

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.710 of 2006

Against the judgment and order of conviction, dated 25.05.2006, passed in Sessions Trial No. 146 of 2001/36 of 2001 by Sri Mahatam Prasad, Additional District Judge, I, Aurangabad

=====

Pramod Bhuiyan, son of Chana Bhuiya, resident of village Toura, P.S. Kutumba, district Aurangabad

.... Appellant

Versus

The State of Bihar

.... Respondent

=====

Appearance :

For the Appellant : Mr. Bachanjee Ojha, Adv.

For the Respondent : Mr. Abhimanyu Sharma, APP

=====

CORAM: HONOURABLE MR. JUSTICE DHARNIDHAR JHA

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DHARNIDHAR JHA)

Date: 05-02-2015

The solitary appellant was tried by the Additional Sessions Judge, I, Aurangabad, in Sessions Trial No. 146 of 2001/36 of 2001 after being indicted of committing offences under Sections 302, 427, 504 and 448 of the Penal Code and by judgment, dated 25.05.2006, was held guilty of committing the offences. The appellant was heard under Section 235 of the Criminal Procedure Code and was directed to undergo rigorous imprisonment for life under Section 302 of the Penal Code, rigorous imprisonment for one year each under Sections 427 and 504 of the Penal Code and rigorous imprisonment for six months under Section 448 of the Penal Code. The learned Judge directed the sentences to run concurrently.

2. The appellant has come up before this Court challenging the judgment of conviction and order of sentence passed upon him by the learned trial Judge.

3. The appellant had a well water of which was used for irrigation purposes. Akhilesh Ram, the husband of the informant had put certain structures and articles for drawing water from the well for irrigating his field. It is stated that the appellant came in the evening to

the house of P.W. 1 Sangeeta Devi the informant, when her husband Akhilesh Ram was at the house seeking him to dismantle the structure which he had put on the well else he would reap the consequences. It is stated that the husband of the informant requested the appellant himself to dismantle the irrigation facility put up by him, but the appellant did not hear him and instead in a fit of rage damaged the tiles of the roof of the house by smashing them with an axe. The appellant, further, damaged the doors of the house of the informant and went away to return after some time again. The informant stated that when the appellant had come back, she was in her kitchen to cook meal and her little daughter Shobha, aged about three months, was in her lap. The appellant came abusing the husband of the informant, upon which she asked him not to do so hearing which this the appellant is said to have picked up the little girl of three months from the lap of the lady, P.W. 1, to throw her on the ground as a result of which she died. The appellant left the place of occurrence.

4. On the basis of the fardbeyan (exhibit 2), the first information report of the case was drawn up and the investigation was taken up. The investigating officer has not been examined, but, what we found from the record available to us is that inquest was held on the dead body and the same was sent to P.W. 5 Dr. Rakesh Kumar for holding post mortem examination and after closing the investigation the appellant was sent up for trial.

5. The defence of the appellant was of non-participation and of his innocence and as may appear from the suggestion which was thrown at P.W. 1, the appellant pleaded that the little child had fallen from a cot on which she was sleeping and died of it.

6. The prosecution examined nine witnesses out of whom Sheorani Devi, the wife of P.W. 3 Ram Prakash Ram, P.W. 7 Satyendra Bhuiyan and P.W. 8 Monarik Bhuiyan, have been declared hostile. The learned trial Judge considering the evidence of P.Ws. 1, 2, 3 and 4 held the appellant guilty of committing the offence for which

he was sentenced.

7. Sri Bachanjee Ojha, learned counsel appearing on behalf of the appellant, submitted that there was no motive for committing the offence and the important witnesses, like the husband of the informant, namely, Akhilesh Ram, her mother-in-law and father-in-law who could have been present in the house have also not come forward to support the charge. It was contended that Ramanandan Ram (P.W. 3) and Ram Pravesh Ram (P.W. 4) who came to support the charges may not be competent witnesses.

8. We find from the evidence of the witnesses that the houses of the witnesses were situated side-by-side in one cluster. It was the time of 08.00 p.m. of a December night and considering the time, we suppose that the witnesses should have been in their homes so as to gaining safety of their houses from cold. The story also states that the occurrence had taken place in the very premises of the house of P.W. 1 Sangeeta Devi in the presence of witnesses, like P.W. 2 Rajdeo Ram and P.W. 3 Ramanandan Ram who claimed having been attracted to scene of occurrence or to have seen commission of offence by the appellant who came abusing and shouting. It appears natural that the witnesses should have been attracted to the scene of occurrence out of curiosity as to what really was going on at that moment. It is true that the witnesses like P.Ws. 2, 3 and 4 were related to P.W. 1 Sangeeta Devi, but, we could not be shown any fact from the record that they were carrying any ill-will towards the appellant and their presence appear natural, as we have already noted, as the occurrence had taken place within precincts of the houses of the witnesses.

9. So far as the consistency in evidence is concerned, we have found some minor deviations in the evidence of the witnesses as regards that of P.W. 1 Sangeeta Devi. P.W. 1 was sitting when the appellant had come and smashed the tiles of her house whereas P.W. 2 Rajdeo Ram was at his field and P.W. 3 Ramanandan Ram was at his



house. There is no dispute in it that Rajdeo Ram was the uncle of the appellant and Ramanandan Ram (P.W. 3) was his son. Thus, if they were speaking about the house of the informant as their own house, there was nothing unusual in it, as in the rural area the relationship of family members continue with others even after separation. They are found having link of personal relationship in matters of describing their family and members. An uncle may in a case of partition also refer to the property of his nephew as his own because the sense of ownership instead of partition having been affected indeed remains very much in the minds of family members and they find it very difficult to free themselves from the sense of possession of the joint property. In that view we do not find any anomaly so as to rejecting the evidence of witnesses as regards the fact that the appellant picked up the little child from the lap of the lady and threw her on the ground. P.W. 5 Dr. Rakesh Kumar also supports the fact that the little child had been thrown on the ground. He found fracture of right temporal bone, membrane of the brain was found torn, brain matter was found lacerated and blood clot was present there. Besides, the ribs of right side were also found fractured. The heart was found empty and the liver was found ruptured. The pleura was torn and the lungs was lacerated. In the opinion of P.W. 5 these injuries could have been caused by hard and blunt substance. Throwing the child of three months on the ground could very well cause such injuries. Thus, we find that the medical evidence also support the ocular testimony of the witnesses that the appellant had thrown the child on the ground to kill her.

10. It was contended by the learned counsel for the appellant that the appellant did not have any motive particularly to kill the child. The appellant had indeed come to ask the father of the deceased-child, i.e., Akhilesh Ram, to dismantle the structure he had erected on his well for drawing water. The predominant intention of the appellant was to restore the irrigation facility, but further facts



indicated that he had again come back and emerged at the scene of the occurrence and when the lady Sangeeta Devi was objecting to his unruly behaviour she was also abused. The appellant was so enraged that he picked up the child from the lap of Sangeeta Devi (P.W. 1) to throw her on the ground. His acts of picking up the child and throwing her, was preceded by a fit of rage and loss of self control, as appears from the incidence. As such it may be a case under Section 304 part II of the Penal Code only in which the provision of Section 304 part II of the Penal Code may be attracted. So far as the conviction of the appellant under Section 427 of the Penal Code or Section 504 of the Penal Code is concerned, we find it very difficult indeed to sustain the conviction of the appellant. It is true that the witnesses have stated that the appellant had smashed the tiles of the roof of the house, but, there is no evidence of the investigating officer pointing out as to what was damage which was caused to the house of the informant, Sangeeta Devi. Besides, what we find is that mere evidence of P.W. 2 is only there claiming that the house of Sangeeta Devi was thatched, we accordingly find the evidence not sufficient to convict the appellant under Section 427 of the Penal Code.

11. As regard the conviction of the appellant under Section 504 of the Penal Code, the evidence further appears lacking that the appellant had insulted and had thereby given provocation to any person intending or knowing the same to be likely that such provocation will cause him to breach the public peace or to commit any other offence. It is true that the appellant is said to have come abusing initially into the house of the informant and subsequently also, but there is no one had come to depose in Court that he was provoked enough to take the public peace into his hand so as to breach it or to commit any other offence. In that view of the matter the conviction of the appellant under Section 504 of the Penal Code also appears not sustainable.

12. The appellant definitely had trespassed into the house of the lady informant, Sangeeta Devi, and his conviction under Section

448 of the Penal Code appears sustainable.

13. Thus, what we find that in the light of the evidence available on record, the appellant appears having committed the offences under Sections 304 part II and 448 of the Penal Code and his conviction under Sections 427 and 504 of the Penal Code appears baseless.

14. Accordingly, the appellant is acquitted of the charges under Sections 427 and 504 of the Penal Code by setting aside the judgment of conviction and order of sentence in that respect, which was passed against him.

15. This brings us to take a decision as to what sentence would be appropriate under the facts and circumstances of the case. We have already held that the appellant appears committing offence under Sections 304 part II and 448 of the Penal Code. It is true that the little child had not done any harm to any one and there was no reason for the appellant to pick her up and throw her on the ground, but, considering the fact that the appellant was in great rage when he committed the offence. We find it fit to sentence the appellant to a term for rigorous imprisonment for four years. We do not propose to pass any sentence upon the appellant under Section 448 of the Penal Code. We have been informed that the appellant is in custody since 22.12.2000. Let him be released from custody as he has already served out the sentence, which we have just passed, if not wanted any other case.

16. The appeal is dismissed with the above modification in order of conviction and sentence.

(Dharnidhar Jha, J)

(Gopal Prasad, J)

N.A.F.R.
SA/-

U	√	T	√
---	---	---	---