

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.634 of 2002

Arising Out of PS.Case No. -null Year- null Thana -null District- MUNGER

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1. Kripa Shankar Prasad Sah, son of Narsingh Sah
 2. Renu Devi, wife of Kripa Shankar Prasad Sah, both are resident of village Khas Bazar, P.S. Kharagpur, District Munger

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Jagannath Singh with
Mr. Pushkar Kumar Roy, Advocates
For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 16-08-2018

Appellants have been convicted under Section 419 read with Section 120B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and fine of Rs.2000/- each with default clause by the judgment and order dated 9.10.2002 and 10.10.2002 respectively passed by Sri Paras Nath Sinha, the then Presiding Officer, Additional Court (Fast Track), Munger in Sessions Trial No. 404 of 1997 and acquitted the appellants and other accused persons from the charges under Sections 364, 364A and 498A IPC leveled against them and also acquitted the other accused persons from the charges under Section 419 read with Section 120B IPC.

2. Prosecution case as per the statement of informant Kanchan Devi (PW 6), in short, is that she was married to Dayashankar Prasad Sah, son of Narsingh Sah and as her husband was habituated to drinking and gambling, taking advantage of that,



informant's father Meghu Sah, resident of village Malaypur, got a sale deed dated 22.4.1979 executed by her husband Dayashankar Prasad Sah with respect to 7 Kathas of land and when the informant came to know about the sale deed, she enquired from her husband and learnt that her father Meghu Sah in collusion with her Dewar Kripashankar Prasad Sah (appellant No.1) got the sale deed executed by fraudulent manner. Further prosecution case is that Meghu Sah, father of informant, Kripashankar Prasad Sah, appellant and Raju Varnwal, resident of village Malaypur, took the informant's husband Dayashankar Prasad Sah from his house to Malaypur on 5.8.1989, on the plea of returning document (sale deed). The informant waited for her husband for several days but he did not return. Further prosecution case is that thereafter informant went to Malaypur in search of her husband but he was not traced out and on return of informant's father Meghu Sah and her Dewar Kripashankar Prasad Sah (appellant) the informant asked them about her husband, upon which they disclosed that he had gone to Delhi to earn his livelihood. Further case of prosecution is that Meghu Sah, Kripashankar Prasad Sah and Raju Varnwal started putting pressure upon the informant to transfer her property in their favour, on which she protested. It is also alleged that accused persons always ill-treated her and tortured her and even her father Meghu Sah joined hands with her Dewar Kripashankar Prasad Sah in order to grab her property. It is further alleged that her Dewar and Dewarani, namely, Kripashankar Prasad Sah and Renu Devi



(appellants) assaulted her on 13.12.1994. Further prosecution case is that appellant Kripashankar Prasad Sah and one Ramdeo Sah along with one person brought an unknown person before her on 22.2.1997 at 10 A.M. and told her that that person was her husband Dayashankar Prasad Sah and that person disclosed his name as Mard Bhagwan @ Prasadi Rabidas, who also disclosed that he had got a tea stall at Bokaro where that unknown person was traced out and that unknown person was her husband. On the statement of aforesaid two persons, the informant carefully saw that unknown person and her neighbours also saw that unknown person but neither the informant nor her neighbours identified him as Dayashankar Prasad Sah, her husband, and on enquiry by the informant, that unknown person disclosed his name as Mard Bhagwan, resident of Bokaro. It appears to the informant that person has been set up to grab her property. It is also the case of prosecution that police was called, who recorded statement of informant Kanchan Devi.

3. On the basis of aforesaid statement, Kharagpur P.S.Case No. 30 of 1997 was registered against the appellants and other accused persons. Post investigation, charge sheet has been submitted, cognizance of the offence has been taken and after commitment the case ultimately traveled to the file of Sri Paras Nath Sinha, the then Presiding Officer, Additional Court (Fast Track), Munger for trial and disposal.

4. During trial, charges were framed against the appellants



and other accused persons under Sections 364, 364A and 498A IPC. Appellants and other accused persons have also been charged under Section 419 read with Section 120B IPC.

5. During trial, seven witnesses have been examined on behalf of prosecution in order to substantiate its case, they are PW 1 Sunil Kumar, PW 2 Kameshwar Prasad Chaurashiya, PW 3 Ramdeo Sah, PW 4 Mahendra Chaudhary, PW 5 Rajkumar Mandal, PW 6 Kanchan Devi (informant) and PW 7 Dewanand Prasad, S.I.

6. Apart from the ocular evidence, the following documents have been brought on the record as documentary evidence : Ext.1- signature of PW 1 on the fardbeyan, Ext.1/1- signature of informant Kanchan Devi on the fardbeyan, Ext.1/2 to 1/5- signatures of PW 2 on the finger print, Ext.1/6 to 1/9- signatures of PW 3 on the finger print, Ext.2- sale deed dated 3.9.1987, Ext.2/1- certified copy of sale deed No.2167 dated 7.4.1989 executed by Dayashankar Sah, Ext.2/2- certified copy of sale deed No.2165 dated 7.4.1989 executed by Dayashankar Sah and Ext.2/3- certified copy of sale deed No. 2166 dated 7.4.1989 executed by Dayashankar Sah.

7. On behalf of defence one witness has been examined, namely, Gauri Tanti as DW 1 and following documents have been brought on record as Exhibits : Ext.Ka- the original affidavit No. 1241 dated 24.2.1997 of Narsingh Sah, Ext.Kha- judgment of G.R.No.1951 of 1994 dated 29.1.1999, Ext.Ga- statement of Sunil Kumar in G.R.No. 1951 of 1994 dated 15.1.1997. Ext.Ga/1- statement of



Kanchan Devi in G.R.No. 1951 of 1994 dated 9.9.1997, Ext.Gha- sale deed No. 846 dated 20.3.1998 executed by Kanchan Devi in favour of Niraj Kumar Sah, Ext.Gha/1- sale deed No. 845 dated 20.3.1998 executed by Kanchan Devi in favour of Sangita Devi.

8. Learned trial court on conclusion of trial though acquitted the appellants and other accused persons from the charges under Sections 364, 364A and 498A IPC but convicted the appellants under Section 419 read with 120B IPC and acquitted other accused persons also from the charges under Section 419 read with 120B IPC and sentenced them as stated above.

9. Being aggrieved by the impugned judgment and order the present appeal has been preferred by the appellants mainly on the ground that on the same fact and on same charge the other accused persons have been acquitted from the charge under Section 419 read with Section 120B IPC, whereas appellants have been convicted and evidence is almost similar against the appellants and other accused persons and as such the judgment is not sustainable in the eye of law.

10. Further elaborating his submission, learned counsel for the appellant has submitted that whole evidence shows that it is Meghu Sah, Raju Varnwal, Kripashankar Sah and Ramdeo Sah, who set up a person claiming that he was Dayashankar Sah husband of informant, and evidence is also that accused Meghu Sah purchased land from Dayashankar Prasad Sah and as such he is beneficiary but other accused persons have been acquitted and appellant Kripashankar



Sah and his wife Renu Devi have been convicted and as such the judgment is not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has supported the judgment of guilt but at the same time he is also feeling difficulty in support of the judgment as on the same evidence, other accused persons have been acquitted from the charges leveled against them but the appellants have been convicted.

12. In the background of submission of both sides, on perusal of the evidence it appears that PW 6 is the informant in this case and she has been examined and cross examined at length. She has stated about kidnapping of Dayashankar Sah and thereafter he was traceless and also about ill-treatment of the appellants on her but all accused persons, including appellants have been acquitted from the charges under Sections 364, 364A and 498A IPC. Conviction is under Section 419 read with 120B IPC against the appellants. However other accused persons were acquitted from the above charge. The evidence of PW 6 in her chief disclosed that her Dewar Kripashankar Prasad Sah, Raju Varnwal, Ramdeo Sah and her father Meghu Sah brought an unknown person claiming that he was her husband Dayashankar Sah and appellant Renu Devi has also told her that he was her husband and when she enquired from that person he disclosed his name as Mard Bhagwan alias Prasadi Rabidas and neighbours also told that he is not her husband. Though in fardbeyan she has stated only about Kripashankar Sah and Ramdeo Sah who brought the



person, claiming him as her husband, but her evidence discloses that appellants and all other accused persons brought that person. Even in her cross examination she has stated that Kripashankar Sah, Raju Varnwal, Ramdeo Sah and Meghu Sah had brought that unknown person. Her evidence in cross examination further discloses she had not lodged the case for abduction of her husband and a case was lodged against appellants Kripashankar Sah and Renu Devi of marpit earlier. Her evidence further discloses that her father-in-law and Dayashankar had asked her that her father had got a sale deed executed as such what they can do. Her cross examination further disclosed that it is true that her father had brought one unknown person to her house, which she has stated before police.

13. From perusal of her entire evidence it appears that so far setting of one unknown person as her husband is concerned, her evidence in court clearly shows that appellants as well as Raju Varnwal, Ramdeo Sah and Meghu Sah had brought that person to her house and asked her to identify him.

14. Evidence of PW 1 Sunil Kumar Sah disclosed that Kripashankar Sah, Meghu Sah, Raju Varnwal, Ramdeo Sah and Renu Devi had brought an unknown person to the house of informant claiming that he is her husband and that unknown person disclosed his name as Mard Bhagwan @ Prasadi Rabidas and they were claiming that person is her husband. Evidence of PW 2 and PW 3 is on the finger print taken of the Mard Bhagwan @ Prasadi Rabidas though it



appears from the record that those finger prints have not been sent for examination to Forensic Science Laboratory Expert. Evidence of PW 4 is on the point of execution of Kewala. Evidence of PW 5 disclosed that he is Bataidar of Kanchan Devi and also on the point that Kanchan Devi asked her father to return the land.

15. On discussions of the entire evidence on record it appears that as per prosecution case, Meghu Sah, Raju Varnwal and Kripashankar Sah have brought a person claiming that he was Dayashankar Sah and that person was not Dayashankar Sah and they have been charged under Section 419 read with Section 120B IPC. However, it appears that though the appellants have been convicted under Section 419 read with Section 120B IPC and having similar evidence other accused persons, namely, Meghu Sah, Raju Varnwal and Prasadi Rabidas alias Mard Bhagwan were acquitted.

16. However, it appears from the impugned judgment that learned trial court in spite of evidence against appellants and evidence against Meghu Sah, Raju Varnwal and Ramdeo Sah are similar but while acquitting the other accused persons from the charge under Section 419 read with Section 120B IPC learned trial court has convicted the appellants under Section 419 read with Section 120B IPC on the same set of evidence, which cannot be held to be just and proper, rather evidence further shows that it is Meghu Sah, father of informant, who got a sale deed executed from Dayashankar Prasad Sah, husband of informant and he is the main beneficiary in this case



but in spite of that he has been acquitted. There is also no evidence available on record as to how appellants would be benefited by setting another person as husband of the informant Kanchan Devi (PW 6).

17. In view of above fact, the appellants are also entitled for acquittal in the present case as evidence is similar as that of Meghu Sah and Raju Varnwal.

18. Accordingly, this appeal is allowed. The impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
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