 72 hours.

3. Post-mortem was conducted on 19.06.2006 at 12/45 P.M. Therefore, death might have occurred three days before, i.e. on the 16th. It was summer season. The body was highly decomposed.

9. The visceras were preserved to find out in case the death was due to poisoning. No report has been received by me.

10. Fracture of hyoid bone was ante-mortem, though not mentioned in P.M. Report.”

23. P.W.-8 Kunj Bihari Singh was the then Officer-in-Charge of Gawan P.S. According to his evidence, on 18.06.1996 at 11:30 A.M. he came to know through rumor that a lady has been killed in Village – Mohobari. He recorded SD Entry at about 11:30 A.M. No. 304 dated 18.06.1996 and proceeded for verification of information along with other police personnel. He reached to the house of the accused Birju Yadav and Barho Yadav, who are real brothers and found dead body of one lady in the Courtyard of the house. Father of the deceased was also present there. He recorded the statement of father of the deceased in presence of witnesses and marked endorsement of registration of the case, which are proved Exhibit-3 & 4 respectively and signature of witness Chandrika Yadav the marked Exhibit – ½. He assumed the charge of investigation by himself,

inspected the place of occurrence, which is the house belonging to the accused persons Birju Yadav and Barho Yadav. The house is consisting of four rooms. In a room within 6" x 7", the dead body of the deceased found on a Cot, in which the deceased was residing with her husband. He also prepared inquest report of deceased (Exhibit-5) in presence of witnesses. The accused persons were present at the house. He arrested Birju Yadav and Barho Yadav and Munwa Devi was not present in the house. He has further stated that the witnesses interrogated during investigation told him that in the night of 17/18.06.1996 the deceased was killed by her husband, bhaisur and gotni by throttling due to domestic dispute. He sent the dead body of the deceased for post-mortem examination. Thereafter, he was transferred and charge of investigation was given to another Investigating Officer.

- 24.** P.W.-9 Dinesh Kumar Rana is the second I.O. of the case, who perused the earlier investigation conducted by previous Investigating Officer, got post-mortem report of the deceased, obtained memo of supervision from Senior Officer and submitted charge sheet against the accused Birju Yadav and Barho Yadav, continuing the investigation against Munuwa Devi, who was absconding.

25. P.W.-10 has proved the formal F.I.R., which was scribed by literate Constable Shiv Kumar Singh as Exhibit-6.

26. On the basis of testimony of witnesses, as discussed above, following incriminating undisputed circumstances appear against the appellant:-

- (i) The appellant was married with the deceased about 10 years prior to the occurrence.
- (ii) Both were blessed with two children, out of them only one is alive.
- (iii) The deceased was annoyed due to illicit relationship between her husband and her gotni Munuwa Devi.
- (iv) The deceased was asking partition of property and also desiring that her husband should live separately along with his wife and keep no relation with his *bhabhi*.
- (v) There was frequent dispute and scuffle between the deceased and accused persons for the aforesaid reasons.
- (vi) The present appellant was working as a driver at Kolkata and used to visit his home.
- (vii) About 4-5 days prior to occurrence, the appellant returned to his home and receiving the said

massage, the informant along with his daughter (deceased) came to her matrimonial home on Sunday i.e. on 16.06.1996, on Monday i.e. 17.06.1996 in the morning, a Panchayati was held and the deceased asked for separation of property from her gotni and bhaisur and separate residence, which was heavily protested by her husband with a threatening.

- (viii) The informant again went to the matrimonial home of deceased on 18.06.1996 and found her dead body lying in the house of the accused persons.
- (ix) The cause of death of the deceased is throttling, which is homicidal in nature and neither suicidal nor accidental.
- (x) The appellant has been asked aforesaid incriminating circumstances in his statement recorded under Section 313 Cr.P.C., but there is simple denial, rather he has admitted his presence in his house on the date of occurrence and also admits that the dead body of the deceased was found in his room lying on a cot.
- (xi) The defence has neither offered any reasonable explanation to the incriminating circumstances nor have taken any defence plea.

27. In the case of ***Sarad Birdhi Chand Sharda Vs. State of Maharashtra*** reported in ***(1984) 4 SCC 116***, the Hon'ble Apex Court has laid down the following panchseel principles for a case based on circumstantial evidence:-

"Certainly, it is a primary principle that the accused must be and not merely may be guilty before a court can convict and the mental distance between 'may be' and 'must be' is long and divides vague conjectures from sure conclusions."

(2) The facts so established should be consistent only with the hypothesis of the guilt of the accused, that is to say. they should not be explainable on any other hypothesis except that the accused is guilty,

(3) the circumstances should be of a conclusive nature and tendency.

(4) they should exclude every possible hypothesis except the one to be proved, and

(5) there must be a chain of evidence so complete as not to leave any reasonable ground for the conclusion consistent with the innocence of the accused and must show that in all human probability the act must have been done by the accused.

These five golden principles, if we may say so, constitute the panchsheel of the proof of a case based on circumstantial evidence.

28. In the instant case, we find that there was tense relationship between the appellant and his wife due to his illicit relationship with his bhabhi and also for separation in mess and property. The appellant was residing at Kolkata and frequently used to come to his

native place and reside with his wife, but under continuous tense relationship, his wife went to her parental home just few months before the occurrence. It is also proved that the deceased returned to her matrimonial home with his father on 16th June, 1996 and Panchayati was held on 17th June, 1996, which was not reduced into writing, rather it failed due to demand of deceased for separation in mess and property with her gotni and bhaisur and her husband, who desist from illicit relationship from his *bhabhi* which provoke the appellant. The local villagers examined in this case have categorically stated that the deceased was killed in the night due to dispute with her husband, gotni and bhaisur and in the very next day morning i.e. 18th they have seen the dead body of the deceased lying on the Cot in the house of the appellant. The death of the deceased is also homicidal caused by throttling while she was under custody of her husband / appellant. If the deceased had died an unnatural death in any abnormal circumstances in the house of the appellant, he has not reported the matter to the police. It was within the knowledge of the appellant as to how and under what circumstances, his wife has died homicidal death in his own house / room. Nothing has been brought on record that any other person has any animus to kill

the deceased and entered into her room and fled away causing her death by strangulation. By not offering any reasonable explanation to the aforesaid clinching incriminating circumstances by the appellant furnishes an additional link in the chain of circumstances leading to conclusion that it is none else, but the appellant himself, who has caused the death of his own wife in his house by strangulation due to strained relationship.

29. The principles propounded in the judgment relied upon by the appellant in the case of ***Ram Pratap (Supra)*** and ***Raja Naykar (Supra)*** that the suspicion, however strong it may be, cannot take the place of proof beyond reasonable doubt is not applicable in the factual background of this case, wherein the incriminating circumstances has been proved beyond all reasonable doubt against the accused – appellant, for which, he has offered no explanation.

30. In view of aforesaid discussion and reasons, we are of the firm view that the learned trial court has very wisely and aptly appraise and appreciated the evidence available on record against the appellant and in view of concrete prove available against the appellant, the trial court has rightly convicted and sentenced him. We have no valid reason for

interference in the impugned judgment and order of conviction and sentence of the appellant. Therefore, this appeal appears to be devoid of merit and accordingly, dismissed.

31. Pending I.A., if any, stand disposed of.

32. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

(Rongon Mukhopadhyay, J.)

(Pradeep Kumar Srivastava, J.)

Jharkhand High Court, Ranchi

Dated, the 11th December, 2024.

Sunil / **N.A.F.R.**