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Court : Patna

Decided On : May-07-2014

Judge : Aditya Kumar Trivedi

Appeal No. : Criminal Appeal (SJ) Nos. 308 & 247 of 2011

Appellant : Rajesh Gupta and Others

Respondent : The State of Bihar

Judgement :

1. Appellants Beer Narain Gupta, Gauri Devi of Cr. Appeal No.247 of 2011 as well as appellant Rajesh Gupta of Cr. Appeal No.308 of 2011 have been found guilty for an offence punishable under Sections 304B, 201 of the I.P.C. as well as each of them has been sentenced to undergo rigorous imprisonment for seven years under Section 304B of the I.P.C., rigorous imprisonment for three years as well as fined appertaining to Rs. One thousand in default thereof, to undergo rigorous imprisonment for three months additionally under Section 201 of the I.P.C. by the 1st Additional Sessions Judge, Purnia vide judgment of conviction and sentence dated 10.02.2011 in Sessions Trial No.478 of 2009/ 02 of 2011 challenged the same and on account thereof, have been heard together and are being disposed of by a common judgment.

2. PW-5 Shivji Prasad had recorded first information report on 04.06.2006 at about 4.45 p.m. at Banmankhi P.S. disclosing therein that he has superannuated from

Army. He has two sons and a daughter. His daughter Punam Gupta has been married with Rajesh Gupta, son of Beer Narain Gupta of village Banmankhi Khokhardhara on 11.12.2000. At the time of marriage, he had gifted cash appertaining to Rs.1,50,000/-, ornaments detailed therein (comprising gold as well as silver), utensils, television, fridge, cooler, washing machine, sewing machine, Hero Honda Splendor motorcycle, furniture (detailed) etc.. After marriage, his daughter came at her Sasural from where they effected žBidaiŸ after staying for 5-6 days. After six months her žDuragmanŸ was effected and since thereafter, she was residing at her Sasural in congenial harmonious atmosphere. As his daughter failed to give birth of a child, just a year of marriage, her husband and in-laws began to torture her. Aforesaid information was being given by his daughter telephonically. The event of torture continued. Her in-laws have directed his daughter to obtain new motorcycle. Just to ward off the situation, he had provided new Hero Honda Splendor Motorcycle after purchasing it from Military Canteen whereupon she lived under fondness for sometime was again subjected to torture by his son in-law Rajesh Gupta, Samdhi Beer Narain Gupta, Samdhin Smt. Gauri Gupta. He used to come during intervening period and requested times without number not to treat his daughter with cruelty as well as torture, but they did not pay heed to it. On 26.05.2006, when he came to Banmankhi to see his daughter, his Samdhi disclosed that she died out of dysentery. On his query regarding non-informing the incident to him, his Samdhi Beer Narain Gupta along with 4-5 persons forcibly thrusted them in a train and on account thereof, they left the place. Today, he along with others has come directly to Police Station. He had further shown the date of occurrence as 20.05.2006, so disclosed by his Samdhi as well as others.

3. On the basis of aforesaid first information report, Banmankhi P. S. Case no.121 of 2006 was registered under Section 304B, 34 of the I.P.C. followed with investigation as well as submission of charge sheet and on account thereof, appellants have faced the trial ultimately meeting with conviction and sentence, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as from the statement recorded under Section 313 of the Cr.P.C. is of complete denial of

occurrence. There happens to be specific plea that deceased Punam Gupta unfortunately suffered from diarrhea and vomiting and for that she was properly cared under the supervision of Dr. Jagannath Gupta and while she was under his treatment, she met with unfortunate death. To support the same, defence had also examined two DWs along with series of exhibits.

5. Learned counsel for the appellants while challenging the judgment impugned has submitted that the learned lower court in spite of absence of positive as well as concrete evidence convicted and sentenced the appellants and on account thereof, the judgment impugned did not justify its privilege. It has further been submitted that ten PWs have been examined on behalf of prosecution to support its case. Out of whom, save and except, PW-5 and PW-6 who happens to be the informant and his colleague, no other material witnesses had supported the case of the prosecution. Contrary to it, they all have supported the defence version supporting the theme of deceased suffering from diarrhea and vomiting as well as died while was under treatment of DW-1 Dr. Jagannath Gupta. It has also been submitted that I.O. of the case had not found any incriminating substance while inspecting the place of occurrence.

6. Now, coming to reliability of the evidence of PW-5 and PW-6, it has been submitted that PW-6 even on its face happens to be hearsay witness and on account thereof, his evidence has got no relevancy. So far, evidence of PW-5 is concerned, apart from being blemish have shown material development during course of evidence than that of initial version and on account thereof, his evidence also became untrustworthy. Furthermore, neither the mother of deceased nor the brother of deceased have come forward to support the case of the prosecution. From the evidence of PW-5 itself their presence are admitted and as such their non-examination without any explanation cast doubt over genuineness of prosecution version. So submitted that excluding major portion of the evidence of PW-5 on account of falling under category of material contradiction nothing more remains to justify applicability of Section 304B of the I.P.C. As such, the conviction and sentence with regard to Section 304B of the I.P.C. is found non-sustainable.

7. It has further been submitted that in likewise manner, Section 201 of the I.P.C. is also not attracted, because of the fact that as there was no offence, hence appellants cannot be held responsible for concealing the evidence or falsely informing regarding commission of an offence to screen themselves from legal prosecution. Moreover, PW-5 had himself admitted that his family members had received information at the end of appellants and virtually on account thereof, PW-5 came at the place of appellants. After returning therefrom, under grudge and vendetta PW-5 got this case registered. So submitted that in any view of the matter, the judgment impugned is non-sustainable and is fit to be set aside.

8. On the other hand while refuting the submission raised on behalf of appellants, it has been submitted on behalf of learned Additional Public Prosecutor that the misfortune happens to be on account of informant being resident of different State that means to say Jabalpur and on account thereof, the important material witnesses could not be examined. Moreover, Court also did not care to summon the remaining material witnesses who were mother, brother, uncle of the deceased and on account thereof, their examination could not materialized. It has also been submitted that during trial the witnesses who happen to be co-villager of appellants have shown their natural conduct deposing in favour of appellants. It has also been submitted that from the evidence of PW-5, it is evident that the Samdhi of PW-5 namely Beer Narain Gupta happens to be a locally influenced person and that happens to be reason behind that the family members or neighbours of the appellants were examined by the Investigating Officer during course of investigation, who also been cited as a prosecution witness on account thereof, they have been examined during trial whereunder they have supported the case of defence instead of prosecution. Therefore, their evidences should be accepted like a defence witness and inconsistency found amongst them is to be accordingly perceived.

9. It has further been submitted that the case virtually not upon the evidence of PW-5 and PW-6, out of whom PW-6 had supported the evidence of PW-5, the informant. Now, coming to the evidence of PW-5, it has been submitted that the F.I.R. could not be expected to be encyclopedia and on account thereof, minutes detail is not at all expected. It has also been submitted that evidence of the PW-5,

though attention has been drawn on behalf of defence due to presence of some sort of variance, was but natural, because of the fact that when PW-5 had lodged F.I.R. as well as while his further statement was being recorded, he was not expected to possess sound mental condition on account of murder of his daughter at her Sasural. Therefore, the suggestion of the defence that there happens to be material development in the evidence of PW-5 was not a material development rather those things have cropped up on account of mental agony and frustration from which the informant was suffering at the relevant movement on account of murder of his daughter. As such, the evidence of PW-5 is to be taken into account in its totality.

10. Furthermore, it has been submitted that as per Section 134 of the Evidence Act, it is the quality and not the quantity which matters regarding adjudication of a trial. Therefore, having the evidence of PW-5 supported with PW-6 as well as the I.O. (PW-10), the case of the prosecution is found fully proved.

11. In order to substantiate its case, the prosecution had examined ten PWs. Out of whom, PW-1 is Abhishek Kumar @ Chandan, PW-2 is Pappu Chaudhary, PW-3 is Mahendra Pd. Gupta, PW-4 is Ganesh Gupta, PW-5 is Shivaji Prasad Sah, PW-6 is Kishori Mohan Singh, PW-7 is Pradeep Gupta, PW-8 is Anand Pd. Gupta, PW-9 is Dukhan Mandal and PW-10 is Md. Jainuddin as well as also exhibited, Exhibit-1 signature of informant over First Information Report, Exhibit-1/1 the F.I.R., Exhibit-2 formal F.I.R. Defence had also examined two DWs. Out of whom, DW-1 is Dr. Jagannath Prasad Gupta and DW-2 is Shivendra Nath Mishra. Also exhibited exhibit-A signature of deceased over a book, exhibit-B handwriting expert report as well as exhibit-B/1 series up to 167 happens to be the photographs, exhibit-C prescription issued by DW-1 and exhibit-D death certificate issued by DW-1 with regard to deceased Punam Devi.

12. In Kansh Raj vrs. State of Punjab reported in 2000(5) SCC page 2007, the ingredients of an offence under Section 304B of the I.P.C. has been identified in following way:-

(a) The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances.

(b) Such death should have occurred within seven years of her marriage.

(c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband.

(d) Such cruelty or harassment should be for or in connection with the demand of dowry.

(e) Such cruelty or harassment the deceased should have been subjected soon before her death.

13. The unfortunate part of case relating to dowry death is, it always happens to be at the Sasural of victim where some of the family members are actively involved while remaining, by their passive activity, facilitate commission of crime even to the extent of keeping silence. This kind of chagrin has also been perceived by the Law Commission who in its 91st report observed:-

œThose who have studied crime and its incidence know that once a serious crime is committed, detection is a difficult matter and still more difficult is successful prosecution of the offender. Crimes that lead to dowry deaths are almost invariably committed within the safe precincts of a residential house. The criminal is a member of the family; other members of the family (if residing in the same house) are either guilty associates in crime, or silent but conniving witnesses to it. In any case, the shackles of the family are so strong that truth may not come out of the chains. There would be no other eye witnesses, except for members of the family.?

14. Although, the appellants have been convicted and sentenced by the learned trial Court, the subject matter of instant appeal. During course of hearing as well as while dictating the judgment when the lower court record has minutely been gone through, it is apparent that the then learned Presiding Judge had acted in unbecoming of a Judicial Officer wherein the learned Additional P.P. along with appellants active association is exposed. From the charge sheet, it is evident that altogether fifteen witnesses have been named including that of family members of Naiharwala of deceased, but the reason best known to the P.O. concerned,

neither summon was issued and served, nor warrant of arrest bailable, warrant of arrest non-bailable were issued against them and in likewise manner, the learned Additional P.P. also failed to pray before the Court for issuance of the same. The charge was framed on 30.06.2009 and the case of the prosecution was closed on 02.11.2009 and by such action justified the slogan œjustice hurried justice buried?. On account thereof, the learned trial Judge had prevented the sufficient material to come on record. Not only this, dubious character of the then Presiding Judge is itself evident from the order sheet dated 12.11.2009, whereunder he had allowed the prayer of the defence to get the handwriting of Y/1 and Y/2 marked for identification examined by handwriting expert at a cost of Rs. One thousand. However, the order sheet did not speak where the document was to be sent and by whom it was to be examined. Subsequently, the order dated 02.01.2010 speaks that the report from one Shivendra Nath Mishra has been received in sealed cover. How the documents have gone to Shivendra Nath Mishra is a matter of concern. The subsequent order dated 06.01.2010 discloses the fact that defence case was closed and without having any petition under Section 311 of the Cr.P.C. the learned Presiding Judge vide order dated 02.02.2010 had recalled the order not only the order rather the date and then facilitated the defence to examine Shivendra Nath Mishra, the so called handwriting expert as DW-2. Connivance of Additional P.P. noting down no objection over petition further bracered the illegal act of the then P.O.

15. In Selvi J. Jayalalithaa and Ors. vs. State of Karnataka and Ors. reported in 2014(1) PLJR (SC) 531 the Honble Apex Court considered the judicial impropriety and held:-

œ24. In Ravi Yashwant Bhoir v. District Collector, Raigad and Ors*., AIR 2012 SC 1339, while dealing with the issue, this Court held:

"37.. Legal malice" or "malice in law? means something done without lawful excuse. It is a deliberate act in disregard to the rights of others. It is an act which is taken with an oblique or indirect object. It is an act done wrongfully and wilfully without reasonable or probable cause, and not necessarily an act done from ill-feeling and spite. Mala fide exercise of power does not imply any moral turpitude.

It means exercise of statutory power for "purposes foreign to those for which it is in law intended." It means conscious violation of the law to the prejudice of another, a depraved inclination on the part of the authority to disregard the rights of others, where intent is manifested by its injurious acts. Passing an order for unauthorized purpose constitutes malice in law.?

(See also: Kalabharati Advertising v. Hemant Vimalnath Narichania and Ors., AIR 2010 SC 3745).

25. Thus, it is trite law that if discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith and the order becomes vulnerable and liable to be set aside.

26. Fair trial is the main object of criminal procedure and such fairness should not be hampered or threatened in any manner. Fair trial entails the interests of the accused, the victim and of the society. Thus, fair trial must be accorded to every accused in the spirit of the right to life and personal liberty and the accused must get a free and fair, just and reasonable trial on the charge imputed in a criminal case. Any breach or violation of public rights and duties adversely affects the community as a whole and it becomes harmful to the society in general. In all circumstances, the courts have a duty to maintain public confidence in the administration of justice and such duty is to vindicate and uphold the žmajesty of the lawŸ and the courts cannot turn a blind eye to vexatious or oppressive conduct that occurs in relation to criminal proceedings.

Denial of a fair trial is as much injustice to the accused as is to the victim and the society. It necessarily requires a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Since the object of the trial is to mete out justice and to convict the guilty and protect the innocent, the trial should be a search for the truth and not a bout over technicalities and must be conducted under such rules as will protect the innocent and punish the guilty. Justice should not only be done but should be seem to have been done. Therefore, free and fair trial is a sine qua non of Article 21 of the Constitution. Right to get a fair trial is not only a basic fundamental right but a human right also. Therefore, any hindrance in

a fair trial could be violative of Article 14 of the Constitution.

œNo trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the raison dŸetre in prescribing the time frame? for conclusion of the trial. Article 12 of the Universal Declaration of Human Rights provides for the right to a fair trial what is enshrined in Article 21 of our Constitution. Therefore, fair trial is the heart of criminal jurisprudence and, in a way, an important facet of a democratic polity and is governed by rule of law. Denial of fair trial is crucifixion of human rights. (Vide: Smt. Triveniben v. State of Gujarat, AIR 1989 SC 1335; A.R. Antulay and Ors, v. R.S. Nayak*, AIR 1992 SC 1701; Raj Deo Sharma (II) v. State of Bihar, (1999) 7 SCC 604; Dwarka Prasad Agarwal (D) by L.Rs. and Anr. v. B.D. Agarwal and Ors., AIR 2003 SC 2686; K. Anbazhagan v. Supdt. of Police, AIR 2004 SC 524; Zahira Habibullah Sheikh (5) v. State of Gujarat, AIR 2006 SC 1367; Noor Aga v. State of Punjab and Anr., (2008) 16 SCC 417; Capt. Amarinder Singh v. Parkash Singh Badal and Ors., (2009) 6 SCC 260; Mohd. Hussain @ Julfikar Ali v. State (Govt. of NCT of Delhi), AIR 2012 SC 750; Sudevanand v. State through CBI*, (2012) 3 SCC 387; Rattiram and Ors. v. State of M.P., (2012) 4 SCC 516; and Natasha Singh v. CBI, (2013) 5 SCC 741).?

16. In view of the above, I am of the considered opinion that the judgment of conviction and sentence is a product of malafide and as such is non-sustainable in the eyes of law. Hence, the same is set aside. Appeal is allowed. The matter is remanded back to the learned lower Court with a direction to procure attendance of all the charge sheet witnesses by whatever means may be and examine all of them and then and then only, will close the prosecution case, will take the statement of the accused and then proceeding with defence followed with hearing argument will pass judgment in accordance with law.

17. The office is directed to place the copy of judgment along with relevant order sheets (photocopy), respective petition filed on behalf of appellants (photocopy) before the Standing Committee for the purpose of taking appropriate disciplinary action against the then Presiding Judge occupying the status of the 1st Additional Sessions Judge, Purnia after tracing out proper identity.

18. Appellants namely Beer Narain Gupta and Gauri Devi are on bail, hence their bail bonds are cancelled with a direction to surrender before the learned lower Court. In case prayer for bail is made on behalf of all these appellants, the learned lower Court will consider the same in accordance with law.