

Binay Kumar Sinha @ Chhote Vs. State of Bihar

Binay Kumar Sinha @ Chhote Vs. State of Bihar

SooperKanoon Citation : sooperkanoon.com/123602

Court : Patna

Decided On : Dec-06-2005

Judge : Manohar Lal Visa and Sadanand Mukherjee, JJ.

Acts : Indian Penal Code (IPC) - Sections 302, 307, 324, 326 and 498A

Appeal No. : Criminal Appeal (DB) No. 434 of 2001

Appellant : Binay Kumar Sinha @ Chhote

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Behari Prasad, Adv.Pankaj Kumar, Adv.

Advocate for Pet/Ap. : Mihir Kumar Jha, Sr. Adv. and Vijay Kumar Verma, Adv.

Disposition : Appeal dismissed

Prior history : Sadanand Mukherjee, J. 1. This Criminal Appeal is directed against the judgment and order of conviction dated 27.8.2001 passed by Mr. Sita Ram Pandey, 6th Additional District and Sessions Judge, Patna in Sessions Trial No. 1056 of 1999, whereby and whereunder, the appellant Binay Kumar Sinha was convicted under Sections 302 and 498A of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302 of the IPC and further sentenced to undergo R.I. for three years under Section 49

Judgement :

Sadanand Mukherjee, J.

1. This Criminal Appeal is directed against the judgment and order of conviction dated 27.8.2001 passed by Mr. Sita Ram Pandey, 6th Additional District and Sessions Judge, Patna in Sessions Trial No. 1056 of 1999, whereby and whereunder, the appellant Binay Kumar Sinha was convicted under Sections 302 and 498A of the Indian Penal Code and sentenced to undergo R.I. for life under Section 302 of the IPC and further sentenced to undergo R.I. for three years under Section 498A of the IPC. The sentences were to run concurrently.

2. The prosecution case, in brief, is that an FIR was lodged by one Lalit Mohan Prasad, brother of the deceased Raj Kumari Devi in emergency ward of PMCH Patna, stating therein, that the sister Raj Kumari Devi was married to accused Binay Kumar Sinha in the year, 1965. Two sons and daughter were born out of the aforesaid wedlock. Earlier in the year, 1990 accused Binay Kumar Sinha got service in the Patna Registry Office. Thereafter he was transferred to Bikram Registry Office. The prosecution case further is that there was good relationship between the deceased Raj Kumari Devi and her husband accused Binay Kumar Sinha prior to the aforesaid transfer. Later on, after his transfer relationship between two was soured and accused stopped giving any money to the deceased Raj Kumari Devi for her livelihood to maintain minor children. It is also disclosed that the accused had stopped visiting his deceased wife. The deceased used to inform her brother, the informant, that during occasional and casual visit of her husband she was being tortured and further assaulted by her husband. The informant-brother of the deceased used to visit the house of the accused to convince him for mending himself. However, his efforts went in vain and the deceased-wife was subjected to assault and torture. The deceased was maintaining herself and her children by collecting rent from the tenants. The accused, however, used to abuse the tenant and resisted the tenants from giving rent to the deceased. Subsequently, in the year, 1998 accused Binay Kumar Sinha was transferred to Barh from Bikram Registry office. Thereafter the accused completely stopped giving any money to the deceased Raj Kumari Devi for her maintenance and also stopped to bear the educational expenditure of the minor children. It was disclosed that accused Binay Kumar Sinha developed illicit

relationship with some other lady and he wanted to remove his wife from the way for getting married to another woman. The deceased used to be threatened with dire consequences. On 19.6.1999 at about 9 p.m. accused Binay Kumar Sinha caused burn injury by pouring kerosene oil on his wife Raj Kumari Devi. On getting information the informant rushed to the house of the deceased and found the incident of burning of the deceased in a room being caused by accused Binay Kumar Sinha by pouring kerosene oil. Seeing the informant, accused Binay Kumar Sinha fled away. Thereafter, the informant brought the deceased Raj Kumari Devi to the Emergency ward of PMCH and in the PMCH Raj Kumari Devi succumbed to injuries.

3. The police recorded Fardbeyan (Ext. 5) of the informant (PW 6) in presence of witness Bimal Bihari Srivastava (PW 1) and on the basis of the Fardbeyan a case was registered firstly under Sections 498A, 307, 324 and 326 of the Indian Penal Code against accused Binay Kumar Sinha vide Jakkanpur P.S. Case No. 60 of 1999 and thereafter Section 302 of the Indian Penal Code was added. The police after investigation submitted charge-sheet under Sections 498A and 302 of the Indian Penal Code against accused Binay Kumar Sinha. After charge was framed under Sections 302 and 498A of the Indian Penal Code, seven prosecution witnesses have been examined. The defence had not examined any defence witness, however, seven registered sale deeds executed in favour of the deceased Raj Kumari Devi @ Raj Kumari Sinha of the year, 1990 have been produced. The defence of the accused was categorical denial of the entire allegation. The defence case is that the accused-appellant has been falsely implicated by the informant.

4. The point for consideration is whether conviction and sentence for the offences under Sections 302 and 498A of the Indian Penal Code can be maintained under the facts and circumstances of the case.

5. During trial prosecution has examined altogether seven witnesses. PW 1 Bimal Bihari Srivastava has stated that there was strained relationship between the deceased and the accused persons and earlier there was settlement of the disputes between the two at Jakkanpur Police Station. In his evidence he has

stated that after getting information regarding the incident from the informant, this witness rushed to the place of occurrence and found the burning condition of the deceased. His further evidence is that he had found the police jeep near the place of occurrence and the deceased had been taken to PMCH, where the deceased had succumbed to injuries. This witness also put his signature on the written statement and thus FIR was drawn. The evidence of this witness goes to show that on 19.6.1999 at 6.30 p.m. after hearing the cry of the deceased, he had rushed to the place of occurrence. His evidence regarding statement before the police on the strained relationship indicates only a circumstance. He is merely a witness on the point of burning of the deceased. He had categorically given evidence to the effect that on 19.6.1999 he had seen the police on the place of occurrence and in the PMCH he had given statement. The evidence of this witness thus is mainly on the fact that he had found the deceased in burning condition.

6. PW3 Rajiv Kumar also heard about the incident on 19.6.1999 stating that he learnt from his uncle (Mousa) Lalit Mohan, the informant, regarding incident of burning of Raj Kumari Devi by sprinkling kerosene oil. His evidence is that when he reached at the P.O. Raj Kumari Devi had been taken to PMCH. He saw the burnt condition of the victim at PMCH where she was being treated. His evidence further goes to show about relationship between Raj Kumari Devi and her husband. He has also stated about earlier incident of assault and torture by accused on Raj Kumari Devi. He is also a witness on the inquest report. On the inquest report he had put his signature as Ext. 1/1. He has also proved the inquest report having been prepared by Ramanuj Singh S.I. of Police (Ext. 3). His evidence is mainly on the point of inquest, as also having seen the deceased in burnt condition.

7. PW 4 Krishna Mohan Prasad is brother of the deceased. His evidence is mainly on the bitter relationship between his sister and the accused. His evidence clearly indicates that accused Binay Kumar Sinha used to assault and torture the deceased and on receiving information about the deceased having been killed by the accused persons he rushed to PMCH on 20.6.1999 and found the sister dead. He has also stated about illicit relationship between accused Binay Kumar Sinha

and another woman. The evidence of this witness shows that he is mainly a witness who had seen the deceased in dead condition. His evidence confirms strained relationship between the deceased and her husband.

PW 4 is the full brother of the deceased Raj Kumari Devi. Although he had not seen the accused Binay Kumar Sinha causing burn injury to the deceased Raj Kumari Devi, the evidence relates to cruelty and torture inflicted on the deceased. PW 4 has stated that at the relevant time, he was in Bakhtiyarpur. On 19.6.1999 he got telephonic information regarding burn injury caused by accused Binay Kumar Sinha. On 20.6.1999 this witness came to PMCH and saw the dead body of his sister. Apart from torture and assault on the deceased, this witness has also stated that the accused used to threaten the deceased to kill her. At the time of cremation of dead body this accused was not present. In his evidence he has stated that on 20.12.1998 a Sanha was lodged in the police station regarding assault committed by the accused Binay Kumar Sinha upon the deceased. Thus, the present witness adduced the evidence mainly on the point of torture and assault used to be made on the deceased and also burn injuries on the person of the deceased.

8. PW 5 Arvind Kumar Sinha, is also full brother of the deceased. On 19.6.1999 in the evening at about 7-7.30 p.m. this witness was present at the residence of his brother. A telephonic information was received that the deceased Raj Kumari Devi was being assaulted by her husband. On his information PW 5 Arvind Kumar Sinha and his brother Lalit Mohan Prasad (PW 6) the informant, rushed to the place of occurrence which was the house of the accused on scooter. While this witness remained outside with the scooter, his brother, the informant (PW 6) entered into the house and after some time he found that his sister Raj Kumari Devi with burn injury was being brought by his brother, the informant (PW 6) from the first floor of the house. This witness also heard the minor son of the deceased namely, Gaurav saying that his mother was caused burn injury by his father. Thereafter, according to his version a Mobile Police Van came and the deceased Raj Kumari Devi was brought to PMCH on Mobile Police Van. The evidence of this witness is that the accused got service in the year, 1990 in Patna Registry Office and thereafter he was transferred to Bikram Registry Office and Barh. The

evidence of this witness is mainly on the point of having seen the burn injury on the person of the deceased, confirming the version of the informant (PW 6) that PW 6 had come inside the house and saw the actual commission of offence as also the deceased being taken to hospital in the Mobile Van of the Police. Although this witness does not figure as an eye-witness to the occurrence, his consistent approach was that after his transfer from Patna, the husband of the deceased used to assault and torture the deceased. The accused also stopped giving any amount to the deceased for her maintenance and livelihood. His further evidence is that his sister, the deceased, used to maintain herself by the rent collected by her from the tenants of the house. PW 5 has supported the version of the informant (PW 6) that in the year 1998 after the deceased having been assaulted and tortured by the accused an information was also lodged before the police and the police made Sanha Entry on the basis of the written information given by the deceased. Thereafter, the accused had promised and assured that in future he would mend himself and would not assault his wife and in this regard he also made an endorsement on the application on which S.D. Entry was made. In course of evidence of the informant, the aforesaid application of the deceased has been marked as Ext. 4 and the endorsement of the accused that he would not assault, humiliate and assault the deceased in way has been marked as Ext. 4/1 and the signature of the informant has been marked as Ext. 4/2 on the aforesaid application. PW 5 categorically supported the prosecution case and his evidence is consistent with the evidence of the informant (PW 6) who is an eye-witness to the occurrence.

9. The informant PW 6 Lalit Mohan Prasad is the full brother of the deceased. He is the maker of the FIR (Ext. 5). The occurrence took place on 19.6.1999 at about 7.30 p.m. His evidence is fully consistent with the evidence of PW 5. He has stated that he was at his residence at that time. He got information on telephone that the deceased. Raj Kumari Devi, was being assaulted by her husband Binay Kumar Sinha. His further evidence is that he along with his younger brother Arvind Kumar Sinha (PW 5) rushed to the house of his sister on a scooter. While his brother remained outside on a road along with the scooter, he rushed inside the room of his sister on the first floor of the house and when he opened the door, he found his sister Raj Kumari Devi burning and the accused Binay Kumar Sinha was

found pouring kerosene oil on the body of the deceased Raj Kumari Devi. The informant also found the accused Binay Kumar Sinha fleeing away. The informant further said in his evidence that he put a blanket on the body of the deceased and while he was carrying down his sister from the first floor of the house, the mobile police reached. The informant brought his sister to PMCH on Mobile Police Van. Raj Kumari Devi was admitted in the hospital. In course of her treatment Raj Kumari Devi died.

10. The evidence of this witness is not only on the point of occurrence but also on the point of relationship between his sister and her husband. The beginning of the marital relationship was good. The husband of the deceased got service in the Patna Registry Office in the year 1990 and later on he was transferred to Bikram Registry Office and thereafter in the year 1998 he was transferred to Barh. The humiliation, torture and assault on the deceased began when the accused developed illicit relationship with another lady. The informant (PW 6) in his further evidence confirmed the version of his brother (PW 5) stating that the deceased was denied to be maintained and she somehow survived by collecting rent from the tenants who were inducted in a part of the house of the accused. The informant (PW 6) has established earlier bitter relationship by saying that on 20.12.1998 when the accused assaulted his wife, the police was informed and Sanha Entry (Exts. 8 and 8/1) was made on the written information given by the deceased. Since the accused was brought into the police station he gave in writing that in future the deceased would not be tortured and humiliated on the application of the deceased (Ext. 4) and an endorsement was made by the accused Binay Kumar Sinha (Ext. 4/1) stating that he would not humiliate and torture the deceased in any way. The aforesaid S.D. Entry Nos. 635/98 and 636/98 dated 20.12.1998 (Exts. 8 and 8/1) confirm the version of the informant regarding the previous torture and assault which is a strong circumstance against the accused person.

In course of cross-examination this witness has not deviated from his evidence-in-chief. He was confronted with his statement before the police, he had categorically stated that he had told the police about previous statements given by him. PW 7 the I.O. also confirms the aforesaid version of the informant in cross-examination.

He had stated about receipt of the information on telephone regarding assault on her sister by accused Binay Kumar Sinha. There is minor inconsequential departures in the statement of this witness when compared with the evidence of the I.O. (PW 7). The evidence of the informant on the point of occurrence however has not been disturbed by any contradiction or otherwise on the material particulars. The informant had stated about cries of public regarding the incident of burning, although he had not named any such person which is but natural under the circumstances. The evidence of the informant sometimes deviating from or contradicting the minor details does not affect the prosecution case. He has also denied the motive of falsely implicating the accused person on the suggestion of the defence that the aforesaid accused Binay Kumar Sinha had repeatedly chided him for realising the rent from the tenants.

Thus it appears that on the point of occurrence this witness has given essential and relevant details in the FIR and his evidence is in conformity with the FIR besides that his evidence on the broad probabilities establishes the prosecution case despite being the solitary eye-witness of the occurrence.

11. It is worthwhile to discuss the medical evidence in this case. PW 2 Doctor Arvind Kumar Singh had conducted the post-mortem examination on the dead body of the deceased Raj Kumari Devi. The post-mortem examination was done on 20.6.1999 and the report has been marked as Ext. 2. The doctor has stated that death of the deceased Raj Kumari Devi had taken place due to extensive burn injury. Dr. Arvind Kumar Singh in his evidence had stated that he conducted the post-mortem examination on the dead body of Raj Kumari Devi, aged about 42 years, wife of Binay Kumar Sinha and found the following injuries:

On examination ante mortem demroepidermal burn injury seen all over the body except part of buttock, umbilicus of perineum, and inner both thighs. No sluf or pus seen on the deceased. All the viscera in general found congested, heart right full, left empty, stomach contained semi-digested rice. The cause of death is said to be extensive burn injury. The postmortem report has been proved as Ext. 2. The evidence of this witness in cross-examination regarding death due to burn injury is intact and has not been impeached.

12. PW 7 Shashibala Jaiswal, the ASI is the I.O. of the case. Her evidence indicates that she was at the relevant time posted at Jakkanpur Police Station and received Fardbeyan of the informant Lalit Mohan Prasad and on the basis of the aforesaid Fardbeyan formal FIR (Ext. 5) was lodged. This witness was entrusted with the investigation. She inspected the P.O. in the first floor of the house. In the P.O. room where the deceased was said to have been burnt, the I.O. found sign of burn on the wall of the room. There was also light smell of smoke in the room where occurrence took place and she also found mark of burning on the surface and there was also light smell of kerosene oil in the P.O. room (stair room of the house). This witness was informed at the P.S. that the deceased had died at PMCH Inquest report (Ext. 3) had already been prepared. The I.O. has stated in her evidence regarding Thana Entry No. 635 dated 20.12.1998 (Ext. 8) which was earlier made showing that one Raj Kumari Devi wife of Binay Kumar Sinha resident of Chiraiyatarn had given information to the police on telephone that she was assaulted by her husband about which discussion has been made in the earlier paragraphs. This witness stated minutest details about the place of occurrence. This witness had also been cross-examined regarding earlier Sanha entries and the defence has not contradicted the prosecution evidence on this point. The evidence of this witness does not show that the informant had given minute particulars. But the statements of the witness (PW 6) before I.O. are consistent with the broad particulars in his evidence. This witness has stated about informant having given statement before him that with the help of neighbouring people he had taken his sister to PMCH. Although the informant has not specifically stated about arrival of mobile jeep nor he has stated about minutest details of the earlier occurrence of assault to this witness which clearly establishes the earlier circumstance of bitterness between the deceased and her husband for which Sanha entry has been made, the broad facts have been stated on these aspects by the informant to the police. The I.O. has been cross-examined at length on the point of arrival of the informant as well as other witnesses at P.O. and also regarding the informant of assault on the deceased by her husband received on phone and the same was also narrated to the I.O. which confirms the veracity of the prosecution case. The version of the witnesses, namely, PW 3, PW 4 and PW 5 before I.O. with reference to their previous statements has been confirmed in the

evidence of I.O. on material particulars. The aforesaid discussion on the evidence belies the contention of the defence that prosecution has manufactured story regarding strained relationship, torture and cruelty between husband and wife. It is true that seven registered deeds of sale have been got proved by the defence (Ext. A to Ext. A/6), but the aforesaid sale deeds which were proved to show good relationship between two indicate that these were executed at a time in the year, 1990 when the relationship was good. The application of the deceased Raj Kumari Devi which went into making of Sanha Entry No. 635 dated 20.12.1998 (Ext. 8) clearly disclosed that the police had received information regarding torture and assault earlier made by accused Binay Kumar Sinha. Another Sanha Entry (Ext. 8/1) goes to show that the police after verification of the genuineness of the Sanha Entry No. 636 brought accused Binay Kumar Sinha along with the deceased, but the police was requested to give one chance to the accused Binay Kumar Sinha to mend himself. The application of the deceased was marked as Ext. 4 and the signature of Binay Kumar Sinha on the application was marked as Ext. 4/ 1. signature of the informant was marked as Ext. 4/2, on the above cogent materials, Sanha Nos. 635 and 636 (Exts. 8 and 8/1) bearing the aforesaid admission of accused Binay Kumar Sinha pursuant to the earlier occurrence cannot be said to be forged and fabricated.

13. The defence has led emphasis on the testimony of the informant being a solitary witness. It has been laid down in several decisions and in the case of Sunil Kumar v. The State Government of NCT of Delhi, reported in IV (2003) CCR 239 (SC) : (2004) 1 SCC 1055, that the Court can and may believe on the testimony of a single witness provided if he is reliable and there is no impediment in convicting a person in the sole testimony of the single witness. The Court is concerned with the quality and not on the quantity of the evidence which is necessary for proving or disproving the fact. There may be some minor contradictions, inconsistency, exaggerations and embellishments in the minor details but that is not enough to demolish the prosecution case.

14. Contention of the defence that the deceased had caught fire in the process of cooking food does not appear to probable as the I.O. had not found any stove in the P.O. which was a store room and mark of burn on the walls of the room was

found by the I.O. This corroborates the prosecution case regarding place of occurrence, besides that in the cross-examination of the witness it was not suggested that the deceased caught fire in the process of cooking food in the kitchen. There is no cogent evidence available on record to show that the informant was realising rent from the tenant in occupation of the ground floor of the house of the accused which was said to be the ground for false implication. No witness has been produced by the defence to show that the informant was realising rent from the tenant of the accused hence suggestion given on behalf of the defence does not appear to be convincing one. The death of the deceased Raj Kumari Devi caused due to burn injury has not been denied by the defence. Any probability of having such burn injury otherwise is ruled out in view of discussion made above. Essential and relevant details in the prosecution evidence despite solitary evidence of the informant on the point of occurrence proved the case beyond doubts. The evidence of only eyewitness being the informant is quite consistent and reliable and the same cannot be doubted on the facts and circumstances stated above.

15. In view of cogent and reliable evidence as discussed above, the conviction and sentence of the appellant Binay Kumar Sinha cannot be interfered with.

In the result, finding no merit, the appeal is dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com