

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.159 of 2017

Arising Out of PS.Case No. -4 Year- 2015 Thana -CHAND District- BHABHUA (KAIMUR)

=====

Etwari Kunwar @ Atwari Kunwar, wife of Late Shiv Murat Bind, resident of village-Beheriya, P.S.-Chand, District-Kaimur (Bhabua).

.... Appellant

Versus

1. The State of Bihar.
2. Birendra Bind, son of Late Murahu Bind, resident of village-Baheriya, P.S.-Chand, District-Kaimur, Bhabua.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Bhaskar Shankar, Advocate

For the State : Ms. Shashi Bala Verma, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE DR. JUSTICE RAVI RANJAN)

Date: 11-05-2017

I.A. No.999 of 2017

This interlocutory application has been filed for grant of leave to appeal.

Heard.

Leave granted.

Cr. Appeal (DB) No.159 of 2017

We have heard learned counsel for the appellant and the State.

The appellant is the informant of Chand P.S. Case No.4 of 2015. She has filed this appeal assailing the judgment of acquittal dated 19.12.2016 passed by the Additional Sessions Judge-VI Kaimur



at Bhabua in Sessions Trial No.234/2015 by which the private respondent, namely, Birendra Bind, has been acquitted of the charges framed under Sections 302 and 328 of the Indian Penal Code by giving benefit of doubt.

The prosecution's case, based on the *fardbeyan* of the informant, is that on 27.01.2015 when her son did not return till 6.00 P.M. then she went to the house of respondent no.2 and asked him whether her son was there. He replied that he was not in his house. After some time at about 7.00 P.M., her son Lakar Bind had come from the house of respondent no.2 in lurch condition and told her to go back to home. After some time he came back and when she asked him to have dinner, he did not take his dinner and slept on his cot. She also slept there near him. At about 11-12 in night, his son started vomiting. She found that saliva is coming out from his mouth. He was feeling uneasy and he was crying. Thereafter, her nephew and other family members came there. She asked them to call a doctor but her son died. It is alleged that respondent no.2 always took advantage of the fact that the deceased was mentally weak. Few days back he got the bicycle of her son sold in low price and, thereafter, she went to complain before the respondent no.2. Allegation is that for that reason he killed his son by administering poison.

On the basis of the aforesaid *fardbeyan* of the informant,



the present case was lodged as Chand P.S. Case No.4 of 2015 under Sections 302 and 328 of the Indian Penal Code.

After investigation, the police submitted *charge sheet* against the private respondent under Sections 302 and 328 of the Indian Penal Code. Thereafter, *cognizance* was taken under the aforesaid penal provisions and the case was committed to the Court of Session, where charges were framed, to which, the accused person pleaded not guilty. Thereafter, trial started.

During trial, the prosecution has examined altogether seven witnesses in support of its case. P.W.1 is Etwari Kunwar (informant), P.W.2 is Munna Bind, P.W.3 is Kamlesh Bind, P.W.4 is Dukhanti Devi, P.W.5 is Rajendra Prasad, P.W.6 is Jaiprakash (the Investigating Officer) and P.W.7 is Dr. Kameshwar Nath Tiwari.

The defence has not examined any witnesses in support of its case.

The learned trial Court, in paragraph 18 of its judgment, has discussed the evidence of prosecution witnesses. From the evidence of P.W.2 Munna Bind, it does not appear that accused was involved in the occurrence as he has not stated, in his cross-examination, that how the deceased Lakru Bind died because he did not have any personal knowledge about that. Similar is the evidence of P.W.3. He was declared hostile by the prosecution. He, in his cross-



examination, has denied his statement given earlier under Section 161 Cr.P.C. before the police. He has stated that the deceased used to always drink wine. P.W.4, in her cross-examination, has stated that she did not know how the deceased died. She has also stated that she did not see the deceased coming from the house of accused. P.W.5 was also declared hostile by the prosecution. P.W.6 is the Investigating Officer of the case. He, in his cross examination, has stated that the deceased was a habitual drunkard. He was informed that the deceased had become weak due to his drinking habit. P.W.1 (informant) is the mother of the deceased. Though, she has stated in his examination that she had seen the deceased coming from the house of accused and, thereafter, the deceased started vomiting and died but, in her cross-examination, she has stated that her son (deceased) did not take wine. She has unable to say that the deceased on the date of occurrence had taken wine or not. She has not seen the deceased going to the house of accused. P.W.7, who is a doctor, has stated in his cross-examination that from the report of Forensic Science Laboratory, it appears that in the body of deceased Thymec was found which is organic phosphorous pesticide which is commonly used in agriculture for killing pests and is highly poisonous.

The learned trial Court, in paragraph 19 of its judgment, after examining the facts and circumstances of the case and evidence



on record, has come to the conclusion that there is no clear evidence that how the poison was administered in the body of the deceased. It is not clear from the evidence of informant that the deceased had gone to the house of accused and the accused had given poison to him. In such a situation, doubt is created regarding involvement of the accused. In absence of sufficient evidence, the accused has been acquitted by giving benefit of doubt.

In view of the aforesaid facts duly discussed by the learned trial Court, we are of the considered opinion that the view taken by the learned trial Court is plausible one and does not require any interference by us in appeal.

This appeal is, therefore, not admitted and shall, accordingly, stand dismissed.

(Dr. Ravi Ranjan, J)

(Vikash Jain, J)

V.K. Pandey/-

AFR/NAFR	N.A.F.R.
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