

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.45 of 2009

Arising Out of P.S.Case No. 459 Year- 2006 Thana- Kahalgaon District- BHAGALPUR

Sanjay Kumar Pandey son of Indradeo Pandey, resident of village-Khairiya, P.S.-
Kahalgaon, District-Bhagalpur.

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Shri Ranjan Kumar Jha, Advocate.

For the Respondent : Shri S.N.Prasad, APP.

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 26-03-2015

The solitary appellant, husband of the deceased Pinki Devi who was aged about 30 years on the day of the occurrence, questions the propriety and correctness of the judgment of conviction and order of sentence dated 22.12.2008 and 24.12.2008 respectively passed by the Presiding Officer of Fast Track Court No.III, Bhagalpur in Sessions trial No.456 of 2007/Trial No.86 of 2007 by which the learned trial Court directed the appellant to suffer rigorous imprisonment for life under Section 302 Indian Penal Code as also to pay a fine of Rs.5,000/- else to suffer rigorous imprisonment for six months.

2. The informant, Indradeo Pandey (P.W.2) was the father of the present appellant. The fardbeyan given by him appears to be the



basis for initiation of the prosecution of the appellant. It was stated that in spite of being married to the lady and having begotten a son of about 11 years, the appellant was not treating his wife well as his habits were bad. The informant stated that his son was a drunkard. He also used to smoke ganja and as well used to take bhang which behaviour of the appellant was always castigated by the informant and his other family members. The appellant used to call names even to his parents, least to talk of the deceased and the informant and his wife, the parents of the appellant were so fed up with the behaviour of the appellant that they had left their house to live in Khairiya with their another son.

3. It was stated that the informant had come to Kahalgaon on 12.12.2007 and he was informed by one Munna Pandey P.W.4 that the appellant had burnt his wife, Pinki Devi to death. She was hospitalized in Jawahar Lal Medical College and Hospital, Bhagalpur. The informant rushed to Bhagalpur Medical College with his wife Uma Devi (P.W.1) to find his daughter-in-law lying hospitalized there in a badly burnt up condition who ultimately died there in the hospital.

4. It appears that on the basis of the fardbeyan lodged by P.W.2, the case was investigated into and the appellant was sent up for trial.

5. The father of the appellant who was examined as P.W.2



and the mother of the appellant Uma Devi (P.W.1) mother did not speak a single line in support of the charges were declared hostile. The father, on the other hand, did state that while he was in the hospital, the police searched for him and after getting him, treated him very badly so much so that he was threatened to be implicated and sent to prison and on that threat he and his wife were forced to sign a plain paper. He had not given any statement. P.W.2 did not support the prosecution story and, as such, he was also declared hostile. P.W.3 Vikram Pandey was the Mama of the deceased and he stated that he learnt through a telephonic message about the incident and came to Khairiya where he met P.Ws.1 and 2 and both of them were pointed out by him that the appellant had burnt his wife at a particular place in the courtyard of the house. Thereafter, he came to the police station and informed the police and ultimately, he brought the deceased to Kahalgaon hospital from where she was referred to Bhagalpur hospital where she died. It was stated by P.W.2 that he had talks with the deceased on 10.12.2006 on telephone and the deceased had pointed out to him that her mother-in-law and father-in-law were conspiring with her husband to kill her and that P.W.3 should come and take the deceased back to her parents' house. It was suggested to P.W.3 that he had not made any statement to the police and he had not stated the facts as was stated by him as regards the deceased having



complained to him about the conspiracy being hatched up by her in-laws to kill her. There was a categorical suggestion to P.W.3 that he had never given any statement to the police. However, the facts which were suggested to P.W.3 Vikram Pandey were not proved by cross-examining the investigating officer to those facts. P.W.4 Munna Pandey was a chance witness as he stated that he had gone back to Khairiya as some belongings he had missed to pick up from a *Dharamshala* and when he was there, he heard the appellant shouting that whoever would come to save the deceased would be shot dead. He stated that he did not state anything further except the above. The witness stated that the police had come to search for Indradeo Pandey, the father-in-law of the deceased in Jagarnath Swami Dharamshala but he did not go to meet them saying that he had disowned his son as *Badmash*.

6. P.W.5 was the doctor who had held postmortem examination on the dead body and as per whose evidence death of the deceased was on account of asphyxia due to burn injuries.

7. P.W.6 was the son of the deceased who as per the prosecution was an eye witness, but what appears from his evidence was that he was present there in the house only up to the deceased was beaten up by the appellant. P.W.6 stated that he ran away from there and hid himself and could come after things were peaceful in the

house to find that his mother was completely burnt up and his father hired a vehicle to take her to the medical college to get her admitted where she died.

8. P.W.7 Dular Chandra Ram was the investigating officer of the case.

9. On consideration of the evidence of the witnesses what appears is that there could not be any doubt that deceased Pinki Devi had died of burn injuries, but there was no evidence as to how she got to be injured that way. P.W.6 the son of the deceased and the present appellant were the only persons in the house and as appears from the evidence of P.W.6, he had ran away from there when the deceased was beaten up by this appellant. P.W.3 might have told that the deceased had told him that the parents of the appellant was conspiring to kill her but again, we do not find any convincing material to hold that the parents of the appellant had any hand in commission of the offence. In fact, the father of the appellant had lodged the report but he was explaining away in Court as to what were the circumstances under which he was forced to sign a plain paper. P.W.4 as we have already noted was a chance witness and he does not appear having stated anything as to why he had stayed in the *Dharmshala*. A witness could be a chance witness only when he could not assign any convincing reason for his presence at a place where he is not usually

to be fond. If the reason assigned by the witness appears convincing as regards his presence at the scene of occurrence, then only he ceases to be a chance witness and his evidence could be relied upon.

10. We have already noted that the reason which was stated by P.W.4 for being present or for coming back to Khairiya does not appear convincing because he had not given any details as to what were the articles he had missed to pick up while checking out of the Dharmshala and for that he was required to come back. In our opinion, the reason assigned by him was a subsequent ploy invented by him to claim his presence at the scene of occurrence and then to tell the Court that the appellant was shouting at everyone who could be attracted to his demonic act not to come there, else he would be shot dead. This is the story which is for the first time told by P.W.4. P.W.6 is the only eye witness who did state that his father had assaulted his mother but also stated that while the incident of beating up his mother was going on, he left his house out of fright of being himself assaulted to hide somewhere and to come many hours after when it was all peace in the house. But what happened in between this span of time, there is a complete absence of any story and that too is not through a reliable person. Besides, P.W.6, the son of the present appellant had stated in his cross-examination that the relationship between the couple, i.e., the present appellant and the deceased were

cordial and there had never been any incident of assault earlier. Thus, the whole prosecution evidence in addition to being deficient in its quality also lacks clarity so much so that no inference could be drawn against the accused. In our opinion, the evidence was not such which could have convinced any judicial conscience that the charges had been proved to the hilt by the prosecution. In fact, the evidence was leading us to no concrete inference as regards the culpability or otherwise of the appellant, as a result of which, we do not have any hesitation in recording that the prosecution had miserably failed in bringing the charges home against the appellant.

11. In the light of the discussion of the evidence, the appeal succeeds and the same is allowed by setting aside the judgment of conviction and order of sentence passed upon the appellant. The appellant is in custody, he shall be released forthwith, if not wanted in any other case.

(Dharnidhar Jha, J)

(Amaresh Kumar Lal, J)

Brajesh Kr./- Kanchan.

U		T	
---	--	---	--