

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Criminal Appeal (D.B.) No.135 of 2003

(Against the judgment of conviction dated 19.12.2002 and the order of sentence dated 23.12.2002 passed by the learned Additional District and Sessions Judge, Fast Track, Court No. II, Jamshedpur, East Singhbhum in Sessions Trial No. 380 of 2000)

Madan Karmakar, son of Rajen Karmakar, resident of Salgajhari, PS Bagbera, District-Jamshedpur, Singhbhum East ... Appellant(s).

Versus

The State of Jharkhand ... Respondent(s).

PRESENT
SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.

For the Appellant(s) : Ms. Rashmi Lal, *Amicus Curiae*
For the Respondent(s) : Ms. Nehala Sharmin, Spl. PP

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J U D G M E N T

25th November 2024

By Court:

Learned counsel, whose name appears in the record for the appellant, submits that his client has taken the file and has requested him not to appear.

2. At this stage, Ms. Rashmi Lal, learned counsel submits that she is ready to argue this appeal as an *Amicus Curiae*. She has obtained a copy of entire paper books.

3. We have heard the learned *Amicus Curiae* appearing for the appellant and the learned counsel for the State at length.

4. This Criminal Appeal arises out of the judgment of conviction dated 19.12.2002 and the order of sentence dated 23.12.2002 passed in Sessions Trial No. 380 of 2000 whereby and whereunder learned Additional District and Sessions Judge, Fast Track Court No.II, Jamshedpur, East Singhbhum convicted the

appellant under Section 302 of the Indian Penal Code and sentenced him to undergo imprisonment for life.

5. Learned counsel appearing on behalf of the appellant submits that there is no eye witness to the occurrence and the whole case is based on circumstantial evidence and the chain of circumstances is also incomplete and all the witnesses are related witnesses. Only on the basis of suspicion that the wife of this appellant being of different caste, was not liked by the parents of the appellant, has killed his wife by burning. Only on this basis this appellant is implicated in this case. Thus, he prays for acquittal of this appellant.

6. Learned counsel for the State submits that witnesses have fully corroborated the evidence of the informant. The prosecution has successfully proved its case. Learned counsel for the State further submits that the death had occurred in the matrimonial home of the deceased and it is husband (this appellant) of the deceased and other family members of the husband who must disclose as to how the death had occurred. Thus, this appeal be dismissed.

7. Prosecution story as per the *fardbeyan* of the informant is that the deceased Kuni Sardar was his sister. Kuni was enticed by this appellant in a love affair and this appellant had taken his sister to his home and kept there where appellant's mother, father and uncle started misbehaving with her and threatened her to leave their home by saying that she is of different caste. On the pressure from his parent's this appellant also started misbehaving with her so that she would leave his home and ultimately, on 10.04.2000 at about 10:00 AM this appellant along with his family members had killed her by setting her on fire. Based on the aforesaid *fardbeyan*, FIR being Parsudih PS Case No. 39 of 2000 was instituted under section 302/34 of the Indian

Penal Code against four accused persons including this appellant.

8. After investigation, the Investigating Officer submitted chargesheet against the appellant and on the basis of chargesheet and materials available on record, cognizance was taken and the case was committed to Court of Sessions where charges were framed under Section 302 of the Indian Penal Code and trial proceeded.

9. To prove the prosecution case, altogether 13 witnesses were examined by the prosecution, who are as under:-

- i. PW1 :- Sahura Karamkar*
- ii. PW2 :- Mahanand Karua*
- iii. PW3 :- Girish Chandra Samad*
- iv. PW4 :- Raimat Tuddu*
- v. PW5 :- Sapan Karwa*
- vi. PW6:- Dr. Y. Nath*
- vii. PW7:- Jiten Sardar*
- viii. PW8:- Dhiren Sardar*
- ix. PW9:- Chhotu Sardar*
- x. PW10:- Saroti Sardar*
- xi. PW11: Baso Sardar*
- xii. PW12:- Kunni Kaiberto*
- xiii. PW13:- Om Prakash*

10. Following documents have been exhibited :

- i. Ext.1 – Signature of PW2 in the Inquest Report*
- ii. Ext.1/1 – Signature of PW3 in the Inquest Report*
- iii. Ext. 1/2– Signature of PW7 in the fardbeyan*
- iv. Ext.2 – Postmortem Report*
- v. Ext.3 – Fardbeyan*

11. PW1, PW3, PW4, PW5 and PW12 have been declared hostile by the prosecution.

PW2 (Mahanand Karua) had stated that Madan Karamkar and his wife were tenant in his house. He had seen the dead body of wife of Madan. His signature on the inquest report had been marked as Ext.1.

PW6 is the doctor who had conducted the postmortem on the dead body of Kuni Sardar (deceased). He found the following injuries:

“Dermo epidermal burn on the whole body with black shoot deposit. Change being of scalp hair which is absent over fore head and temple area of scalp. White froth over mouth. Pilling of skin at places. The body is pale with weak inflammatory reaction.”

The doctor opined that the burn was ante mortem and the death was due to shock of the burn. Postmortem report has been exhibited as Ext.2. In the cross examination he admitted that the burning was hundred percent in whole body.

PW7 (Jiten Sardar) is the informant and brother of the deceased. He stated that the incident is of 1 ½ to 2 years ago at about 8:30 p.m., when his sister had been enticed by Madan Karmkar and taken to his home. When he along with other family members went to appellant’s house, his family members were not happy as they both were of different caste. Then informant had taken her sister back to their home. Again after two days Madan Karamkar had taken her sister to his house. He further stated that after some days he came to know that his sister had been burnt to death.

PW8 (Dhiren Sardar) and PW9 (Chhotu Sardar) are the other brothers of the deceased. They narrated in the similar manner as PW7. They accepted that they have not registered any case against this appellant for enticing their sister and for eloping with her.

PW10 (Saroti Sardar) is the sister-in-law (*bhabhi*) of the deceased. She stated that 1 ½ to 2 years ago her sister-in-law (*nanad*) was taken by this appellant. After search she was found in the house of Madan Karmkar at Salgajori. When her sister-in-law (*nanad*) returned back she told that appellant’s parents were misbehaving with her telling that she is of different caste. Again

after two days she was taken by this appellant. One week thereafter she came to know that her sister-in-law had been burnt to death.

PW11 (Baso Sardar) had also stated that the deceased was enticed and taken by this appellant and when she was taken back to their house she complained that this appellant along with his parents were ill-treating her because she is of different caste. Again she was taken by this appellant. Thereafter he came to know that she had been burnt to death.

PW12 (Kunni Kaiberto) is a hostile witness.

PW13 (Om Prakash) is the investigating officer who got charge of investigation of this case. He proved the *fardbeyan* of the informant which was marked as Ext.3. He has recorded the restatement of the informant and visited the place of occurrence for investigation and he described the whole area in his deposition. He also prepared the inquest report which was marked as Ext.1 and sent the dead body for postmortem. He had also taken statement of some witnesses and after getting the postmortem report he submitted the chargesheet before the trial Court.

12. After hearing the learned counsel for the parties, we find that there is no eye witness to the occurrence and the whole case is based on circumstantial evidence. In this case PW1, PW3, PW4, PW5 and PW12 have been declared hostile.

13. From the prosecution case, we find that the deceased was enticed by this appellant and was taken to his home where he kept her for some time. The deceased was ill treated by her in-laws. Thereafter she returned to her paternal house and after some time she was again taken by this appellant to his house where she was burnt to death. From the above, we find that no case was registered when the deceased first eloped with the

appellant. Further after she reached her matrimonial house she was ill treated by her in-laws. Then also no complaint was lodged which raises suspicion.

14. Further, we find that in the place of occurrence both deceased and appellant resided together as per the statement of the house owner PW2. Further, we find that the investigating officer in his cross examination at paragraph no. 31 stated that he did not find any substance of igniting fire and there was no sign of struggle/wriggling which casts suspicion on the prosecution version. Further when we go through the statement of the doctor we find that he did not find any external injury on the person of the deceased which raises suspicion as to whether she was burnt to death or she had committed suicide.

15. Further we find that prosecution has miserably failed to prove that this appellant was torturing the deceased. It is evident that the father-in-law, mother-in-law were torturing the deceased. If at all this appellant had tortured her then she would not have gone with this appellant for the second time. Further there is nothing in evidence to suggest that this appellant was present at the time of occurrence. The other witnesses have failed to support the prosecution case. Only on the basis of conjecture and surmises prosecution has set up a story that it is the appellant who had committed the offence. When there is doubt, benefit should always be given to the accused. Thus giving benefit of doubt, we acquit the appellant of the charge.

16. Considering what has been held above, we are inclined to allow this Criminal Appeal. Accordingly, this **Criminal Appeal is allowed**. The conviction of the appellant under Section 302 of the Indian Penal Code vide judgment of conviction dated 19.12.2002 passed by learned Additional District and Sessions Judge, Fast Track, Court No. II, Jamshedpur, East Singhbhum in

Sessions Trial No. 380 of 2000, is hereby set aside and, accordingly, the sentence awarded by the learned Trial Court vide order of sentence dated 23.12.2002 is also set aside.

17. The appellant is on bail. He is discharged of the liabilities of the bail bonds, so are the bailors.

18. Considering the proper assistance given by Ms. Rashmi Lal, learned *Amicus Curiae*, we direct the Secretary, Jharkhand High Court Legal Services Committee, Ranchi to pay remuneration of Rs. 7,500/- to her at the earliest.

19. Let a copy of the judgment along with the Trial Court Records be sent back to the Court concerned forthwith.

20. Pending I.A, if any, stands disposed of.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

High Court of Jharkhand, Ranchi

Dated : 25/11/2024

Tanuj/

N.A.F.R.