

Binod Kumar Nonia and Anr Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Mar-19-2015

Appellant : Binod Kumar Nonia and Anr

Respondent : State of Jharkhand

Judgement :

Criminal Appeal (D.B) No.1303 of 2004 with Criminal Appeal (D.B) No.1384 of 2004 with Criminal Appeal (D.B) No.1439 of 2004 ----- Against the judgment of conviction and order of sentence dated 12.7.2004 passed by the Additional Sessions Judge III, Dhanbad in S.T.No.564 of 2002. ----- 1.Anita Kumari 2.Sumitra Devi.....Appellants [in Cr. App.(D.B) No.1303 of 2004] 1. Binod Kumar Nonia 2.Poresh Kumar @ Poresh Kumar Nonia.....Appellants [in Cr.App.(D.B) No.1384 of 2004] 1.Azadi Nonia 2. Sita Devi 3. Rekha Devi ...Appellants[in Cr. App.(D.B) No.1439 of 2004] V E R S U S State of Jharkhand..... Respondent (in all cases) For the Appellants: Ms. Priya Shresth (Amicus Curiae) For the State :Mr. H.P.Singh, A.P.P(in Cr.App.No.1303 of 2004) For the State :Mr.S.K.Pandey,APP (in Cr.App.No.1384 of 2004) For the State :Ms.Laxmi Murmu,APP(in Cr.App.No.1439 of 2004) For the Informant : Mr.Pratik Sen, Advocate P R E S E N T THE HONBLE MR. JUSTICE R. R. PRASAD THE HONBLE MR. JUSTICE R. N. VERMA By Court: These appeals are directed against the judgment of conviction and order of sentence dated 12.7.2004 passed by the Additional Sessions Judge III, Dhanbad in S.T. No.564 of 2002 whereby and hereunder the court while acquitting the appellants, Nathuni Nonia and

Shanker Belder did find other seven appellants guilty for committing murder of Rekha Devi @ Punam Devi and accordingly, convicted them for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life. The case of the prosecution is that the informant Binod Belder, P.W.2, brother of the deceased Rekha Devi @ Punam Devi, had gone to his sister's in-laws place on 1.8.2002 where he was informed by his sister that she is being assaulted by her husband who has repeatedly been saying that he will take another marriage. On 2.8.2002 he left for Deoghar. On 5.8.2002 Poresh Nonia (one of the appellants) came to his house and informed that his sister has died on 4.8.2002 on account of receiving burn injury. When he came to his village on 6.8.2002, he was told by his niece Neha Kumari (daughter of the deceased) that on 4.8.2002 an altercation took place in between her grand father and father Nathuni Nonia and Azadi Nonia. During that altercation, the deceased Rekha Devi when intervened in the matter, Rekha Devi (one of the appellants) Phuwa of P.W.1 started altercating with the deceased by saying that she is not bearing male child. In that course, Sita Devi (one of the appellants) the grand-mother of P.W.1 started altercating with the father of P.W.1 during which Rekha Devi (Phuw of P.W.1) also joined. During that course, grand-mother Sita Devi assaulted her mother Rekha Devi (deceased) with a piece of stone (meant for grinding spices) and the appellant Rekha Devi also started assaulting her mother. Thereupon the appellant Poresh Nonia pushed the deceased from the stair. Meanwhile, the appellants Sumitra Devi and Anita Kumari, another Phuwas of P.W.1 came from a place known as Godhar and started abusing the mother of P.W.1. The appellant Anita Kumari by pulling hair of her mother assaulted the deceased. Meanwhile, grand-mother, Poresh Nonia and Binod Nonia (both uncle of P.W.1) caught hold of hand of the deceased and the appellant Rekha Devi, poured K. Oil over the deceased and Sita Devi, the grand-mother of P.W.1 put her on fire. At that point of time, Azadi Nonia father of P.W.1 was sitting over the stair to whom she requested to save her life but he did not do anything rather said that he will be taking another mother for her. While her mother was burning, she was shouting for help. Meanwhile, her Phupha Shanker Chauhan (Belder) came and poured water over the deceased. Thereafter grand-mother, father Azadi Nonia and Shankar Chauhan (Belder) took the deceased to hospital. Meanwhile, Anita

Kumari and Sumitra Devi washed off the room. After the occurrence, Neha Kumari, daughter of the deceased along with other two sisters came to her maternal grand-fathers house where she informed to her uncle Binod Belder (P.W.2), who had returned home from Deoghar on 6.8.2002 about the occurrence. Accordingly, Binod Belder, P.W.2 submitted a written report (Ext.1) before Jogta police station, upon which a case was registered against nine accused persons. The matter was taken up for investigation by Ram Nandan Prasad (P.W.16), who after holding inquest on the dead body of the deceased on 5.8.2002 sent the dead body for post mortem examination which was conducted by Dr. Shailendra Kumar (P.W.8). The doctor during post portem examination did find Dermo on epidermal ante mortem burn injuries all over the body of the deceased. Scalp and hairs were partly burnt and were sinzed. The Doctor issued post mortem examination report (Ext.2) with an opinion that death was caused due to shock as a result of hundred per cent burn injury. The Investigating Officer after completion of the investigation, submitted charge sheet against all the nine accused persons, upon which cognizance of the offence was taken. When the case was committed to the court of sessions, all the accused persons were put on trial, during which the prosecution examined altogether 16 witnesses. Of them P.W.1, Neha Kumari, who happens to be the daughter of the deceased, is the sole eye witness. P.W.2 Binod Belder, the informant, maternal uncle of P.W.1 has derived knowledge about the occurrence from P.W.1. Similar is the case with P.W.3, Budhia Devi, and P.W.4 Rajesh Chauhan, who also derived knowledge from P.W.1. P.W.5 Dr. A.N.Das had treated the deceased while she had been hospitalized. According to him, she had received 80% burn injury and smell of K.Oil was coming from the entire body. Similar is the testimony of P.W.6 Sushil Kumar, Compounder. P.W.7 Reshela Jha, Nurse has testified that the deceased was brought to hospital by her mother-in-law, husband and other persons. P.Ws 9, 10,11, 12 and 13 have been declared hostile. After closure of the prosecution case, incriminating materials appearing against the appellants were put to the accused persons under Section 313 of the Code of Criminal Procedure which they denied. The defence in support of its case that the deceased caught fire accidentally while she was cooking food has examined two witnesses, D.W.1 and D.W.2. Besides that, the statement (Ext.6) made by the deceased at the hospital

recorded by the A.S.I, S.N.Ram has also been brought on the record not by the defence but by the prosecution wherein she had stated that she caught fire accidentally while she was cooking food. The trial court while accepting the testimony of P.W.1 rejected the plea taken by the defence that the deceased had caught fire accidentally and thereby recorded the order of conviction and sentence against all the appellants except the appellants Shankar Belder and Nathuni Nonia, who were acquitted. Being aggrieved with the judgment of conviction and order of sentence, the aforesaid three appeals have been filed by different appellants- accused persons. Ms.Priya Shresth, who was appointed as Amicus Curiae, submitted that on one hand, the prosecution has come forward with the case that the appellants killed the deceased by putting her on fire whereas, on the other hand, the prosecution also come forward to place on the record the Fardbeyan of the deceased which had been recorded by one A.S.I, S.N.Ram from which it would appear that the deceased had made statement before the A.S.I that while she was cooking food, she caught fire accidentally resulting into her death but the trial court did not attach much importance to it, rather ignored it and thereby the trial court can certainly be said to have committed illegality in recording the order of conviction and sentence. As against this, learned counsel appearing for the informant submitted that the trial court has rightly rejected the fardbeyan of the deceased as she, according to evidence of the Doctor (P.W8), had received hundred per cent burn injury and in that event, she would not have been in the state of making any statement and thereby Ext.6 appears to be a suspicious document. Further it was submitted that P.W.1 daughter of the deceased happens to be natural witness, who has testified about the manner of occurrence, place of occurrence and nothing has been elicited by the defence to disbelieve the testimony of P.W.1 and thereby the trial court has rightly convicted the appellants. Having heard learned counsel appearing for the parties and on perusal of the record, we do find that the only eye witness is P.W.1, who has testified in the same manner as she had stated about the occurrence to the informant (P.W.2) mentioned in the fardbeyan (Ext.1). P.W.1 has testified that on 4.8.2002 at about 8 A.M. altercation took place in between her grand-father and father. Meanwhile, the appellant Rekha Devi came over there and started altercating with her father. Seeing all these her mother (deceased) intervened for pacifying them but grand

mother Sita Devi and Phuwa Rekha Devi instead of being pacified, started altercating with the deceased. In that course, Sita Devi assaulted with a piece of stone to her mother. Thereafter all the accused persons started assaulting her mother. She has further testified that Binod Nonia and Poresh Kumar Nonia (uncle of P.W.1) had had also altercation with her mother. It further appears from her testimony that after some times when the appellant Anita Kumari and Sumitra Devi (both phua of P.W.1) and Shankar, husband of Sumitra Devi came from other place, they also had had altercation with the deceased, at the time when her mother was cooking food. During that course, the appellant Anita Kumari and Sumitra Devi overturned utensils meant for cooking food. Meanwhile, all the appellants caught hold of the hand of her mother and then the appellant Rekha Devi poured K.Oil upon her mother and Sita Devi (grand- mother) put her on fire. Seeing all these things, when P.W.1 made request to her father, who was sitting over the stair to save her mother, he did not do anything, rather said to her that he will having another mother. Her mother started shouting, upon which Shankar put water on the person of the deceased and then, they brought her mother to the hospital. Thereupon P.W.1 when came to her maternal grand-father's house on the next day, she told about the occurrence to her maternal uncle Binod Belder (P.W.2) and also PW.3 Budhia Devi (maternal grand- mother of P.W.1) which is evident from the testimony made in paragraph 7. At the same time, P.Ws.2 and 3 have also stated the said fact in their evidences. On careful perusal of the evidence of P.W.1, we do find that nothing has been elicited on behalf of the defence to even cast a doubt over the testimony of P.W.1 rather on the other hand, her testimony gets corroboration from the medical evidence as the doctor has found burn injury right from top to bottom was to the extent of hundred per cent. Besides that, Dr.A.N.Das, P.W.5 as well as Sushil Kumar,P.W.6 have also testified that when the deceased had been brought to hospital, smell of K. Oil was coming from the body of the deceased. Thus, we do find that the case of the prosecution that the deceased was burnt to death by the appellants has been established by the prosecution. However, on the other hand, the defence has come forward with the case that it is a case of accidental death as the deceased, as per her fardbeyan (Ext.6), had caught fire accidentally while she was cooking food which does not seem to be correct as we do find that as per the case of the

prosecution, she had received burn injury from top to bottom whereas statement of the deceased does disclose that while she was cooking food by sitting, she caught fire on her sari. Had that happened like that, burn injury in all probability would not have been there over the head and face which, in fact, is there, as per the evidence of the doctor, as a result of which, hair got singed. That apart, if the occurrence would have taken place in the manner as has been stated by the deceased, smell of K. Oil as has been found by P.Ws 5 and 6 would not have been there on the injured. The smell of K.Oil coming from the body of the injured fully supports the case of the prosecution whereas it negates the statement of the deceased and thereby the trial court has rightly rejected the statement made by the deceased and has been found to be a suspicious piece of document. We, in the facts and circumstances stated above, endorse the same view. Now the question does arise as to whether all the appellants are guilty for committing culpable homicide We have already noted that right from the morning, altercation was going on in between the family members. Altercation got started in between grand-father and father of P.W.1. Subsequently, Rekha Devi also joined and when the deceased intervened to get the matter pacified, the appellant Rekha Devi and Sita Devi started altercation with the deceased. The reason for altercation has not been brought forward by the prosecution. However, we proceed by taking the case of the prosecution that there had been altercation in between the family members. In that altercation, uncle of P.W.1, Binod Kumar Nonia and Poresh Nonia also joined. Further we do find that after some time when Sumitra and Anita along with Shankar came from other place, they had had also altercation with the deceased, while she was cooking food. During that course, it is said that the appellant Rekha Devi put K.Oil on the person of the deceased whereas the appellant Sita Devi put her on fire. All this fact does indicate that other than Rekha Devi and Sita Devi had no mens rea to kill the deceased, rather, according to the case of the prosecution itself, they had had altercation with the deceased on account of some reason which has not been disclosed by the prosecution. Even if the testimony of P.W.1 is accepted that all other persons had caught hold of the deceased, they may not have caught hold the deceased with a view that she be killed. Thus, we, in the facts and circumstances, do not find that they had had any mean rea to kill the deceased, rather that mean rea was upon the appellants, Rekha Devi and Sita

Devi. Therefore, we do not find the appellants Azadi Nonia, Binod Kumar Nonia, Poresh Kumar Nonia, Sumitra Devi and Anita Kumari guilty for the offence punishable under Section 302/34 of the Indian Penal Code. Thus, the trial court seems to have committed illegality in recording the order of conviction and sentence against them. Their appeals stand allowed. Accordingly, they are acquitted of the charge. The appellants Anita Kumari and Sumitra Devi, who are on bail, are discharged from the liability of their bail bonds whereas other appellants, named above, are directed to be released forthwith if not wanted in any other case. So far the appellants Sita Devi and Rekha Devi are concerned, the prosecution has proved its case beyond all reasonable doubt and thereby they have rightly been convicted for the offence punishable under Section 302/34 of the Indian Penal Code. Accordingly, the judgment of conviction and order of sentence passed by the trial court against them is hereby affirmed. In the result, Cr.App. (D.B) No.1303 of 2004 and Cr.App. (D.B) No. 1384 of 2004 are allowed whereas Cr.App.(D.B) No.1439 of 2004 is partly allowed. (R.R.Prasad, J.) (R.N.Verma, J) Jharkhand High Court, Ranchi The 19th March, 2015, NAFR/ N.Dev

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