

**(2014) 08 JH CK 0025**

**Jharkhand High Court**

**Case No:** Cr. Appeal (DB) No. 1107 of 2006

Sitaram Barik

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** Aug. 13, 2014

**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Evidence Act, 1872 - Section 106
- Penal Code, 1860 (IPC) - Section 302

**Citation:** (2014) 4 JLR 45

**Hon'ble Judges:** Rakesh Ranjan Prasad, J; Amitav Kumar Gupta, J

**Bench:** Division Bench

**Advocate:** Shailesh and L.C.N. Sahdeo, Advocate for the Appellant; V.S. Sahay, A.P.P, Advocate for the Respondent

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**Judgement**

1. Heard learned counsel appearing for the appellant and learned counsel appearing for the State.
2. This appeal is directed against the judgment and order dated 11.07.2006/13.07.2006, passed in Sessions Trial No. 114 of 2004 [arising out of Rajnagar P.S. Case No. 24 of 2004 in connection with G.R. No. 455 of 2004], whereby and whereunder the learned Additional Sessions Judge, F.T.C. III, Seraikella having found the appellant guilty for committing murder of his wife convicted him under Section 302 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life.
3. It is the of the prosecution that Mogli Barik (deceased), the daughter of Prafullo Bank, the informant (P.W.-2) having married to the appellant came to her inlaws place where she lived peacefully for a year but thereafter, the appellant and also the first wife of the appellant started subjecting her to cruelty.

Further, Case is that on 18.06.2004 the deceased, Mogli Barik came to her father's house. After four days, the appellant also came there on 22.06.2004. In the night both of them slept together in a room which had no door. In the night when the informant (P.W.-2), his wife, Kunni Barik (P.W.-1) and his daughter, Rewti Barik (P.W.-5) heard giggling sound coming from the room where Mogli Barik and her husband were sleeping. They left the room to come to over there. In that process they saw this appellant running away by riding a cycle. When they entered into the room, they found Mogli Barik dead. Thereupon, P.W.-2, Prafullo Barik gave fardbeyan to the police, upon which, a case was registered as Rajnagar P.S. Case No. 24 of 2004, under Section 302 of the Indian Penal Code against the appellant.

4. Upon taking up of the investigation the Investigating Officer held inquest on the dead body of the deceased and prepared an Inquest Report. Thereafter, the dead body was sent for the post-mortem examination, which was conducted by the Dr. Pranaw Kumar (P.W.-6), who found the following injuries on the person of the deceased:--

"(i) Nail marks on neck.

(ii) Injury on right elbow.

(iii) Froath from left nostril.

(iv) Bleeding from right nostril.

(v) Blood stains on left ear.

(vi) Fracture of hyoid bone. Lungs was found congested."

Accordingly post-mortem report (Ext.-3) was drawn. According to the opinion of the doctor, death was caused due to asphyxia on account of strangulation.

5. The Investigating Officer recorded the statements of the witnesses. After the completion of the investigation when the Investigating Officer submitted charge-sheet cognizance of the offence was taken. Upon committal of the case to the Court of Sessions charge was framed under Section 302 of the Indian Penal Code.

6. In course of trial, the prosecution examined 9 (nine) witnesses. Of them Prafullo Barik (informant), Kunni Barik, wife of the informant and Rewati Barik, daughter of the informant were examined as P.W.-2, P.W.-1 and P.W.-5 respectively. According to them the deceased had married to the appellant. After getting married, she was living in her in-laws place, where she lived peacefully for a year. Thereafter, the appellant and his first wife started subjecting her to cruelty. On 18.06.2004, the deceased came to her parent's house, where the appellant also came on 22.06.2004. In the night they slept together. In the midnight they heard giggling sound coming from the room where the appellant and the deceased were sleeping. On hearing such sound, while they were coming to that room they saw the

appellant running away by riding a cycle. When they came inside the room, they found the deceased dead.

7. The learned trial court having found testimonies of those three witnesses trustworthy recorded the order of conviction and sentence. Being aggrieved with it, this appeal has been preferred.

8. Mr. Shailesh, learned counsel appearing for the appellant submits that admittedly, no one, who had claimed themselves to be the eye witnesses had seen this appellant committing murder of the deceased. In that event this appellant can not be fastened with the liability of committing murder of the deceased particularly, when the room, where the deceased was sleeping was open and some villagers were having animosity with the deceased. Further submission is that the prosecution has failed to establish that on the night of the occurrence, this appellant had come to the village and had stayed with the deceased and that innocence of the appellant gets reflected from the fact that on the very next morning this appellant did surrender before the police, but the learned trial court did not consider all these aspects of the matter in the right perspective and thereby it committed illegality in recording the order of conviction and sentence against the appellant.

9. Learned counsel for the State-A.P.P. submits that it is a full proof case where the prosecution has been able to establish that it is none other than this appellant, who had committed murder of his wife as relationship in between the wife and the husband was not cordial and hence, judgment of conviction and order of sentence never warrants any interference.

10. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that the informant P.W.-2, Prafulla Barik, father of the deceased, P.W.-1 the mother of the deceased and P.W.-5 the sister of the deceased were testified that Mogli Barik having married appellant" was living with him. For a year she lived peacefully but thereafter she was being subjected to the torture by the appellant and his first wife. Further they have testified that on 18.06.2004 she had come to her father's place and after four days i.e. on 22.06.2004 appellant also came and slept in the night with the deceased in a room. In the midnight the informant, P.W.-2, his wife Kunni Bank, P.W.-1 and Rewati Bank, P.W.-5, daughter of the informant who were sleeping in the room adjacent to the said room heard giggling sound coming from that room. Having heard such sound when they were coming to that room they saw the appellant running away from the cycle, thereupon they found the Mogli Barik dead. The defence utterly failed in eliciting anything in the cross examination so as to have any doubt the trustworthiness of the witnesses. The doctor P.W.-6 has found the death of the deceased as homicidal. Thus, the prosecution has been able to establish that this appellant was seen running away and immediately thereafter the witnesses found Mogli Barik dead who was found to have been strangled to death.

11. As per the case of the prosecution only two persons, this appellant and the deceased beside seven months child were in the room, where Mogli Barik was found strangulated to death. Under the circumstances, it must be within the knowledge of this appellant as to how the deceased died. Since it was within the special knowledge of the appellant the burden in view of the provision under Section 106 of the Evidence Act was upon the appellant to prove it otherwise or any circumstances that brings his case with any of the exception to criminal identity and the appellant has failed to discharge his burden as he has not uttered a single word regarding his innocence in the statement under Section 313 of the Cr.P.C.

12. Under the Circumstances no other conclusion other than that it was the appellant who committed murder could be drawn.

13. Under the circumstances we do not find any illegality with the judgment and order under which the appellant has been convicted and sentenced to undergo rigorous imprisonment for life. Accordingly, judgment and order passed by the learned Additional Sessions Judge, FTC-III, Saraikella in Sessions Trial No. 114 of 2004 is, hereby, affirmed.

14. In the result this appeal is dismissed.