

Dr Arvind Kumar Alias Arbind Kumar Vs. The State of Jharkhand

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Court : Jharkhand

Decided On : Apr-30-2015

Appellant : Dr Arvind Kumar Alias Arbind Kumar

Respondent : The State of Jharkhand

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI Cr. Appeal (DB) No. 62 of 2015 WITH Cr. Appeal (DB) No.74 of 2015 ---- Nishi Rani Kerketta wife of late Sharad Soreng, resident of Sector - IVB, Qrs. No.1033, PS & PO Sector IV B.S. City, District Bokaro Jharkhand presently residing at Qrs. No.409/Sector - XIIC, PS & PO Sector - XII, District Bokaro Jharkhand. [Appellant in Cr. Appeal No.62 of 2015] Dr. Arbind Kumar @ Arbind Kumar son of Shri Shyam Bihari Singh, resident of Village Dhanauta PO & PS Maharajganj District Siwan (Bihar) and Qrs. No.111 Defence Colony Kankarbag, PO & PS Kankarbag District Patna (Bihar), presently residing at Qrs. No.D/7, SAIL Township Kiriburu PO & PS Kiriburu, District Singhbhum West. [Appellant in Cr. Appeal No.74 of 2015] -versus- The State of Jharkhand Respondent in both Appeals ---- CORAM: HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HONBLE MR. JUSTICE P.P. BHATT ---- For the Appellant/Petitioner : Mr. B.M. Tripathy, Sr. Advocate Mr. Naveen Kumar Jaiswal, Adv For the Respondent-State : Mr. Shekhar Sinha, A.P.P. For the Respondent No.2 : Mr. P.P.N. Rai, Sr. Advocate ---- Order No.6 Dated 30th April, 2015 Per Virender Singh, C.J.

(Oral) In all, there are two accused in this case namely Dr. Arbind Kumar and Nishi Rani Kerketta (wife of deceased Dr. Sharad Soreng). Dr. Arbind Kumar stands convicted for the charge of section 302 I.P.C, 201 I.P.C and also under Section 120-B I.P.C for being a party to the criminal conspiracy to commit murder of Dr. Sharad Soreng. Nishi Rani Kerketta is held guilty for the offence under section 302 I.P.C read with Section 120-B I.P.C for conspiring with her co-accused Dr. Arbind Kumar to commit murder of her husband Dr. Sharad Soreng. 2 Being aggrieved of the impugned judgment of conviction and sentence dated 4th December, 2012, both the accused have filed their two separate appeals, viz. Cr. Appeal (DB) No. 62/2015 filed by Nishi Rani Kerketta and Cr. Appeal (DB) No. 74/2015 by Dr. Arbind Kumar. Both are now praying for suspension of sentence during the pendency of the appeal.

2. At the very outset, Mr. Tripathy, learned Senior Counsel, submits that he does not press the prayer for suspension of sentence qua Dr. Arbind Kumar, the appellant in Cr. Appeal (DB)No. 74/2015 at this stage. Consequently, prayer declined as not pressed.

3. Mr. Tripathy, however, while praying for suspension of sentence qua Nishi Rani Kerketta in Cr. Appeal (DB) No. 62/2015, vehemently contends that the evidence of conspiracy as brought forward during the trial by the prosecution through PW7Stela Shoren and PW10Amrit Soreng, the father of the deceased and happens to be one of the signatories of F.I.R lodged by the appellant herself on 22nd May, 2012, is not at all convincing inasmuch as on certain material aspects, their evidence during trial is different from the one when they were examined by Investigating Officer under section 161 of the Code of Criminal Procedure, 1973 (for short Cr.P.C), which fact is evident from the evidence of PW13Roshan Guria, Dy.S.P, first Investigating Officer of the present case.

4. Mr. Tripathy submitted that the police had swung into motion on the first information report by the appellant in which she had raised finger of suspicion on Dr. Arbind Kumar, therefore, she could not conspire with him for committing the murder of her 3 husband. According to Mr. Tripathy, it is when the investigation was half way through, it took U turn towards the present applicant- appellant on

the asking of P.W. Amrit Soreng, the father of the deceased, who has developed hatred for her, may be because of strained relation between the husband and the wife.

5. Mr. Tripathy further contended that call detail report, on which the prosecution is banking very heavily to prove the charge of conspiracy against the appellant, is also not proved strictly in terms of section 65B(4) of the Indian Evidence Act. Not only that, there is no cogent evidence available on record to connect that the present appellant had ever talked to Dr. Arbind Kumar, her co-accused, on his mobile phone from her mobile phone.

6. Primarily pointing out the aforesaid flaws crept in the prosecution case during the trial, Mr. Tripathy wants to impress upon the Court that the case against appellant Nishi Rani Kerketta is not free from doubt, therefore, she deserves the concession of suspension of sentence during the pendency of the instant appeal, more so when she remained on bail during the trial also.

7. Prayer made herein is vehemently opposed by Mr. Sinha, learned Additional Public Prosecutor, who is assisted by Mr. P.P.N. Rai, learned Senior Counsel appearing for the father of the deceased.

8. Learned Additional Public Prosecutor submitted that on the face of it, it appears to be a heinous crime in which applicant- appellant being the wife of the deceased has played a very active role in eliminating her husband, who had noticed something objectionable on the part of the applicant-appellant as she was carrying on with Dr. 4 Arbind Kumar, her co-accused and this was the main cause of tiff between the deceased and the appellant, and for this reason she was staying with her parents at Bokaro, but, brought to Kiriburu by the deceased on the date of occurrence itself, there was wedding anniversary of the couple on that very date.

9. Learned State Counsel submitted that the evidence collected by the prosecution from the phone details is that when the appellant was staying with her parents at Bokaro, she was in constant touch with Dr. Arbind Kumar and that even on 19th, 20th and 21st May, 2012, she had talked to Dr. Arbind Kumar for a reasonably good period. Learned State Counsel submitted it is the case of the appellant

herself, who happens to be the first informant, that her husband (deceased) had stayed at her parental house at Bokaro for two days prior to 21st May, 2012, i.e. 19th May, 2012 and 20th May, 2012 and even during this period also, she remained in constant touch with Dr. Arbind Kumar on mobile phone from Bokaro itself. Learned State Counsel submitted that one of the incoming calls dated 20th May, 2012 goes to show that Dr. Arbind Kumar had talked to the appellant for more than half an hour (exactly 3382 seconds).

10. Learned State Counsel further submitted that apart from documentary evidence, prosecution has been able to produce other cogent evidence also pointing towards the complicity of the present appellant, if one reads the statement of PW7Stela Shoren (Nurse) and PW10Amrit Soreng (father of the deceased) as Stela Shoren has categorically stated that she knew the deceased earlier, being in the same hospital, who told her that Dr. Arbind Kumar was keeping an evil eye on his wife and that the appellant was also not interested in living with him (deceased). While referring to the evidence of PW10Amrit Soreng, learned State Counsel submitted that even this witness has also stated about the rift going on between the deceased and the appellant and how the appellant had gone to her parental house at Bokaro on different intervals.

11. Learned State Counsel, thus, submitted that considering totality of the facts and circumstances of the present case, the appellant, who happens to be the main conspirator in committing the murder of her husband along with Dr. Arbind Kumar, her co-accused, does not deserve any sympathy of the Court.

12. Having regard to the facts of the present case and showing all our constraints on expressing any opinion on the merits of the present case, lest it may prejudice the case of either side at the relevant stage of hearing the main appeal, the appellant, who happens to be the wife of the deceased and convicted for the main charge with the aid of Section 120B I.P.C, does not deserve the concession of suspension of sentence as prayed for, may be she was on bail during the trial. Prayer declined. (Virender Singh, C.J.) (P.P.Bhatt, J.) dey