

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.976 of 2010

(Against the Judgment of Conviction dated 21.07.2010 and Order of Sentence dated 24.07.2010 passed by the Additional Sessions Judge, F.T.C.-I, Gopalganj, in Sessions Trial No.101 of 2009/6 of 2009).

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1. Ramnath Mahto, son of Late Sipahi Mahto.
 2. Parbhawati Devi, wife of Ramnath Mahto.

Both are resident of village- Basaha , P.S.- Baikunthpur , District- Gopalganj.

.... Appellants.

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellants : M/s. Girish Chandra Jha, Lakshmi Kant Tiwary, Rajesh Roy, Raghwendra Kumar, Naresh Chadra Verma & Surendra Prasad Singh, Advocates.

For the State : Mr. Binod Bihar Singh, A.P.P.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 05-11-2015

The Appellants have been convicted under Sections 302/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.5000/-, in default of which, further simple imprisonment for four months vide Judgment of conviction dated 21.07.2010 and Order of sentence dated 24.07.2010 passed by the Additional Sessions Judge, F.T.C.- I, Gopalganj, in Sessions Trial No.101 of 2009/6 of 2009.

2. The case of the prosecution, according to dying



declaration of the deceased Ram Balak Mahto, is that he being aged about 75 years, on 15.06.2008 at about 10.00 O'clock in the morning was lying down in his home. In the meantime, the Appellants came there. The Appellant Parbhawati Devi had a 'Lota' in her hand containing Kerosene Oil which she sprinkled on his body whereas Appellant Ramnath Mahto lit fire with a match stick on account of which he started burning. On his 'hulla' his wife and son came there alongwith other persons and the police was informed who took him to Primary Health Centre, Baikunthpur, for treatment where he was being administered treatment. The reason for the occurrence was that he had started living in his in-laws' house which was not liked by the other relatives of his in-laws side and, thus, he was burnt to death. The dying declaration was witnessed by Ram Balak Mahto, Lalbabu Mahto (P.W.6) and Manchotiya Kunwar (P.W.5).

3. During trial, prosecution examined seven witnesses.

4. P.W.1 Umesh Kumar Srivastava has merely proved the signature of the S.I. R.P. Singh on the fardbeyan and identified the same as Ext.1 He also proved the formal First information Report as Ext.2 being in the same pen.

5. P.W.2 Sipahi Dubey stated that he had heard that the deceased had died on account of burning but the person who had informed him he did not know nor he was examined by the police.



6. P.W.3 Babloo Kumar stated that the deceased had been burnt and that he had land dispute with Appellant Ram Nath Mahto. In cross examination, he stated that after the occurrence the deceased was not speaking and was taken to Baikunthpur Hospital where the doctor had given him treatment where the police came. The police took the signature of the deceased on a blank paper. Thereafter, the doctor referred him to Gopalganj where he died. He further stated that the deceased used to smoke 'Bidi' and consume 'Ganja' and he was not in a position to give any statement and, in fact, after the death, the son of the deceased had falsely implicated the Appellants in the present occurrence.

7. P.W.4 Dr. Shashi Ranjan Prasad stated that on 16.06.2008 at 13.15 P.M. he conducted post-mortem and found superficial to deep burn about 100%. In cross examination, he stated that there was no smell of Kerosene Oil and it was dry burn injury.

8. P.W.5 Manchotiya Kunwar is the wife of the deceased, who stated that she had gone to pluck branches of tree used for brushing teeth backside of her home, when she heard the sound of her husband so she came to her house and saw the Appellants sprinkling Kerosene Oil and setting her husband on fire with a match stick. Her husband asked Ramnath Mahto as to why he had done such a thing. Then the Police came and took the deceased to the Hospital. She



stated that for reasons of land dispute, her husband had been set on fire. In cross examination at para-11 she stated that when she came she saw her husband burning at which she screamed so villagers gathered. However, they ran away since they were apprehended that they could be implicated. She further stated that her husband had become unconscious on sustaining burn injuries and he was removed to Gopalganj Hospital where he died and his entire body had been burnt. At the place of occurrence, there was no vessel but Kerosene Oil was on the floor which the Investigating Officer and the S.P. had seen. Once again she stated that since the last 12-13 years parties were on litigating terms on account of land. It was suggested to her that that, in fact, her husband had died on account of accidental fire having been caused by 'Bidi' and the Appellants had been implicated falsely for the reasons of land dispute.

9. P.W.6 Lalbabu Mahto, the son of the deceased, stated that he had gone to the field on the date of occurrence. When he heard 'hulla' he came home and found his father screaming saying that the Appellants had not done a good thing and they had set him on fire. Somebody had informed the police at which the Officer Incharge had come and had taken the deceased to the Baikunthpur Hospital where he was examined after which he died. He asserted that his father died in the Hospital and his own statement was recorded in Sadar Hospital,



Gopalganj, in the Emergency Ward which he had signed. In cross examination, he stated that he had seen his father burning and his entire body had been burnt and the clothes were stuck on his body. He further stated that when he reached a number of co-villagers had gathered there but no body came there fearing implication. He clarified that his father died at 11.00 P.M. in the night and had not become unconscious on sustaining burn injury and that he was conscious till in Gopalganj Hospital and that he had remained in Baikunthpur Hospital till 03.00 P.M. In paragraph-16, it was suggested to him that, in fact, in his earlier statement he had not stated that when he had reached his father was saying that Appellant Parbhawati Devi sprinkled Kerosene Oil and Appellant Ramnath Mahto had set him on fire. It was suggested to him that his father had died on account of 'Bidi' and on account of land dispute, the Appellants had been implicated.

10. P.W.7 Ambika Yadv is a formal witness, who proved the inquest report Ext.4.

11. On going through the evidence of the witnesses, we find that there is no direct evidence against the Appellants. The dying declaration on the basis of which the case has been initiated has not been proved by the prosecution nor has the Investigating Officer been examined. In such circumstances, we find that we have oral evidence



of P.W.3 Babloo Kumar, P.W.5 Manchotia Kunwar and P.W.6 Lalbabu Mahto and documentary evidence by way of Post-Mortem Examination Report. We are not inclined to rely on the evidence of P.W.5 as an eye witness for the simple reason that she has deposed that she arrived when her husband had become unconscious so she could not have possibly witnessed the occurrence. As far as P.W.6 is concerned, we find that no doubt he has deposed as an eye witness but it was suggested to him that he had not given such a statement before the Investigating Officer. Since the Investigating Officer has not been examined, we would not think it wise to rely on his evidence which would cause great prejudice to the Appellants.

12. In the event of failure of the prosecution in examining the Investigating Officer who alone could have thrown some light about the presence of Kerosene Oil at the occurrence we would have to place reliance on the positive evidence of the doctor (P.W.4) that he did not find any smell of Kerosene Oil and the burn injury was dry. In doing so a substantial part of the prosecution case is rejected.

13. In this background while testing the oral dying declaration, we find whereas P.W.5 stated that her husband had become unconscious when he sustained burn injuries contradicting P.W.6 who stated that he was still conscious. The sole independent

witness P.W.3 also stated that the deceased had become unconscious. In such circumstances, we are not inclined to place any reliance on the sole evidence of P.W.6 in this regard which is rendered shaky.

14. For the aforesaid reasons, this appeal is allowed. The impugned Judgment of conviction and Order of sentence passed against the Appellants is set aside. Appellant No.1, Ramnath Mahto, who is in jail custody, is directed to be released forthwith, if not wanted in any other case. So far as Appellant No.2, Parbhawati Devi, is concerned, she is on bail and, hence she is discharged from the liabilities of bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.F.R.

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