

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 592 of 2009

Against the judgment of conviction, dated 17.06.2009 and order of sentence dated 19.06.2009 passed by Shri Shambhu Nath Mishra, learned Additional Sessions Judge, I, Jehanabad, in Sessions Trial No. 01 of 1999/289 of 1998 arising out of Ghosi P.S. Case No. 112 of 1996

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Bhagwan Sao, son of late Tilakdhari Sao, resident of village Ratubigha, P.S. Ghosi, district Jehanabad Appellant

With

Criminal Appeal (DB) No. 599 of 2009

1. Durga Sao, son of Late Tilakdhari Sao
2. Gorkhi Devi, wife of Sri Durga Sao
3. Sunil Sao, son of Sri Durga Sao, all residents of village Ratubigha, P.S. Ghosi, district Jehanabad Appellants

With

Criminal Appeal (DB) No. 720 of 2009

Vijay Sao, Son of Durga Sao, Resident of village Ratubigha, P.S. Ghosi, district Jehanabad Appellant

Versus

The State of Bihar

.... Respondent
(In all the appeals)

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Appearance :

For the Appellants : M/S Prakash Chandra Jha & Bijay Prakash Singh, Advs.

For the Respondent : M/S D.K. Sinha, S.B. Verma & A. Sharma, APPs

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CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 13-07-2015

These three appeals arise out of judgment, dated 17.06.2009, and orders of sentence, dated 19.06.2009, passed by the learned First Additional Sessions Judge, Jehanabad, in Sessions Trial No. 01 of 1999 by which the five appellants of the three appeals were held guilty of committing offences under Sections 304B and 201/34 of the Indian Penal Code and each of them was directed to suffer rigorous imprisonment for life as also for seven years under the two respective counts.

2. Some of the facts are not disputed that the deceased, Shailu

Devi, the sister of P.Ws. 1 and 5 was married to appellant Vijay Sao and on the date of occurrence, that's, 30th May, 1996, she was residing in her matrimonial house and she was married some time in 1991.

As per written report and as per the witnesses also, it was alleged by the informant P.W. 5 that her sister was being ill-treated and tortured by the accused persons in connection with demand for dowry and was continuously being ill-treated and the accused persons were holding out threats of getting Vijay Sao married to another lady. The allegation was that on 30th May, 1996, the appellants joined hands to burn her to death and cremated her dead body so as to erase the evidence of commission of offence of dowry death. The informant stated in his written report that after having come to know about the incidence from P.W. 4 Gopal Prasad, he along with P.W. 4 came to village Ratubigha, to gather information about the incident and found the family members of the deceased evasive in their replies. However, some of the villagers pointed out to them that the deceased had been killed and her dead body cremated by the accused persons.

3. In absence of the evidence of the investigating officer, we are handicapped by not having the evidence as to how the investigation had proceeded, but, the finality of the trial definitely indicates that the five accused persons, i.e., the appellants were sent up for trial and that resulted in the impugned judgment.

4. We have heard the learned counsel appearing for the appellants and we have also heard learned Additional Public Prosecutors.

5. We have gone through the evidence of the witnesses and we find that there are many slips between the prosecution's lips and its cup.

There is no eye witness, as generally it is never in such a case on account of the fact that such incidents generally take place within the confines of the matrimonial house of the lady. But, in spite of that one may lay his hand on certain circumstances which could be stitched up into a complete chain so as to present it before the trial Court. Here in the present case we find that the prosecution did not indeed produce any evidence of the culpability which could be creating any circumstance by raising an inference to that effect.

6. The first deficiency the prosecution case suffers from is that in spite of having come to know about the incident on the very third day of it, P.W. 5 the informant and his brother (P.W. 1) along with P.W. 4 their brother-in-law (Bahnoi) were roaming around in the village to gather information so as to concretizing it for presenting it before the police. In paragraphs 7, 8 and 9 of the evidence of P.W. 1 it has been stated by him that he had very well been informed by P.W. 5 on the very third day of the incident and he had come down to the village and, thereafter, had went on the fifth day of incident to Ghosi Police Station to be told by the Officer-in-Charge of the Police Station to very much ascertain the facts to clear any doubts before he had lodged the report with the police. P.W. 1 stated as may appears from paragraph 9 that he roamed around for 5-6 days and then he lodged the report, but, when put to cross examination in paragraph 9 the witness, P.W. 1, stated that he could not tell the names of those persons

who had put in the information, that's, the factum of his sister being killed by the accused persons into his ears. Still, P.W. 1 was very certain that the report was lodged on the sixth day of incident.

7. The record, i.e., the first information report of the case is the testimony to the fact as to when it was lodged and on perusal of the same what we find is that for an occurrence dated the 30th May, 1996, the written report was lodged on the 13th June, 1996, i.e., the first information report was instituted after fourteen days of occurrence. The explanation was though missing from the written report, but, we could gather from the evidence of P.W. 1 that he was roaming around to gather some more concrete informations and that exercise by P.W. 5 and P.W. 1 his brother with the aid of all resourceful P.W. 4 Gopal Prasad had been completed within six days of getting the information. Why then the informant or his brother or their brother-in-law Gopal Prasad P.W. 4 were still shying away from the Police Station in lodging the report, this is unexplained to us.

8. The lady was being tortured as per P.W. 1 the younger brother of P.W. 5 and two wives of the brothers, namely, P.Ws. 2 and 3 as also as per P.W. 4 Gopal Prasad the Bahnoi of the informant. The story which was projected by the prosecution was that the lady was tortured to such an extent that she was used to be beaten up and driven away from her matrimonial home. P.W. 1 in paragraph 11 had stated that not less than on ten occasions the lady had been ousted from her matrimonial home after being beaten black and blue. No support from any other person than P.W. 1 or P.W. 5 or at least P.Ws. 2, 3 and 4 was coming before the learned trial

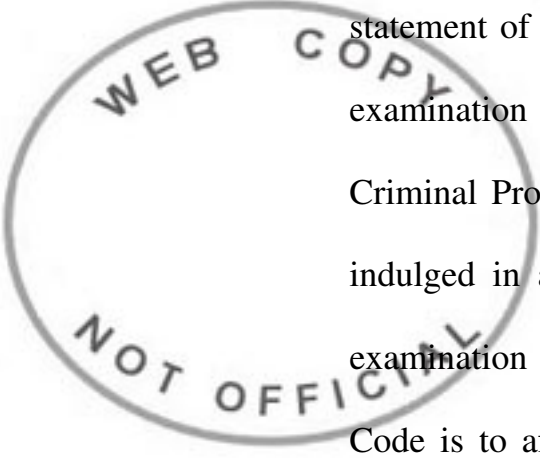
Judge. They were as per their evidence, pushing the lady back into her matrimonial house on all such occasions and on each of occasions the witnesses appeared having retreated into their shells as well as not to inform any authority about the atrocious act which were being committed with Shailu Devi, the deceased.

9. We do not have any further details as to what were the reasons on whatever occasions that the lady had been expelled from her matrimonial home. Besides this we do not, as noted above, have any additional evidence coming from some independent sources in support of the allegations that the lady was being ill-treated and tortured in connection with any demand for dowry. P.W. 1 was stating that the demand was for Rs.20,000/- to 25,000/- and P.W. 5 was completely silent as to what was the article or sum which was demanded by the accused persons. Not only that, P.W. 4 who had special relation with the victim and was a witness of the prosecution, was stating that Shailu Devi was a literate lady who used to convey to her family members the story of her torture by the accused persons through letters. P.W. 3 had stated that she was a literate lady, she was a matriculate and she used to write letters to her family members complaining of the torturous behaviour of the accused persons. P.W. 1 the younger brother of P.W. 5 the informant and elder brother of the deceased along with one of the wives of the two brothers, namely, P.W. 2 Munni Devi as also the informant, the three persons, did not even whisper that Shailu Devi had ever written a letter to any of the family members. In fact, P.W. 2 was very categorically in paragraph 8 in stating that Shailu Devi had

never sent a letter to any of them which evidence runs contrary to the evidence of P.W. 3. In paragraph 3 of P.W. 4, the worst was that P.W. 4 admitted that Shailu Devi had never corresponded with him but still was producing two letters from under his cap for the first time in the Court room without producing it before the investigating officer or even telling them about the existence of any such document to claim that those were the letters containing the details of the tales of woes of the lady which were related to P.W. 4 through those two documents.

10. The defence was very stout in refuting the genuineness of the two letters. The learned trial Judge ought to have in our opinion sought the production of evidence so as to satisfying himself about the genuineness of two documents; that Exhibits 1 and 1/1 were indeed in the hand of Shailu Devi specifically in the light of the evidence of her four family members, like, P.Ws. 1, 2, 3 and 5 who did not even know about the existence of the two letters, Exhibits 1 and 1/1. Using the letters as incriminating circumstance against the accused persons, under the circumstances, we have just noticed, was in our opinion not a proper judicial finding so as to re-enforcing the finding of guilt of the accused persons.

11. While perusing the papers, our attention was drawn to page 42 of the brief which contains the statement of Vijay Sao recorded under Section 313 of the Criminal Procedure Code on 22nd January, 2002. If one can go through the contents of that statement, it is squarely the confession of the accused of commission of the offence, but, again our attention was drawn to page 41 of paper book, which is yet another statement under



Section 313 of the Criminal Procedure Code of the same accused which was recorded on 06.05.2009, i.e., after about seven years of the first statement of Vijay Sao, which was recorded just on the day and after the examination of P.W. 5. In the second statement under Section 313 of the Criminal Procedure Code appellant Vijay Sao completely denied to have indulged in any manner in commission of the offence. The purpose of examination of an accused under Section 313 of the Criminal Procedure Code is to afford to him an opportunity of explaining the circumstances which may be appearing against him from the prosecution evidence and as may appear from the draft of the provision if something was appearing incriminating in that statement the same might be used against him in subsequent enquiry or trial. Thus, the very rider, which is contained in Section 313(4) of the Criminal Procedure Code clearly points out that any incriminating statement which might have come from the accused while being questioned under Section 313 of the Criminal Procedure Code may not be used in a proceeding in which the record had been made. We, as such, eliminate the statement of Vijay Sao recorded on 22.01.2002 considering that he had been examined subsequently five years after that examination in which he had denied his involvement in the commission of the offence.

12. On having gone through the evidence of witnesses and after considering the submissions of the learned counsel of both the sides, we are of the view that evidence of witnesses is too scant to justify raising of inference of culpability of the five appellants so as to holding them guilty

for committing the offence they had been convicted of and, as such, it was not appropriate for the learned trial Judge to sentence them as indicated at the very outset of the present judgment.

13. In the result, the three appeals succeed. They are allowed by setting aside the judgment of conviction and order of sentence, passed upon the five appellants. All appellants, other than Vijay Sao, are on bail. They are discharged from the liabilities of their respective bail bonds. Appellant Vijay Sao is still in custody. He shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J.)

(Gopal Prasad, J.)

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