IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.275 of 2017

Arising Out of PS. Case No.-246 Year-2007 Thana- MAKHDUMPUR District- Jehanabad

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Amin Quireshi, Son of Sallahuddin Quirashi, Resident of Village + P.O. - Makhdumpur, District Jehanabad.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate
		Mr. Ram Hriday Prasad, Advocate
		Mr. Ritwaj Raman, Advocate
		Mrs. Maruti Kumari, Advocate
For the Respondent/s	:	Mr. Dilip Kumar Sinha, APP
For the Informant	:	Mr. Bhaskar Shandilya, Advocate
		Mr. Sunil Kumar, Advocate
		Mr. Sanjeeb Kumar Sanju, Advocate
		Mr. Upendra Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-12-2023

1. The sole appellant has been convicted under Section 302 of the Indian Penal Code *vide* judgment dated 28.01.2017, passed by the learned Additional Sessions Judge-I, Jehanabad in Sessions

Trial No. 208 of 2008 / 101 of 2012, arising out of Makhdumpur P.S. Case No. 246 of 2007. By order dated 31.01.2017, he has been directed to undergo imprisonment for life and to pay a fine of Rs. 10,000/-. In default of payment of fine, he has to further suffer imprisonment for one month.

2. He is alleged to have hacked a differently abled woman to death in her house on 25.09.2007 in front of her mother.

3. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellant; Mr. Bhaskar Shandilya, learned Advocate for the informant and Mr. Dilip Kumar Sinha, the learned APP for the State.

4. The FIR has been lodged by the brother of the deceased (P.W. 7) who has alleged that he had left for Patna on 25.09.2007 by a 12:30 train. However, in the night, he was informed by one Minhaj Ansari (not examined) that his sister has been killed. He

immediately left for Patna and when he came back home, his mother/Jamila Khatoon (P.W. 9) told him that on the previous night, a person, clad in vest and *lungi* and of a thin frame had killed the deceased. She had tried to accost him as well, but the accused never responded.

5. The informant (P.W. 7), therefore, suspected that perhaps the assailant would be from the family of those persons with whom he is on litigating terms and has been contesting a Title Suit (T.S. No. 53 of 2004). In the aforesaid Title Suit, the opposite parties had not been appearing and the informant had to get a paper publication of the notice to them.

6. One Bineshwar Chaudhary, who is the son of one of the opposite parties in the Title Suit had though appeared in but had stated P.W. 7 would not be able to avail its fruit in the litigation. The informant had litigation with other families also because of his

family having landed property. It was therefore suspected by P.W. 7 that somebody with whom he is on litigating terms has committed the offence.

7. On the basis of the aforenoted written report on 26.09.2007 i.e. on the next day of the occurrence, Makhdumpur P.S. Case No. 246 of 2007, dated 26.09.2007 was registered for investigation for offence under Section 302 of the IPC. Bineshwar Chaudhary, referred to above, was named as the suspected accused.

8. However, it appears that charge-sheet was submitted against the appellant who is a butcher by profession and is a tenant in the house of P.W. 7.

9. At the Trial, P.W. 7 did not support the prosecution version but has not been declared hostile. He has reiterated the story of his having left for Patna in the afternoon of 25.09.2007 and his having been informed in the night that his sister had been killed. He

came back on the next day and lodged the written report, naming one Bineshwar Chaudhary as a suspected accused. However, in his examination-in-chief, he has stated that when his mother (P.W. 9) became normal, she told him on the day when he had reached home that the appellant had killed the deceased.

10. In his cross-examination, even though he has admitted that the appellant runs a meat shop from a rented room in his house but there was no dispute with him with respect to either the rental amount or his running the meat shop. In fact, he went to the extent of explaining to the Court that whenever his family required mutton, the appellant only supplied it and the cost of the mutton was adjusted against the monthly rental which the appellant had been paying.

11. The FIR was lodged only on the basis of the threat doled out by the opposite parties in the

Title Suit.

12. At the time of occurrence, the mother of P.W. 7 was about 75 years of age who could read and write and did not also require glasses while reading newspapers. He has further repeated that when he had come back home in the night of 25.09.2007, his mother had spoken about the accused person to be of a lean frame who was dressed in a vest and *lungi*. Only three days later, did the mother take the name of the appellant as the person who had hacked the deceased to death. The suggestion that P.W. 7 wanted to have the rented room from where the appellant ran his shop vacated, was denied.

13. Thus, from his deposition only, it appears that the name of the appellant transpired only after three days of the lodging of the FIR. It appears from the background facts that the appellant did not have any motive or reason to kill the deceased.

14. It has also come in evidence that the deceased was a married lady who was physically challenged and the relationship between P.W. 7, the deceased and P.W. 9 was very cordial. The appellant had been running his shop in one of the rooms of house of P.W. 7 for the last six to seven years prior to the occurrence.

15. What then would have impelled the appellant to kill the deceased?

16. If it were not for the insistence of the family of the deceased to have the shop vacated, there was no conceivable flash-point between the appellant and the deceased. There is no evidence of any ransacking of the house or of any sexual attack either.

17. One, therefore, starts doubting whether the mother of the deceased (P.W. 9) had made a correct statement while in her senses.

18. We do admit that there is nothing on

record to infer any caducity of P.W. 9 because of dotage and senescence.

19. This therefore has raised our curiosity as to why P.W. 9 had named the appellant before P.W. 7 after three days of the lodging of the FIR.

20. A bare look at the deposition of P.W. 9 would clear the doubts.

21. Jamila Khatoon, as we have seen, is the mother of the deceased as also P.W. 9. In her examination-in-chief, she has named the appellant as having come to the house with a butcher’s knife. He sat near her. The deceased also was somewhere around. Thereafter, she has alleged that the deceased was slit through by the aforenoted knife. She was also threatened by the appellant of being killed if she raised any alarm. It was only in the next morning that she shouted that the appellant had killed the deceased. On her shouts, many persons of the neighbourhood had

arrived. She has further stated before the Trial Court that because of such mishap in her family which made her cry day in and day out, she lost her eye-sight. She was not even in a position to see the face of the lawyer in the Court who was cross-examining her. She admitted before the Trial Court that the same situation, health-wise, was prevalent with her three-four years ago i.e. when the occurrence had taken pace.

22. With respect to the motive of the appellant for having committed crime, P.W. 9 had no clue. She has also asserted the fact that the appellant had been running a meat shop in one of the rooms of the family house for the last ten years and there was no dispute with him on any account. He after committing the murder, ran away.

23. When her son (P.W. 7) came back home, she had told him about the appellant having

killed the deceased. She had also spoken to the persons of the neighbourhood who had arrived in the morning of the occurring.

24. Obviously, therefore, she would have stated about the appellant having killed the deceased, if she is to be believed.

25. From a perusal of the deposition of P.W. 9, therefore, we get an idea that either she was of too old age to make a coherent statement or she was just hallucinating about the appellant having killed the deceased.

26. We say so for the reason that if she had not become unconscious on seeing the grisly crime, she would have definitely told the name of the appellant to her son (P.W. 7) who came in the night of the occurrence only and to many others who had come in the next morning. None of the persons in the early part of the investigation ever referred to the appellant

as having been named by P.W. 9 before whom the murder had taken place.

27. Even otherwise, the entire narration of P.W. 9 does not appear to be correct for the reason that if the appellant had been seeing her tenant for the last ten years who had no dispute with the family, either with respect to the tenancy or on any other account, he would not have committed the murder for no reason in front of P.W. 9.

28. P.W. 9, therefore, was making a statement in some delirium or else she would have stated the reason for her not having named the appellant straightaway when her son (P.W. 7) had arrived in the night of the occurrence.

29. We are at a loss to understand as to how the police changed its course of investigation and turned its gaze only towards the appellant, without realizing that not only the killing was mindless but the

accusation was even more difficult to believe.

30. The effort of the prosecution to anyhow take the case to a logical conclusion gets reflected very poorly if one examines the deposition of Mustafa Ansari and Md. Akhatar (P.W. 1 and P.W. 2 respectively).

31. The aforenoted two persons are residents of the same locality who have claimed that while they were coming from the Mosque, they saw the appellant with another person moving nervously. This observation of P.Ws. 1 and 2 makes no sense as nothing was done by them to know the reason.

32. If the appellant would have committed the offence, the aforenoted witnesses would surely have known that the appellant was the culprit. They have not made any statement during the course of investigation and only for the first time before the Trial Court, they have come up with an absolutely weird

story of their having seen the appellant along with another person, dressed in a white vest and *lungi* moving with a feverish pitch. That someone else at the Trial had said that he had seen the appellant wearing white vest and white *lungi*. Well, that is the dress of persons of the community from which the appellant hails and deceased belonged!

33. The logic of the prosecution, thus, is not only weird but absolutely skewed.

34. Similar statements have been made by other witnesses.

35. Another blatant attempt of the prosecution to have the prosecution case proved at the Trial is the citing of Reyaz Ahmad (P.W. 10) as one of the witnesses in this case. He is a local Doctor, who as touted by the prosecution, had treated the appellant for a wound in his finger. The inference, therefore, is that while committing the murder, the appellant had

hurt his finger.

36. P.W. 10 though admits that he practices medicine and surgery in the village but did not remember if he had ever treated the appellant.

37. Rest all other witnesses are hearsay and their knowledge is based only on what they had heard from P.W. 7 and P.W. 9.

38. That the deceased died a homicidal death is beyond dispute.

39. Dr. Dinesh Kumar (P.W. 3) had conducted the post-mortem examination. The post-mortem report reflects that the deceased was brutally killed. There are four incised wounds on her body. According to the prosecution case, the deceased was cut to death by a butcher's knife. Even P.W. 9, whom we must say, we have not believed, has not talked about the deceased having been attacked a number of times. This then reflects a totally different picture. The

deceased had been killed by a knife but beyond that, all the witnesses appear to be playing the blind-man's buff.

40. Our curiosity, even then, could not be doused especially when the reason of implication of the applicant at the hands of P.W. 7 and P.W. 9 remains unknown for there is no dissonance of the appellant with the family of the deceased.

41. To what benefit would the murder have been committed?

42. The police never ventured into any other theory of killing.

43. Were the family members involved in the killing of the deceased for the deceased being a differently abled woman who perhaps had lost her relevance in the family?

44. But thinking on those lines would be making forays into thin air. We have to leave all such

speculations at that only.

45. We have no option but to give benefit of doubt to the appellant.

46. For the reasons aforenoted, the impugned judgment of conviction and order of sentence passed by the learned Trial Court is set aside and the appellant is acquitted of charge levelled against him.

47. The appeal stands allowed.

48. It has been informed by the learned Advocate that the appellant is in jail. He is directed to be released forthwith from jail, if not detained or wanted in any other case.

49. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

50. The records of this case be returned to the concerned Trial Court forthwith.

51. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
Sunil-

AFR/NAFR	AFR
CAV DATE	NA
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