

Arising Out of PS. Case No.-53 Year-2004 Thana- KHIJARSARAI District- Gaya

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... .. Appellant

Versus

- Respondents

For the Appellant/s	:	Mr. Birendra Kumar, Advocate Mrs. Shweeta Verma, Advocate
For the State	:	Mr. Abhimanyu Sharma, APP
Fr the Respondent/s		Mr. Baxi S.R.P. Sinha, Sr. Advocate Mr. Brajesh Prasad Gupta, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER**

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

10 20-02-2024 Heard learned counsel for the appellant, Mr. Abhimanyu Sharma, learned Additional P.P. for the State and Mr. Baxi S.R.P. Sinha, learned Senior Advocate assisted by Mr. Brajesh Prasad Gupta, learned counsel for the respondent nos. 2 to 4.

2. This appeal has been preferred for setting aside the judgment of acquittal dated 28.09.2022 passed by learned Additional Sessions Judge-II, Gaya in Sessions Trial No. 166 of

2009 arising out of Khijar Sarai P.S. Case No. 53 of 2004 registered under Sections 304B/201, 34 of the Indian Penal Code (in short 'IPC'), G.R. Case No. 1484 of 2004 and Tr. No. 520 of 2022 whereby and whereunder the respondent nos. 2 to 4 who were facing trial for the offences under Sections 304B/34 or 302, 201 of the IPC have been acquitted and they have been discharged from the liability of their respective bail bonds.

3. As per the prosecution story, the informant got his daughter married with Manoj Kumar on 23.06.1999 as per Hindu rites and she was blessed with a daughter. It is alleged that just after the marriage, her family members, including her husband, were harassing for a Hero Honda motorcycle and cash Rs 50,000/- and on non-fulfillment of the same, she was subjected to torture. It is further alleged that on 29.06.2004, he got information from one Ram Lakhan Prasad that his daughter and granddaughter were killed and in order to destroy evidence, they have been cremated. Upon getting such information, the informant reached at his daughter's place and from the neighbors he came to know that Manoj Kumar, Sitaram Yadav, wife of Sitaram Yadav, Anil Kumar and his wife, Sunil Kumar and his wife after beating his daughter and granddaughter mercilessly, burned them by pouring kerosene.

4. It appears from the materials placed before this Court that in this case the FIR was registered on 29.06.2004 with respect to the alleged occurrence which took place on the same day i.e. 29.06.2004. After investigation, Police submitted a chargesheet bearing No. 148 of 2008 dated 28.10.2008. The cognizance was taken and summons were issued against the accused persons whereafter they were supplied with the police papers and the records were committed to the court of Sessions. On 14.05.2009, charges were framed under Sections 306 IPC, 201/34 IPC which was amended vide order dated 28.01.2010 and the accused persons were charged with the offences under Sections 304B/34 or 302/34 and 201/34 IPC.

5. From the discussions made in the trial court's judgment it would appear that the prosecution examined altogether five witnesses, namely (i) Dinanath Yadav (PW-1) who is the informant of this case, (ii) Ram Millan Yadav, (iii) Ram Krit Yadav (iv) Sudershan @ Suresh Prasad and (v) Krishna Prasad. The prosecution got exhibited the following documents:- (i) Exhibit '1' written complaint by the PW-1/informant (ii) Exhibit '2' protest-cum-complaint petition by PW-1/informant (iii) Exhibit-3 formal FIR (Admitted).

6. The accused persons have not examined any

defence witness. They were given an opportunity to make statement under Section 313 Code of Criminal Procedure (in short 'Cr.P.C.') on 05.09.2018. The statement of the accused persons were recorded wherein they denied the case of the prosecution, claimed innocence and false implication. The trial court records would further say that later on the prosecution got charge added vide order dated 17.01.2019 and got it framed on 01.02.2019. The prosecution was given chance to bring the prosecution evidence, however, they did no bring any evidence and on 12.09.2022 the evidence was closed. Since no further evidence was produced, no fresh statement of the accused was recorded against under Section 313 Cr.P.C.

7. From the discussions in the impugned judgment of the trial court it would appear that PW-1 Dinanath Yadav is the father of the victim who has submitted the written complaint (Exhibit-1) and the protest-cum-complaint petition to C.J.M., Gaya (Exhibit-2). He has supported the prosecution case. According to PW-1, his daughter had come to his house and had told her about the harassment being given by her husband Manoj Kumar and other family members, namely Sitaram Yadav, mother of Manoj, Anil Kumar, his wife, Sunil Kumar and his wife for the demand of Hero Honda motorcycle and Rs.

50,000/- in cash. PW-1 had sent his daughter along with elder brother of his son-in-law whereafter the accused persons started beating her for non-fulfillment of the demands. Three days thereafter on 29.06.2004, Ram Lakhan Yadav (not examined), who reside at Saidpur gave him information that his daughter was killed by burning by the accused persons. PW-1 reached there but accused persons were not there. Villagers told him that Manoj Kumar, Sitaram Yadav and others have burnt the dead body. PW-1 has stated that the accused persons had not given any information to him or Police. In his cross-examination, PW-1 has stated that after marriage her daughter first time came to his house after one and half year and during this time she was not harassed. He went there twice before marriage and about ten-twelve times after marriage. The learned trial court has found that PW-1 is the solitary witness on whom the prosecution witness case rests but the difficulty is that he is not supported/corroborated by other witnesses.

8. It has been held that Ram Millan Yadav (PW-2), Ram Krit Yadav (PW-3), Sudershan Yadav @ Suresh Prasad (PW-4) and Krishna Prasad (PW-5), who are all prosecution witnesses, have stated that the marriage between the daughter of PW-1 and Manoj had been solemnised about ten-fifteen years

ago. PW-2 has gone on to depose that in the house of Manoj all were residing nicely and there was no demand of dowry. According to PW-2, fire took place in *chulha* made for cooking and the relative of the deceased was present in the last ritual and on the day of incident only deceased was there alone and no one else from family was there. PW-2 was not declared hostile by the prosecution and he was not cross-examined. PW-3, PW-4 and PW-5 were declared hostile. They have stated that they had not given statement before the Police.

9. The learned trial court having perused the evidences of the prosecution came to a conclusion that in this case the death due to accidental burning cannot be ruled out and once the accident is not ruled out, the benefit would go to the accused persons. The learned trial court has examined the testimony of PW-1 and found that PW-1 had not made any complaint alleging harassment to the witnesses of the *Panchayat* as nothing of that sort has been brought on the record. From the evidence on the record, the essential ingredients of Section 304B IPC were not proved.

10. The learned trial court has further found that the prosecution has not successfully discharged the initial burden of proof of homicide as required under Section 300 IPC for

holding an accused guilty under Section 302 IPC. In addition, the dead body of the deceased was not recovered from the house of the accused persons and it has not been proved that the accused persons were present with the deceased lady on the date of incident in the same house at the time of occurrence. About the case under Section 201 IPC, it is held that the prosecution witnesses have stated that the cremation was done in the presence of PW-1 and his brother-in-law Ram Lakhan Yadav, therefore Section 201 IPC would not be attracted.

11. Learned counsel for the appellant has assailed the impugned judgment on the ground that the learned court below disbelieved the prosecution witnesses saying that they were not trustworthy only because there were minor contradictions and inconsistencies in their statements.

12. Mr. Baxi S.R.P. Sinha, learned Senior counsel for the respondent nos. 2 to 4, however, submits that the learned trial court has rightly held in the impugned judgment that PW-2, PW-3, PW-4 and PW-5 have not supported the prosecution case. In fact, while PW-2, PW-3 and PW-4 were declared hostile, PW-2 who has in fact deposed in favour of defence was not even declared hostile. The I.O. was not examined in this case but that would not cause any prejudice to the prosecution.

13. Mr. Abhimanyu Sharma, learned Additional PP for the State has also supported the impugned judgment.

14. Having heard learned counsel for the parties and on perusal of the records, this Court finds that the learned trial court has discussed the evidences brought by the prosecution at length. This Court would agree with the view taken by the learned trial court that in this case though PW-1 has supported the case of the prosecution but he had not seen the incident. So far as PW-2, PW-4 and PW-5 are concerned, they reached at the spot at about 9 pm. They had seen the deceased dead after burning and that her daughter had also suffered burn injuries as the fire took place in the *chulha* made for cooking. It is for this reason, the learned trial court has taken a view that the prosecution has not ruled out a case of accidental burning. We are satisfied that the learned trial court has not committed error in appreciation of the evidences in this case.

15. In result, this criminal appeal is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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