

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.576 of 2002

Arising Out of PS.Case No. Year- Thana - District- BANKA

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Rajiv Lochan Sharma, son of Late Kailash Sharma, resident of Village Mumrama,
PS Amarpur, in the district of Banka

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Gopal Prasad Roy, Advocate

For the Respondent/s : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL JUDGMENT

Date: 07-10-2017

This appeal has been filed by the appellant Rajiv Lochan Sharma challenging his conviction in Sessions Trial No. 52 of 1998/269 of 2002 by the Additional District & Sessions Judge, Fast Track Court, Bhagalpur, for the offence punishable under Sections 306 and 498 of the Indian Penal Code and sentencing him to undergo rigorous imprisonment for three years and seven years respectively.

It is the case of the prosecution that the appellant was married to one with Smt. A, daughter of the informant in the year 1989. The accused was working in the Regional Office of the Life Insurance Corporation of India and on 29.06.1997 in the morning it is said that the accused went to the house of his father-in-law, the informant, at Bokaro and told him about the marriage of the



informant's second daughter Kumari B and for settling the marriage of the said girl with the younger brother of Dr. Hem Shankar Sharma of Bhagalpr. It was said that he came to take Kumari B to Bhagalpur so that the marriage can be finalized. The informant is said to have sent his daughter with the appellant and also requested his another daughter Kumari C aged about 14-15 years to accompany the son-in-law, the accused, to Bhagalpur. It is said that on 04.07.1997 when the informant's wife made a phone call to the son-in-law, she was informed that the marriage has been finally settled and requested to send the informant to Bhagalpur for further negotiation. Accordingly, on 05.07.1997, it is said that the informant proceeded to Bhagalpur and reached there on 06.07.1997 at 6.45 A.M., went to the house of his son-in-law but found that the house closed. On enquiry, he was informed that his minor grand-daughter has been admitted in the Emergency Ward of Mayaganj Hospital. When he reached the hospital, he found his younger brother present there who told him that his elder daughter Smt. A, second daughter Kumari B and maternal grand-daughter had committed suicide by coming under a running train. The other daughter Kumari C became unconscious and was admitted to hospital. The informant stated that he he believed that the accused has committed some immoral act with his unmarried daughter Kumari B and, therefore, all the persons



committed suicide.

Based on this story, and the statement made under Section 161, Cr.P.C. particularly the statement of Kumari C under Section 164, Cr.P.C. before the Magistrate, the appellant was prosecuted and the prosecution having been upheld this appeal.

Learned counsel for the appellant took me through the statement of the witnesses, particularly PW 1 Maanju Prasad, Advocate, who is said to have stated about the train accident taking place and the cordial relation between the accused and his wife. PW 2 Dr. Hem Shankar Sharma with whose younger brother the marriage negotiation was going on for Kumari B and was to be solemnized admitted the fact. PW 3 Subhash Chandra Narayan, an employee working in the L.I.C. who was testified about the cordial relation between the family members and argued that there is no evidence available on record to show that the appellant has committed any offence with Kumari B which led the other family members taking the steps of committing suicide. He took me through the evidence of PW 6 Kumari C and argued that she has become hostile and has specifically denied the case of the prosecution even denies giving the statement to the police under Sections 161, Cr.P.C., to the Magistrate under Section 164, Cr.P.C.. He argued that both the Investigating Officer PW 9 and the doctor



had clearly stated that there was no evidence of rape on the person of Kumari B. He argues that even the Magistrate who is said to have recorded the statement under Section 164, Cr.P.C. and has not been examined and merely based on the statement of Kumari C under Section 164, Cr.P.C. conviction has been ordered. According to the learned counsel, in convicting the appellant based on this evidence of Kumari C error has been committed and, therefore, it is a case of false prosecution and the appellant is entitled for acquittal.

Learned counsel for the State supported the case of the prosecution and argued that the case of the prosecution is proved and, therefore, the conviction should be upheld.

Having heard learned counsel for the parties and on perusal of the record it is clear that that the learned trial court has based its conviction merely on the statement of Kumari C recorded under Section 164, Cr.P.C. before the Magistrate vide Ext.1/2. However, in the Court, PW 6 Kumari C has categorically stated that she does not know about the offence. She speaks about the accident taken place and only says that the police recorded *fardi* and she was asked to sign it. She specifically denied the happenings or any occurrence. Even though, she was declared hostile, in her cross-examination nothing comes out of her evidence. The learned Magistrate, however, discussed the conduct of this witness from the



statement recorded by her before the Magistrate and chose to believe her statement before the Magistrate and ordered the conviction. However, while doing so, the learned Trial Court failed to consider the fact that the Magistrate who has recorded the statement u/s 164, Cr.P.C. Ext. 1/2, was not examined and even if the reasons for the deceased person jumping before the running train, committing suicide, is the act of the appellant, in regard to Kumari B, the prosecutrix, the medical evidence of PW 8 Dr. Kailash Jha, who had committed the postmortem, says that he had examined the body of the deceased Kumari B, who was more than 19 years of age, found various injuries, which were the result of an accident but specifically speaks about there being no sign of any rape, committed on her body. He gives specific report that there is no injury or sign of any rape on the private part of the deceased, whom he had examined. That apart, the informant also says that he suspected that his son-in-law would have acted so and, therefore, his daughters have committed suicide. His evidence is based on an assumption, which is not supported by the medical examination or other corroborative evidence. The statement of Kumari C, recorded u/s 164, Cr. P.C. cannot be believed as the same is not corroborated by any medical evidence, available on record and, therefore, has to be denied. On the contrary, the evidence of the various officers and the



investigating officer PW7 goes to show that it was a case of accident, near Bhagalpur Railway Station.

For convicting the appellant, u/s 306, I.P.C, there has to be enough evidence to show that he has abetted in commission of the offence. The reason for abetment, is his act on the deceased Kumari B, however the so-called alleged act on Kumari B is not proved or established by the prosecution. That being so, the question of abetment by the appellant does not arise. As far as the conviction for offence u/s 498, I. P.C. is concerned, there is not an iota of evidence which can be said to be available on record to prove these charges. On the contrary, all the evidence that has come on record, particularly the statement of PW1 Mannju Prasad, PW 2 Dr. Hem Shankar Sharma, PW 3 Shubhash Chandra Narayan & PW4 Tara Kant Prasad, indicate about the cordial relation between the appellant and his wife and her family members and does not speak about any complaint of harassment etc. made by him, against his son-in-law.

As the appellant had taken the sister-in-law, Kumari B, with consent of her father and from the statement of PW2 Dr. Hem Shankar Sharma, the fact about her marriage with his younger brother is also proved. That being so, there is no evidence to convict the appellant u/s 498, I.P.C.



Accordingly, under the facts and circumstances of the case and the evidence and material that have come on record, conviction of the appellant u/s 498 I.P.C, is not sustainable. Taking note of all the fact and circumstances this Court holds that conviction of the appellant u/s 498 I.P.C, cannot be sustained. The appeal is allowed and the conviction is set aside. The appellant is released of the bail bond and set free.

(Rajendra Menon, CJ)

mrl

AFR/NAFR	NAFR
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