

Criminal Appeal (D.B.) No. 592 of 2002

[Arising out of judgment of conviction dated 25.07.2002 and order of sentence dated 27.07.2002 passed by learned 1st Additional Sessions Judge, Pakur in Sessions Case No. 133 of 2000/19 of 2000]

Ali Hussain, S/o Late Bisharad Momin, R/o village- Ramakura P.S.- Hiranpur, District- Pakur

.... **Appellant**

--Versus--

The State of Jharkhand **Respondent**

For the Appellant : Mr. Rajeeva Sharma, Sr. Adv

Ms. Rita Kumari, Adv

Mr. Atulaya Shresth, Adv

Mr. Om Prakash, Adv

For the State : Mr. Vishwnath Roy, A.P.P.

PRESENT: SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 21.11.2024

Pronounced On: 26.11.2024

Per Gautam Kumar Choudhary, J. Appellant is before this Court in appeal against the Judgment of conviction and sentence passed under Sections 302 and 201 of the IPC.

2. Informant- Alimuddin has stated in his fardbeyan that his younger sister (deceased) was married to the appellant 20 years ago and since then she was living in her matrimonial home. After 2 ½ to 3 years, she was blessed with a child. Thereafter, her husband fled away leaving his wife and child. Her husband after 3-4 years had contracted second marriage, lived with her second wife and child at his home. A panchayati was held regarding the keeping of his first wife with him and the appellant took his first wife with him, but thereafter drove her out after beating her. She then came to the natal home and was living there and she filed a case of maintenance against her husband. On the day of incidence, both separately went to Pakur Court and from there his sister did not return. On 06.04.2000 son of deceased went to the pond for searching her and there he found her dead body.

3. On the basis of fardbeyan, Hiranpur P.S. Case No.25/2000 was registered against the named accused person under Sections 302 and 201 of the IPC. Police on investigation submitted charge sheet against the appellant and he was put on trial for offence under Sections 302 and 201 of the IPC.

4. Altogether nine witnesses were examined on behalf of prosecution and the relevant documents have been adduced into evidence and marked as exhibits. After the examination of 313 Cr.P.C., defence examined two witnesses in support of its case.

5. Learned counsel for the appellant has submitted that there was no eye-witness to the occurrence and most of the witnesses turned hostile. The chain of circumstance is not complete as there is no eye-witness to the incidence. It is further argued that none had seen the appellant going towards the pond along with deceased. As the Investigating Officer of this case has also not examined, therefore the place of occurrence is not proved.

6. Learned A.P.P. has submitted that nothing contradictory had come in the deposition of the informant and as per the deposition of PW-1, deceased was last seen in the company of the appellant. The appellant has stated in his examination under section 313 Cr.P.C. that he was not present with the deceased on the day of occurrence.

FINDING

7. There are certain facts which have been established by evidence and they have remained uncontested in the cross-examination and have not been assailed in appeal.

PW-3 informant and the brother of the deceased has deposed that deceased Rahiman Bibi was married to the appellant about 20 years ago. After 2-3 years of the marriage appellant deserted the deceased and fled away, consequently she returned to her natal home with her only child and was living there since then. Appellant contracted second marriage and started living with her in his house. Deceased filed a maintenance case against him.

8. It is also not in dispute that the deceased died a homicidal death which has been established by PW-4, who is the Dr., who examined the deceased and prepared post-mortem report and found the following injuries: -

Rigor mortis passed off-going to decomposition, mouth open, tongue protruded, both eyes were closed.

ante mortem wound on neck 1"x ½" deep to muscle, common carotid artery insured, right temporal region 1" x ½"x muscle deep wound on forehead 1"x 1/4" x bone deep.

Injuries were caused by sharp and hard weapon. Death was due to severe hemorrhage leading to shock. Post-mortem report was marked as Ext.-3.

9. Prosecution case rests on last seen. It has been deposed by PW-3 has that his sister (deceased) had gone to the Civil Court in connection with the maintenance

case. Appellant had also come to the Court that very day. His sister did not return from the Court. He and the son of the deceased started searching for the deceased, when her son found the dead body afloat in a pond. These facts have remained undemolished in the cross-examination.

10. The main evidence on last seen is of PW-1 Tobarak Hussain who is an independent witness. He has deposed that there was a maintenance case between appellant and the deceased. He further deposed that he had a stall of snacks near Torai Mohanpur *more*. Appellant and deceased used to come to his stall whenever they went to Pakur Court. On the day of incidence both had visited his shop and had breakfast, they were talking and laughing. At this when he asked the reason, appellant said that they had compromised the matter and went away. After this, he had not seen the wife of the appellant. He further deposed that later on he heard that the dead body of the deceased was found in the pond. In his cross-examination he has stated that when they were having their snacks, the sun was setting and thereafter both of them went away.

PW-2 Abdul Hussain is the son of the deceased and appellant, he has deposed in para 1 that earlier there was a maintenance case in which an order for payment of maintenance of Rs 28,000-29,000 was passed against his father and the case for realization of the amount was pending in the Court at Pakur. He stated in para-8 that, his father had threatened the deceased with her life to withdraw the maintenance case.

PW-5 though hostile has deposed that he had seen the dead body of the deceased and went along with police to recover it. PW-6, PW-7 and PW-8 were declared hostile witnesses.

11. From the above evidence it can be safely concluded that the deceased was last seen in the company of the appellant on 03.04.2000, in the evening and thereafter her dead body was found on 06.04.2000. Claim of the defence witnesses that they had seen the deceased alive on 05.04.2000 cannot be accepted for the reason that as per Doctor (PW-4) the postmortem examination was conducted on 07.04.2000 at 10 AM, and the Doctor has opined that time elapsed since death was three to four days. This completely falsifies the defence version that deceased was alive on 05.04.2000 and was seen at the Bus stand.

12. Thus, prosecution has proved that deceased was the 1st wife of the appellant and was ousted by him and was living in her natal home, whereas the appellant was living with his 2nd wife in his native home. Deceased had filed a maintenance case against the appellant and despite the order for payment of the maintenance amount, payment was not made and arrear of Rs 28,000-29,000 was pending. He has

admitted this in his statement under Section 313 of the Cr.P.C. Appellant had also threatened the deceased to withdraw the maintenance case. On 03.04.2000, Deceased had gone to the Court in connection with the maintenance case and there the appellant put up a pretense of getting the case compromised, and took the deceased in good humor. Deceased was last seen in the snack stall of PW-1, and an impression was given by the appellant that the case had been compromised. There is no material on record to suggest compromise of the maintenance case. The appellant has not disclosed when did he part company with the deceased. On the contrary he has stated that on that day he had not even gone to the Court. This is a false plea in view of the deposition of PW-1. All these circumstance lead to the only irresistible conclusion that appellant had committed the murder of the deceased and had disposed her dead body in the pond.

Learned trial Court has discussed all these aspects in detail. I do not find any infirmity in the Judgment of conviction and sentence.

Criminal Appeal accordingly stands dismissed.

Pending Interlocutory Application, if any, is disposed of.

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

Appellant is on bail, his bail stands cancelled, he be taken into custody to serve out the remaining sentence.

(Gautam Kumar Choudhary, J.)

Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated 26th November, 2024

AFR/Pawan