

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.159 of 2018

Arising Out of PS. Case No.-111 Year-2008 Thana- MADHEPUR District- Madhubani

Kundan Kumar Jha, Son of late Vijendra Jha, Resident of Village- Mahrail,
Police Station- Rudrapur, District Madhubani.

... .. Appellant/s

Versus

1. The State of Bihar.
2. Purushottam Mishra, Son of Jagarnath Mishra @ Jagannath Mishra,
Resident of Village- Manmohan, P.S. Lakhsaur, District Madhubani.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Manish Jha, Advocate.
For the Respondent No.2:		Mr. Vivekanand Kunal, Advocate.
		Mr. Ajay Kumar, Advocate.
For the State	:	Mr. Shivesh Chandra Mishra, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)

Date : 12-03-2019

1. Heard learned counsel appearing for the appellant as well as learned Additional Public Prosecutor for the State and the learned counsel appearing for the respondent no. 2 on the point of admission as well as on I.A. No. 497 of 2018 filed under Section 378(3) of the Code of Criminal Procedure for grant of leave to file this criminal appeal.

2. Since the appellant happens to be brother of the deceased, therefore, he comes under the definition of victim and



has right to challenge the Judgment of acquittal and, accordingly, he is permitted to pursue this criminal appeal.

3. In the aforesaid manner, I.A. No. 497 of 2018 stands disposed of.

4. This criminal appeal has been preferred against the Judgment dated 07.10.2017 passed by the learned Presiding Officer, Fast Track Court-I, Madhubani, in Sessions Trial No. 220 of 2016/31 of 2017, by which and whereunder, the learned court acquitted the respondent no. 2 from the charge framed against him for the offences punishable under Sections 304(B)/34 and 201/34 of the Indian Penal Code, whereas by the same impugned Judgment, the learned trial court convicted the other accused for the offences punishable under Sections 304(B)/34 and 201/34 of the Indian Penal Code.

5. Learned counsel appearing for the appellant assailed the impugned Judgment of acquittal arguing that the learned trial court failed to take note of this fact that the prosecution witnesses in course of trial claimed that the respondent no. 2 was present at his home on the next day of the alleged occurrence and the learned trial court committed error in acquitting the respondent no. 2 on the ground that at the time of alleged occurrence, the respondent no. 2 was not present at his home.



6. On the other hand, learned counsel appearing for the respondent no. 2 submits that the learned trial court rightly acquitted the respondent no. 2, as in the Fradbeyan of the informant itself, it was admitted that the respondent no. 2 had gone to Himachal Pradesh prior to the alleged occurrence and he was not present at his house when deceased died. He, further, submits that only because of some co-accused have been convicted for the offences punishable under Sections 304(B)/34 and 201/34 of the Indian Penal Code, it cannot be presumed that the respondent no. 2 had also participated in the crime, particularly, in the circumstance when the prosecution admitted that the respondent no. 2 was not at his home when the occurrence had taken place.

7. Having heard the contentions of both the parties, we went through the Impugned Judgment and lower court's record. We find that the learned trial court has discussed the evidence of prosecution and defence and came to conclusion that the appellant was not present at his house when the deceased died. Furthermore, from perusal of the impugned Judgment, we find that the prosecution could not succeed to bring any material to show that any abetment was made by the respondent no. 2 nor there is anything on the record to show that the respondent no. 2 had entered into conspiracy to commit the murder of the deceased with



other convicts. Furthermore, we find that no doubt, the learned trial court found that deceased died within seven years of her marriage in other than normal circumstances and she was subjected to cruelty soon before her death due to non fulfillment of illegal demand of dory but the prosecution could not bring any evidence to show that it was respondent no. 2 who had made illegal demand of dowry and had subjected the deceased into cruelty soon before her death. Respondent No. 2 is, admittedly, husband of the deceased but complainant admitted in his complaint cum protest petition that the respondent no. 2 went to Himachal Pradesh prior to alleged occurrence and there was nothing before the trial court to come on conclusion that on the date of death of the deceased, the respondent no. 2 was also present at his house. Therefore, it is obvious that the respondent no. 2 had not taken part in killing the deceased and the aforesaid fact has been admitted by the prosecution witnesses by admitting this fact that the respondent no. 2 had gone to Himachal Pradesh prior to the alleged occurrence. The learned trial court has taken the aforesaid fact into consideration while writing of the Judgment of acquittal in favour of the respondent no.2. Therefore, there is no need to interfere into the findings recorded by the trial court in respect of the respondent no. 2 in the impugned Judgment and,



accordingly, this criminal appeal stands dismissed on admission stage.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Bhardwaj/-

AFR/NAFR	AFR
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