

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.367 of 2014

Arising Out of PS.Case No. -19 Year- 2004 Thana -BIKRAMGANJ District- SASARAM
(ROHTAS)

=====

1. Rajaram Sah @ Amit Kumar son of Late Munnilal Sah, resident of village -
Danghai Town, Bikramganj, P.S. Bikramganj, District - Rohtas at Sasaram

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Krishna Chandra, Advocate
For the State : Mr. A.K. Sinha, APP
For the Informant : Mr. Ravindra Kumar, Advocate

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 03-03-2016

Sole Appellant has been convicted under Section 302
I.P.C. and sentenced to R.I. for life and fine of Rs.10,000/-, in default
of which simple imprisonment for another six months by judgment
dated 23/28.01.2014 passed by the 1st Additional District and Sessions
Judge, Rohtas, Sasaram in Sessions Trial No.471 of 2005.

2. The case of the prosecution, according to the dying
declaration of Manju Devi recorded on 18.02.2004 at about 8 P.M. at
Sub Divisional Hospital, Bikramganj (Dhangai), is that on the same
day at about 4.30 P.M. her in-laws had burnt her and even earlier the
wife of Jawahar Prasad had been burnt by the in-laws. They always

used to threaten her of dire consequences and, therefore, they had burnt her. This dying declaration was recorded by the S.I. Chandeshwar Sharma (P.W.8) in presence of Sanjay Kumar Gupta (P.W.6), Rajesh Kumar (P.W.5) and Sangeeta Devi (P.W.2). Dr. Shivnath Jha, Court Witness No.1, also certified that the statement had been given in his presence.

3. During trial, all the in-laws were charged but while the rest were acquitted, only the Appellant, who happened to be the husband of the deceased, was convicted.

4. The prosecution in all examined ten witnesses and the defence has got certain documents which have been marked as Exhibit A, A/1, A/2, B and C about financial transactions between the father of the deceased and her father-in-law.

5. We find that P.W.1 Bijay Kumar Sah is the cousin brother-in-law of the deceased, who did not support the case of the prosecution.

6. P.W.2 Sangeeta Devi is the cousin sister of the deceased, who stated that she learnt on 18.2.2004 at about 6.30 P.M. that the deceased had been burnt, at which he went to Dhangai Hospital and saw her in an injured condition. She gave an oral dying declaration before her that the in-laws had burnt her. The police was already present from before and the statement of the deceased was



recorded in her presence, on which she also signed. She proved the same as Exhibit 1. She further stated that Manju Devi was removed to P.M.C.H. but she died in the morning of 19th. In cross examination she stated that she learnt about this occurrence on rumour and she learnt it from the neighbours. She firstly went to the house of Manju Devi but by then Manju Devi had been removed to the Hospital. When she asked Manju Devi, the deceased, just who had brought to the Hospital. She stated that it was her in-laws. She stated that the police had recorded her statement and made her sign on the same as also her brother and cousin brother had signed as witnesses.

7. P.W.3 Ram Nandan Pandey stated that he knew accused Rajaram and his father Munnilal Sah since he was their Priest. He further stated that the wife of the Appellant had died on account of burn injuries and on the same day a Pooja had been held in the house. In cross examination there is nothing which is of note.

8. P.W.4 Chandan Kumar is the brother of the deceased, who stated that his sister had been married to the Appellant on 12.6.2003, on which occasion a large number of gifts were given but the in-laws used to demand dowry and had burnt her on 18.2.2004. He stated that on the date of occurrence he was at his house at Ara and he learnt about this occurrence, so they immediately came to Bikramganj but no one was present in the house of the deceased. So he went to

Dhangai Hospital but none of the family members were present. He saw his sister in an injured condition but her finger was not burnt. The doctor referred her to P.M.C.H. but she died. When he asked his sister she told him that her in-laws had burnt her. A lot of cross examination has taken place in regard to demand of dowry but that is not relevant since it is not a case under Section 304B I.P.C.

9. P.W.5 Rajesh Kumar, who is the brother of the deceased, has stated that on 18.2.2004 at about 6 P.M. he learnt that the daughter-in-law of Munnilal Sah had been burnt. So he, his sister Sangeeta Devi (P.W.2) and friend Sanjay Kumar Gupta (P.W.6) went to the house of Munnilal Sah, where he learnt that they had gone to Referral Hospital. When he reached Dhangai Hospital he found Manju Devi in a burnt condition being administered saline. However her hand was not burnt. When he asked Manju Devi as to how she had sustained injury, she said that her in-laws had burnt her for reasons of dowry. He proves his signature on the dying declaration as Exhibit 1/1 and that of P.W.6 as Exhibit 1/2. He further stated that Manju Devi was removed to P.M.C.H. but she died. He stated that he was examined two days after the occurrence.

10. P.W.6 Sanjay Kumar Gupta is a formal witness, who merely proves his signature on the dying declaration as Exhibit 1/2.

11. P.W.7 Pandit Awadhesh Kumar is the father of the



deceased, who stated that he had married his daughter Manju Devi on 12.6.2003 with the Appellant and given a large number of gifts but the in-laws used to torture her. On 18.2.2004 the friend of the elder son received a call on the Mobile that Manju Devi had been burnt for reasons of dowry by her in-laws. He also stated that his brother-in-law Praful Chand Gupta, not examined, and Dwarika Sao, also not examined had taken his daughter to Referral Hospital, Dhangai, whereafter she was referred to P.M.C.H. but she died on the 19th morning. He then gave his statement before the Pirbahore Police Station which he signs as Exhibit 2 as also the protest petition which is Exhibit 2/1.

We thus find that in his evidence importantly there is no mention of the deceased having given dying declaration before the authority of Dhangai Referral Hospital. He further stated that when he met his daughter she was not in a position to speak nor had she ever complained about the bad behaviour of the in-laws.

12. P.W.8 Chandeshwar Sharma is the Investigating Officer, who stated that on 18.2.2004 while he was on patrolling duty he learnt that one woman had been burnt and taken to Referral Hospital. So he and the Dy.S.P. went to the Hospital where he found a big crowd. He also found a woman screaming, who was being administered saline water. He recorded her statement, on which she



affixed her thumb impression which he proves as Exhibit 2. He stated that he had prepared the injury report which is Exhibit 4. He also stated that Munnilal Sah and Jawahar Sah, father and brother-in-law respectively, were arrested in the Hospital itself. Two days later he inspected the place of occurrence and found some remnants of kerosene oil, broken bangles and also hair band but there was no sign of burning in the room. He also stated that on the date of occurrence when he had gone to the house of the Appellant he learnt that Munnilal had taken his daughter-in-law to the Referral Hospital and it is only then he reached there. The Hospital was only about two kilometers away. He further stated that there was no certificate that the deceased was in a fit mental condition to give her statement and that accused Mangal Sao was arrested on the same day at night from the house. Even though he stated that the accused persons were caught and taken to the Police Station but he surprisingly states that he did not record the statement of the arrested accused.

It is thus notable that this witness has not reproduced the statement given to him by the deceased nor any Officer had certified that the deceased was in a fit mental condition and that two of the accused persons were arrested in the Hospital and another co-accused from the house on the same night.

13. P.W.9 Arun Kumar Singh is the doctor at P.M.C.H.,

who performed the postmortem examination and found the following injuries on the person of the deceased Aparajita Kumari @ Manju :

Rigor mortis was present all over the body, there was no decomposition bandages was present on trunk and limbs left leg was venesection. Antemortem - Dermo – epidermal. Burn injuries were found all over the body except front of abdomen. Dorsal aspect of right and left upper limb, left lower limb and right leg.

On dissection :

In general all viscera were found congested. Stomach contained about 150 M.L. Chocolate colour for fluid uterious was found normal and non-pregnant.

Bladder was found empty.

Opinion No.1 - time since death within 12 hours approximately from time of P.M. examination.

Opinion No.2 – caused of death burn and its complication.

In cross examination he stated that the entire palm of both hands were found burnt and there was no smell of kerosene oil.

14. P.W.10 Md. Sabir Khan had conducted part of the investigation, in course of which he had examined some witnesses. However since the attention of this witness has been drawn mainly in regard to demands of dowry, it is not relevant hence it is not being discussed.

15. The Court Witness No.1 Dr. Shiv Nath Jha, who was one of the persons, appended his signature on the so-called dying

declaration stated that the deceased was not in a position to speak and he had been forced to append his signature on the dying declaration.

However, we are not inclined to give any credence to this witness since we find that he never complained to the Civil Surgeon about him having been coerced and he is irrelevant since he has not certified that the deceased was in a fit mental condition to give such a statement.

16. On a fair assessment of the evidence of the witnesses, we find that the case was initiated on the so-called dying declaration of the deceased. However, the evidence of Dr. Arun Kumar Singh (P.W.9), who had conducted the postmortem, is to the effect that both the palms of the deceased were burnt in which condition it is not probable that any thumb print could have given by the deceased. Further we find that there is no certification of any authority that the deceased was in a fit mental condition to give a statement which makes it of a doubtful nature. Also when the Investigating Officer was examined he did not state about the exact nature of information that was given to him by the deceased, in which circumstances its support by her family members does not inspire confidence.

17. As for the rest of the evidence we find that the prosecution story is consistent that some occurrence had taken place in the house of the Appellant and the deceased had been removed to

the Hospital nearby and the two of the accused persons were arrested near the deceased while she was being given medication. This is not a natural conduct of a human being involved in killing a person. No doubt, the Appellant was not found there but when his implication stems from the same statement which was allegedly given implicating even those persons who were sitting near her at the Hospital, such statement cannot be relied upon.

18. In such circumstances, the Appeal is allowed and the judgment of conviction and order of sentence passed against the Appellant by a judgment dated 23/28.01.2014 by the 1st Additional District and Sessions Judge, Rohtas, Sasaram in Sessions Trial No.471 of 2005 is hereby set aside. The Appellant Rajaram Sah @ Amit Kumar son of late Munnilal Sah, who is in custody, be released forthwith, if not wanted in any other case.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

Narendra/
NAFR/

U		T	
---	--	---	--