

IN THE HIGH COURT OF JUDICATURE AT PATNA
Govt. Appeal (DB) No.18 of 2017

Arising Out of PS. Case No.-333 Year-2013 Thana- HAJIPUR District- Vaishali

The State of Bihar through District Magistrate, Vaishali.

... .. Appellant

Versus

Shalini Kumari @ Shalini Kanan W/o Late Atul Krishna Kanan & D/o
Late Pramod Kumar, R/o Veer Kunwar Singh Colony, Police
Station-Hajipur Town, District- Vaishali.

... .. Respondent

Appearance :

For the Appellant/s : Mr. Shyameshwar Dayal, A.P.P.
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

6 08-01-2018 Heard Sri Shymeshwar Dayal, learned Addl. Public
Prosecutor.

2. The present appeal has been filed by the State against the Judgment of acquittal dated 03.06.2017 in respect of sole respondent passed in Sessions Trial No.540 of 2013 arising out of Hajipur Town P.S. Case No.333 of 2013. The respondent Shalini Kumari @ Shalini Kanan was put on trial along with other four accused persons in Sessions Trial No.540 of 2013. The father-in-law of the respondent was the informant in the case.



3. In the case, son of the informant, while moving on motorcycle with his brother-in-law, was killed by fire-arm injury. Initially, in the F.I.R. it was alleged that due to some land dispute with one of the political person, namely, Nityanand Rai, son of the informant was done to death. However, subsequently to the reasons best known to the Investigating Officer, the mode of investigation was changed and prosecution side came out with a case that the respondent daughter-in-law of the informant, in connivance with her old boy friend, got killed her own husband on the auspicious day '*Bat Savitri Puja*'. The Investigating Agency proceeded on the basis of Call Detailed Report (in short "C.D.R."), which suggested that the respondent was in constant touch with one of the accused Abhishek Kumar, who was none else but brother of husband of her own sister. The story was built up as if the respondent was having illicit relation with Abhishek Kumar and this was the reason that the prosecution witnesses on the basis of C.D.R. had come out with a case that the respondent had provided information to accused Abhishek Kumar regarding movement of her husband and, thereafter Abhishek Kumar



with hired criminals got her husband killed.

4. After investigation, the police submitted chargesheet against five accused persons including respondent Shalini Kumari @ Shalini Kanan as if she was one of the main members' of the conspiracy. During trial, number of witnesses were examined and evidence on record suggested that accused Abhishek Kumar was one sided in love with the respondent. The learned trial Judge had noticed that since there was family relation with accused Abhishek Kumar, he had called the respondent telephonically and inquired about whereabouts of her husband and this was the reason that being relative she had provided such information. Learned trial Judge after examining the entire evidence had noticed that accused Abhishek Kumar was a man, who was one sided in love with respondent and only on the aforesaid ground he had called telephonically respondent Shalini Kumari @ Shalini Kanan. Learned trial Judge noticed that there was no sufficient material to held her guilty, while convicting other accused persons. Learned trial Judge has passed order of acquittal in respect of Shalini Kumari @ Shalini Kanan and



she was discharged from charge under Section 302 read with Section 120(B) of the Indian Penal Code. The learned trial Judge, on the basis of evidence, had also noticed that the respondent was pregnant and carrying foetus of about 3 ½ months and in such situation, the learned trial Judge in absence of any evidence showing direct involvement of the respondent has passed order of acquittal. However, other accused persons were held guilty and convicted.

5. Sri Shyameshwar Dayal, learned Addl. Public Prosecutor has tried to persuade the Court that since on similar evidence other accused persons were held guilty, there was no reason for the learned trial Judge to pass order of acquittal in favour of the respondent. The Court is of the opinion that in a case of conspiracy under Section 120(B) of the Code of Criminal Procedure, the evidence is required to be taken note as to whether there was circumstances to draw an inference regarding the fact that one of the co-accused was also member of such conspiracy or not. In the evidence, during trial there was no such evidence to suggest that directly or indirectly the respondent was instrumental in getting her husband killed. Accordingly, the submission of



learned Addl. Public Prosecutor on this very ground has got no relevance. Learned Addl. Public Prosecutor has also argued that Call Detailed Report in respect of Cell Phone of the respondent as well as accused Abhishek Kumar, who was none else but own relation of the respondent, was sufficient to draw an inference regarding her connivance. Regarding the said submission of the learned Addl. Public Prosecutor, the Court is of the opinion that since both were relative, in that event conclusively, even though, there was call detailed report showing conversation in between the respondent and one of the accused, one may not come to specific conclusion that she was a member of the conspiracy. If the respondent and one of the accused were relative, the conversation in between them may not be pointedly considered as if the respondent had given clue regarding movement of her husband only for the purpose of murder of her husband. Even though the learned trial Judge has discussed the evidence in detail and has rightly not considered the said call detailed report as having any relevance showing her involvement.

6. Considering the facts and circumstances and detail



reason assigned by the learned trial Judge, we do not find any error in the judgment impugned, whereby the learned trial Judge has passed order of acquittal in respect of respondent Shalini Kumari @ Shalini Kanan.

7. Accordingly, there is no ground to grant leave to the appeal and, as such, leave petition i.e. I.A. No.1987 of 2017 filed under Section 378(3) of the Code of Criminal Procedure for grant of leave stands rejected. Consequently the appeal against acquittal of respondent too is dismissed.

(Rakesh Kumar, J)

(Arvind Srivastava, J)

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