

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 100 of 1995

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

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1. Bhawani Devi, wife of Kartik Jha.
 2. Subhash Chandra Jha, son of Kartik Jha.

Both resident of village-Bangaon, P.S. & District-Saharsa.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Pramod Mishra, Adv.
Miss. Monika, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date: 09-07-2018

1. The Superintendent of Police, Saharsa vide Letter No. 2483 dated 14.05.2018 reported that appellant no. 1, namely, Bhawani Devi died on 10.02.2017.

2. In view of the aforesaid report, this appeal stood abated in respect of appellant no. 1, namely, Bhawani Devi.

3. The present appeal has been preferred against the judgment of conviction dated 18.05.1995 passed by learned 2nd



Additional Sessions Judge, Saharsa in Sessions Case No. 123 of 1992/130 of 1992 by which and whereunder he convicted the appellants for the offences punishable under Section 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life for the offences punishable under Section 302/34 of the Indian Penal Code whereas acquitted the appellants and other accused of the charges framed under Sections 304-B, 498-A of the Indian Penal Code and Section 4 of Dowry Prohibition Act.

4. Informant, Bhawesh Jha, gave written report to Superintendent of Police, Saharsa on 05.04.1991 mentioning therein that on 02.04.1991, he learnt through newspaper that his daughter, namely, Kavita was burnt to death by her husband and other in-laws. He further claimed that the marriage of Kavita had taken place one year ago with appellant no. 2, namely, Subhash Chandra Jha but after marriage appellants and other accused started demanding colour television and cash in dowry. He further claimed that 15 days ago, the appellant no. 2 Subhash Chandra Jha took the deceased along with him but on 26.03.1991 appellants as well as others committed the murder of deceased by putting her on fire. The informant, further, claimed that Gopal Kumar (PW-6) had also gone along with Kavita to her in-laws' house and he was present at the time of alleged occurrence.



5. On the basis of aforesaid written report, Saharsa (Bangaon) P. S. Case No. 128 of 1991 for the offences punishable under Sections 304-B/34 of the Indian Penal Code and 3/4 of Dowry Prohibition Act was registered and formal first information report was drawn up against the appellants and others for the above stated offences. After investigation, charge-sheet was submitted and, accordingly, the appellants and two others were put on trial before the trial court. The appellants and remaining two co-accused stood charged for the offences punishable under Sections 302, 304-B/34, 498-A of the Indian Penal Code and 4 of Dowry Prohibition Act. The appellants and other accused denied the charges and claimed to be tried.

6. In course of trial, prosecution examined, altogether, 11 witnesses and also got exhibited some documents. The statements of appellants and other accused were recorded under Section 313 of the Cr. P.C. in which they reiterated their innocence and claimed to adduce evidence in support of their defence. The appellants and other accused also got examined four defence witnesses in support of their defence.

7. The learned trial court after scrutinizing the evidences available on the record convicted the appellants whereas acquitted the remaining two accused passing impugned judgment which is under



challenge before this court.

8. Learned counsel appearing for the appellants submits that except PW-2, almost all the material witnesses were declared hostile by the prosecution and they did not support the prosecution case but in spite of that the learned trial court convicted the appellants only on the basis of surmises and conjectures. Learned counsel further submitted that PW-1 very clearly stated that having heard the noise of wife of one Bhagwan Jha, he entered the house of deceased and he dragged out the deceased from room. This witness further stated that deceased disclosed that she was caught in fire while she was preparing tea. Learned counsel further submitted that PW-2 also claimed that when the deceased was being taken to hospital by his rickshaw, the deceased had disclosed that she was caught in fire while preparing tea. Learned counsel submitted that the above stated dying declaration of the deceased goes to show that she was caught in fire accidentally while she was preparing tea but learned court below without any cogent evidence came to the conclusion that it were appellants, who committed the murder of deceased.

9. On the other hand, learned Additional Public Prosecutor supported the impugned judgment of conviction arguing that there were sufficient circumstantial evidences available on the record to show that it were appellants, who committed the murder of



deceased.

10. Having heard the contentions of both the parties, we went through the record. Admittedly, PW-1, PW-3, PW-4, PW-5, PW-6, PW-7, PW-8, and PW-9 have been declared hostile. PW-10 is Investigating Officer whereas PW-11 is another Investigating Officer.

11. The death of deceased Kavita Devi is not in dispute. It is also not in dispute that she died of burn injuries at hospital while she was admitted for treatment. It is also not in dispute that none has seen the actual killing of the deceased and only prosecution witness no. 1 claims that having heard the noise of wife of Bhagwan Jha, he went in the house of the deceased and saw her burning in a room and thereafter he dragged out the deceased who disclosed that she was caught in fire accidentally while she was preparing tea. Similarly, PW-3 also claimed that having heard the cry of wife of Bhagwan Ji, he went running into the house of deceased where PW-1 was present. This witness claimed that he saw the deceased burning in fire. He further claimed that he extinguished the fire and took out deceased from the house. PW-2 is rickshaw puller and claimed that deceased was taken to hospital by his rickshaw. This witness claimed that Bibhash Jha, the younger brother-in-law of the deceased and Bablu Choudhary took the deceased to hospital. Similarly, PW-5, Ranjeet Khan claimed that he took the deceased by his tempo to Sadar



Hospital, Saharsa.

12. PW-6 is brother of deceased whereas PW-9 is uncle of the deceased but both the aforesaid witnesses have not supported the prosecution case. Therefore, it is obvious that except the aforesaid material evidence, there is nothing on the record. The perusal of impugned judgment goes to show that the learned trial court recorded the findings of conviction of the appellants on the ground that they were present in the house at the time of alleged occurrence and their defence was found to be untrustworthy but in our view, the aforesaid circumstantial evidences were not sufficient to convict the appellants for the offences punishable under Section 302/34 of the Indian Penal Code because even if the defence of appellants was found untrustworthy, then also, it is the duty of the prosecution to prove its case beyond all shadow of reasonable doubt and no person can be convicted only on the basis of surmises and conjectures. In the present case, we are of the opinion that the prosecution could not succeed to prove its case beyond all shadow of reasonable doubts and the appellant no. 2, namely, Subhash Chandra Jha is entitled to get benefit of doubt.

13. On the basis of aforesaid discussions, this criminal appeal is allowed and the impugned judgment of conviction and sentence order is, hereby, set aside. The appellant no. 2, namely,



Subhash Chandra Jha, is acquitted of the charges. He is on bail. He is discharged from the liabilities of his bail bonds.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

SHAHZAD/-
Rajeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.07.2018
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