

Criminal Appeal (D.B.) No. 1418 of 2003

[Arising out of judgment of conviction and order of sentence both dated 30.08.2003 passed by learned Xth Additional Judicial Commissioner, Ranchi in Sessions Trial No. 153 of 2003]

Ainul Khan son of Nasir Khan, resident of Village Ashro, P.S. Bero,
District Ranchi (Jharkhand) **Appellant**

--Versus--

State of Jharkhand **Respondent**

For the Appellant: Mr. Suraj Kumar, Amicus Curiae

For the State : Mr. Vineet Kumar Vashistha, Special P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 22.11.2024

Pronounced On: 27.11.2024

Per Gautam Kumar Choudhary, J. The sole appellant is before this Court in appeal against the judgment of conviction and sentence under Section 302 of the IPC.

2. Appellant is the husband of the deceased and has been convicted for committing murder of his wife. Informant is the father of deceased. As per the FIR, he received information that his daughter was seriously ill in her matrimonial home. He rushed to her matrimonial home which was situated in Village Asro, where he found the dead body of his daughter with blood oozing from her mouth and nose. There was black injury over the chest and back side of the dead body. Deceased was the second wife of the appellant and there used to be usual altercation with his first wife, for which she used to be assaulted by the Appellant.

3. On the basis of the *fardbeyan*, Bero P.S. case No.39/2002 was registered under Section 302 of the IPC against this appellant. After investigation, charge sheet was submitted and he was put on trial for committing murder of his wife.

4. Altogether twelve witnesses have been examined on behalf of the prosecution and one defence witness has also been examined. Apart from the prosecution evidence, relevant documents including post-mortem

examination report, inquest report and *fardbeyan* have been proved and marked as exhibits.

5. Judgment of conviction and sentence has been assailed on the ground that prosecution has failed to prove homicidal death of the deceased, which is the fundamental ingredient to prove the charge for offence under Section 302 of the IPC. P.W. 1, P.W. 2 and P.W. 6 are hearsay witnesses. Evidence of death being caused by injuries as result of an assault, is falsified by the post-mortem examination report. The prosecution case rests on extra-judicial confession of the appellant made to P.W. 3 which is a very weak witness.

6. Learned A.P.P. defended the judgment of conviction and sentence. It is submitted that P.W. 4 is the mother of the deceased and has deposed that the appellant was in the habit of assaulting the deceased. P.W. 5 is the sister of the deceased and resided in the house of the deceased and the appellant in the adjacent room. She had witnessed the incidence and supported the case. P.W. 8 Khairun Bibi was another sister of the deceased and resident of the neighborhood and was also an eye witness to the occurrence. When on hulla, she reached the place of occurrence, she found the deceased breathing her last. About 2/3 days back, she was assaulted by the Appellant.

FINDING

7. On close scrutiny, it is evident that P.W. 5 sister of the deceased claims to be the direct eye witness to the incidence as she resided in the same house. This witness can be accepted to be a natural witness, as her husband was the full brother of the Appellant and they were residing in the same house hold. She has stated in para-1 that when on hulla she arrived at the place of occurrence, she was told by the deceased that Appellant had strangulated her, and there was bleeding from her neck, chest, mouth and her back. Her minor daughter Tarannum was weeping and asking to spare her mother. She claims to have seen Tangi in the hand of the Appellant. She has vouched to the presence of the P.W. 7 at the time of incidence.

P.W. 7- Aziz Khan has deposed that he reached the place of

occurrence on hulla and saw injuries all over the body of the deceased. He has also stated about the almost regular altercation that took place, between the wife and husband.

P.W. 8 is another sister of the deceased and was living nearby to the house of the deceased. On hulla, when she arrived there, she saw her sister breathing her last due to the injuries over her body. She also claims to have seen extensive injuries all over her body and marks of strangulation over her neck.

8. Weight of oral evidence is that death was due to injuries of assault and as a result of strangulation. Evidence of Oral Dying declaration and death by strangulation are incompatible and both cannot be accepted, for the reason that if one is throttled, she will have no opportunity to make the dying declaration. Post-mortem Report also discounts possibility of strangulation as the cause of death.

9. P.W. 10 is the Doctor, who has proved the post-mortem examination report (Exhibit 2). Autopsy Surgeon found the following injuries on the dead body: -.

External

- i. Multiple abrasions ranging from pinhead to peanut size with irregular margin spread over both the cheeks and right axilla and there were ant bite which were post-mortem in nature.
- ii. Abrasion measuring 1 cm x $\frac{1}{4}$ cm and 1 $\frac{1}{2}$ cm x $\frac{1}{4}$ cm on right side of the neck upper part.

Internal

There was contusion of soft tissue of right side of neck underlying the abrasion as noted above. The organs were congested with evidence of pinpoint petechial hemorrhage in the visceral surface of lungs, heart and conjunctivae. The stomach was empty containing only little amount of mucus intestine contained gas and fecal matter. Uterus was normal and non-pregnant. The urinary bladder was empty. Cause of death was reserved pending chemical examination of viscera.

10. From the above, it is clear that medical evidence is not in line with the testimony of P.W. 5 who was residing in the same house and has

deposed that the deceased was strangled. The testimony of witnesses that deceased had bleeding injuries all over her body is also belied, as Autopsy Surgeon noted only abrasions ranging from pinhead to peanut size, but not incised or lacerated wound to suggest the injuries as narrated to by the witnesses. P.W. 5 has deposed that appellant was seen standing with tangi at the place of occurrence, but no injury can be said to have been caused by it. No cause of death has been disclosed in the post-mortem examination report. In the absence of any injury corresponding to the oral evidence leaves us with no option, but to discard the testimony of witness who claims to be eye witness.

11. In the absence of proof of cause of death and any credible evidence stating about the circumstance leading to death, appellant is entitled to benefit of doubt.

Judgment of conviction and order of sentence is set aside.

Criminal Appeal is allowed.

Appellant is on bail. His sureties are discharged from the liability of their bail bonds.

Pending Interlocutory Application, if any, is disposed of.

Considering the assistance given by learned Amicus Curiae, we hereby direct the Member Secretary, JHALSA, Ranchi to pay remuneration of Rs.7500/- to him at the earliest.

Let the Trial Court Records be transmitted to the Court concerned along with a copy of this judgment.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 27th November, 2024

AFR/Anit