
(2008) 10 JH CK 0045
In the Jharkhand High Court

Shiv Shankar Sah

APPELLANT

Vs

The State of Bihar (now Jharkhand)

RESPONDENT

Date of Decision : 20-10-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 164
Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2009) CriLJ 2288 : (2008) 4 JCR 597

Hon'ble Judges : Jaya Roy, J; Amareshwar Sahay, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. By Court The present appeal has been filed by the sole appellant Shiv Shankar Sah against the judgment dated 01/09/1990 passed by the 4th Additional Sessions Judge, Dumka, in Sessions Case No. 173/1988, whereby the learned Additional Sessions Judge convicted the appellant for the offence u/s 302/34 IPC for committing the murder of Renu Devi and thereby, sentenced him to undergo R.I. for life. The three other accused namely, Madan Lal Sah, Bina Devi and Bhuli Devi, who were tried together with the present appellant, however, have been acquitted from the charges u/s 302/34 IPC by the trial court.

2. One Narayn Kumar Mukherjee (PW-3), who is a Pujari of a "Yaga Shala", situated in Basukinath gave a Fardbeyan to O/C Jarmundi police station on 05/09/1986 stating therein that his "Yaga Shala", where he used to reside, was situated just opposite to the house of Balgovind Sah, the father of the appellant and he was closely acquainted with all the family members of the said Balgovind Sah. He alleged that Renu Devi, the daughter-in-law of Balgovind Sah, i.e. the wife of this appellant, was not pulling on well with her in laws and she was being tortured and assaulted by her husband Shiv Shankar Sah (appellant) due to which since last six months she was staying with her parents. He further stated that the daughter ?in-law of Balgovind Sah, i.e. Renu Devi was a very noble lady and only on the last Saturday she was reached to her in laws place by her father.

In that very night, the in-laws of Renu Devi quarreled with her father. Though Renu Devi had requested her parents not to leave her at her in laws place since she was frightened that her in-law would kill her but her parents left her in her in laws place and returned in the next morning. These facts the informant came to know from the daughter of Balgovind Sah namely Guddi. It was further alleged that since thereafter, Renu Devi was being ill treated and tortured by her in laws.

The informant further alleged that at about 11 P.M. in the night of Thursday he heard the noise of quarreling coming from the house of the accused persons but at that time Balgovind Sah was not there in his house since he had gone to Haridwar. In the late night at about 3.00 a.m., he heard the screaming alarm of Renu Devi as "Mat Maro-Mat Maro" and "Maa Pani Do-Pani Do Tel Dalkar Jala Diya". The informant further heard the voice of two more ladies, who were abusing Renu Devi and were asking her to keep quite. Suddenly, he saw smoke coming out from the main door of the house of the appellant and then he gave a call to the appellant Shiv Shankar Sah and asked him as to why smoke is coming out from his house and whether fire has broken out in his house? AT this, this appellant said to have replied that nothing has happened. But in the meantime, on hearing hulla, neighbouring people assembled there and asked the appellant to open the door but the appellant did not open the door. Thereafter, a few persons even kicked the door by legs but the brother-in-law of the appellant namely Madan came at the top of the roof and told the neighbours that it was their family matter and, therefore, they should not interfere. It is said that after some time, the appellant came out of his house and went somewhere. Later on the informant saw that the appellant brought a Maxi vehicle and got it parked in front of his door and hurriedly got Renu Devi boarded on the said vehicle in badly burnt condition and then went away. Subsequently, the informant came to know that Renu Devi died in the hospital. The informant further alleged in the Fardbeyan that he was well acquainted with the family of Balgovind Sah. The appellant as well as the daughter of Balgovind Sah namely Bina Devi was not of good character and this fact was known to all the neighbouring people. He further alleged that the deceased Renu Devi was regularly being assaulted and tortured by the appellant and his family members and though the informant requested them not to ill treat her but they did not listen and ultimately Renu Devi was burnt to death by them.

3. On the report of the informant Narayan Kumar Mukherjee, F.I.R. was registered and then the police came into action and started investigation of the case. On 06/09/1986 the Officer-in-Charge of the police station sent a letter to the father of Renu Devi namely Motilal Sah through a constable informing him that his daughter Renu Devi has been burnt to death. On this information, the father of the deceased Renu Devi came to Dumka and met the Officer-in-Charge and, then, after the Post Mortem examination of the dead body, it was cremated. Subsequently, he went to Basukinath and met the informant, who narrated the entire story as to how his daughter was burnt to death by the accused persons.

4. The father of the deceased Renu Devi gave in writing to the Investigating Officer stating therein that the accused persons were demanding dowry, which could not be fulfilled by him and he brought his daughter to the house of the appellant on 30th August 1986 but on that day, her mother-in-law started abusing Renu Devi in his presence. However, he left his daughter there and went back to his village. The said complaint, made in writing by the father of the deceased Renu Devi, was adduced in evidence as Ext.1. It was proved by Motilal Sah himself (PW-1).

5. The police after completion of the investigation submitted charge sheet and, thereafter, all the accused persons were put on trial.

6. In order to substantiate the charges, in course of trial, altogether 9 prosecution witnesses were examined and several documents were also adduced in evidence and were marked as exhibits.

7. The learned trial court, on the basis of the evidence and materials on record, found the present appellant guilty for the charges u/s 302/34 IPC and sentenced him to undergo R.I. for life whereas other three accused persons, who were tried together with the appellant, were acquitted on the ground that the prosecution failed to establish the charges against them.

Against the said judgment of the trial court, the present appeal has been filed by the sole appellant Shiv Shanker Sah.

8. The whole case is based on the circumstantial evidence since there is no eyewitness to the occurrence.

9. The learned counsel for the appellant challenging the conviction and sentence passed by the trial court against the appellant has submitted that the chain of circumstances, which have been relied by the trial court are not as such which clearly indicate towards the guilt of the appellant and the circumstances, which have been brought in evidence are not even complete so as to come to the logical conclusion that it was the appellant who committed the murder of his wife Renu Devi by setting her on fire.

It was further submitted by the learned counsel for the appellant that in fact, the deceased caught accidental fire while she was preparing food for the children and there is no evidence to the effect that she was burnt to death by the appellant or any other person.

10. In order to appreciate the argument of the learned counsel for the appellant, we have minutely scrutinized the oral as well as documentary evidence, adduced by the prosecution.

11. PW-1 Motilal Sah is the father of the deceased Renu Devi. This witness has specifically stated that his daughter Renu Devi was being tortured and ill treated by her husband and her in-laws due to non-fulfillment of the demand of dowry. She was regularly being abused and assaulted by them. From his evidence it

appears that Renu Devi had two daughters. It has come in the evidence of this witness that in the month of June 1986 the accused persons has sent Renu Devi back to her father's house alone by a Bus and after 2-3 days the son-in-law, i.e. the present appellant went to his in-laws place, i.e. the parent's house of Renu Devi and he refused to take back his wife with him rather he asked this witness PW-1 to reacg his daughter to his house. Accordingly, PW-1 went to the house of the appellant on 30/08/1986 with his daughter where she was abused by the accused persons in his presence. From the statement of PW-1 it appears that the relationship between the husband and the wife and between the in- laws and the daughter-in-law were very much strained and was not at all congenial. It is pertinent to note that PW-1 reached his daughter to the house of the appellant on 30th August 1986 and just after 5 days the occurrence took place and the deceased was burnt to death.

12. PW-2 Naurangi Sah has been declared hostile. PW-3 Narayan Kumar Mukherjee is the informant. He was also examined u/s 164 Cr.P.C. during investigation and his statement has been marked as Ext.-1/1. This witness PW-3 is the main witness of the prosecution, who used to live in his Yagya Shala, which was situated just opposite to the house of the appellant at a distance of 10-12 cubits. He has stated that on the date and time of occurrence smoke was coming out from the house of the appellant from the ground floor though the whole family of the appellant used to live in the upper floor. This witness has fully corroborated his statements made in the F.I.R. as well as the statement made by him u/s 164 Cr.P.C. He has clearly stated that he heard the alarm of Renu Devi, who was crying saying "Bachao-Bachao" and "Pani Pilao-Pani Pilao". This PW-3 was the first person who reached at the place of occurrence. He saw that at about 3.00 "O" clock in the night the smoke coming out from the house of the appellant and the door was closed from inside and in spite of being asked the door was not opened by the appellant or any of his family members rather this witness was asked to go back since it was their family affair.

13. The statement of this witness is fully consistent and nothing has been pointed out on behalf of the appellant specifically so as to make his evidence unbelievable or unreliable rather we find that this witness is a truthful witness and has stated in detail about the occurrence which he has seen.

14. The Investigating Officer (PW-8) has stated in his evidence that the place of occurrence was the house of the appellant. In the ground floor he found some half burnt clothes and in a corner of one room he found a small bottle from which smell of Kerosene Oil was coming out. He also found a match box and also a stove. He further found the blackening of wall due to smoke. He seized the stove, the Kerosene Oil bottle, the match box as well as the half burnt clothes, which were marked as material Ext. (i) (ii) (iii) and (iv). The evidence of the Investigating Officer coupled with the material exhibits which were seized from the place of occurrence by the Investigating Officer fully corroborated the evidence of PW-3 and it lays suppot of the fact that at the relevant time the

deceased was burnt to death by using kerosene Oil kept in the bottle and found at the spot.

15. The plea of the appellant that the deceased died due to accidental fire while she was preparing food for the children is not believable simply because that nobody would believe that the deceased was preparing food for children at 3.00 "O" Clock in the night and that also on the ground floor of the house when everybody used to reside at the upper floor. If at all Renu Devi caught accidental fire while preparing food then why the appellant or any of his family members did not try to save her by extinguishing fire after hearing the alarm and cries of Renu Devi. Natural human conduct would be in such case to make an attempt to save the life of the victim by extinguishing the fire but this is not the case here. If at all she caught fire accidentally then why on alarm raised by her the appellant did not try to save her. If the appellant would have tried to save his wife then he must have received some burn injuries on his palm or hands but curiously enough no such any injury was found on the person of the appellant. It is only when the deceased got severe burn injury and when she was almost at the verge of death and when she was not in a position to speak then she was taken to the hospital by the appellant but by the time she reached to the hospital, she died. Therefore, action of taking the injured Renu Devi to the hospital by the appellant was nothing but to create defence to save his own skin.

16. Thus, from the evidence, which has been discussed above, we have no doubt in our mind that in order to kill his wife Renu Devi the appellant set her on fire by pouring Kerosene Oil and due to the severe burn injuries she died. We find that the learned trial court has rightly convicted and sentenced the appellant for the offence of murder of his wife Renu Devi.

17. In view of the discussions and findings above, we find no merit in this appeal. Accordingly, the same is hereby dismissed. The appellant, who is on bail, his bail bonds are hereby cancelled and he is directed to surrender before the court below to serve out the sentence.