

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.370 of 1995

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Jai Ram Mandal, son of Sri Mushar Mandal, resident of village Sirsia, P.S.
Baheri, District Darbhanga

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Anil Kumar Singh, Advocate
For the Respondent/s : Mr. Ashfaque Ahmad, APP

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-04-2018

The sole appellant Jai Ram Mandal, who has been convicted by the 2nd Additional Sessions Judge, Darbhanga vide judgment dated 27th of September, 1995 passed in Sessions Trial No.231/1994, calls in question his conviction under Sections 302 and 201 of I.P.C. and the sentence of life imprisonment ordered.

It is the case of the prosecution that P.W. 4 Gaya Devi, mother of the deceased, submitted a written report in Baheri police station, district Darbhanga to the effect that her daughter, deceased Lal Kumari was married, she was deserted by her husband and, therefore, she contacted a second marriage with the appellant Jai Ram Mandal while her first husband was already alive. She was living with Jai Ram Mandal as his wife. It is



alleged that the appellant started assaulting and misbehaving with her, but on 19.5.1994 P.W.4 Gaya Devi received information that six accused persons, who are family members of the appellant, namely Suraj Narayan Mandal, Vishundeo Mandal, Vaidya Nath Mandal, Musahar Mandal and Kanhaiya Mandal conspired and killed her daughter, set her to fire and threw her body in a place which is indicated as 'Maheshwar Chaur'.

Based on the aforesaid, offence was registered, investigation conducted and the charge-sheet filed and in the trial the prosecution examined about 14 witnesses. They were: P.W.1 Pramod Mandal, P.W.2 Abir Kumar Mandal, P.W.3 Shyam Sunder Mandal, P.W.4 Gaya Devi, P.W.5 Muni Lal Mandal, P.W.6 Nirmala Devi, P.W.7 Ram Udgar Mandal, P.W.8 Md. Subham, P.W.9 Hari Paswan, P.W.10 Shyam Sundar Mandal, P.W.11 S.S. Paswan, P.W.12 Dr. P.K. Das, P.W.13 Ganesh Mahto and P.W.14 Upendra Mandal. Out of these witnesses P.W.1 Pramod Mandal, P.W.6 Nirmala Devi, P.W.7 Ram Udgar Mandal, P.W.8 Md. Subham, P.W.9 Hari Paswan, P.W.10 Shyam Sundar Mandal and P.W.13 Ganesh Mahto have turned hostile and have not supported the version of the prosecution even though none of them are eye-witnesses, but are only witness to say about the incident. P.W.2 Abir Kumar Mandal and P.W.14 Upendra Mandal have been



tendered and, therefore, their evidence cannot be looked into. P.W.3 Shyam Sunder Mandal is a formal witness who has proved Exhibit-1, the F.I.R., and P.W.12 is Dr. P.K. Das who conducted the post mortem examination on the body of the deceased on 26.5.1994. The only two important witnesses on whose testimony the conviction has been ordered are P.W.4, mother of the deceased, and P.W.5 Muni Lal Mandal, the brother of the deceased. P.W.11 S.S. Paswan is the Investigating Officer. It may be taken note of that there is no eye-witness to the entire incident and the entire conviction of the appellant is made on the basis of the circumstantial evidence. Even though along with the appellant five other family members named above were prosecuted, but they have been acquitted on the ground that the circumstances appearing against them have not been proved. The sole appellant Jai Ram Mandal, who is the second husband of the deceased and with whom she was staying at the time of death, has been convicted solely on the basis of circumstantial evidence.

Before dealing with the circumstantial evidence, it would be appropriate to take note of the statement of the only two important witnesses, namely P.W.4 Gaya Devi, mother of the deceased, and P.W.5 Muni Lal Mandal, brother of the deceased and son of P.W.4., the informant. P.W.4 in her statement admits



that she is the informant and when she had gone to the Sasural of her daughter, she did not find anybody when even her daughter was not present. She was informed that her daughter has been taken to Darbhanga for treatment. Thereafter she was informed that the dead body of her daughter has been thrown into the 'Maheshwar Chaur' and it has been recovered by the police in a gunny bag. She says that she heard about these facts through some persons, but does not disclose the name of the persons who informed her of these facts. However, in her cross-examination this witness admits that she had not received any complaint from her daughter with regard to ill treatment or harassment caused by her son-in-law, the appellant herein. P.W.5, the brother of the deceased, also in his statement admits that his sister never complained about assault or any ill treatment by any of the accused persons.

From the statement of both these witnesses, it is seen that they have only heard about the incident from the villagers and they had no direct knowledge about the incident. The only circumstances which were considered by the learned trial court for convicting the appellant herein were: (1) that the deceased was the wife of the appellant and was living with him; (2) that the appellant had opportunity to commit the crime and the deceased



died of burn injuries; (3) the Investigating Officer had found certain smoke mark on the wall and the ceiling of the house suggesting that the place was used for setting on fire the deceased; and finally, (4) the dead body of the deceased was found in a gunny bag and was recovered from 'Maheshwar Chaur'. These are the four circumstances which are said to be available against the appellant and which form the basis of conviction of the appellant.

Even though these four circumstances were also available against other accused persons, but they have been acquitted and the present appellant has been convicted only because he happens to be the husband of the deceased. However, he is not prosecuted for any offence pertaining to demand of dowry or harassment, but he is charged for having committed an offence under Section 302 of I.P.C. and, therefore, no presumption can be drawn with regard to commission of offence by him.

For the purpose of convicting a person on the basis of circumstantial evidence, the law is very clear. Each set of circumstances and the link to complete the chain of circumstances should be such that points out to the commission of offence by the accused persons. The link in each chain should be complete in itself and if there is any missing link, the benefit has to go to the



accused persons. The law with regard to conviction based on circumstantial evidence has been discussed in the following manner in the cases of State of Himachal Pradesh Vs. Raj Kumar, (2018) 2 SCC 69, (2015) 11 SCC 43, Raja Alias Rajinder Vs. State of Haryana and (2015) 12 SCC 644, Vijay Shankar Vs. State of Haryana.

If the case in hand is analyzed in the backdrop of the aforesaid principle, we find that the four circumstances indicated hereinabove, which form the basis for conviction, are not circumstances complete in themselves to point out at the guilt of the appellant and there is nothing to hold that the circumstances are such that they are sufficient enough to bring home the guilt of the appellant. In fact, none of the circumstances are sufficient enough nor do they constitute a chain of circumstances which points out to the guilt of the appellant. Merely because some smoke marks were found on the wall and ceiling of the house, when in the house more than eight persons are living, how can the appellant can be singled out and held responsible for the crime when there is no allegation of harassment or assault by him and all other inhabitants of the house are held 'not guilty' of the offence.

In our considered view, in this case the prosecution has miserably failed to prove the guilt of the appellant beyond



reasonable doubt and it is a fit case where the appeal has to be allowed and conviction set aside.

Accordingly, the appeal is allowed and conviction of the appellant ordered by the learned 2nd Additional Sessions Judge, Darbhanga vide judgment dated 27th of September, 1995 passed in Sessions Trial No.231/1994 is set aside. He is discharged from the liability of bail-bonds.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/-

AFR/NAFR	NAFR
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