

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.599 of 2015

Arising Out of PS.Case No. -56 Year- 1997 Thana -BARHARA District- PURNIA

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Amina Khatoon, Wife of Md. Ilyas @ Md. Ilyas, Daughter of Late Bijal Mohammad, resident of Village-Mangur Jan, P.S.-Barhara, District-Purnea.

.... Appellant

Versus

1. The State of Bihar.

2. Md. Ilyas @ Md. Ilyas, Son of Md. Usman, resident of Village-Mangurjan, P.S.-Barhara, District-Purnea.

.... Respondents

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Appearance :

For the Appellant : Mr. Ram Prawesh Kumar, Advocate

For the State : Mr. Bipin Kumar, A.P.P.

For the Respondent No. 2 :

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date: 18-08-2015

The informant of Barhara P.S. Case No. 56 of 1997 has preferred this appeal against the judgment and order passed by learned Additional Sessions Judge-III, Purnea, dated 25/05/2015, in Sessions Trial No. 1424 of



2013 (CIS-Sessions Case No. 4603 of 2013), whereby he has recorded acquittal of respondent no. 2, who stood charged for the offences punishable under Sections 307/34, 120 B and 498 A of the Indian Penal Code. Respondent No. 2, namely, Md. Ilyas, is admittedly the husband of the appellant.

2. The said Barhara P.S. Case No. 56 of 1997 was instituted on the basis of Fardbeyan of the appellant alleging therein that she was married to respondent No. 2 nearly five years prior to making of her Fardbeyan. Immediately, thereafter, differences between the two cropped up. Respondent No. 2 went to Punjab for earning, leaving the appellant in her in-laws' house. Allegedly, the father of respondent No. 2, namely, Md. Usman, would keep greedy eyes on her and would always induce her and attempt for establishing sexual relationship. The said Md. Usman had allegedly made positive advances to have physical relationship with her, which she, somehow or the other, could overcome and left for her parents' house. The respondent No. 2 had returned, nearly twenty days back, from Punjab, but did not take the appellant from her parents'



house to her Sasural, i.e., the house of respondent No. 2. Allegedly, upon negotiation and intervention by the Village Panches, namely, Habib Miyan (P.W.-9), Mansahi Miyan, Mehdi Miyan (P.W.-4), Tajamul Miyan (P.W.-1), Allauddin Miyan (P.W.-2) and Gul Mohammed (P.W.-10), respondent No. 2 agreed to take her to her Sasural on 25/03/1997, respondent No. 2 came to the house of the parents of the appellant and took her to Banmankhi and spent sometime in the market. Respondent No. 2 is said to have taken her to cinema Hall and at 9.00 P.M. and when they were on way to home, Md. Usman, the father of the respondent No. 2, met them, whereafter both of them assaulted the appellant and strangulated her neck and thrown her in a nearly water body naked, after pulling her Sari. In the midnight, she is said to have returned to senses, whereafter she came out of water and attempted to go to her mother's house, but she fell down near Village-Badhwa, as she became unconscious. A woman is said to have helped her regaining her consciousness, whereafter she narrated the entire story to the said women and a Mukhiya.

3. The police after completion of investigation



submitted chargesheet against the accused, Md. Usman, under Sections 498 A, 307 and 120 B/34 of the Indian Penal Code, showing respondent No. 2 to be an absconder. After taking cognizance of the offence, on the basis of the chargesheet, so submitted by the police, learned Judicial Magistrate, Ist Class, Purnea took cognizance of the offences. Vide an order, dated 14/02/1998, the Judicial Magistrate, Ist Class, Purnea committed the case records to the Court of Sessions. Sessions Case No. 116 of 1998 was, accordingly, registered which finally resulted into acquittal of Md. Usman by judgment dated 27/03/2004.

4. The case of respondent No. 2 was committed to the Court of Sessions vide an order, dated 28/11/2013, giving rise to Sessions Case No. 1424 of 2013. The case record was transferred to the Court of learned Adhoc Additional Sessions Judge-V, Purnea and subsequently to the Court of learned Additional Sessions Judge-III, Purnea for disposal.

5. Respondent No. 2 stood charged under Sections 307/34, 120 B and 498 A/34 of the Indian Penal Code. Respondent No. 2, in course of trial, though accepted the

fact that the appellant was her wife and was living separate from him, denied the occurrence, as alleged in the First Information Report. The trial, accordingly, commenced.

6. From the judgment under appeal, it transpires that altogether ten (10) prosecution witnesses were examined, out of which, P.W.-1 (Tajamul Hussain), P.W.-2 (Allauddin), P.W.-4 (Mehdi Hussain) and P.W.-5 (Md. Irfan) were declared hostile. P.W.-3 (Santosh Bhagat) and P.W.-5 (Md. Irfan) proved their signatures on the seizure list (Ext.-2). P.W.-6 (Amina Khatoon), the informant herself, P.W.-7 (Jamal Miyan), the uncle of the informant and P.W.-8 (Quraisha Khatoon), the mother of the informant, were also examined. P.W.-9 (Md. Habib) and P.W.-10 (Gul Mohammed) also deposed as prosecution witnesses.

7. It also appears from the impugned judgment of acquittal that in course of trial, neither the First Information Report nor the Fardbeyan was proved by the prosecution. Medical Officer was also not examined, nor the Investigating Officer.

8. The learned trial Court noticed apparent contradiction in the evidence of the informant (P.W.-6) as



regards, the person whom she met first, after she came out of the water body. While in her Fardbeyan, she said that she met a woman, who had saved her after she came out of the water body in the Village-Badhwa, in course of trial in her evidence, she took the name of one Sah Saheb to whom she had met after she had came out of the water body. Neither the said woman nor Sah Saheb were examined as the prosecution witnesses. We further find that there was no eye-witness, who claimed to have seen the occurrence and the entire prosecution version as of assault, said to have been committed by respondent No. 2 and his father, Md. Usman, was based on the sole testimony of P.W.-6, the informant. In the absence of any definite evidence to prove the charge of attempt to murder under Section 307 and 120 B of the Indian Penal Code and in the absence of any medical evidence brought on record in order to corroborate the allegation of assault on the appellant, the learned trial Court came to a finding that the prosecution had failed to substantiate the ingredients of charge for the offence punishable under Section 307 of the Indian Penal Code. Dealing with the charge under Section 498 A of the Indian



Penal Code, the learned trial Court came to a finding that the prosecution failed to prove that respondent No. 2 treated his wife with cruelty of such nature as was likely to drive her to commit suicide or to cause grave injury to life, limb or health. There being no allegation of harassment by respondent No. 2 of the appellant with a view to coerce her or any person related to her to meet any lawful demand for any property or valuable security, the Trial Court came to a finding that the essential ingredients for constituting offence under Section 498 A of the Indian Penal Code could not be proved against respondent No. 2, beyond shadow of all reasonable doubts. He, accordingly, recorded judgment, acquitting respondent No. 2 of the charges framed against him, dated 25/05/2015, which is under challenge in the present appeal.

9. Learned counsel, appearing on behalf of the appellant, has contended that the evidence of the informant, P.W.-6, could not be said to be inconsistent and on the basis of minor consistencies between the statements made by the appellant in the Fardbeyan and one made in course of trial, ought not to have been the basis for recording judgment of

acquittal. He has contended that the evidence of the informant, P.W.-6, who divulged the real truth, as regard occurrence, was sufficient for convicting respondent No. 2 of the charges levelled against him.

10. We have perused the judgment under appeal and have given our anxious consideration to the submissions made on behalf of the appellant (the informant). We find from the judgment under appeal that the informant alleged that she was assaulted and strangulated by respondent No. 2 and his father, Md. Usman, in the night of 25/03/1997 and was thrown in a nearby water body. According to her, she remained unconscious in the water body for quite sometime and when she regained her senses, she came out of the water body and while on her way to her mother's place, she again became unconscious and she regained consciousness with the help of a lady. The learned trial Court has recorded in his judgment that she narrated a different story in course of trial, wherein, in her evidence, she said that she had met with one Sah Saheb, after she had regained consciousness. We find that neither the lady, who is said to have helped the appellant, whom she is said to have met, in Village-Badhwa

nor said Sah Saheb was examined in course of trial, to support the prosecution version.

11. Further, as per her Fardbeyan, few Punches had allegedly intervened to resolve matrimonial dispute between the appellant and respondent No. 2, a day before the date of occurrence. The names of such Punches were mentioned in her Fardbeyan. Some of them, namely, Tajamul Miayn (P.W.-1), Allauddin Miyan (P.W.-2) and Mehdi Miyan (P.W.-4) were examined, who did not support the prosecution case at all and they were accordingly declared hostile by the prosecution.

12. P.W.-7, namely, Jamal Miyan, is the uncle of the informant, who is certainly not the eye-witness, has supported the prosecution case. In course of cross-examination, he admitted that he had not seen any injury on the body of the informant and he had not got her treated by the doctor. P.W.-9, namely, Md. Habib, is also not an eye-witness but had supported the prosecution case only to the extent that he learnt about the occurrence, after one Hamid Sah raised alarm that the appellant was thrown in the water body.



13. Upon perusal of the order under appeal, we find that the learned trial Court has considered and dealt with the evidence adduced in course of trial and upon appreciation of such evidence, he came to the finding that the prosecution failed to prove beyond all reasonable doubt, the charges framed against the respondent No. 2. We do not find any infirmity in the reasoning assigned by the learned trial Court while recording the judgment of acquittal. Keeping in view the apparent contradiction between the narration of the appellant in her Fardbeyan and her evidence in course of trial, the learned trial Court, in our opinion, rightly noted her evidence was required to be examined with care and caution. We also find that the evidence of the appellant, in course of trial, could not be corroborated by the other witnesses.

14. We do not find any manifest illegality in the judgment under appeal and we do not find that the conclusion arrived at by the learned trial Court is such, which could not have been possible conclusion to arrive at on the basis of evidence referred to in the judgment under appeal. The findings of the learned trial Court cannot be

said to be unjustified, requiring interference by this Court in the present appeal against acquittal. Learned counsel, appearing on behalf of the appellant, has not be able to draw our attention to any evidence, to satisfy us that there was some material evidence before the learned trial Court, clinching in nature, which either remained unnoticed or wrongly appreciated by the court below.

15. We do not find any merit in this appeal.

16. This appeal does not deserve to be admitted and is, accordingly, dismissed at the admission stage itself.

(I. A. Ansari, ACJ.)

(Chakradhari Sharan Singh, J.)

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