

Raj Pati Devi. Vs. State of Bihar.

Raj Pati Devi. Vs. State of Bihar.

SooperKanoon Citation : sooperkanoon.com/916541

Court : Patna

Decided On : Apr-15-2011

Judge : Dharnidhar Jha, J.

Acts : Indian Penal Code (IPC) - Section 306; Evidence Act - Section 32(1); Code of Criminal Procedure (CrPC) - Section 313

Appeal No. : Criminal Appeal (SJ) No.175 OF 2005

Appellant : Raj Pati Devi.

Respondent : State of Bihar.

Advocate for Def. : Shri Braj Kishore Prasad, Adv.

Advocate for Pet/Ap. : Ms. Priya Gupta, Adv.

Judgement :

1. The solitary appellant Raj Pati Devi stands convicted under section 306 IPC and sentenced to undergo simple imprisonment for seven years as also to pay a fine of Rupees five thousand, else to suffer additional simple incarceration of six months. The above judgment of conviction and sentence was passed by the Fast Track Court No. 5, Aurangabad in S.T. No. 237 of 2002/ 142 of 2003.

2. It appears that Suresh Prajapati and his wife Sudha had committed suicide in the night intervening 21st and 22nd April, 2002 and the incident was known to persons by 8.15 A.M. on 22.4.2002. They were found dead inside the house

where a diary was found lying on a chowki. People, who had assembled there, were accusing this appellant of creating circumstances in the lives of the two deceased so as to forcing them to commit suicide. The diary, which was found in the room, was found containing note (Ext. 6) allegedly in the handwriting of Suresh Prajapati, which was indicating the circumstances which were created by the present appellant who had forced him and his wife to commit suicide.

3. After having gone through the whole of the judgment, what this court finds is that there was absolutely no evidence on record coming from any witness so as to indicating as to how the appellant had instigated the two deceased Suresh and his wife Sudha to end their lives but, they did end their life stood proved by the two reports (Exts. 7 and 7/1), which were submitted by the Forensic Science Laboratory after chemically analyzing the viscera of the two deceased which was sent for anlysis and report. The reports indicated that both the deceased had swallowed aluminium phosphide which was commercially being marketed as 'celphos' to end their lives.

4. As regards the question as to what was the reason of committing suicide, the court below has recorded that there was no apparent reason coming out of the record except the entry dated 21.4.2002 (Ext. 6) made by the deceased Suresh Prajapati in the diary which was seized from the room where the two dead bodies were found. The learned trial judge has heavily relied upon that document and has gone on to hold that there were sufficient materials contained in that particular write-up in the hand of Suresh Prajapati so as to indicate the circumstances which were created by the present appellant both by her words and deeds so as to forcing them to end their lives.

5. It is true that the statement of a dead person either in writing or made orally could be admissible as regards the cause of his death or the circumstances of the transaction which had resulted in his death. It is quite settled a principle of law as regards the admissibility of such a statement under section 32(1) of the Evidence Act that such statements could be admissible both to infer murder and suicide. Reference in the above behalf may be made to Sharad Birdhichand Sharda v. State AIR 1984 SC 1622. However, the test for such admissibility is that it has to

be proved by writing or words of the deceased that it were his and his alone and there could not be any doubt that there had been any adulteration in the statement which could be delivered to the court for its use as evidence under section 32 of the Evidence Act. When the judgment of the learned trial judge is tested on the above criteria of admissibility as regards the authorship of the writing, then one could find from the record made by the learned trial judge that there was no evidence on record that the writing was either of Suresh or Sudha, the two deceased persons. If the writing was not established as being either of the two deceased, then the court below ought not have proceeded to consider it as evidence so as to creating circumstance of abetting the suicide by the present appellant of the two deceased persons.

6. In addition to the above, this was the solitary circumstance upon which, the present appellant was being convicted by the learned trial court. It was desirable that the circumstance ought to have been put across the present appellant while she was being examined under section 313 of the Cr.P.C. so as to eliciting her explanation regarding the contents or correctness or both of the document which has been used by the court below after having marked it as exhibits. The record made by the learned trial judge of the statement under section 313 of the Cr.P.C. appears at page 30 of the lower court records and on perusal of the same, I find that there is not even a whisper of the fact that the appellant was afforded any opportunity of explaining that circumstance which was to be used against her. When the evidence and the circumstance appearing there from was not put for being explained by the appellant to her, then it was completely illegal on the part of the learned trial judge to have utilized the circumstance so as to recording the guilt of the appellant. Above are the two reasons upon which the judgment of conviction passed by the learned trial judge and the sentences inflicted on that account upon the appellant could not be sustained.

7. In the result, the appeal succeeds and the same is allowed. The judgment of conviction and order of sentence are set aside. The appellant is in custody. She shall be released forthwith if not wanted in any other case.