

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.52 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUNGER

[Against judgment of conviction and order of sentence dated 19.01.2009 and 22.01.2009 respectively passed by the 1st Additional Sessions Judge, Munger, in Sessions Case No.218 of 2006 arising out of Naya Ramnagar P.S. Case No.104 of 2005]

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1. Dharambir Kumar, son of Bhirgu Nandan Yadav &
 2. Arvind Kumar, son of Bhirgu Nandan Yadav, both resident of Naya Ram Nagar, P.S.- Naya Ram Nagar, District-Monghyer

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

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Criminal Appeal (SJ) No. 320 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- MUNGER

[Against judgment of conviction and order of sentence dated 19.01.2009 and 22.01.2009 respectively passed by the 1st Additional Sessions Judge, Munger, in Sessions Case No.218 of 2006 arising out of Naya Ramnagar P.S. Case No.104 of 2005]

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Binay Sagar @ Binay Kumar, son of Bhirgu Nandan Yadav, resident of village-Naya Ram Nagar, P.S.- Naya Ram Nagar, District-Monghyer

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

(In Both Appeals)

For the Appellant/s : Mr. Baxi S. R. P. Sinha, Sr. Advocate with
Mr. D. K. Pandey, Advocate

For the Respondent/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 14-09-2018

Both Criminal Appeals have arisen out of common judgment and as such, have been heard together and are being



disposed off by this common judgment.

2. By judgment of conviction and order of sentence dated 19.01.2009 and 22.01.2009 respectively passed by the 1st Additional Sessions Judge, Munger, in Sessions Case No.218 of 2006 arising out of Naya Ramnagar P.S. Case No.104 of 2005, all the three Appellants have been convicted under Sections 498-A and 304-B of Indian Penal Code and Appellant, Binay Sagar @ Binay Kumar, has been sentenced to undergo rigorous imprisonment for two years under Section 498-A Indian Penal Code and ten years under Section 304-B Indian Penal Code. Other two Appellants, Dharambir Kumar and Arbind Kumar, have been sentenced to undergo rigorous imprisonment for two years under Section 498-A Indian Penal Code and seven years under Section 304-B Indian Penal Code. Both the sentences were ordered to run concurrently.

3. Counsel for the Appellants has submitted that no witness was examined on behalf of the defence. Defence of the Appellants was complete denial of the alleged occurrence. There is no reliable evidence of prosecution witness to support the case. The Informant and other witnesses have turned hostile and have not supported the case.

4. Counsel for the State has submitted that there is no illegality in the impugned judgment.

5. Prosecution case, as per *fard-e-beyan* of the



Informant, is that his sister, Reena Devi, (since deceased) was married to Binay Sagar on 23.01.2000. Sufficient gifts were given at the time of marriage by way of dowry. The accused persons started making demand of rupees two lac by way of dowry for purchase of tractor. Due to non-fulfillment of demand of dowry, sister of the Informant was tortured in her *Sasural*. The informant received message on 16.07.2005 about burn injuries having been sustained by his sister. The Informant rushed to house of his sister where he found his sister in burnt condition. The sister of the Informant was shifted to local hospital where she died. The Informant further alleged in the *fard-e-beyan* that on enquiry from his sister, she disclosed that she has been burnt to death by her father-in-law, brother-in-law (Dewar) and sister-in-law (*Nanad*) etc. after pouring kerosene oil over her body. All the accused persons have fled away after setting her on fire.

6. The prosecution during course of trial has examined altogether 15 witnesses in support of the case. Defence of the accused persons is that deceased, Reena Devi, sustained burn injuries when she was cooking food and later on she succumbed to the injuries.

7. The Informant, Sudhanshu Chand Sudhanshu @ Sudhanshu Yadav, is brother of the deceased. He has been examined as PW 10. He has stated in his examination-in-chief that his sister,



Reena Devi, has died due to burn injuries sustained during cooking of food. He had not given any statement before the police. He has only put his signature on the *fard-e-beyan*. This witness has been declared hostile by the prosecution.

8. Himanshu Chandra Himanshu (PW 12) is another brother of the deceased. He has stated that he got information that his sister has sustained burn injuries. He went to see her and found her burnt. He could not know how she sustained burn injuries. He has also been declared hostile by the prosecution.

In cross-examination, he has stated that he has not seen the occurrence from his own eyes.

9. Manish Yadav (PW 11) has stated in his evidence that deceased was his cousin sister as per village relation. He heard that she has been burnt. This witness has also been declared hostile by the prosecution.

In cross-examination, he has stated that his sister never complained against family members of her *Sasural*.

10. Vijay Yadav (PW 9) has stated that Reena Devi is his cousin sister. He learnt that one lady has been burnt while returning to village after meeting Rajendra Yadav, Junior Engineer. He went to see in the house then found Reena Devi was lying burnt. He told the persons present there to take her to Doctor. He along with other persons of village brought her to hospital. The Doctor



stated that she has sustained 70% burn injuries and referred her to Sadar Hospital, Munger. She died in Sadar Hospital during course of her treatment.

This witness has stated in his cross-examination that he could not know whether she died due to burst of stove or during preparation of tea. Reena Devi was married 12 years back. No occurrence has taken place with her in her *Sasural* during that period.

11. Sri Kant Yadav (PW 2) has stated that Reena Devi was his cousin sister. She sustained burn injuries while cooking food. This witness has been declared hostile by the prosecution.

In cross-examination, he has stated that after marriage his sister used to regularly come to his maternal house. She never complained against her husband and his family members.

12. Navin Yadav (PW 3) has stated that he heard that Reena Devi has died while cooking food. This witness has also been declared hostile by the prosecution.

In cross-examination, this witness has stated that his sister, Reena Devi, had good relation with her husband and his family members. Husband of Reena Devi is his cousin son-in-law.

13. Niraj Kumar (PW 4) has stated that Reena Devi had sustained burn injuries while cooking food. He has also been



declared hostile by the prosecution.

In cross-examination, he has stated that Reena Devi was his sister and her husband, Vinay Sagar, is his *Bahnoi*. He has given evidence voluntarily.

14. Bhubanshwar Yadav (PW 5) has been tendered for cross-examination. He has stated that both boy and girl had voluntarily married. They were leading happy conjugal life. He has never seen any dispute between them.

15. Nandan Yadav (PW 6) has also been tendered for cross-examination. He has stated that Vinay Sagar and Reena Devi had voluntarily married. They were leading happy conjugal life.

16. Umesh Yadav (PW 14) has stated that he learnt that Reena Devi has sustained burn injuries. He cannot say how she sustained burn injuries. This witness has been declared hostile by the prosecution.

17. Tarni Yadav (PW 15) has stated that he does not know anything about the occurrence. He has not seen the occurrence.

18. Raj Kishore Raju (PW 1) has stated in his evidence that Reena Devi was married with Vinay Sagar. She was her niece. Vinay Sagar used to demand rupees two lac for purchase of tractor. She was tortured in her *Sasural* for aforesaid demand. His *Bhagani* (niece) had come twelve days prior to the occurrence and



made allegation of assault and also shown her face with sign of assault for non-fulfillment of dowry. He went to her *Sasural* to persuade Vinay Sagar, who assured to behave properly. He received telephonic call on 16.07.2005 that his niece has been done to death. He found her crying in burnt condition. She started crying on seeing him to save her. He brought her to hospital in Jamalpur on TATA 407 vehicle. He thereafter took her to Munger Hospital. During course of treatment, he enquired from his niece then she told that accused persons had poured kerosene oil over her body and had burnt her.

Attention of this witness was drawn towards his earlier statement given before the police in para 9. He has stated that he had told before the police that the victim had told him that she had been burnt to death by the accused persons.

19. Investigating Officer, Sidhnath Sharma, has been examined as PW 13. This witness has stated in para 13 of his cross-examination that Raj Kishore Raju (PW 1) has not stated before him that deceased told him that these Appellants have caused burn injuries to her after pouring kerosene oil over her body.

20. Doctor has been examined as PW 7. He has held post mortem examination of dead body of the deceased and found burn injuries.

In cross-examination, he has stated that from post



mortem report it cannot be inferred whether she was burnt by accident or by any one. He has opined that death was due to shock on account of burn injuries. Time elapsed since death was within six hours.

21. Kumar Krishnanand Prasad (PW 8) is a formal witness, who has proved the handwriting and signature of ASI, Ram Deo Singh, over the First Information Report, which has been marked as Ext.2.

22. In this manner, from the evidence of the prosecution witnesses, it appears that besides PW 1, none of the prosecution witnesses including the Informant and his other family members have supported the case of prosecution. Witnesses have stated that she sustained burn injuries while cooking food.

23. PW 1 has stated in his examination-in-chief in para 5 that deceased had told that the accused persons had caused burn injuries on her person after pouring kerosene oil. Attention of the witness was drawn towards his earlier statement given before police in para 9 of his cross-examination. The Investigating Officer (PW 13) in his cross-examination at para 13 has stated that Raj Kishore Raju (PW 1) had not stated before him that the deceased told him that accused persons had set her on fire after pouring kerosene oil over her body.

24. Therefore, this Court finds that there is no cogent



and reliable evidence on behalf of the prosecution to substantiate the Charges under Section 498-A and 304-B Indian Penal Code against the Appellants beyond all reasonable doubts. The Trial Court has committed illegality in convicting the Appellants on the basis of evidence available on record.

25. In view of such, impugned judgment of conviction and order of sentence dated 19.01.2009 and 22.01.2009 respectively passed by the 1st Additional Sessions Judge, Munger, in Sessions Case No.218 of 2006 arising out of Naya Ramnagar P.S. Case No.104 of 2005, is hereby set aside. All the Appellants are acquitted of the charges levelled against them. They are discharged from the liabilities of their respective bail bonds.

26. Both Criminal Appeals are, accordingly, **allowed**.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	27-07-2018
Uploading Date	15-09-2018
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