

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.123 of 2019

Arising Out of PS. Case No.-49 Year-2015 Thana- PHULWARIYA District- Gopalganj

SHANTI DEVI aged about 48 years, female, Wife of-Birendra Prasad
Resident of village-Suksenwa, Tola- Pandey Patti, P.S.- Kateya, District-
Gopalganj.

... .. Appellant/s

Versus

1. The State of Bihar and Ors Bihar
2. Rahul Chouhan Son of-Late Shyam Sundar chauhan Resident of village-
Chaturbhuj Manjha, P.S.- Phulwaria, District- Gopalganj.
3. Suganti Devi wife of-Motilal Chauhan Resident of village-Chaturbhuj
Manjha, P.S.- Phulwaria, District- Gopalganj.
4. Bhukhali Devi Wife of-Late Shyam Sundar Chauhan Resident of village-
Chaturbhuj Manjha, P.S.- Phulwaria, District- Gopalganj.
5. Champa Devi Wife of-Jitendra Chauhan Resident of village-Chaturbhuj
Manjha, P.S.- Phulwaria, District- Gopalganj.
6. Rajwanti Devi Wife of-Nagendra Chauhan Resident of village-Chaturbhuj
Manjha, P.S.- Phulwaria, District- Gopalganj.
7. Shrikant Chauhan Son of-Khelwan chauhan Resident of village-Chaturbhuj
Manjha, P.S.- Phulwaria, District- Gopalganj.
8. Bhulli Devi @ Kamlawati Devi Wife of-Prahalad Chauhan Resident of
village-Semra, P.S.- Gopalpur, District- Gopalganj.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Sanjay Kumar Pandey No.5
For the State	:	Mr. Ashwani Kumar Sinha
For Respondent Nos. 2 to 8:	:	M/s Rama Kant Sharma, Sr. Advocate

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 10-07-2019

Heard learned counsel appearing for the appellant,

learned counsel appearing for respondent Nos. 2 to 8 as well as



learned Additional Public Prosecutor for the State on I.A. No. 1 of 2019, I.A. No. 2 of 2019 as well as on the point of admission and perused the record along with Lower Court Records.

Re. I.A. No. 1 of 2019

I.A. No. 1 of 2019 has been filed on behalf of the appellant under Section 5 of the Limitation Act for condonation of delay of 190 days in filing this criminal appeal.

For the reasons stated in the aforesaid I.A. No. 1 of 2019, the delay in filing this criminal appeal is, hereby condoned and, accordingly I.A. No. 1 of 2019 stands disposed of.

I.A. No. 2 of 2019

I.A. No. 2 of 2019 has been filed on behalf of the appellant under Section 378(3) of the Code of Criminal Procedure seeking leave to file and pursue this appeal.

The appellant happens to be the mother of the deceased and, therefore, she has statutory right to prefer the appeal against the judgment of acquittal and, accordingly, I.A. No. 2 of 2019 stands disposed of.

Re. Criminal Appeal (DB) No. 123 of 2019

The appellant has preferred this criminal appeal against



the judgment of acquittal dated 28.6.2018 passed by learned Additional Sessions Judge 5th, Gopalganj, in Sessions Trial No. 438/2017 (arising out of Phulwaria P.S. Case No. 49 of 2015), by which and whereunder he acquitted the respondent Nos. 2 to 8 from the charges framed against them for the offences punishable under Sections 304B, 302, 201 read with Section 34 of the Indian Penal Code.

Being aggrieved by the impugned judgment of acquittal, the appellant has preferred this criminal appeal.

The appellant happens to be informant of Phulwaria P.S. Case No. 49 of 2015 and she claimed that marriage of her daughter was solemnized with respondent No. 2 Rahul Chouhan five years ago but her daughter was subjected to cruelty and torture due to non-fulfillment of illegal demand of dowry and, lastly, she was killed by respondent Nos. 2 to 8.

Respondent Nos. 2 to 8 were put on trial and, accordingly, they stood charged for the offences punishable under Sections 304B, 302, 201 read with Section 34 of the Indian Penal Code.

In order to prove the charges, prosecution examined altogether 9 witnesses. Subsequently, the statements of respondent Nos. 2 to 8 were recorded under Section 313 of



the Cr.P.C.. The respondent Nos. 2 to 8 also got examined one witness as defence witness No. 1.

Learned trial court having perused the materials available on record passed the judgment of acquittal having relied upon the death certificate treating the said death certificate as Ext. A.

Learned counsel appearing for appellant submits that the learned trial court committed error in acquitting the respondent Nos. 2 to 8. He tried to highlight several infirmities in the impugned judgment. The learned counsel submitted that the learned trial court has based his finding upon a document, which had not been produced in evidence by the defence. He submitted that the perusal of the impugned judgment goes to show that the learned trial court placed his reliance upon death certificate treating the same as Ext. A, but as a matter of fact, there is no document as Ext. A on the record of the lower court and, therefore, the aforesaid fact clearly goes to show that the learned trial court relied upon a document, which had not been produced in evidence.

On the other hand, learned counsel appearing for respondent Nos. 2 to 8 supported the impugned judgment of acquittal arguing that even if the death certificate is excluded



from the evidence, then also, there is sufficient evidence to prove the guilt of respondent Nos. 2 to 8 and, therefore, in the aforesaid circumstance, there is no need to interfere into the impugned judgment of acquittal.

Having heard the contentions of both the parties, we went through the records along with the lower court records.

In our view, this appeal can be disposed of at admission stage itself.

From perusal of paragraph 16 of the impugned judgment, we find that the learned trial court has relied upon so-called death certificate of deceased but the aforesaid death certificate was not exhibited in accordance with law. The impugned judgment goes to show that the above stated so-called death certificate of the deceased had prejudiced the mind of learned trial court and, admittedly, the learned trial court relied upon a document, which had not been exhibited in evidence in accordance with law, therefore, the aforesaid perversity is apparent from the face of the impugned judgment itself.

In the aforesaid circumstances, we have no option except to set aside the impugned judgment of acquittal and send the Sessions Trial No. 438/2017 to the court below for pronouncement of fresh judgment after excluding so-called



death certificate of the deceased,

In the aforesaid manner, this criminal appeal is allowed and the impugned judgment of acquittal dated 28.6.2018 is, hereby set aside. The Sessions Trial No. 438/2017 is remitted to the learned trial court for pronouncement of fresh judgment excluding so-called death certificate of deceased after giving fresh opportunity of hearing to both parties. The learned trial court shall pronounce the judgment within one month from the date of receipt of this order.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.07.2019
Transmission Date	12.07.2019

