

Death Reference No.6 of 2023
With
Criminal Appeal (D.B.) No. 1707 of 2023

[Arising out of judgment of conviction dated 21.08.2023 and order of sentence dated 04.09.2023 passed by learned Additional Sessions Judge-VI cum Special Judge, C.A.W. Hazaribag in Sessions Trial No. 162 of 2019]

Death Reference No.6 of 2023

The State of Jharkhand **Appellant**
--Versus--

Anand Kumar Dangi @ Anand Dangi aged about 36 years son of Suresh Dangi, resident of Village Danguri, P.O. and P.S. Chauparan, District Hazaribag **Respondent**

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Criminal Appeal (D.B.) No. 1707 of 2023

Anand Kumar Dangi @ Anand Dangi aged about 36 years son of Suresh Dangi, resident of Village Danguri, P.O. and P.S. Chauparan, District Hazaribag **Appellant**

--Versus--
The State of Jharkhand **Respondent**

For the Appellant : Mr. Suwendu Jaipurkar, Advocate
Mr. Sunil Kumar Jaiswal, Advocate
Mr. Sanjay Kumar Upadhyay, Advocate
For the State : Mr. Pankaj Kumar, P.P.
Ms. Sharda Kumari, A.C. to P.P.

PRESENT: SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

JUDGMENT

Reserved on: 12.09.2024

Pronounced On: 19.09.2024

Per Gautam Kumar Choudhary, J. Death Reference on behalf of the State and the Criminal Appeal preferred on behalf of the appellant arise out of the judgment and sentence passed in Sessions Trial No.162 of 2019, whereby and whereunder the appellant has been convicted and sentenced to death along with fine of Rs.10,000/- under Section 302/34 of the IPC. He has also been convicted under Section 315 of the IPC and sentenced to RI of ten years, fine of Rs. 5000/-, and in default SI of six months.

2. Prosecution case is about cold-blooded murder of a pregnant lady and her infant child allegedly done by the appellant, who happens to be husband of the deceased lady.

3. Informant is the father of the deceased. As per the FIR, deceased Angira

Kumari was married to the appellant- Anand Kumar in 2014. There was normal conjugal relationship for some time and thereafter, she was subjected to cruelty in reference to dowry demand. In the meantime, her husband developed intimacy with some other girl which was opposed to by the deceased. As a result, she was assaulted and she returned to her parental home. After much persuasion, she went back to her matrimonial home. For last two years, father of appellant, Suresh Dangi had developed illicit relationship with one Rangina Devi and when this was opposed by her, she was extended life threat. On the date of incidence on 13.12.2018 at 7 O' clock in the evening, deceased had telephonically informed that Rangina Devi had abused and threatened her. On 14.12.2018 at 1.15 a.m. on, her brother-in-law (Devar) informed the informant on mobile that deceased was missing. In the morning at 9 a.m., when they reached there, she saw her dead body lying. The dead body of her infant child (15 months old), was found in the nearby well.

4. On the basis of the written report, Chouparan P.S. Case No.312/18 was registered under Sections 302/34 of the IPC against this appellant, Manoj Dangi, Suresh Dangi and Rangina. Police on investigation, submitted charge sheet only against this appellant and he was put on trial for offence under Section 302/34 and 315/34 of the IPC, keeping investigation pending against others.

5. Altogether eight witnesses were examined on behalf of prosecution. Relevant documents including written report, seizure list, post-mortem examination report were adduced into evidence and marked as exhibits.

6. It is submitted by the learned counsel on behalf of the appellant that there is no direct or circumstantial evidence in the present case and the appellant has been convicted and sentenced only for the reason that he happens to be the husband of the deceased. Deceased was not even present in the village at the time of incidence. In the FIR, it is definite case of the prosecution that the deceased had a row with Rangina Devi at 7 p.m. on 13.12.2018. There is no reference in the FIR that on that day appellant was present in the village or there was any incidence of marital discord in the recent past.

7. Learned counsel on behalf of the State has defended the Judgment of conviction and sentence

8. Homicidal death of Angira Devi and her infant child is proved by the Post Mortem Examination Reports (P1 & P2). External examination revealed that

Angira Devi had suffered fracture of skull bone over occipital area, lacerated wound measuring 1” x 1” with deep penetration present. At the time of death deceased was pregnant and carrying 28-30 week male dead foetus. Death was due to Neurogenic shock by hard and blunt substance. Her infant child Anshika Kumari died due to asphyxia by ante mortem drowning. Post Mortem Report speaks volumes about the manner in which homicidal death was caused.

9. On the author of this diabolical crime, there is no direct eye witness and the prosecution relies on circumstantial evidence. Prosecution evidence discloses following circumstances: -

- I. Deceased was married to the appellant in 2014. There was marital discord of the appellant with the deceased on account of his illicit relationship with some other girl. Later, the matter was resolved. P.W. 1 in para-11.
- II. Deceased was subjected to cruelty in reference to dowry demand after 1-2 years of the marriage. Appellant, his father Suresh Dangi, and brother Manoj Dangi used to assault the deceased in reference to dowry demand. P.W.-5 in para-4, has deposed that the deceased was assaulted by the appellant and in-laws in reference to dowry demand. P.W. 3 in para 5 and 6 has stated about the marital discord and illicit relationship of the appellant and his father, but he has not whispered anything regarding dowry demand.
- III. Suresh Dangi had illicit relationship with one Rangina Devi and when this was opposed by the deceased, she used to be abused and assaulted and threatened by him. P.W. 5 in para-5
- IV. A day before the incidence Rangina Devi, Suresh Dangi, Appellant and Manoj Dangi had abused and assaulted her. This was informed to P.W. 5 by the deceased. P.W. 5 in para 6.
- V. Appellant was arrested and on his disclosure statement, the weapon of offence was recovered. P.W. 5 in para 11 and P.W. 6-I.O. in para-9 have also deposed in the same line.
- VI. As per the CDR of the mobile used by the appellant bearing SIM No. 8862958832, tower location of the appellant showed him to be present near his house. P.W. 6 in para 19-20 has also deposed in the same line.

- VII. He was in constant touch with his wife on her mobile the fateful night.
- VIII. Motive of offence: Deceased opposed the illicit relationship of the appellant with one Pushpa Kumari and of Suresh Dangi with Rangina Devi.
- IX. P.W. 4 has stated that there was marital discord, but the reason for it has been stated by him, was mainly the illicit relationship of the appellant with one girl and his father with Rangina Devi.
- 10.** On close scrutiny of the prosecution evidence, it will transpire that these circumstances have not been properly proved and even if it is assumed to be true to some extent they do not complete the chain from which an inference can be drawn that it was the appellant and none else who committed the crime.
- 11.** There are three propositions that have been advanced on behalf of the prosecution. The first is that there was a dowry demand after 1 – 2 years of the marriage, 2nd is that appellant had extra marital relationship with one Pushpa Kumari, opposed by the deceased and 3rd is that threat extended by Rangina Devi on the very same evening of the incidence who was the paramour of the father-in-law of the deceased. As far as dowry death is concerned, neither the charge has been framed nor this allegation has been followed up during trial.
- 12.** As stated by P.W. 5 deceased was abused and assaulted by Suresh Dangi (father of appellant) and Rangina Devi, but these persons were not put on trial as the investigation was kept pending against them and charge sheet was not submitted. P.W. 2 is the brother of deceased and it has been deposed by him that both the appellant and his father had threatened the deceased.
- 13.** Thus, from the prosecution case it appears that apart from appellant, there were at least two persons who nursed grievance against the deceased and had abused, assaulted and threatened her. They were Suresh Dangi and Rangina Devi whose illicit relationship was opposed and objected by the deceased. On the very same day of incidence as per the FIR and the testimony of the informant, it was Rangina who had extended life threat to her. Thus, circumstance do not unerringly establish that it was the appellant who had committed the offence.
- 14.** The allegation of recovery of spade on the disclosure statement made by this appellant, is falsified by the deposition of P.W. 1 in para 6, who is a seizure

list witness and has deposed that from near the dead body, the spade had been seized. The seizure list is Exhibit 6 from which it will transpires that the said seizure was made on 15.12.2018 at 15.45 hours, whereas the disclosure statement has not even been proved. The Investigating Officer (P.W. 6) has deposed in para 3 that on 14.12.2018, the dead body was found in a mustard field, the inquest report of which was made. Even the inquest report has not been proved and brought on record. P.W. 3 has also deposed that police had seized the spade and blood-stained soil from near the place where the dead body was found. When the spade had been lying near the dead body, the prosecution case of it have been seized on the disclosure statement does not hold ground, for the reason that dead body was found on 14.12.2018, whereas the seizure was made on 15.12.2018. Thus, circumstance no. V is not proved.

15. As far as circumstance nos. VI and VII are concerned, it is amazing that neither the call detail report has been brought on record nor it has been proved as per Section 65 B of the Evidence Act. It is surprising that learned trial court has accepted and acted upon the oral testimony of Investigating Officer to prove the tower location of the appellant to be in the village on the date and time of incidence and of his being in constant touch with the deceased on the fateful night. The learned trial court appears to have lost sight of the fact that electronic records produced for the inspection of the court come within the meaning of evidence and when the original is not proved, the print out like CDR, is to be proved as per Section 65 B of the Evidence Act. Contents of such record cannot be proved by oral evidence. In the absence of the proof, circumstance nos.V and VI cannot be legally considered.

16. What is apparent from the above discussion is that the prosecution case has crumbled like a house of card. Neither the circumstances have been proved which can lead to a conclusion that the appellant was complicit in offence, nor any consistent prosecution version has come which can be relied upon. There is no evidence of last seen. This is how a crime of a most gruesome nature has been investigated and prosecution conducted during trial. Prosecution proposes that appellant was in the village on the night of evidence, but neither any oral nor electronic evidence being led in support of it. An evening before the incidence, the informant has received a call from the deceased that she was abused, assaulted and threatened by Rangina Devi, but surprisingly the charge

sheet was not submitted against her. There was evidence of past marital discord, but there is no evidence that the appellant had extended life threat to the deceased. It is surprising how on these contradictory versions and sketchy evidence, learned trial court convicted the appellant and awarded death sentence. Judgment of conviction and sentence is not sustainable.

17. There is a duty cast on the trial courts to exercise greater degree of scrutiny care and circumspection while awarding death sentence [See **(2021) 13 SCC 716**]. The court cannot remain a moot spectator but should be alive and alter during criminal trial. Even if prosecution omits inadvertently or deliberately, to bring on record all relevant materials, courts on its own stop prosecution and seek clarification. [**(2013) 16 SCC 173**].

18. The manner in which investigation, prosecution and trial has been conducted, we have no option but to set aside the Judgment of conviction and sentence passed against the appellant. The Death Reference is accordingly answered in the negative.

Criminal Appeal is allowed.

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.

(Gautam Kumar Choudhary, J.)

Per Ananda Sen, J. I agree.

(Ananda Sen, J.)

High Court of Jharkhand, Ranchi

Dated, 19th September, 2024

AFR/Anit