

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1232 of 2010

Against the judgment of conviction, dated 31.08.2010, and order of sentenced dated 03.09.2010, passed by Mr. Arun Kumar Sinha, Additional Sessions Judge, IV, Aurangabad, in Sessions Trial No. 148 of 2006/584 of 2009 arising out of Baroon P.S. Case No. 77 of 2002 (G.R. No. 1025 of 2002)

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Sadik Sheikh @ Pappu, son of late Naim Sheikh, resident of village Shekh Bigha, P.S. Barun district Aurangabad (Bihar) Appellant

Versus

The State of Bihar Respondent

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Appearance :

For the Appellant : Mrs. Dr. Leelawati Kumar, Adv.

For the Respondent : Mr. D.K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 23-11-2015

Heard the learned counsel for the Appellant and the State.

2. The Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced for live and a fine of Rs.2000/- in default of which simple imprisonment for fifteen days by the Additional Sessions Judge, IV, Aurangabad, by a judgment, dated 31.08.2010/03.09.2010, passed in Sessions Trial No. 148 of 2006/584 of 2009.

3. The case of the prosecution, according to the Dafadar, Circle No. 1, Umar Sah, P.W. 4, is that on 02.06.2002 when he returned from his daily inspection, he heard that the Appellant had killed his wife and had attempted to burn her dead body. When he reached there he found the dead body of the deceased. The villagers present stated that on 01.06.2002 at about 04.00 P.M. the Appellant had taken his wife to his elder brother and when he returned from there he had killed her and attempted to burn the dead body, but, the villagers gathered and had taken out the deceased and the Appellant. Thereafter, the Appellant leaved the dead body in the house and ran away.

4. During the trial the prosecution examined eleven witnesses.

5. P.W. 1 is Ible Hasan, P.W. 2 is Ibrahim, P.W. 3 is Md. Mumtaz, P.W. 4 is Umar Sah, the informant, have been declared hostile. P.W. 5, Md. Shabir, is a formal witness, who merely stated that he had signed on some documents which have not been put to him.

6. P.W. 6, Raushan Ara, happens to be the sister-in-law of the deceased, who stated that she heard that the deceased had died in an accidental fire. In cross-examination, she stated that she had never seen the Appellant ever beating up his wife.

7. P.W. 7, Maiya Khatoon, stated that on the date of occurrence she saw smoke coming out of the house of the Appellant at which she started screaming and villagers gathered and then the Appellant and his wife were taken out. However, the deceased had died. In cross-examination, she stated that she had not seen the Appellant burning his wife.

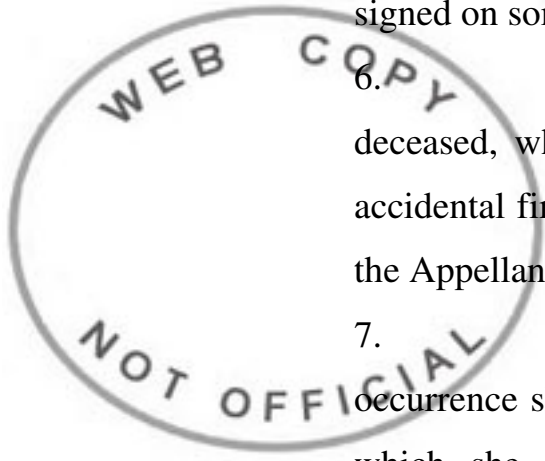
8. P.W. 8, Khushbu Khatoon, happens to be the daughter of Appellant and the deceased. She stated that once in a while when her mother used to press the husband to go and earn, he used to assault her. She stated that the house hold expenses were taken care of by the mother who used to stitch clothes because the husband did not work. She has stated that she did not know as to how her mother had died.

9. P.W. 9, Shahzadi Khatoon, is the sister-in-law of the deceased, who stated that there was good relation between the husband and wife and she was declared hostile.

10. P.W. 10, Dr. Surendra Prasad Singh, who conducted the post mortem of the deceased opined that death caused on account of asphyxia due to throatling and there were superficial burn injuries on the person of the deceased.

11. P.W. 11, Md. Shamim, is a formal witness who proved the fardbeyan, Exhibit 4, the signature of the informant on the fardbeyan, Exhibit 5, the first information report, Exhibit 6 and the inquest report, Exhibit 7.

12. On an analysis of the above evidences, we find that apart from the circumstance that the deceased died a homicidal death there is



complete paucity of any evidence in support of charge of murder of the deceased at the hands of the Appellant.

7. In such view the appeal is **allowed** and judgment, dated 31.08.2010/03.09.2010, passed in Sessions Trial No. 148 of 2006/584 of 2009 is set aside.

8. Since, the Appellant is in jail, he is directed to be released forthwith, if not wanted in any other case. He is discharged from the liability of bail bond.

(Anjana Prakash, J)

(Gopal Prasad, J)

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