

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.65 of 1994

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Budhu Sah, son of Late Hriday Sah, resident of Digambar Sarkar Lane,
Jogsar, P.S.-Kotwali, District-Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. KRISHNA MOHAN, Advocate

Mr. Praveen Kumar, Advocate

For the Respondent/s : Mr. A.K. Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date : 07-10-2017

We have heard parties and perused the records of this case.

The appellant has filed this appeal assailing the judgment of conviction dated 11.02.1994 and order of sentence dated 14.02.1994 passed by 5th Additional Sessions Judge, Bhagalpur in Sessions Trial No. 32 of 1989 arising out of Kotwali P.S. Case No.699 of 1986 by which he has been convicted for the offences punishable under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life.

The prosecution case, in brief, is that the fardbeyan of one Saira Bano was recorded on 25.11.1986 at 8.00 P.M. in the



Emergency Ward of Bhagalpur Medical College and Hospital, Bhagalpur by one Sri B.K.Singh, A.S.I. of Police. It is stated therein that Saira Bano was a girl of a very poor family and her parents had expired much earlier and she was maintaining herself anyhow by dint of her labour at Farbisganj, Purnea. She has stated that the accused Budhu Sah who used to go to Forbisganj where she went into his contact and then the accused gave her allurement of marriage and brought her to Bhagalpur. For some time, he kept her in his house and treated her as his wife. She further stated that after few months, the accused hired a room at Mohalla-Jogsar and began to reside there with her but after some time the accused started to bring unknown persons and his friends at the house and forced her for prostitution with those persons. It is further stated that on her refusal or resistance, the accused assaulted her and also threatened to kill her. Out of fear of the accused, she accepted the profession of prostitution but the earning thereof was taken away each day by the accused-appellant. It is alleged that being disgusted with her profession and life the informant contemplated to arrange her marriage with a person but when the matter leaked out to the accused, he again threatened her to kill. The informant went on insisting for her marriage and also refused to carry out the



profession of prostitution. Allegedly, in the midnight, the appellant got the informant's door opened and pressurized her to re-enter into the profession of prostitution but she denied upon which the accused became enraged picked up a burning lamp and sprinkle it oil on her body and set her on fire, as a result of which, the garments of the informant caught fire. It is stated that to save her life, she tried her best and also raised alarm then the nearby prostitutes arrived there and saved her from burning further. No one picked up courage to arrange the medical treatment for her due to fear of Buddhu Sah. But having got the information of burning, a constable brought her on a Ricksaw to Hospital where she was being treated. The police officer who recorded the fardbeyan of the informant also took her LTI thereon together with the LTI of an attesting witness Sakina Bibi.

On the basis of aforesaid fardbeyan of the informant, the police registered a case under Sections 366, 307 and 326 of the Indian Penal Code vide Kotwali P.S. Case No.699/86. On 29.11.1986 the informant died during her treatment. Then, Section 302 IPC was added. The police took up the investigation of the case. After investigation, the police submitted charge sheet against the appellant. Thereafter, cognizance was taken



and the case was committed to the court of sessions, where charges were framed under Sections 302/366 of the Indian Penal Code, to which, the accused person pleaded not guilty. Thereafter, trial started against the appellant.

During trial, the prosecution has examined altogether six witnesses in support of its case. P.W.1 is Md. Shakoor, P.W. 2 is Dr. Kailash Jha, P.W. 3 is Md. Sajjan, P.W. 4 is Ganesh Prasad Singh, P.W. 5 is Vijay Krishna Singh and P.W. 6 is Tripathi Shukla.

The defence has not examined any witness on his behalf.

The trial court after hearing learned counsel for the parties and considering the evidence on record came to the conclusion that the prosecution has been able to prove the charge under Section 302 of the Indian Penal Code against the appellant and, accordingly, the aforesaid judgment of conviction and order of sentence has been passed.

Now this Court is required to reappraise the prosecution evidence to see as to whether the prosecution has been able to substantiate its case beyond shadow of all reasonable doubts or not?

The most important witness in the case is Sri Ganesh Pd. Singh, Judicial Magistrate, who was posted as such at Bhagalpur



in the year 1986. He is P.W.4. He has stated that on 28.11.1986, he went to the Medical College Hospital, Bhagalpur and recorded the dying declaration of Saira Bano (the deceased) (Ext.3). In her dying declaration, she had stated that due to fall of a 'Dibiya', she caught fire and none was responsible for that. Exhibit 3 (dying declaration) purported to have been recorded by the Magistrate (P.W.4) does not reveal a case of setting the informant on fire rather it clearly speaks that the fire was accidental and none was responsible for that. Bibi Sakina, the attesting witness of the fardbeyan did not turn up to depose in court.

Subsequent statement of the informant was recorded by the police on 27.11.1986. Paragraph 5 of the case diary contains the statement of the informant (Ext.A) in which she has negated the entire allegation against the appellant.

In our considered opinion, the prosecution has completely failed to substantiate the charge beyond reasonable doubt against the appellant as several links in the chain of evidence are missing. Thus, the conviction by the trial court cannot be sustained and upheld.

In the result, this appeal succeeds. Judgment of conviction and order of sentence are set aside. The appellant is acquitted of



the charges. Since, the appellant is on bail, he is discharged from the liabilities of his bail bonds.

(Dr. Ravi Ranjan, J)

(S. Kumar, J)

V.K.Pandey/-

AFR/NAFR	N.A.F.R.
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