

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.981 of 2009

With

Criminal Appeal (DB) No. 947 of 2009

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AGAINST THE JUDGMENT OF CONVICTION, DATED 26TH AUGUST, 2009, AND THE ORDER OF SENTENCE, DATED, 31ST AUGUST, 2009, PASSED BY SHRI SANJAY PRIYA, SESSIONS JUDGE, VAISHALI AT HAJIPUR, IN SESSIONS TRIAL NO. 218 of 1999/426 of 2000, ARISING OUT OF BHAGWANPUR POLICE STATION CASE NO. 129 OF 1998

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Satish Kumar Singh @ Ballu, S/o Rajeshwar Prasad Singh, resident of village Rampur Bakhara, Police Station Bhagwanpur, District Vaishali

.... Appellant **(In Criminal Appeal No. 981 of 2009)**
with

Rajeshwar Singh @ Rajeshwar Prasad Singh, S/o late Madhusudan Singh, resident of village Rampur Bakhara, Police Station Bhagwanpur, District Vaishali

.... Appellant **(In Criminal iAppeal No. 947 of 2009)**

Versus

The State of Bihar

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

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Appearance:

(In CR. APP (DB) No. 981 of 2009)

For the Appellant : Mr. Jagdish Prasad, Advocate,
Mr. Alok Kumar Alok
Mr. Hanslal Kumar

For the Respondent : Mr. Ajay Mishra, APP

Mrs. Soni Shrivastava, Advocate, as Amicus Curiae

(In CR. APP (DB) No. 947 of 2009)

For the Appellant : Mr. Jagdish Prasad, Advocate,
Mr. Alok Kumar Alok
Mr. Hanslal Kumar

For the Respondent : Mr. Abhimanyu Sharma, APP

Mrs. Fauzia Shakil, Advocate, as Amicus Curiae

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CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI

and

HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)

Date: 03-07-2015



Sindhu Kumari alias Sarita died at the prime age of 25 years. Her husband, Satish Kumar Singh @ Bablu, the remaining appellant herein, has been in prison for the last more than six years on the charges of having committed, along with his parents, *dowry death* and also on the accusation of having destroyed evidence in order to screen himself and his parents from punishment for the *dowry death* so committed.

2. Whether the appellant, Satish Kumar Singh @ Bablu, along with his father, Rajeshwar Singh (since deceased), had destroyed the evidence of *dowry death* in order to screen himself and other co-accused from punishment are the principal questions, which have been raised in the present appeal, which has arisen out of the judgment, dated 26.08.2009, passed, in Sessions Trial No. 218 of 1999/426 of 2000, by learned Sessions Judge, Vaishali, at Hajipur, convicting the accused-appellant, Satish Kumar Singh @ Bablu, and his father, the accused-appellant, Rajeshwar Singh (since deceased), under Section 304-B and 201 read with Section 34 of the Indian Penal Code. Following their conviction under Section 304B read with Section 34 of the Indian Penal Code, the accused-appellant, Satish Kumar Singh @ Bablu, and his father, accused-appellant, Rajeshwar Singh (since deceased), have been sentenced to suffer imprisonment for life. In consequence of their conviction under Section 201 read with Section 34 of the Indian Penal Code, both the accused-appellants aforementioned have been

directed to suffer rigorous imprisonment for three years and pay a fine to the tune of Rs.10,000/- each and, in default in payment of fine, the accused appellants have been sentenced to suffer rigorous imprisonment for a period of six months each, the sentences having been directed to run concurrently.

3. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) Sarita was given in marriage to accused Satish Kumar Singh @ Bablu in the month of May, 1996, and to the best of his financial capacity, the informant, Krishna Nandan Singh, gave several articles and ornaments to his daughter. However, after the marriage was solemnized, demand for a scooter was raised by the family of accused Satish Kumar Singh @ Bablu. Though this demand was satisfied, accused Satish Kumar Singh @ Bablu remained dissatisfied and raised the further demand for a tractor. Due to his financial constrains, as the demand for tractor could not be met by the informant, accused Satish Kumar Singh @ Bablu and his parents started pressurising Sarita to get a tractor from her father. Though Sarita informed her father about the said demand of tractor, her father was unable to meet the demand, whereupon accused Satish Kumar Singh @ Bablu wrote a letter, addressed to the informant, demanding Rs. one lakh to start his business, his financial condition being not good. This demand also could not be satisfied by Sarita's parents. This led

to the informant's daughter, Sarita, being subjected to torture.

(ii) In order to resolve the issue, the informant went, with some of his co-villagers and relatives, to the house of the accused and tried to persuade them to give up their demand for tractor or money. For a brief spell of time, raising of demand from the end of the accused subsided.

(iii) As the informant's son was unemployed, the informant took loan from bank and, having purchased a tractor, gave the same to his son. On coming to know of the fact that the informant had given a tractor to his son, accused Satish Kumar Singh @ Bablu and his parents intensified their acts of torture on Sarita so much so that they stopped providing her with food and also started assaulting her.

(iv) Having come to know of the kind of treatment, which was being meted out to his daughter, the informant sent his son, Nityanand Kumar (PW 17), to the house of the accused to bring Sarita on the occasion of Deepawali festival; but the accused did not allow PW 17 to even meet his sister, Sarita, and told PW 17 that until the time their demand for Rs. one lakh was fulfilled, they would not permit any meeting between the informant's son, Nityanand Kumar (PW 17), and his sister, Sarita.

(v) On 22.10.1998, the informant heard that Sarita had been killed by the accused by setting her ablaze. On receiving this information, the informant, accompanied by his

relatives, went to the house of the accused, but did not find any of the accused and his daughter, Sarita, there and learnt from the neighbours of the accused that having burnt Sarita, the accused had taken her to Muzaffarpur; but when they reached the Civil Hospital, Muzaffarpur, they came to learn that Sarita had already been cremated.

(vi) Based on the First Information Report (Exhibit-2), which was lodged by the informant, Krishna Nandan Singh (since deceased), Bhagwanpur Police Station Case No. 129 of 1998, under Section 304-B read with Section 34 of the Indian Penal Code, was registered against accused Satish Kumar Singh @ Bablu, his parents and his sister, Babina Kumari.

4. On completion of investigation, a *charge sheet* was laid, under Sections 304-B and 201 read with Section 34 of the Indian Penal Code, against accused Satish Kumar Singh @ Bablu, and his father, accused Rajeshwar Singh.

5. At the trial, charges, under Sections 304-B and 201 read with Section 34 of the Indian Penal Code, were framed against both the accused aforementioned. To the charges so framed, both the accused aforementioned pleaded not guilty.

6. In support of their case, prosecution examined altogether 17 (seventeen) witnesses. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure and, in their examinations aforementioned, they

denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being, in brief, as follows :

(i) The accused had never raised any demand for tractor, money or any valuable nor did they ever subject Sarita to cruelty and that the death of Sarita was accidental inasmuch as she suffered burn injuries, when her clothes caught fire by the flames, which, suddenly, erupted from a burning stove at her matrimonial house.

(ii) At the time, when Sarita suffered burn injuries, accused Rajeshwar Singh (i.e., the father of the accused Satish Kumar Singh @ Bablu, and his wife, i.e., the mother of accused Satish Kumar Singh @ Bablu) had gone to Jamshedpur and were, therefore, not present at the place of occurrence. Even accused Satish Kumar Singh @ Bablu was not present at the time of occurrence inasmuch as he had left with his tractor for cultivation.

(iii) On hearing the cries of Sarita, her neighbours, including Mohan Pathak (DW 1), Manoj Kumar Singh (DW 2) and others, went to the house of accused Satish Kumar Singh @ Bablu and, on finding Sarita in a seriously burnt condition, they carried her to Civil Hospital, Muzaffarpur, where Sarita died in about two-and-a-half-hours.

(iv) As the doctor had informed the police about Sarita having been brought with burn injuries, police arrived at

the hospital and an information, in writing, was given, in this regard, to the police by Manoj Kumar Singh (DW 2) stating to the effect, *inter alia*, that Sarita had suffered burn injuries accidentally in the manner as described hereinbefore. Sarita's dead body was subjected to *post mortem* examination, which revealed that she had died, because of burn injuries.

7. In support of their case, the defence, too, adduced evidence by examining three witnesses.

8. Having found accused Satish Kumar Singh @ Bablu and his father, accused Rajeshwar Singh, guilty of the offences charged with, learned trial Court convicted them accordingly and passed sentences against them as mentioned above.

9. Aggrieved by their conviction and the sentences passed against them, both the accused, as convicted persons, preferred appeals.

10. However, during pendency of the appeal, the accused-appellant, Rajeshwar Singh, having, admittedly, died and the appeal filed by him, namely, Cr. Appeal (D.B.) No.947 of 2009, stands abated.

11. The appeal, therefore, preferred by accused-appellant, Satish Kumar Singh @ Bablu, namely, Cr. Appeal (D.B.) No.981 of 2009, is the appeal, which survives for consideration.

12. We have heard Mr. Jagdish Prasad, learned

counsel appearing for the appellant, and Mrs. Soni Srivastava, learned counsel, appearing as *amicus curiae*. We have also heard Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State in Cr. Appeal (DB) No. 981 of 2009.

13. While considering the present appeal, we may point out that out of 17 witnesses, who have been examined by the prosecution, as many as seven witnesses have been *tendered* by the prosecution, these witnesses being PW 1, PW 4, PW 5, PW 7, PW 8, PW 10 and PW 11.

14. We are constrained to point out that the practice of *tendering* of witnesses ought not to have been resorted to inasmuch as the scheme of trial, as envisaged by the Code of Criminal Procedure, 1973, does not permit the practice of *tendering* of witnesses, which had been in vogue prior to the coming into force of Code of Criminal Procedure, 1973.

15. We may point out that Section 138 of the Evidence Act, 1872, provides as follows:

138. Order of examinations.-Witnesses shall be first examined -in-chief then (if the adverse party so desires) cross-examined, then (if the party calling him so desires) re-examined.

The examination and cross-examination must relate to relevant facts but the cross-examination need not be confined to the facts to which the witness testified on his examination - in

chief.

Direction for re-examination. - The re-examination shall be directed to the explanation of matters referred to in cross-examination; and if now matter is, by permission of the Court, introduced in re-examination, the adverse party may further cross-examine upon that matter."

16. The scheme of Section 138 of the Evidence Act, 1872, clearly contemplates that a witness would be, first, *examined-in-chief* and, then, subjected to cross-examination, and, in order to seek any clarification, the witness may be *re-examined*.

17. There is, thus, no scope of tendering of a witness for mere cross-examination. Tendering of a witness amounts to nothing, but giving up the witness by the prosecution inasmuch as it chooses not to examine *in-chief* the witness.

18. The practice of tendering of witnesses used to be frequently resorted to since coming into force of the Code of Criminal Procedure, 1898. The reason for taking recourse to the practice of tendering, which was inconsistent with, and contrary to, what Section 138 of the Evidence Act, 1872, envisages, was that under the Code of Criminal Procedure, 1898, as amended by the Act of 26 of 1955, a full-fledged magisterial enquiry was held in a case, which was exclusively triable by a Court of Session or the High Court. In the enquiry, prosecution was required to examine all its witnesses. Under



Section 288 of the old Code, the evidence of the witnesses, so recorded by the committing Magistrate, could be treated, at the discretion of the Sessions Judge, as the evidence in the trial. Taking advantage of these provisions, prosecution used to often ask for, and obtain leave of, the Sessions Judge to treat the deposition of the witnesses, whom the prosecution did not intend to examine afresh, recorded in the committal proceeding, as its evidence at the trial and, then, tendered them for *cross-examination*. To put it a little differently, prosecution, quite often, brought on record of the trial Court testimonies of some of the witnesses, recorded at the instance of the prosecution, before the committing Magistrate, as the prosecution's evidence during trial and, then, tendered them for *cross-examination* by the defence.

19. Having taken into account decisions of various High Courts, the Supreme Court has pointed out, in ***Satnam Singh v. State of Punjab***, AIR 1995 SC 1601, that the Bombay, Kerala, Calcutta, Madras and Punjab High Courts have, notwithstanding the provisions of Section 288 of the Code of 1898, consistently taken the view that there is no provision, whereunder the prosecution is permitted to *tender* a witness for *cross-examination* only, without there being any *examination-in-chief* in relation to which, such a witness can be *cross-examined*. It is pointed out by the Supreme Court, in ***Satnam Singh*** (supra), the practice of *tendering* a witness for

cross-examination has been consistently discouraged and even condemned by these High Courts and rightly so.

20. Referring to its decision in ***State of U.P. v. Jaggo alias Jagdish*** (AIR 1971 SC 1586), the Supreme Court has pointed out that a peculiar fact situation was in consideration in the case of ***Jaggo alias Jagdish*** (supra) and even in that context, it was observed that the witness "*could have been produced for cross-examination by the accused*": and that "*the accused were entitled to test his evidence*". The Supreme Court has clarified, in ***Satnam Singh*** (supra), that the observations of the Court in ***Jaggo's*** case (supra), therefore, do not support the view that a material witness can be "*tendered*" for cross-examination only. The Supreme Court has held, ***Satnam Singh's*** case (supra), that the decision, in ***Jaggo's*** case (supra), has been misappreciated and that the decision, in ***Jaggo's*** case (supra), cannot be interpreted as a sanction from the Supreme Court to the prosecution to adopt the practice of *tendering* a witness for *cross-examination* only, without there being any *examination-in-chief*, in relation to which the witness has to be *cross-examined*.

21. In the light of what have been discussed above, there can be no escape from the conclusion that the practice, adopted by the some Courts allowing prosecution to *tender* witnesses, is wholly contrary to the scheme of the Code of Criminal Procedure, 1973, and needs to be eschewed.

22. We, therefore, hold that the practice of *tendering* of witnesses is illegal and must be discontinued.

23. Before we proceed further, we may point out that it has not been in dispute that Sarita's dead body was subjected to *post mortem* examination. The report of this *post mortem* examination has been brought on record by DW 3 as Exhibit-C. This report shows that Sarita's dead body, on being subjected to *post mortem* examination, was found to have suffered from burn injuries except her head and part of right and left shoulder. The doctor found that she suffered about 90% burn injuries. In the opinion of doctor, the cause of death was shock arising out of burn injuries. The findings of the doctor have not been in dispute and we have no reason to discard or disbelieve the findings of the doctor and/or his opinion with regard to the cause of death of Sarita, the cause of her death being that she had suffered 90% burn injuries.

24. Sarita's marriage was, admittedly, solemnized with accused Satish Kumar Singh alias Bablu in the month of May, 1996, and she died within less than two-and-a-half years of her marriage with accused Satish Kumar Singh alias Bablu. Coupled with this is the fact that the *post mortem* examination report reveals, as indicated above, that she died, because of having suffered burn injuries. It, therefore, follows that if it is found to have been proved that Sarita had been subjected to cruelty by raising demand for dowry, then, her death would be



a *dowry death* provided, of course, that her death was not accidental inasmuch as Section 304-B Indian Penal Code lays down that where death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, *she was subjected to cruelty or harassment* by her husband or any relative of her husband *for, or in connection with,* any demand for dowry, such death shall be called "*dowry death*", and such husband or relative shall be deemed to have caused her death.

25. Coupled with the above, Section 113-B of the Evidence Act lays down that when the question arises whether a person has committed dowry death of a woman and it is shown that soon before his death, the woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

26. In the case at hand, the Court is duty bound to presume that Sarita's death was a *dowry death* if it is proved that soon before her death, she was subjected to cruelty or harassment for, or in connection with, any demand for dowry. The question of all questions, therefore, is: *whether Sarita was subjected to cruelty by raising demand of dowry?*

27. While considering the question posed above, it needs to be noted that the informant died before the trial



commenced and the informant's allegation made against the accused-appellants that his daughter, Sarita, had been subjected to cruelty, because of non-fulfillment of demand of dowry, which had been raised by the accused-appellants, particularly, accused Satish Kumar Singh alias Bablu, could not be substantiated by the informant. The prosecution, therefore, relies on the evidence of PW 9, PW 15, PW 16 and PW 17.

28. As far as PW 9 is concerned, he is a relative of the informant. The evidence of this witness is that he had gone to the house of the accused-appellant, along with the informant, PW 6, PW 15, PW 16 and others, on coming to know that father-in-law, mother-in-law, sister-in-law and the husband of Sarita had burnt her to death and that the villagers had taken her to hospital, they went to the hospital, but came to learn from the hospital that Sarita was brought in burnt condition to the hospital and as she died, her dead body had been cremated.

29. There is nothing in the evidence of PW 9 to show that he had any personal knowledge of any kind of demand of dowry having been raised by the accused-appellant or accused-appellants, wither alone or along with some one had caused Sarita's death.

30. Though PW 9 claims that PW 6 also went with him to the house of accused-appellant on coming to know about the death of Sarita, PW 6 has deposed that on



22.10.1998, Krishna Nandan Singh, i.e., the informant, told him that his daughter, Sarita, had been killed by the accused by setting her on fire and, then, he, along with the others, went to the matrimonial house of Sarita and came to learn that she had suffered burn injuries on 21.10.1998 and the members of her house had taken her to Muzaffarpur, but when they went to the hospital at Muzaffarpur, they came to know that Sarita's dead body had already been cremated.

31. Thus, the evidence of PW 6 is the same as the evidence of PW 9, their evidence being nothing but *hearsay*.

32. When we turn to the evidence of PW 15, we notice that according to his evidence, he came to know that Sarita's husband and her-in-laws had burnt Sarita to death and that she had been taken to hospital for treatment and when he reached the hospital along with the informant, PW 6, PW 9 and PW 16, they learnt that Sarita's dead body had already been cremated.

33. Coming to the evidence of PW 16, we notice that according to his evidence, on receiving information from the informant, he went, along with the informant, PW 9, PW 15 and others, to the house of the accused and came to know that Sarita had been burnt by the accused and taken for treatment to Muzaffarpur, but when they reached the hospital at Muzaffarpur, they did not find the accused and the deceased and they came to learn that Sarita's dead body had already

been cremated. The evidence of PW 16 stands on no better footing than the evidence of PW 6, PW 9 and PW 15. We may also hasten to point out that as far as PW 2 is concerned, he has turned hostile and nothing could be elicited from him to show that Sarita had been subjected to cruelty or that her death was a *dowry death*.

34. In order to, therefore, sustain the charges framed against the accused-appellant, prosecution heavily relied on the evidence of Nityanand (PW 17), brother of deceased Sarita. His evidence is that Sarita's marriage was solemnized with Satish Kumar Singh @ Bablu in the year 1996 and, on her marriage, Sarita went to her matrimonial house and that the members of the family of her-in-laws raised a demand for a tractor and Rs. one lakh, they also demanded scooter and though his father gave a scooter to the accused, the demand for money and tractor continued and as his father failed to meet the demand, accused Satish Kumar Singh @ Bablu as well as his parents began to torture Sarita and asked her to go to her parents and convey their demand, whereupon his father, accompanied by some co-villagers, went to the house of the accused to persuade them not to raise their demand, but the accused did not relent.

35. It is in the evidence of PW 17 that his father obtained loan from bank and purchased a tractor for his own use, but the accused raised demand for tractor and that when



he went, on the occasion of Deepawali, to the house of the accused to bring Sarita, the accused did not permit him to meet and said that until their demand for Rs. one lakh was met, they would not let Sarita meet any of her relatives and two days after Deepawali, they came to know that the accused had killed Sarita by burning her and, on coming to know the same, they went to the house of the accused, but they did not find the accused there, because all the accused had taken Sarita to Muzaffarpur.

36. PW 17 produced Exhibit-3 and 4 as letters, which had been written by Sarita to her parents, and Exhibit-5, 6 and 7 as letters, which had been addressed to the informant, i.e., father of deceased Sarita, by accused Satish Kumar Singh @ Bablu.

37. When the evidence of PW 17 is considered in the light of the evidence of PW 2, PW 6, PW 9, PW 15 and PW 16, it does not transpire that PW 17 had also gone to the house of the accused.

38. Coupled with the above, though PW 2, PW 6, PW 9, PW 15 and PW 16 had accompanied the informant, i.e., the father of PW 17, to the house of the accused, on coming to know, as informed by the informant, Krishna Nandan Singh, that she (Sarita) had been burnt to death by accused Satish Kumar Singh @ Bablu and members of his family, none of them has deposed that Krishna Nandan Singh told them at any point



of time that the accused had been raising the demand for scooter, tractor or money. In fact, though the First Information Report, Exhibit-2, lodged by Krishna Nandan Singh, alleges that he went to the house of the accused with a view to persuading them not to insist with their demand for tractor and money, no witness has been examined by the prosecution, who had accompanied Krishna Nandan Singh to the house of the accused.

39. There is, therefore, no reliable evidence on record from any of the independent witnesses indicating to the effect that the accused-appellant had raised any demand for *dowry*.

40. Moreover, when the independent witnesses were available, withholding them from court constrains this Court to draw adverse inference against the prosecution, the inference being that had any such witness been produced, his evidence would not have supported the case of the prosecution and that was the reason why, they had not been brought as witnesses at trial.

41. Further-more, though Exhibits 5, 6 and 7 have been produced by PW 17 as letters claimed to have been written by the accused Satish Kumar Singh @ Bablu, PW 17, in his cross-examination, concedes that so far as he himself is concerned, he never had any occasion to read anything written by accused Satish Kumar Singh @ Bablu nor had he (PW 17)

seen accused Satish Kumar Singh @ Bablu writing and that no other written document is available within him showing that accused Satish Kumar Singh @ Bablu had made any correspondence with him (PW 17).

42. Thus, Exhibits 5, 6 and 7 have not, strictly speaking, been proved as being the letters written by accused Satish Kumar Singh @ Bablu. This apart, the contents of these letters indicate that accused Satish Kumar Singh @ Bablu was passing financially very difficult time and as he was unemployed, he wanted to start his business and was requesting his father-in-law to arrange for money in order to enable him to start a business with his brother-in-law (i.e., PW 17).

43. We are completely unable to construe the contents of Exhibits-5, 6 and 7 as a proof of demand for *dowry* having been raised by accused Satish Kumar Singh @ Bablu. The tone and tenor of the contents of these documents demonstrate, as we have already indicated hereinbefore, the difficult financial condition of the accused and his request to his father-in-law to arrange money so that he could start a business with his brother-in-law, i.e., PW 17.

44. So far as Exhibits 3 and 4 are concerned, the contents thereof do not give any indication of raising of demand of dowry by the accused-appellant. What, however, the letters do indicate is that Sarita was sad and was feeling



like committing suicide when accused Satish Kumar Singh @ Bablu asked her to leave his house. The contents of the letter go contrary to the case of the prosecution inasmuch as it is the case of the prosecution that the accused were not allowing Sarita to meet her brother or any one from her paternal family; whereas the contents of Exhibit-4 show that the accused were asking her to leave her matrimonial house.

45. Situated thus, it is clear that the contents of the letter belie the evidence given by PW 17.

46. Broadly in tune with each other is the evidence of PW 3, PW 13 and PW 14, which do not, admittedly, support the case of the prosecution.

47. What is also important to note, while considering the evidence of PW 17, is that PW 17 was not examined by the police during investigation. In fact, PW 9, PW 15, PW 16 and PW 17 were not examined by the police during investigation and it is for the first time, at the trial, that they have been examined as witnesses. There is, therefore, no previous statement of any of these witnesses in order to test their veracity.

48. Be that as it may, so far as PW 6, PW 9, PW 15 and PW 16 are concerned, their evidence, as we have already held above, is nothing, but *hearsay* and, so far as PW 17 is concerned, his evidence is not above board and reliable.

49. Further-more, broadly in the tune with each



other, PW 5 and PW 8, who are neighbours of the accused-appellant, have deposed that they assemble at the house of the accused on hearing *hulla* that Sarita had caught fire due to sudden eruption of intense flame from the stove, and, then, their co-villagers had taken Sarita to hospital at Muzaffarpur, where she died in course of her treatment. It is in their evidence that in-laws of Sarita had gone to Jamshedpur prior to this occurrence and accused Satish Kumar Singh @ Bablu had gone for cultivation with his tractor at that time.

50. It is the clear evidence of the prosecution's own witnesses, namely, PW 4 that when Sarita suffered burnt injuries, her husband, accused Satish Kumar Singh @ Bablu, had gone for cultivation with his tractor. There is not even a particle of evidence on record showing that either the accused appellant, Satish Kumar Singh alias Bablu, or the accused-appellant, Rajeshwar Singh (since deceased), was present at their house, when Sarita suffered burnt injuries.

51. Whether, therefore, Sarita suffered burn injuries, because of accident or by way of suicide remains unknown. This apart, the evidence of PW 4 shows that the accused-appellant, Satish Kumar Singh alias Bablu, had a tractor and, hence, question of demand for tractor cannot be easily accepted to have been raised by the accused-appellant.

52. Moreover, Exhibit-A is the *fardbeyan* lodged by DW 2, on 21.10.1998, with regard to the occurrence and has



been treated as the First Information Report (Exhibit-2). Contents of Exhibit-2 convey to the effect that on hearing *hulla*, when the neighbours assembled at the house of the accused, they found Sarita having caught fire, when she was cooking and at that point of time, her parents-in-law had gone to Jamshedpur and her husband had gone with his tractor for cultivation and their neighbours, therefore, brought Sarita with serious burn injuries to civil hospital, Muzaffarpur, where she died.

53. It is the evidence of DW 2 that Sarita caught fire, when intense flames suddenly erupted from stove and that Sarita was carried for treatment to the hospital at Muzaffarpur and that Sarita was provided with treatment at the hospital at Muzaffarpur and she remained in hospital for about three hours. It also transpires from the evidence of DW 2 that before admitting Sarita in hospital, the doctor gave information to the police, whereupon police came and took down the statements of witnesses. It is also in the evidence of DW 2 that the stove, in question, was shown to the Investigating Officer and the same was seized by the police. Sadly enough, the Investigating Officer has not been examined and the defence was denied the opportunity to cross-examine him or elicit from him his objective findings like burnt stove, etc., collected and seized from the place of occurrence as deposed to by PW 4 as well as by DW 2.

54. In fact, contrary to the prosecution's case, PW 5 denied of Sarita having been subjected to cruelty by the accused persons. Even PW 1 claims that Sarita had been living at her matrimonial house in congenial atmosphere. No witness, other than PW 17, thus, speaks of raising of demand for dowry. PW 14 claims that Sarita suffered burn injuries by bursting of stove and died in course of treatment at Muzaffarpur hospital.

55. It is of immense importance to note that PW 4 does admit the presence of DW 2 inasmuch as the statement of DW 2 was taken down by the police, at the hospital, in the presence of PW 4.

56. According to the evidence of DW 2, accused Satish Kumar Singh @ Bablu had gone with his tractor for cultivation and accused Rajeshwar Singh had gone to Jamshedpur, where his younger son live, and that the accused-appellant, Satish Kumar Singh @ Bablu, reached hospital half-an-hour after the death of Sarita. From his cross-examination, nothing could be elicited by the prosecution to show that the evidence given by DW 2 was either untrue or unreliable. His evidence, therefore, remains shaken.

57. Even PW 13 has deposed that accused Rajeshwar Singh had gone to Jamshedpur at the time, when Sarita was found suffered with burn injuries. To the same effect is the evidence of PW 4, PW 5 and PW 2 inasmuch as they have deposed that the neighbours informed them that Sarita's

husband, accused Satish Kumar Singh @ Bablu, had gone for cultivation and Sarita's in-laws had gone to Jamshedpur.

58. What crystallizes from the above discussions is that the prosecution has failed to adduce any evidence showing that Sarita had committed suicide. On the other hand, there is volume of evidence showing that Sarita had suffered burnt injuries accidentally. This apart, the evidence on record makes it amply clear that at the time, when Sarita suffered burn injuries, none of the accused was present at their home. No evidence has been adduced by the prosecution to show as to how Sarita suffered burn injuries. Presumption of suicide cannot, therefore, in a case of present nature, be raised. This apart, the solitary testimony of PW 17, in the light of other evidence on record, which we have discussed above, does not prove that convincingly any demand for dowry was raised and it was because of non-fulfillment of demand for dowry that Sarita was subjected to torture or cruelty. In fact, the letters, Exhibits 3 and 4, even if believed to be letters written by Sarita, do not prove that any demand for dowry was raised.

59. Though the contents of the letter, Exhibit 4, demonstrate ill-treatment of Sarita at the hands of her husband, i.e., accused-appellant, Satish Kumar Singh alias Bablu, the letters do not speak of ill-treatment having been meted out to her, because of non-fulfillment of demand for dowry nor does Exhibit-4 indicate that any demand for dowry



was raised by any of the accused. So far as Exhibit 3 is concerned, it does not speak of any ill-treatment of the deceased at the hands of her husband or her in-laws. A mere ill treatment, which may drive a woman to commit suicide, would not amount to *dowry death* unless her death – which has to be not under normal circumstances – is proved to have been caused, because of non-fulfillment of any demand for dowry.

60. Situated thus, it becomes clear that the charge for *dowry death* must fail. We may hasten to point out that the learned trial Court has not even examined the question as to whether Exhibits 5, 6 and 7 were proved in accordance with law as the letters written by accused Satish Kumar Singh *alias* Bablu nor has the learned trial Court determined if the contents of Exhibit-3 and Exhibit-4 convey any ill-treatment or torture of Sarita, because of non-fulfillment of demand for *dowry* or the factum of raising of demand for *dowry*.

61. As far as Section 201 read with 34 of the Indian Penal Code is concerned, this charge, too, fails inasmuch as there is not even an iota of evidence on record that there is any act or omission on the part of the accused-appellant, which can be treated to be an act or omission constituting the offence aforementioned.

62. Because of what have been discussed and pointed out above, we are clearly of the view that in the facts and the attending circumstances of the present case, the

evidence adduced by the prosecution did not meet the standard of proof, which is insisted in a criminal trial, and the accused-appellant ought to have, therefore, been accorded, at least, benefit of doubt.

63. In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellant and the sentences passed against him by the judgment and order, under appeal, are hereby set aside. The accused-appellant is held not guilty of the offences, which he stands convicted of, and he is hereby acquitted of the same under benefit of doubt.

64. As the accused-appellant, namely, Satish Kumar Singh @ Bablu, is in custody, he is directed to be released forthwith if not required to be detained in connection with any other case.

65. Let the *Amicus Curiae* be paid a fee of Rs.5,000/- each.

66. 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.)

(Vikash Jain, J.)

N.A.F.R./
A.I./Pawan/-

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