

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.249 of 2015

(Against the Judgment of conviction dated 16.07.2010 and Order of sentence dated 19.07.2010 passed by the Additional Sessions Judge, Fast Track Court No.2, Sitamarhni, in Sessions Case No.416 of 2007).

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Nagendra Paswan, son of Late Ram Lal Paswan, resident of village - Dumra Parori,
P.S. Dumra District - Sitamarhi

.... Appellant.

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant : Dr. Alok Kumar Alok and Mr. Hans Lal Kumar, Advocates.

For the State : Mr. A.K. Sinha, 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: 20-06-2016

The sole Appellant has been convicted under Section 302 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for life and fine of Rs.10,000/-, in default of which, to undergo further rigorous imprisonment for one year vide Judgment of conviction dated 16.07.2010 and Order of sentence dated 19.07.2010 passed by the Additional Sessions Judge, Fast Track Court No.2, in Sessions Case No.416 of 2007.

2. The prosecution case is based on the dying declaration of the deceased Chandrakala alias Chanda Devi, who stated that on

30.03.2007 at about 07.00 P.M., her husband, the Appellant, Nagendra Paswan, came in a drunken state and started to abuse her. When she protested, he poured kerosene oil on her and set her on fire. When she started screaming, several neighbours gathered and they extinguished the fire and took her to the hospital where she was being treated. She had lost her consciousness and when she regained the same, it came to light that her husband was assaulted by the co-villagers and had also been admitted in the hospital. The deceased, subsequently, died upon which the case was converted into one under Section 302 of the Indian Penal Code.

3. During trial, the prosecution examined altogether 10 witnesses.

4. P.W.1 Daya Devi stated that on the date of occurrence she saw the Appellant in a drunken state assaulting the deceased. When she and her son, aged about 8 years, protested, they were pushed by the Appellant. Then the Appellant locked the door and she saw from the gap of the door that the Appellant poured kerosene oil on the person of the deceased and set her on fire. He then hid under the 'Chowki' from where he was brought out by the co-villagers from where he was taken to the hospital along with the injured/deceased.

In cross examination, she stated that she was a neighbour of the deceased and the Appellant and she was alone when the

deceased was being assaulted and abused. There is nothing else which is of note in her further cross examination.

5. P.W.2 Panchu Paswan is a formal witness on the point of recording of the dying declaration of the deceased on which he alongwith Ritesh Jaiswal (P.W.7) had signed. He proves the same as Exts.1 and 1/1.

6. Similarly, P.W.7 Ritesh Jaiswal, is also on the point of recording of dying declaration of the deceased and appending his signature on the same.

7. P.W.3 Shambhu Paswan, P.W.4 Santosh Paswan, P.W.5 Bittu Kumar and P.W.6 Pinku Kumari have not supported the case of the prosecution and have been declared hostile.

8. P.W.8 Sriram Singh is Investigating Officer, who stated that on the date of occurrence he recorded the dying declaration of the deceased. She was speaking clearly. Her statement was read over to her. He proved the same as Ext.2. On that very basis, the First Information Report was instituted which he proves as Ext.3. During investigation, he examined the children of the deceased and the Appellant as also inspected the place of occurrence and found a small room in the house in which a 'Chowki' with bedding was laid. There was smell of kerosene oil in the room. He also found the door broken and burnt cloths there of which he prepared a seizure list which he

proves as Ext.4. He also proves the Inquest Report as Ext.5 and material exhibits of burnt cloths as Exts.1, 1/1 and 1/2.

In cross examination, he stated that he had recorded the Fardbeyan of the deceased at 10.00 P.M. and since it did not seem that the deceased would die, therefore, he did not make attempt to get the doctor to sign on the Fardbeyan.

9. P.W.9 is Dr. Shyamdeo, who examined the Appellant on the same day and found the following injuries on his person.

- (i). Lacerated wound on frontal bone 1" X 1/4" X deep bone.
- (ii). Lacerated wound on occipital bone 2" X 1" X deep bone.
- (iii). Lacerated wound on nose 1/2" X 1/6" X 1/6".
- (iv). Pain whole body.

He proves the Injury Report of the Appellant as Ext.6.

10. P.W.10 is Dr. Jaidev Mandal, who performed the Post-Mortem Examination of the deceased on 31.03.2007 and found the following injuries on her person:

External Injuries:- Eye closed, mouth closed, Burn of face, neck, chest, Both upper limbs, upper part of the back, burn of left Buttock, right thigh and legs.

Total burn area is about 60-70%.

Internal findings:- On opening of skull cranium intact, Brain matter congested. On opening of neck, trachea contains carbon particles. On opening of thorax both lungs intact and congested. Heart intact and left chamber empty and right chamber filled dark blood. On opening of abdominal cavity, all abdominal viscera intact and pale.

Stomach contains gastric juice only.

Urinary bladder partially filled. Uterus normal in size.

Time elapses death and P.M. held-within 24 hours.

In his opinion, the cause of death was due to hypovolumic shock, leading CR failure as result of above noted burn injuries cause by flame of fire.

He proves the Post-Mortem Examination Report of the deceased as Ext.7.

There is nothing notable in his further cross examination.

11. Learned counsel for the Appellant submits that there is no eye witness to the occurrence and, therefore, the prosecution case is fit to be disbelieved.

12. From the aforesaid evidence of the witnesses discussed above, we find that that the case is based on the dying declaration of the deceased who in full consciousness had given incriminating statement against the Appellant, which is the basis of

the First Information Report. The same is well corroborated on all material particulars inasmuch as one Doctor found burn injuries on the person of the deceased another Doctor found the Appellant in an injured condition on the same day. The Investigating Officer found the objective evidence of burn and smell of kerosene oil in the room of the deceased further corroborating the statement of the deceased which is fully reliable. The reason why the Doctor did not append his certificate on the Fardbeyan is also well explained by the Investigating Officer. We also take note of the fact that the Appellant, in his statement recorded under Section 313 of the Code of Criminal Procedure has not taken any specific plea as to how his wife had suffered burn injury on the same day nor as to how he had sustained injury which fact was within his special knowledge.

13. In view of the aforesaid discussions, finding no merit in this appeal, the same is dismissed.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/A.B. Bhardwaj.

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