

(2007) 11 PAT CK 0025

In the Patna High Court

Case No : Criminal Appeal Nos. 208 and 441 of 2002 and Govt. Appeal No. 10 of 2002

Rajniti Prasad Singh

APPELLANT

Vs

The State of Bihar and Another
 Smt. Ranju Devi Vs
The State of Bihar
 The State of Bihar Vs Gopendra
Kumar Thakur

RESPONDENT

Date of Decision : 08-11-2007

Acts Referred:

Citation : (2007) 11 PAT CK 0025

Judgement

Shiva Kirti Singh and Dharnidhar Jha, JJ.—The judgment under appeal dated 26th February, 2002 has been passed by 1st Additional District and Sessions Judge, Madhubani in Sessions Trial No. 12 of 2000 arising out of Madhubani (Town) PS Case No. 197 of 1999. By the said judgment appellant, Ranju Devi has been convicted for the offence u/s 302/328 of the Indian Penal Code and awarded life imprisonment. The other co-accused Gopendra Kumar Thakur has been acquitted of the said charge. Criminal Appeal No. 208 of 2002 has been preferred against conviction of Smt. Ranju Devi whereas the Govt. Appeal has been admitted for hearing against acquittal of co-accused Gopendra Kumar Thakur. The Criminal Revision has been preferred by the informant of the case against acquittal of Gopendra Kumar Thakur. Since all the three matters arise out of same judgment noticed above hence they have been heard together and are being disposed of by this common judgment.

2. The prosecution case as appearing from the Fardbeyan of one Rajniti Prasad Singh, brother of deceased Raj Ballabh Singh, recorded on 3.8.1999 at 1500 hrs. at Alamganj PS (Patna) is to the effect that Raj Ballabh Singh a resident of village Bhauara PS Madhubani district Madhubani used to live with his wife and was engaged in the business of running a brick kiln. The said business could not be a success and, therefore, since few months he had engaged himself in petty contract works. Allegedly, one month earlier to the occurrence the deceased had met the informant at informant's residence at Patna and had disclosed that his

wife, Ranju Devi, appellant, had developed illicit relationship with accused Gopendra Kumar Thakur (since acquitted). Ranju Devi was not listening to the advice of Raj Ballabh Singh and was continuing in her relationship with Gopendra Kumar Thakur. It has further been alleged that the deceased expressed an apprehension that he may be killed by his wife and Gopendra Kumar Thakur on account of conspiracy. The informant advised his brother, Raj Ballabh Singh to take his wife and children to his father-in-law's house and leave them there. On 3.8.1999, the informant while at Patna received telephonic information from Alamganj PS that Raj Ballabh Singh had died. On going to Nalanda Medical College Hospital, Patna where the body of was lying for postmortem he saw the dead body of his brother and also saw Ranju Devi, the appellant and Gopendra Kumar Thakur. On enquiry they disclosed that on 2.8.1999 in the morning at about 9.00 am Raj Ballabh Singh became sick and, therefore, he was brought to the hospital at Patna where he died in course of treatment. The informant claimed that the Ranju Devi, the appellant and co-accused Gopendra Kumar Thakur (since acquitted) had acted in conspiracy and under a plan they had killed Raj Ballabh Singh after administering some poisonous substance to him and as a result, he died in NMCH, Patna in course of treatment.

3. After investigation, police submitted chargesheet against both named accused including the appellant, Ranju Devi. It appears that in course of postmortem examination at NMCH, Patna the doctors could not be certain of cause of death and, therefore, they advised for sending the viscera of the deceased for chemical examination. It further appears from Exhibit 1 that chemical examination report of Forensic Science Laboratory, Patna has been received in the records of this case and it has been noticed that according to the chemical examination, Aluminium Phosphide, commonly known as Celphos, was detected in the gastro intestinal track of the deceased. The report also indicates that Celphos is a grain preservative and is highly poisonous.

3.1 After cognizance the case was committed to the Court of Sessions where charges were framed against the accused persons u/s 302/328 of the IPC. They pleaded not guilty to the charges and, therefore, were put on trial. As noticed earlier, appellant, Ranju Devi has been convicted of the charges and sentenced to RI for life whereas the other co-accused Gopendra Kumar Thakur has been acquitted of the charges. The defence of the accused persons appears to be denial of all the allegations and a simple assertion that they are innocent.

4. The prosecution in order to prove the charges examined altogether 8 witnesses. PW 1, Ashish Kumar Mishra, PW 2, Ram Briksh Thakur, PW 3, Ganga Prasad Yadav, PW 4, Lal Babu Thakur, PW 5, Shyam Kumar Rai and PW 6, Salnarayan Thakur, chose not to support the prosecution case and, therefore, have been declared hostile. PW 7, Birendra Kumar Thakur, is a brother of appellant, Ranju Devi and he has deposed only to the effect that relations between her sister and deceased brother-in-law was not cordial and the deceased had once told him that conduct of the appellant was not proper. This

witness has stated that the appellant and Gopendra Kumar Thakur used to teach in the same school but he is not aware whether they have any illicit relationship. Admittedly, he was not present in the house and has not seen any part of the alleged occurrence. The last remaining witness PW 8, Neelu Kumari is a daughter of this appellant who at the time of the alleged occurrence was aged about 9 years. The conviction has been recorded mainly on the basis of this witness.

5. On careful examination of the deposition of PW 8, Neelu Kumari, it is found that she was aware that her father had objected to opening of a school by the appellant but she did not pay heed to his advice. She has deposed that her father was annoyed with the appellant to the extent that once he asked the appellant to leave the house along with her four children. Thereafter, this child witness has deposed that her mother began to administer poison to her father through his food and the poison used to be supplied by co-accused Gopendra. After 10 days, her father became ill and when his condition deteriorated then her mother took him to Patna but she killed him in the way. She has admitted that she remained at home and on getting information of the case she was taken to her Nanihal to her maternal grandfather. In cross-examination she has stated that her mother and father used to live cordially and when her father became ill she was at Madhubani where he was not treated by any doctor. When he fell sick at that time her school was open and she had gone to school. On coming back from school, she saw medicine in the house, she made no enquiries from her father regarding effect of the medicine but by evening her father's condition became bad. Her mother told her that she was taking him for treatment. She also stated that within her sight no medicine was administered to her father and at the relevant time her mother was working as a teacher. When her father's condition became bad then accused Gopendra came to her house and her father was taken on a rickshaw to the bus stand. She has denied the suggestion that she has deposed falsely on account of influence of her maternal uncle and maternal aunt. The deposition of a child witness requires cautious scrutiny and careful appraisal. On going through the evidence of PW 8 it is found that she has stated certain facts not on account of her observation but on account of impressions. Many a times a child in the age group of 9-10 years is prone to flight of imagination and clearly certain parts of deposition of this witness, particularly her claim that she saw co-accused Gopendra Kumar Thakur providing poison to her mother which she administered in the food for about 10 days is totally contradicted by her own statement in cross-examination. Since PW 8 is the sole witness from the family of the deceased, many facts have to be inferred on the basis of her statement. It is clear from her statement that deceased suddenly became ill on a particular day and he was not under treatment of any doctor from before. It is also clear that when the deceased fell ill, co-accused Gopendra Kumar Thakur came and with his help the appellant, Ranju Devi took the deceased on a rickshaw to bus stand and then to NMCH at Patna for treatment. The materials on record show that the deceased died in course of treatment at NMCH, Patna.

6. As would appear from the facts noticed above, in this case Rajniti Prasad Singh, the informant has not been examined by the prosecution. Further, the prosecution has not examined either the investigating officer or the doctor who conducted autopsy on the dead body of the deceased.

7. It has been submitted on behalf of the appellant, Ranju Devi that in a case of charge of murder by poisoning, it is necessary to prove that the death of the deceased was caused by poison, that the poison in question was in possession of the accused and the poison was administered by the accused to the deceased. Admittedly, in this case there is no direct evidence that the accused was in possession of poison, commonly known by the commercial name Celphos. There is no direct evidence that any of the accused administered the same to the deceased. The only fact proved by the prosecution through Exhibit 1 is that chemical examination report of viscera of the deceased disclosed presence of Celphos. On this vital issue also learned Counsel for the appellant, Ranju Devi, has submitted on the basis of judgment of the Supreme Court in the case of Jaipal Vs. State of Haryana, that Celphos has a very foul smell and once it is exposed to air, on account of pungent smell it is very difficult to administer the same deceitfully and, therefore, usually Celphos is not preferred in the case of homicide. In other words, according to the said judgment it is difficult to administer Celphos deceitfully as suggested by DW 8 and it is highly poisonous and the symptoms are such which may not be missed to be noticed in a postmortem examination of the dead body. It was further submitted that Exhibit 1, the report of Forensic Science Laboratory, Patna dated 5.12.2000 shows that the memo dated 8.11.1999 of Professor and Head of Department of Forensic Medicine and Toxicology, Nalanda Medical College Hospital, Patna was received through a special messenger- C-672 Nand Kishore Singh on 19.5.2000. According to learned Counsel for the appellant, the delay in delivering the viscera at the Laboratory was of more than 5 months and this itself should raise a doubt regarding conduct of the prosecution and it is claimed that the proper viscera was not sent to the Laboratory. So far as delay in sending the viscera to the Laboratory is concerned, it appears that Nand Kishore Singh was a constable bearing No. C-672 and along with the memo of Professor and Head of Department of Forensic Medicine and Toxicology, he had delivered one sealed glass jar said to contain viscera of Raj Ballabh Singh. No doubt, no witness has been examined to explain why the viscera could not be sent to the Laboratory earlier but on this aspect of the matter alone it may not be proper to give any definite finding that the viscera sent to the Laboratory in this case was not properly sealed and was subjected to any manipulation. However, as noticed earlier, at least three facts remained to be proved either by direct evidence or by related circumstantial evidence to bring home the charge of murder by poisoning. Even if it is presumed in this case on the basis of Exhibit I that the viscera of the deceased contained the poison- Celphos but in view of its pungent smell and characteristics, as held by the Apex Court in the case of Jaipal v. State of Haryana (supra), such poison could not have been administered deceitfully or

openly. Either it had to be administered by force away from the eyes of the inmates of the house or else in all probability it could be consumed by the victim himself. So far as other two requirements are concerned, there is no material on record in this case to show that the poison in question was in possession of the accused or the poison was administered by the accused persons to the deceased. These requirements in a case of murder by poisoning are well indicated in the judgment of the Apex Court in the case of Sharad Birdhichand Sarda Vs. State of Maharashtra, particularly paragraph 166 thereof.

8. Thus, on a careful analysis of the entire facts and circumstances, we find that the prosecution in this case has failed to prove the charge u/s 302/328 of the IPC against the accused persons including the appellant, Ranju Devi. As a result, her appeal is allowed and she is acquitted of all the charges. As a further result of aforesaid findings, the Govt. Appeal No. 10 of 2002 and Cr. Revision No. 441 of 2002 preferred against acquittal of the co-accused Gopendra Kumar Thakur are also found without any merit and are dismissed accordingly. Since appellant, Ranju Devi is said to be in jail custody, she should be released from such custody forthwith if not required in connection with any other case.