

Shanti Devi Vs. the State of Bihar

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Court : Patna

Decided On : Apr-18-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) No. 143 of 2013

Appellant : Shanti Devi

Respondent : The State of Bihar

Judgement :

I.A. Ansari, J.

1. By the judgment, dated 28.01.2013, passed, in Sessions Trial No. 389 of 2008, by learned Ad hoc Additional Sessions Judge-V, Biharsharif at Nalanda, the appellant, Shanti Devi, along with co-accused, Bacchu Singh, stands convicted, under Sections 328 and 302 read with Section 34 of the Indian Penal Code. Following their conviction, the appellant, Shanti Devi, and the co-accused, Bacchu Singh, under Section 302 read with Section 34 of the Indian Penal Code, stand convicted, under order, dated 31.01.2013, to undergo imprisonment for life and pay fine of Rs. 10,000/- (Ten thousand) each and, in default of payment of fine, suffer simple imprisonment for three years. Following their conviction, under Section 328 read with 34 of the Indian Penal Code, the present appellant and the co-convict, Bacchu Singh, have been further sentenced to undergo rigorous imprisonment for 7 (seven) years and pay fine of Rs. 5,000/- each and, in default

of payment of fine, suffer simple imprisonment for one year, both the sentences having been directed to run concurrently.

2. The case of the prosecution, as unfolded at the trial, may, in a nut-shell, be described as under:

(i) Vimlesh Kumar Singh (since deceased) was married to Nitu Singh, daughter of Bacchu Singh (co-convict) and his wife, Shanti Devi (appellant). The marriage between Vimlesh Kumar Singh and Nitu Singh was solemnized on 24.04.2001. Nitu Singh died, on 22.10.2004, at her matrimonial house. On being called by his father-in-law, Bacchu Singh, Vimlesh Kumar Singh (since deceased) went, on 01.06.2005, to the residential house of his parents-in-law and, on the following day, i.e. on 02.06.2005, at about 9:00 PM, his mother-in-law, Shanti Devi (i.e. appellant herein) and other members of the family, namely, brother-in-law, accused Arun Singh, accused Arun Singhs wife, Devanti Devi, and accused Arun Singhs sister, Punari Kumari, came with meal on the roof of their house. Following them, Bacchu Singh, too, came, on the roof of their house, armed with gun and, on the point of gun, compelled Vimlesh Kumar Singh to take the meals. Upon taking the meals, Vimlesh Kumar Singh became ill and Vimlesh Kumar Singh, was, therefore, of the view that he had been administered poison by means of the meal, which he had been forced to take on the point of gun as has been described hereinbefore.

(ii) Thereafter, rumour spread that Vimlesh Kumar Singh had been poisoned by his in-laws. This brought Satyendra Singh, a co-villager of the appellant, to the scene, who, in turn, informed the family members of Vimlesh Kumar Singh, whereupon Vimlesh Kumar Singhs father, brother and others came and took Vimlesh Kumar Singh to Sadar Hospital, Biharsharif, for treatment. While Vimlesh Kumar Singh was lying in the said hospital for treatment, police were informed, police came and recorded the statement of Vimlesh Kumar Singh.

(iii) Treating the said statement of Vimlesh Kumar Singh as First Information Report, Islampur Police Station Case No. 73 of 2005 was registered, on 19.06.2005, under Sections 328/307/34/120B of the Indian Penal Code, against five named accused persons including the appellant herein. While remaining under

treatment, Vimlesh Kumar Singh died on 06.06.2005 and, thereafter, Sections 302/34 of the Indian Penal Code was added to Islampur Police Station Case No. 73 of 2005.

(iv) Inquest was held over Vimlesh Kumar Singhs dead body, which was also subjected to post mortem examination. Since the post mortem examination did not reveal any injury or specific cause of death, the viscera was preserved and, on completion of the investigation, charge sheet was submitted, under Section 328/302/34 of the Indian Penal Code, against accused Shanti Devi showing, in the charge sheet, accused Bacchu Singh, Arun Kumar Singh, Devanti Kumari and Punari Kumari, as absconders.

3. At the trial, when charges, under Sections 328 and 302 read with Section 34 of the Indian Penal Code, were framed against the appellant, Shanti Devi, and her husband, Bacchu Singh, they pleaded not guilty to the charges so framed.

4. In support of their case, prosecution examined altogether five witnesses including the doctor (PW 5), who had performed the post mortem examination and the police officer (PW 2), who had conducted the investigation.

5. On conclusion of the examination of the prosecution witnesses, learned trial Court examined the two accused persons, namely, Shanti Devi and Bacchu Singh, under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, they denied to had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial.

6. No evidence was adduced was adduced by the defence.

7. Having, however, held the two accused persons, namely, Bacchu Singh and Shanti Devi, guilty of the offences under Section 302 and 328 read with Section 34 of the Indian Penal Code, learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

8. Aggrieved by her conviction and the sentences, which have been passed against her, the appellant, Shanti Devi, as a convicted person, has preferred this

appeal.

9. We have heard Mr. Ajay Kumar Thakur, learned counsel appearing on behalf of the appellant, and Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor for the State.

10. While considering the present appeal, it is pertinent to point out that according to the doctor (PW 5), who had conducted post mortem examination, on 06.06.2005, at about 5:30 PM, on the dead body of Vimlesh Singh, he had found as follows:

œ(i). Rigour mortis present in upper limbs.

(ii). Intra I.V. line present right. Fobe eye congested and face swollen.

ON DISSECTION:

Skull intact, brain menineges intact, pale congested.

Neck- no external internal injury present.

Chest- intact, Lungs intact.

Heart-both chambers contain few C.C. of blood.

Abdomen- stomach contains whitish liquied 30 ouns, Liver, spleen, Kidney intact and congested.

Bladder-empty.?

11. In the opinion of the doctor (PW 5), death had occurred due to suspected poisoning. The doctor, therefore, clarified, in his evidence, that any opinion with regard to the cause of death can be given upon receipt of the report of the viscera preserved for pathological and chemical examination of the contents.

12. From the above findings, it is crystal clear that there was no external or internal injury found to have been caused to Vimlesh Kumar Singh.

13. However, as the death of Vimlesh Kumar Singh was suspected to have been caused by poison, the viscera was preserved for pathological and chemical examinations.

14. At the trial, report of pathological and/or chemical examination of the viscera, so preserved, was not brought on record. Consequently, the cause of death of Vimlesh Kumar Singh remained, and still remains, completely unknown.

15. In the backdrop of the above facts, let us, now, turn to the other witnesses of the prosecution.

16. With regard to the above, it needs to be noted that PW 3 is the brother of Vimlesh Kumar Singh. This witness's evidence is that the present appellant, along with her family members, had, at the point of gun, compelled Vimlesh Kumar Singh to take meals and, upon taking meals, Vimlesh Kumar Singh's condition deteriorated, Vimlesh Kumar Singh was shifted to hospital, but he died after having made a statement, which had been recorded by the police, and, later on, this statement was treated as fardbayan.

17. Broadly in tune with the evidence of PW 3 is the evidence given by PW 1.

18. When the evidence of PW 3 is closely scrutinized, it becomes crystal clear that his evidence is nothing, but hearsay and presumptuous in nature. His evidence is, therefore, neither admissible nor reliable. On no better footing stands the evidence of PW 1.

19. So far as PW 2 is concerned, he is the Investigating Officer, who had recorded the statement of Vimlesh Kumar Singh. The said statement, as already mentioned above, has been treated as the First Information Report and PW 4 is the police officer, who had submitted the charge sheet.

20. The learned trial Court has treated the contents of the fardbayan (Exhibit-1) as the dying declaration under Section 32 of the Evidence Act. The fact, however, remains that whether Vimlesh Kumar Singh died natural or unnatural death remains unknown. What caused his death could not have been held to have been determined and, therefore, when the cause of death could not be determined, it

clearly followed that prosecution miserably failed to prove that Vimlesh Kumar Singhs death was homicidal in nature.

21. In the circumstances mentioned above, the present appellant could have, by no means, been convicted of an offence as serious as murder.

22. Situated thus, we are clearly of the view that the evidence on record was wholly inadequate to convict the accused-appellant and she ought to have been acquitted.

23. Because of what have been discussed and pointed out, this appeal needs to be allowed.

24. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against her by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which she stands convicted of, and she is hereby accordingly acquitted of the same.

25. Let the accused-appellant be set at liberty, forthwith, unless she is required to be detained in connection with any other case.

26. The Registry shall, forthwith, send, a copy of this judgment and order to the learned trial Court along with the Lower Courts Record.

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