

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO. 711 of 2008

MD. MASOOD ALAM @ MD. MASOOD

..... APPELLANT

VERSUS

STATE OF BIHAR

.....

RESPONDENT

O R D E R

1. This is a rather unfortunate case. The first informant P.W. 10 is the father of the appellant. As per the prosecution story, P.W. 10 had contracted a second marriage with the deceased Nazeema Khatoon sometime before the incident and she was pregnant as on that date. It appears that the appellant was upset with the second marriage of his father as he felt that his property would now be divided into two parts. As per the prosecution story, on the 2nd of March, 1995, at about 7:45p.m., PW 10 went to the village Mosque for namaz and while he was offering prayers he received information that his wife had been killed. He rushed back home and found that the appellant, his wife and his mother in law who had been present in the house

when he had gone to the mosque, were missing. He, accordingly, lodged a report against these three persons as well as Mohd. Masi and Mohd. Shaukat who had been encouraging the appellant to sort out his step mother. The trial court relied on the evidence of P.W. 9 Tarsem who claimed to be an eye witness of the occurrence and after noticing some of the contradictions and differences vis-à-vis his evidence and that of P.W. 10, gave the benefit of doubt to four of the accused, but convicted the appellant for offences punishable under Section 302 and 120B of the IPC. The matter was thereafter taken in appeal by the accused. The High Court has given a finding that the presence of P.W. 9 had to be ruled out as he lived in a village some distance away, but relying on the circumstances of the case has arrived at the conclusion that it was the appellant who had been involved in the murder. The matter is before us after the grant of special leave.

2. The learned Amicus Curiae has argued that in the light of the fact that the High Court itself had given a positive finding that PW 9 was a witness who could not be relied upon there was no other evidence against the appellant and he was entitled to be treated in the same manner as the other accused who had been acquitted

by the trial court. He has further submitted that there was no motive for the murder as there was no evidence to show that the property would be divided between appellant and the child who was yet to be born to his father and step mother. Mr. Rudreshwar Singh appearing for the State of Bihar has, however, pointed out that the High Court had itself identified five circumstances which went against the appellant notwithstanding the fact that the presence of P.W. 9 had been ruled out. We reproduce paragraph 12 of the judgment of the High Court in which this matter has been dealt with:-

"From the aforesaid discussions it is clear that the factum of unnatural death of the deceased as well as the place of occurrence have been proved beyond all reasonable doubts. The case against the appellant rests only upon five main circumstances proved by the prosecution particularly through the informant (PW 10) who is none else but father of the appellant and found to be fully reliable. The circumstances are following - (I) The deceased was last seen in the court yard of informant's house along with the appellant, his wife and mother-in-law; (ii) information of the occurrence taking place in the courtyard of the house was not given to the informant by the appellant, his son or by wife or mother-in-law of the appellant; (iii) as soon as the informant got information of the occurrence he rushed to his house but found that appellant, his wife and his mother-in-law were not present and had left the house; (iv) the dead body was found in the court-yard of the house of

the informant where appellant also lived and (v) there was annoyance and anger on the part of the appellant ever since the informant had contracted second marriage with the deceased more so because she was in the family way which seemingly posed a threat to his property interests."

3. A bare reading of the aforesaid extract would reveal that the circumstance culled out are germane to the matter and do reflect that the appellant was guilty of the offence. It cannot be forgotten that PW 10 was none other than the father of the appellant. We are, therefore, of the opinion that no case for interference is made out. The appeal is dismissed.

4. Fee of the learned Amicus is fixed at ₹ 7,000/-

.....J
[HARJIT SINGH BEDI]

.....J
[CHANDRAMAULI KR. PRASAD]

NEW DELHI
APRIL 19, 2011.