

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL APPEAL (DB) No.622 of 2018**

Arising Out of PS. Case No.-30 Year-1997 Thana- CHHAURADANO District- East  
Champaran

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Maya Devi, Wife of Kapil Dao Prasad, resident of Village- Hirmani, P.S.-  
Chhauradano, District- East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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**Appearance :**

For the Appellant/s : Ms. Aishwarya Shree, *Amicus*  
For the State : Mr. Sujit Kumar Sharma, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

**and**

**HONOURABLE MR. JUSTICE JITENDRA KUMAR**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)**

**Date : 31-07-2024**

Nobody has appeared on behalf of the  
appellant.

2. In all fitness of things, we requested Ms.  
Aishwarya Shree, the learned Advocate to be the *Amicus*  
in this appeal and she has agreed to assist this Court on



behalf of the sole appellant/Maya Devi.

3. The State has been represented by Mr. Sujit Kumar Singh, the learned APP.

4. The appellant has been convicted under Section 302/34 of the Indian Penal Code (*in short the IPC*) *vide* judgment dated 17.04.2018 passed by the learned Fast Track Court-II, East Champaran at Motihari in Sessions Trial No. 214 of 1998/S-4344 of 2016, arising out of Chhauradano P.S. Case No. 30 of 1997. By order dated 18.04.2018, she has been sentenced to undergo rigorous imprisonment for the remainder of her life for the offence under Section 302/34 of the IPC.

5. The appellant and her husband, *viz.*, Kapildeo Prasad are accused of murdering three persons, namely, Ganesh Sah, Braj Kishore Prasad and Kamli Devi.

6. The FIR was lodged by one Sindhu Devi (informant), who did not offer to come to the witness stand, that she was present in the house of her late



father where she had gone for participating in the marriage of one of the deceased, namely, Braj Kishore Prasad. After the festivities, she had gone to her room to retire. Later, when she heard the sound of gun-shot, she came out of the room thinking that *dacoits* have entered the house. However, on the stairway, she found her own eldest brother/Kapildeo Prasad, accompanied by the appellant/the wife of Kapildeo Prasad, coming down with Kapildeo Prasad, holding a country made pistol in his hand. No sooner had the mother of Sindhu Devi came in the line of vision of Kapildeo Prasad, he fired from his weapon, injuring her mother/Kamli Devi, who later died. Sindhu Devi wanted to overpower Kapildeo Prasad, but she was told by the appellant to keep aside and not interfere in the family affairs. Later, she saw the dead-bodies of her father and brother also at different places in the house. Kapildeo Prasad and his wife (appellant), thereafter, fled away and became traceless.



7. On the basis of the *fardebayan* of afore-noted Sindhu Devi, a case *vide* Chhauradano P.S. Case No. 30 of 1997, dated 11.06.1997, was registered for investigation against Kapildeo Prasad and the appellant for the offences under Section 302/34 of the IPC and Section 27 of the Arms Act.

8. Both, Kapildeo Prasad and the appellant, were put up on Trial and the Trial Court, after examining thirteen witnesses on behalf of the prosecution, convicted and sentenced the appellant and Kapildeo Prasad for the offence under Section 302/34 of the IPC. Kapildeo Prasad was further convicted under Section 27 of the Arms Act. The appellant and Kapildeo Prasad were, as noted above, sentenced to rigorous imprisonment for the remainder of their life. Kapildeo Prasad was further sentenced to undergo rigorous imprisonment for seven years under Section 27 of the Arms Act.

9. During the pendency of the appeal,



Kapildeo Prasad [Cr. Appeal (DB) No. 637 of 2018] died on 09.03.2021.

10. After receiving the report of the Senior Superintendent of Police, Motihari, East Champaran regarding the death of Kapildeo Prasad, the appeal preferred by him stood abated by order dated 05.07.2024.

11. The learned *Amicus* has argued that none of the witnesses have claimed to be the eye-witness to the occurrence except one Uma Shankar Prasad (P.W. 6), who had seen Kapildeo Prasad and the appellant running away from the house. Rest all other witnesses were informed by Sindhu Devi that Kapildeo Prasad was holding a country made pistol in his hand and had fired at Kamli Devi, who later died and the dead-bodies of Ganesh Sah and Braj Kishore Prasad were also located in different parts of the house.

12. In such a situation, it has been argued, it would be unsafe to convict the appellant, who is only



alleged to be accompanying Kapildeo Prasad when he went on the killing spree.

13. Dr. Brajesh Kumar Singh, Medical Officer, Sadar Hospital, Motihari (P.W. 2) had conducted autopsy on the dead-body of Kamili Devi, whereas Dr. Asfaque Ahmad, Medical Officer, Sadar Hospital, Motihari (P.W. 3) had performed autopsy on the dead-body of Braj Kishore Prasad. Both the deceased had received one gun-shot each, which was the cause of their death.

14. No *post-mortem* report of Ganesh Sah, the third of the slain persons, is on record.

15. The death of the three persons, referred to above, has been proved to be homicidal caused by gun-shots.

16. Bishundeo Sah (P.W. 4) is a neighbour of the deceased. He had heard a *hulla* in the morning of 10.06.1997 at about 04:00 AM from the house of late Ganesh Sah. When he went there, Sindhu Devi disclosed



before him that Kapildeo Prasad had killed her parents and brother and had run away from the house along with his wife (appellant). He recounted that on an earlier occasion, Kapildeo Prasad had told him that he shall kill all the members of his family.

17. Similarly, Bishwanath Rai (P.W. 5), another neighbour, was told by Sindhu Devi that the murders were executed by him and the appellant was accompanying Kapildeo Prasad and after the occurrence, both of them had fled away from the house.

18. Thus, neither P.W. 4 nor P.W. 5 had seen any part of the occurrence.

19. Uma Shankar Prasad (P.W. 6) had also reached the house of the deceased on hearing the gunshot and had seen Kapildeo Prasad and Maya Devi (appellant) running away from the house. Kapildeo Prasad was armed with a country made pistol.

20. Jaimangal Prasad (P.W. 7) had received information at about 06:00 A.M. on 11.06.1997 that



his elder brother-in-law, viz., Kapildeo Prasad had killed his parents and younger brother. On getting this information, he proceeded for his home and on reaching there, made inquiries. He was also told by Sindhu Devi that Kapildeo Prasad had killed the entire family.

21. P.Ws. 12 and 13, viz., Pappu Prasad and Sheopati Devi have not supported the prosecution case and have been declared hostile.

22. The I.O. of this case, unfortunately, has not been examined. No explanation is on record regarding his non-examination.

23. The Trial Court, as we have found, has convicted the appellant on the evidence of her accompanying Kapildeo Prasad, who had shot and killed the three members of the family one after the other.

24. With the non-examination of Sindhu Devi,



for which no explanation has been offered, there does not appear to be any direct evidence of participation of the appellant in the crime. Most of the witnesses have only deposed that the appellant was accompanying her husband and prevented Sindhu Devi from interfering in the matter.

25. The weapon was held by Kapildeo Prasad about which there is no divergence in the statements of the witnesses. That all the three persons died of gun-shot stands proved. The only evidence against the appellant, therefore, is of P.W. 6, who had seen her running away from the house.

26. From the tenor of evidence, it appears that Kapildeo Prasad harboured some grudge against his family members and decided to do away their lines. That the appellant was accompanying Kapildeo Prasad does not necessarily mean that she was in concert with Kapildeo Prasad for killing the family members. There could be a possibility of her making attempts at



restraining Kapildeo Prasad for committing such a ghastly crime. One can also infer that she was threatened by Kapildeo Prasad to come along with him and leave the house after the murders.

27. In any view of the matter, with the non-examination of Sindhu Devi and the I.O. of this case, there remains no evidence on record with respect to the participation of the appellant in the offences for which she has been charged at the Trial.

28. As we have already noted, the appeal of Kapildeo Prasad abated because of his death in the year 2021. Under such circumstances, it would be absolutely difficult for this Court to put its imprimatur on the opinion of the Trial Court convicting the appellant under Section 302/34 of the IPC.

29. We have also found from the records that a deed of gift had been executed in favour of late Kapildeo Prasad. In that context, the learned *Amicus* has argued that there would not have been any grudge



against the slain persons.

30. Though we have found the accusation against the appellant to be doubtful because of the paucity of evidence, but we have noticed that the Trial Court has sentenced the appellant for the remainder of her life for the offence under Section 302/34 of the IPC. This is not permissible in view of the decision of the Supreme Court in case of *Union of India Vs. V. Sriharan @ Murugan & Ors.*; (2014) 4 SCC 242.

31. For the reasons discussed above, we set aside the judgment and order of conviction and sentence, referred to above, and acquit the appellant of all the charges levelled against her.

32. The appeal stands allowed.

33. The appellant/Maya Devi is on bail. She is discharged of her liabilities under the bail bonds.

34. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for



compliance and record.

35. The records of the case be returned to the Trial Court forthwith.

36. Interlocutory application/s, if any, also stands disposed off accordingly.

37. We record our appreciation for Ms. Aishwarya Shree, the learned *Amicus* for assisting this Court in this matter.

38. The Bihar State Legal Services Authority is directed to pay Rs. 5,000/- to Ms. Aishwarya Shree, the learned *Amicus*, towards her personal fee for assisting this Court.

**(Ashutosh Kumar, J)**

**(Jitendra Kumar, J)**

Praveen-II/Manoj

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| AFR/NAFR          | NAFR       |
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