

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.46 of 2011

(Against the Judgment of conviction dated 29.11.2010 and Order of sentence dated 04.12.2010 passed by the 1st Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.516 of 2003).

Sanjay Kumar Singh, son of Braj Kishore Singh @ Mokhtar Singh, resident of Chainpura, P.S. Deoria, District- Muzaffarpur.

..... Appellant.
Versus
The State of Bihar
..... Respondent.
with

Criminal Appeal (DB) No. 306 of 2005

(Against the Judgment of conviction dated 04.04.2005 and Order of sentence dated 06.04.2005 passed by the 9th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No.340 of 2003).

Braj Kishore Singh @ Mokhtar Singh, son of Keshav Singh, resident of village-Chainpur, P.S. Deoriya, District-Muzaffarpur.

..... Appellant.
Versus
The State of Bihar
..... Respondent.

Appearance :

(In CR. APP (DB) No. 46 of 2011):

For the Appellant : M/s. Kanhaiya Prasad Singh, Senior Advocate and Alok Kumar Singh, Advocate.

For the State : Mr. A.K. Sinha, A.P.P.

(In CR. APP (DB) No. 306 of 2005):

For the Appellant : M/s. Kanhaiya Prasad Singh, Senior Advocate and Alok Kumar Singh, Advocate.

For the State : Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-12-2015

Both Appellants have been convicted under Section



302/34 of the Indian Penal Code. **In Criminal Appeal(DB) No. 46 of 2011**, Appellant, Sanjay Kumar Singh, has been convicted and sentenced to Rigorous Imprisonment for life and fine of Rs.10,000/- vide Judgment of Conviction dated 29.11.2010 and Order of sentence dated 04.12.2010 passed by the Ist Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 516 of 2003. **In Criminal Appeal(DB) No. 306 of 2005**, Appellant, Braj Kishore Singh @ Mokhtar Singh, has been convicted and sentenced to Rigorous Imprisonment for life and fine of Rs.2,000/- vide Judgment of Conviction dated 04.04.2005 and Order of sentence dated 06.04.2005 passed by the 9th Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 340 of 2003.

2. The case of the informant, Banaras Mahto, is that he was the Majdoor of Braj Kishore Singh @ Mokhtar Singh and Rs.400/- was due with him. On 29.10.2001, at about 5 P.M., he had gone to ask for his wages at which the Appellant, Braj Kishore Singh @ Mokhtar Singh abused and threatened him. He then came home at about 7 P.M. and lay down at his cot. At about 7.30 P.M., both Appellants came to his door and Appellant, Braj Kishore Singh, threw Kerosene Oil on his body and directed his son, Appellant, Sanjay Kumar Singh, to light matchbox, on account of which he got severely burnt. When he started crying then Lal Mohan Mahto and Raghunandan Mahto came and threw water to save him. He attended

to get his treatment at the village itself. He alleged that both Appellants with an intention to kill him had burnt him on account of which he became injured. This statement was recorded on 31.10.2001 at 1 P.M. at the Primary Health Centre, Dhumnagar.

3. During trial, in Sessions Trial No. 516 of 2003, the prosecution examined 21 witnesses whereas in Sessions Trial No. 340 of 2003, the prosecution examined 27 witnesses.

Some of the witnesses are common in both Sessions Trial, they are as such, P.W.1 Maya Shankar Singh is P.W.16, P.W.2 Kameshwar Singh is P.W.7, P.W.3 Jugeshwar Pandit is P.W.21, P.W.4 Surendra Singh is P.W.11, P.W.5 Lal Mohan Mahto is P.W. 1, P.W.6 Ashrfi Ram is P.W. 20, P.W.7 Prem Shankar Singh is P.W.17, P.W.8 Sheo Ratan Mahto is P.W.9, P.W.9 Rameshwar Singh is P.W.5, P.W.10 Pankaj Kumar Singh is P.W.8, P.W.11 Prasad Mahto is P.W.10, P.W.12 Radhe Shyam Singh is P.W. 23, P.W. 13 Rameshwar Mahto is P.W. 15, P.W.15 Pramila Devi is P.W.19, P.W.17 Dr. Maya Shankar is P.W.24, P.W. 18 Raghunandan Mahto is P.W. 3, P.W. 21 Chndeshwar Prasad Yadav is P.W.25, the Investigating Officer. We thus found that apart from P.W. 14 Dhanwanti Devi, P.W.16 Savitri Devi, P.W.19 Yogendra Mahto and P.W.20 Udai Kumar, most of the witnesses are common.

Further, in Sessions Trial No. 340 of 2003, P.W. 2 Phulmati Devi, P.W.4 Shiv Shankar Mahto, P.W.6 Jainuluddin

Ansari, P.W.12 Ravindra Mandal, P.W. 13 Sita Mahto, P.W. 14 Shankar Mahto, P.W. 18 Lakho Devi, P.W. 22 Rajeshwar Singh, P.W. 26 Dr. Ramnaresh Prasad and P.W. 27 Sailendra Kumar Mishra, are additional witnesses.

4. To deal with the witnesses of both sets of Sessions Trial, we would like to note down that P.W. 1/P.W.16 Maya Shankar Singh in both the Sessions Trial has turned hostile. Similar is position of P.W.2/P.W.7 Kameshwar Singh, P.W.3/P.W.21 Jugeshwar Pandit, P.W.4/P.W.11 Surendra Singh, P.W.5/P.W. 1 Lal Mohan Mahto, P.W.6/P.W. 20 Ashrfi Ram, P.W.7/P.W.17 Prem Shankar Singh, P.W.8/P.W.9 Sheo Ratan Mahto, P.W.9/P.W.5 Rameshwar Singh, P.W.10/P.W.8 Pankaj Kumar Singh, P.W.11/P.W.10 Prasad Mahto, P.W.12/P.W. 23 Radhe Shyam Singh, P.W. 13/P.W. 15 Rameshwar Mahto, P.W.15/P.W.19 Pramila Devi, P.W. 16 Savitri Devi, P.W. 18/P.W. 3 Raghunandan Mahto, P.W. 19 Yogendra Mahto, P.W. 20 Udai Kumar, P.W. 21/P.W.25 Chndeshwar Prasad Yadav have also turned hostile.

In Sessions Trial No. 340 of 2003, P.W. 2 Fulmati Devi, P.W.4 Shiv Shankar Singh, P.W.6 Jainuluddin Ansari, P.W.12 Ravindra Manal, P.W. 13 Sita Mahto, P.W. 14 Shankar Mahto, P.W. 18 Lakhi Devi, P.W. 22 Rajeshwar Singh, P.W. 27 Sailendra Kumar Mishra, have also not supported the case of the prosecution and hence, have been declared hostile.

5. We then left only with the evidence of P.W.21/P.W.25 Chandeshwar Prasad Yadav, the Investigating Officer and the evidence of P.W.17/P.W.24, Dr. Maya Shankar.

6. We found from the evidence of Chandeshwar Prasad Yadav, who is the Investigating Officer, that on 31.10.2001 while he was the Officer-in-Charge of Deoria P.S. he had gone to the Primary Health Centre, Dhumnagar on the basis of O.D. Slip, recorded as Sanha. When he reached there and took the statement of the deceased, Banaras Mahto, after having been satisfied with the mental status and the capacity of the deceased. He proves the dying declaration which is Ext. 3. He stated that after taking note of the injuries on the body of the deceased, he was sent to S.K.M.C.H., Muzaffarpur, for further treatment. He then examined the place of occurrence which was a thatched hut inside a courtyard and a little land was in front of hut. The deceased was said to have been lying down here on a cot when the Appellants perpetuated the said act. He then examined the witnesses. Further we find that the attention of the Investigating Officer has not been drawn to the evidence of any of the hostile witnesses, which makes their evidence completely irrelevant. In cross-examination, he stated that he had proceeded with the Primary Health Centre on the basis of O.D. Slip and deceased had given his statement lying down on the bed and his eyes were open. He further stated that he did not see any burn article at the place of occurrence neither any

else which was notable.

7. In Sessions Trial No. 340 of 2003, he has been examined as P.W. 25 wherein he stated that on the date of occurrence on the basis of O.D. slip he proceeded with the Primary Health Centre and found the deceased lying down in burnt condition on the bed and crying. He tried to look for the Doctor but he could not find. The injured was burnt severely but he could record his statement nevertheless. The deceased also allegedly heard the statement and thereafter affixed his sign on the same which was proved as Exts. 2, 3 and 4. He stated that he recorded the statement of his son Lal Mohan Mahto and proceeded to the place of occurrence. In this Sessions Trial his attention to the evidence of P.W. 1, son of the deceased, P.W. 2, wife of the deceased, P.W. 4, a co-villager who are only on the point of Appellant fleeing away from the place of occurrence and P.W. 13, a hearsay witness was drawn. He did not find any cot at the place of occurrence.

8. The next relevant witness, i.e., Dr. Maya Shankar P.W. 17/P.W. 24, has stated that he conducted the postmortem examination of the deceased on 02.11.2001 and found following injuries on his person.

- (i) Dermo epidermal burn of chest, both arm from front side. Face also.
- (ii) Whole of back with dermo epidermal burn was present.

(iii) K. oil smell was present.

On Dissection- No any internal injury was found.

Cause of death – Due to shock of burn of burn injury.

Time of death – 12 to 24 hours.

9. Initially, P.W. 26, Dr. Ramnaresh Prasad, has been examined in Sessions Trial No. 340 of 2003, who stated that on 31.10.2001 he had found the following injuries on his person. He proved the injury report, which is marked as Ext.5.

Superficial burn of arm forearm and hand 9% (Light Side).

Superficial burn of arm forearm and hand 9% (Right Side).

Superficial burn chest abdomen front and back both side 36%.

Opinion – Total burn 54%

Age of injury – within 48 hours.

10. He has stated that after having given first aid, the deceased was referred to S.K.M.C.H., Muzaffarpur. He also stated that he did not find any smell of Kerosene oil and only superficial burn injury. He further stated that the deceased was in on unconscious condition and unable to speak.

11. It has been submitted on behalf of the Appellants that the evidence of Doctor who had examined the injured first clinches at the issue of the dying declaration being unreliable. Further submission is that even though the occurrence is said to have taken

place two days earlier, a report was made about this only much later evidently for ulterior reasons.

12. The learned A.P.P. is unable to meet these arguments.

13. Having gone through the evidence, we find that no doubt a large number of witnesses have been examined in both Sessions Trial but they are not on any vital point. Hence, we found the case rests solely on the dying declaration which appears doubtful in the light of the evidence of P.W. 26, Dr. Ram Naresh Prasad, in Sessions Trial No.340 of 2003, who stated that the deceased was in on unconscious state and unable to speak.

14. In view of the above discussion, both appeals are allowed. The impugned judgment of Conviction and Order of sentence passed against the Appellants in both Sessions Trial are set aside. Even the son and wife of the deceased have not supported the prosecution case. Appellants, who are in jail custody, are directed to be released forthwith, if not wanted in any other cases.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-N.A.F.R.

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