

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 427 of 1993
WITH
Criminal Appeal (DB) No. 552 of 1993

=====

(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE, DATED 22ND SEPTEMBER, 1993, PASSED BY SHRI ABHIJIT SINHA, 9TH ADDITIONAL SESSIONS JUDGE, ARA, IN SESSIONS TRIAL NO. 272 OF 1991, ARISING OUT OF AGIAON POLICE STATION CASE NO.8 OF 1990.)

=====

Janki Devi, wife of Jogendra Singh, resident of Village- Barap, Police Station- Agiaon (Garhani), District- Bhojpur.

.... **Appellant [In Cr. Appeal (DB) No. 427 of 1993]**

AND

1. Shashi Bhushan Singh,
 2. Hari Bhushan Singh,
- Both sons of Jogendra Singh, resident of Village- Barap, Police Station- Agiaon (Garhani), District- Bhojpur.

.... **Appellants [In Cr. Appeal (DB) No.552 of 1993]**

Versus

The State of Bihar

.... **Respondent (In both the appeals)**

=====

Appearance :
(In both these appeals)

For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Advocate.
Mr. Anita Kumari Singh, Advocate.
Mr. Abhishek Anand Surya, Advocate.

For the Respondent/s : Mr. Ajay Mishra, APP

=====

CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI
AND
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)
Date: 21-04-2015

Under the judgment and order, dated 22.09.1993, passed, in Sessions Trial No. 272 of 1991, by learned 9th Additional Sessions Judge, Ara, the appellants, Janki Devi, Shashi Bhushan Singh and Hari Bhushan Singh, stand convicted under Section 302 read with Section 34 of the

Indian Penal Code. Following their conviction, the accused-appellants have been sentenced to suffer imprisonment for life.

2. The case of the prosecution, as unfolded by the First Information Report, may, in brief, be described thus:

(i) Deceased Bibha Devi was wife of accused Hari Bhushan Singh. Accused Shashi Bhushan Singh is the elder brother of accused Hari Bhushan Singh. Accused Janki Devi is mother of Hari Bhushan Singh and Shashi Bhushan Singh.

(ii) On 07.03.1990, at about 11:00 AM, on having seen accused Hari Bhushan Singh, coming out of the room of Shashi Bhushan Singh, wherein Shashi Bhushan Singh used to live with his wife, accused Hari Bhushan Singh's wife, Bibha Devi (since deceased), objected by enquiring as to why he (accused Hari Bhushan Singh) had entered into the room of their sister-in-law. Reacting to the query so made by Bibha Devi, her husband (accused Hari Bhushan Singh) pressed the mouth of Bibha Devi and asked her not to raise her voice as the matter concerned his prestige. Accused Hari Bhushan Singh, then, put Bibha Devi into a room and asked his mother, Janki Devi, and brother, Shashi Bhushan Singh, to come. Accused Janki Devi came with kerosene oil and sprinkled the same on Bibha Devi's body. Accused Shashi Bhushan Singh also arrived



there by saying, at that point of time, that he had been looking for a motorcycle for long. While Bibha Devi was held by accused Hari Bhushan Singh, accused Shashi Bhushan Singh lit a match stick and put the flame on the body of Bibha Devi. Bibha Devi sustained burn injuries. While accused Janki Devi and accused Shashi Bhushan Singh fled away, accused Hari Bhushan Singh and Sundari Devi sent information to Bibha Devi's father, Mundrika Singh (PW 2), that Bibha Devi had suffered burn injuries.

(iii) Before, however, PW 2 (Mundrika Singh) reached the matrimonial house of Bibha Devi, Bibha Devi was moved, in a jeep, to Sadar Hospital, Ara, where Assistant Sub-Inspector of Police, Nagendra Singh (PW 7) arrived and recorded, at about 05:00 PM, the statement of Bibha Devi, in the form of her *fardbeyan* (Exhibit-4) and treating the same as First Information Report, Agion Police Station Case No. 8 of 1990, under Section 498A of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act, 1961, was registered against accused Janki Devi, Shashi Bhushan Singh and Hari Bhushan Singh. On 07.03.1980 itself, Bibha Devi died. Following Bibha Devi's death, Section 304B of the Indian Penal Code was added to the case aforementioned.

(iv) Inquest was held over Bibha Devi's dead body, which was also subjected to *post mortem* examination,

and, on completion of investigation, a *charge sheet* was laid, under Sections 304B and 498A of the Indian Penal Code and also under Sections 3 and 4 of the Dowry Prohibition Act, 1961, against accused, Janki Devi, Shashi Bhushan Singh and Hari Bhushan Singh.

3. At the trial, apart from framing charges under Sections 302 and 304B read with Section 34 of the Indian Penal Code, charges, under Sections 3 and 4 of the Dowry Prohibition Act, 1961, were also framed against all the accused namely, Janki Devi, Shashi Bhushan Singh and Hari Bhushan Singh. To the charges so framed, all the accused pleaded not guilty.

4. In support of their case, prosecution examined altogether 9 (nine). The accused persons were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, the accused persons denied that they had committed the offences, which they were alleged to have been committed by them, their case being that of denial. The defence, too, adduced evidence by examining four witnesses.

5. Having, however, found accused, Janki Devi, Shashi Bhushan Singh and Hari Bhushan Singh, guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code, learned trial Court convicted all of them

accordingly and passed sentence against them as mentioned above.

6. Aggrieved by their conviction and the sentence passed against them, all the accused, as convicted persons, have preferred these two appeals.

7. While Cr. Appeal (DB) No. 427 of 1993 has been preferred by accused-appellant, Janki Devi, Cr. Appeal (DB) No. 552 of 1993 has been preferred by accused-appellants, Shashi Bhushan Singh and Hari Bhushan Singh.

8. As both these appeals have arisen out of the judgment and order, dated 22.09.1993, passed, in Sessions Trial Case No. 272 of 1991, by learned 9th Additional Sessions Judge, Ara, we propose to dispose of both these appeals by this common judgment and order.

9. We have heard Mr. Akhileshwar Prasad Singh, learned Senior Counsel, appearing on behalf of the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

10. While considering the present appeal, what needs to be noted is that according to the evidence of Dr. Satish Kumar Sinha (PW 8), who had, admittedly, performed, on 08.03.1990, at about 9.30 AM, at Sadar Hospital, Ara, *post mortem* examination on the dead body of Bibha Devi, he found following injuries:

"External Examination:

On external examination rigor mortis was present and burn injuries involving scalp with singeing of scalp hairs in front part, face, front and back part of neck, front of chest, whole back, front of abdomen, perineum with singeing of pubic hairs, front and back of both arms and forearms, front and back of both lower limbs excluding foot, excoriation of skin present at places.

On Internal Dissection:

Heart chamber full of blood, liver, lungs, spleen, kidneys congested, stomach contents semi digested food matter about 3 ons. Lunar bladder empty, uterus now gravid and empty on cut sections."

11. All the above injuries, according to the doctor (PW 8), were *ante mortem* in nature and caused by fire. In the opinion of the doctor (PW 8), death was due to shock and cardio pulmonary failure resulting from the burn injuries, which had been sustained by the said deceased.

12. While considering the medical evidence as given by doctor (PW 8), it may be pointed out that according to the evidence given in his cross-examination by the doctor

(PW 8), a person, who may have suffered more than 50% burn injuries, would die instantly. At the same time and in the same breath PW 8 has deposed that a person, having suffered *cent percent* burn injuries, can be in a position to speak depending on his/her condition.

13. Coupled with the above, it is also in the evidence of PW 8 that the absence of sooty substance in the *trachea* suggested that burning had taken place after death.

14. Notwithstanding the fact that neither the prosecution nor the defence assert that the findings of the doctor and/or his opinion with regard to the cause of death are incorrect or untrue, it is abundantly clear from a bare reading of the evidence of the doctor (PW 8) that though PW 8 has been examined as a doctor, he had not acquired sufficient proficiency in his subject or else, his evidence would not be found to be so contradictory as have been revealed inasmuch as PW 8, while on the one hand, deposed that a person, who suffers 50% burn injuries, would die instantly, he contradicts himself by saying that a person, who suffers *cent percent* burn injuries, can be in a position to speak depending on his or her condition. Similarly, while, on the one hand, PW 8 has given his opinion that the death was caused due to shock and cardio pulmonary failure resulting from burn injuries sustained, PW 8 also says, in his cross-examination, that the absence of sooty substance in

the *trachea* suggested that burning had taken place after death.

15. Situated thus, we do not find that PW 8 has been able to correctly assess the cause of death. It needs to be borne in mind, while *considering the above aspect of the prosecution case that the opinion of an expert, such as, a medical practitioner, though admissible in evidence by virtue of Section 45 of the Evidence Act, is not binding on the Court inasmuch as the opinion of an expert is merely advisory in nature and may help the Court, in a given case, in arriving at a correct conclusion; but, at the end of the day, it is the responsibility of the Court to determine, with the help of expert, if required, the cause of death. If the evidence on record discloses that the deceased had been beheaded, the conviction of the perpetrator of the crime would not require assistance from a medical practitioner if the Court is, otherwise, satisfied that the head of the deceased was severed from his neck by such a weapon as might have transpired from the evidence on record.*

16. In the case at hand, the clear finding of the doctor is that Bibha Devi had sustained burn injuries, which were *ante mortem* in nature, and as no other cause could be assigned to her death, the cardio pulmonary failure was because of the burn injuries sustained by her. In short, thus, Bibha Devi's death was because of the burn injuries sustained

by her.

17. The question, however, remains: whether Bibha Devi's death was *homicidal* or she had committed *suicide* or her death was *accidental*?

18. Considering the fact that the accused-appellants have been convicted of murder and not of the offence under Section 304B of the Indian Penal Code and no appeal has been preferred by the State or by any other person against the acquittal of the accused-appellants under Section 304B of the Indian Penal Code nor has any revision been filed against the said acquittal of the accused-appellants in this regard, this Court, in the present set of appeals, is, now, required to determine if Bibha Devi's death was *homicidal* in nature.

19. Our quest for an answer to the above question brings us to the ocular evidence on record and what we notice is in the case at hand, the prosecution's case revolves around the statement of Bibha Devi claimed to have been recorded on 07.03.1990, at 5.00 PM, by PW 7, a Sub-Inspector of Police, inasmuch as this statement, if true, was nothing, but her *dying declaration*.

20. We may pause, at this stage, to point out that though Bibha Devi's said statement, proved as Exhibit-4, has been treated as the First Information Report, what cannot

be ignored is that the said statement was, in the light of the evidence of PW 7, recorded by PW 7 pursuant to the information, which brought him (PW 7) to the hospital, where Bibha Devi stood admitted and had been receiving treatment for the burn injuries suffered by her.

21. What information was given to PW 7, which brought him to the Sadar Hospital, Ara, remains a mystery in the present case inasmuch as the information, which had been given to, and received by, PW 7 (Nagendra Singh), when he stood posted as Assistant Sub-Inspector of Police at Ara Police Station, and brought him to the hospital has not been disclosed by the prosecution.

22. Coming to the question as to whether Exhibit-4 has been legally proved as a statement of Bibha Devi made soon before her death revealing the cause of her death or any of the circumstances of the transactions, which resulted into her death, we notice that the evidence of PW 7, in this regard, is that, on 07.03.1990, while he was functioning as A.S.I., at Town Police Station, Ara, he recorded, at Sadar Hospital, Ara, at 5.00 PM, Bibha Devi's statement, when she was conscious. It is also in the evidence of PW 7 that Mundrika Singh (PW 2), father of Bibha Devi (since deceased), and her brother, Ram Sundar Singh (PW 5), were present, when the said statement of Bibha Devi was recorded and after

recording her statement, he read out the statements to her, whereupon she gave her right thumb impression on her said statement.

23. In his cross-examination, as has been rightly pointed out on behalf of the accused-appellants, PW 7 has deposed that sooty from the wall was used for the purpose of obtaining Bibha Devi's right thumb impression on her said statement; whereas the evidence of PW 2, father of Bibha Devi (since deceased), is that it was with the help of ink pen that the right thumb impression of Bibha Devi was taken on her said statement.

24. Coupled with the above, in the light of the evidence of DW 5, an expert of hand-writing and finger prints, that the impression, which has been sought to be proved by the prosecution as the right thumb impression of Bibha Devi, was not the thumb impression. What can also not be ignored is that it has been rightly agitated, on behalf of the accused-appellants, that though Bibha Devi was under treatment, at Sadar Hospital, Ara, her said statement had not been recorded by PW 7 in the presence of doctor. Why no doctor was associated with the recording of her said statement has not been explained by the prosecution nor is there any explanation discernable, in this regard, from the materials on record.

25. Situated thus, we do not find that



Exhibit-4 can be said to have been proved beyond reasonable doubt as Bibha Devi's statement made by her, soon before her death, while she was conscious and capable of making statement. The reference made by Mr. Akhileshwar Prasad Singh, learned Senior Counsel, appearing for the accused-appellants, to the cases of **Khushal Rao v. State of Bombay (AIR 1958 SC 22)**, **State (Delhi Administration) v. Laxman Kumar and Others (1986 Cri.L.J. 155)**, **Paramjit Singh and Others v. State of Punjab and Others**, reported in **(1997) 4 SCC 156**, and **Panchdeo Singh v. State of Bihar**, reported in **(2001) 1 SCC 577**, is not misplaced.

26. When the so-called dying declaration of Bibha Devi has failed, there really remains nothing in the evidence on record, which could enable the Court to hold the accused-appellants guilty of committing murder.

27. Sadly enough, we find that the learned trial Court has not taken note of the prominently noticeable infirmities with which the evidence, adduced by the prosecution witnesses, suffered from.

28. At any rate, therefore, in the light of the evidence on record and the law relevant thereto, the accused-appellants deserve to be accorded, at least, benefit of doubt.

29. In the result and for the forgoing reasons, we allow these two appeals. The impugned conviction

of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which they stand convicted of, and they are hereby acquitted of the same under benefit of doubt.

30. Since all the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall accordingly stand discharged.

31. Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

(I. A. Ansari, J.)

(Nilu Agrawal, J.)

N.A.F.R./Mkr./-

U	√	T	√
---	---	---	---