

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.399 of 2015

Arising Out of PS.Case No. -19 Year- 2013 Thana -JANKINAGAR District- PURNIA

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Mangan Sharma, Son of Puran Sharma Resident of Village -Madhuban, P.S Janki Nagar, District Purnea.

..... Appellant

Versus

The State of Bihar

..... Respondent

With

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Criminal Appeal (SJ) No. 365 of 2015

Arising Out of PS.Case No. -19 Year- 2013 Thana -JANKINAGAR District- PURNIA

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1. Puran Sharma, Son of Late Sri Sharma.
2. Manjula Devi, wife of Puran Sharma.
Both resident of village – Madhuban, P.S.-Janki Nagar, District-Purnea.

..... Appellant/s

Versus

The State of Bihar

..... Respondent/s

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Appearance:

(In CR. APP (SJ) No.399 of 2015)

For the Appellant/s : Mr. Ashok Choudhary, Advocate.
Mr. Amish Kumar, Advocate.

For the Respondent/s : Mr. Bipin Kumar, APP.

(In CR. APP (SJ) No.365 of 2015)

For the Appellant/s : Mr. Ashok Choudhary, Advocate
Mr. Amish Kumar, Advocate.

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

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 06-10-2017

As both the aforesaid two criminal appeals have cropped up from the common judgment and order of conviction and sentence, hence these two appeals are being taken together for



consideration and are disposed of by the common judgment.

2. Heard learned counsel for the appellants as well as learned APP for the State.

3. Aforesaid two appeals have been preferred against the Judgment and Order of conviction dated 30.04.2015 and order of sentence dated 04.05.2015 passed by the 2nd Additional Sessions Judge, Purnea in Session Trial Nos. 793 of 2013, 1118 of 2013 and 522 of 2014 arising out of Janki Nagar P.S. Case No. 19 of 2013, whereby the learned trial court convicted the appellant Puran Sharma, Mangan Sharma and Manjula Devi for the offence punishable under Sections 304B and 201/34 of the Indian Penal Code and acquitted Darogi Sharma of the aforesaid charges and sentenced Accused Puran Sharma, Mangan Sharma and Manjula Devi to undergo R.I. for 10 years each under Section 304B of the Indian Penal Code and further sentenced them to undergo R.I. for 3 years each under Section 201/34 of the Indian Penal Code. They were also slapped with fine of Rs. 1000/- each and in case of default of payment of fine, to undergo R.I. for 2 months each under Section 304B of the Indian Penal Code.

4. The factual matrix of the case is that Janki Nagar P.S. Case No. 19 of 2013 was instituted under Sections 304B and 201/34 of the Indian Penal Code against the accused persons, namely, Mangan Sharma, Puran Sharma, Manjula Devi and Darogi



Sharma on the basis of the written report of Ajay Sharma, Son of Gholtu Das, Resident of village Dhima, P.S.-Banmankhi, District-Purnea with the allegation in succinct that marriage of his niece Pinki Devi was performed with Mangan Sharma, Son of Puran Sharma, resident of village – Jhagarua Tola Madhuban, P.S.-Jankinagar, District-Purnea. On 21.02.2013, he got information on mobile phone that his niece was suffering from colic and abdominal disorder and again got information that she succumbed to her ailment. On the said information, they rushed to her marital house and learnt that his niece has died due to ailment and her dead body has been cremated. Further allegation is that all the accused persons used to demand nose pin, money, chauki, etc. in dowry and on failure to cough up their demand, they subjected the deceased to torture and extended threatening of dire consequence. He suspected that all the aforesaid accused persons have eliminated the deceased over the said dowry demand hatching conspiracy and disposed of her dead body.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against Puran Sharma under Sections 304B and 201/34 of the Indian Penal Code keeping the investigation pending against the accused Mangan Sharma, Manjula Devi and Darogi Sharma. Subsequently, I.O. submitted two supplementary chargesheets against the aforesaid



three accused persons namely, Mangan Sharma, Manjula Devi and Darogi Sharma under Sections 304B and 201/34 of the Indian Penal Code.

6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused persons and committed the case to the court of sessions and after transfer, the aforesaid cases finally came in the *seisin* of 2nd Additional Sessions Judge, Purnea for trial.

7. From perusal of the record, it appears that three separate trials were conducted against the accused persons after commitment of the case, namely, Session Trial No. 793 of 2013 against the accused Puran Sharma, Session Trial No. 1118 of 2013 against the accused Mangan Sharma and Darogi Sharma and Session Trial No. 522 of 2014 against the accused Manjula Devi. Charge against the accused Puran Sharma in Session Trial No. 793 of 2013 was framed under Sections 304B/34 and 201/34 of the Indian Penal Code on 03.07.2013, charge against the accused Mangan Sharma and Darogi Sharma in Session Trial No. 1118 of 2013 was framed under Sections 304B/34 and 201/34 of the Indian Penal Code on 19.09.2013 and charge against the accused Manjula Devi in Session Trial No. 522 of 2014 was framed under Sections 304B/34 and 201/34 of the Indian Penal Code on 03.07.2014. Charge was read



over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

8. The record further indicates that Sessions Trial No. 1118 of 2013 was amalgamated with Sessions Trial No. 793 of 2013 vide order dated 15.01.2014 of the learned Trial Court. Thereafter, two witnesses, namely, Ram Vilash Sharma (PW-1) and Arvind Kumar (PW-2) were examined in aforesaid session trials on 25.02.2014 and 12.05.2014 respectively. Deposition of aforesaid witnesses, namely, Ram Vilash Sharma and Arvind Kumar were again recorded in Session Trial No. 522 of 2014 as PW-2 and PW-1 on 11.09.2014 and 05.08.2014 respectively. Thereafter, aforesaid Session Trial No. 522 of 2014 was amalgamated with Session Trial No. 793 of 2013 and 1118 of 2013 vide order dated 16.10.2014 of the learned Trial Court and then three more witnesses, namely, Lalita Devi, the informant Ajay Sharma and Subodh Kumar Gupta were examined in the aforesaid session trials on 15.11.2014, 09.12.2014 and 09.12.2014 respectively. In documentary evidence, the prosecution has also filed and proved several documents.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. In buttress of its case, in ocular evidence, the defence



has examined five witnesses, namely, Subhash Chandra Yadav as DW-1, Lal Bahadur Sharma as DW-2, Surendra Sharma as DW-3, Rajo Sharma as DW-4 and Shibu Sharma as DW-5. In documentary evidence, the defence has filed original voter list of Darogi Sharma marked as Exhibit-A.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts Puran Sharma and Manjula Devi have preferred Criminal Appeal No. 365 of 2015 and the convict Mangan Sharma has preferred Criminal Appeal No. 399 of 2015.

12. Evidence of two witnesses, namely, Ram Vilas Sharma and Arvind Kumar were recorded in Sessions Trial Nos. 793 of 2013 and 1118 of 2013 after their amalgamation in presence of the accused Puran Sharma, Mangan Sharma and Darogi Sharma of the aforesaid two session trials and the evidence of the aforesaid two witnesses were again recorded in Session Trial No. 522 of 2014 separately in presence of the accused Manjula Devi of that Session Trial only which means that the evidence of the aforesaid two witnesses recorded in Sessions Trial Nos. 793 of 2013 and 1118 of



2013 were not recorded in presence of the accused Manjula Devi i.e. in her absence and likewise evidence of the aforesaid two witnesses in Session Trial No. 522 of 2014 was recorded separately not in the presence of accused Puran Sharma, Mangan Sharma and Darogi Sharma rather in their absence. Moreover, from perusal of evidence of the aforesaid witnesses recorded in the aforesaid session trials, it does not appear to be same as certain facts put to the said witnesses in the said first two session trials were not put to the said witnesses in the said third Sessions trial.

13. As per Section 273 of the Code of Criminal Procedure, except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. The purpose of recording the evidence of the witnesses in presence of the accused or his pleader is obviously for the purpose of a fair trial in as much as the accused has every right of opportunity of hearing of the evidence against him and also know as to which witnesses are deposing in the case and what they are deposing, so that he can give valuable instruction to his pleader to defend him properly and also give effective reply to the questions put to him by the Presiding Officer in the accused statement. Recording the evidence behind the back of the



accused and not in his presence and utilizing the same against him would certainly cause serious prejudice to him.

14. As the evidence of the aforesaid two witnesses in the aforesaid first two session trials were recorded in presence of the aforesaid accused persons and in absence of accused Manjula Devi and in later session trial in presence of accused Manjula Devi and in absence of Puran Sharma, Mangan Sharma and Darogi Sharma, so the evidence of the aforesaid two witnesses recorded in the absence of the aforesaid accused persons, in my considered opinion, will not be considered against them. Moreover, it is also settled principle of law that two session trials may be amalgamated only if they are at the same stage. But from perusal of the record, it appears that Session Trial No. 522 of 2014 was amalgamated with Session Trial No. 793 of 2013 and 1118 of 2013 not at the same stage rather after recording of the testimony of the aforesaid two witnesses separately in the said session trials.

15. The evidence of Ram Vilash Sharma (PW-1) and Arvind Kumar (PW-2) recorded in Session Trial Nos. 793 of 2013 and 1118 of 2013 in absence of accused Manjula Devi and likewise evidence of aforesaid two witnesses recorded in Session Trial No. 522 of 2014 in absence of accused Puran Sharma, Mangan Sharma and Darogi Sharma will not be considered against the aforesaid



accused persons who were not facing the aforesaid trials. The procedure adopted by the trial court is not a case of mere irregularity curable under Section 465 Cr.P.C. but an illegality, as the very use of such evidences against the appellants recorded in their absence is by itself a proof of prejudice to them. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial court relying upon the testimony of the aforesaid two witnesses is set aside and the case is remitted back to the trial Court for examination of the witnesses, namely, Ram Vilash Sharma and Arvind Kumar afresh according sufficient opportunity to the appellants for cross-examination. However, since the recording of other witnesses was in presence of all the appellants and opportunity of cross-examination have been provided to them, those witnesses need not be examined again.

16. It is pertinent to mention here that the accused Darogi Sharma of Sessions Trial no. 1118 of 2013 has been acquitted by the learned trial court, but no appeal has been filed by the State against the said acquittal rather the aforesaid two appeals have been filed by the appellants who have been convicted by the learned trial court and the said accused namely, Darogi Sharma has not been impleaded as party in the aforesaid two appeals. Hence, the Order of acquittal passed by the learned trial court against the accused Darogi



Sharma could not be interfered with. Hence, this order would have no impact on the acquittal of the said accused. Accordingly, the aforesaid two appeals stand allowed in the light of the observations made by me hereinabove without entering into the merit of the case. As the appellants Puran Sharma and Manjula Devi of Cr. Appeal (SJ) No. 365 of 2015 were on bail at the time of conclusion of the trial, they shall continue to remain on bail. As the appellant Mangan Sharma of Cr. Appeal (SJ) No. 399 of 2015 is in custody, the learned trial Court is directed to take up the trial on day to day basis. Let the L.C.R. be remitted back to the court below.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
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