

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.793 of 2011

[Against the judgment and order of conviction dated 16th July, 2011 and 20th July, 2011, respectively passed by the Additional Sessions Judge, Fast Track Court No.4, Gaya, in Sessions Trial No.678 of 2007 / 193 of 2009]

=====

Dharmendra Kumar Singh alias Dharmendra Kumar, son of late Haridwar Singh, resident of village-Gauri Bigha, Police Station-Anti, District- Gaya, at present residing at Mohalla-Chhotki Delha, Thakurbari near Delha, P.S.-Delha, District-Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

=====

Appearance:

For the Appellant/s : Mr. Ravindra Kumar Sinha, Advocate

For the Respondent/s : Mr. Shivesh Chadnra Mishra, Addl. PP

=====

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 01-02-2016

1. The sole Appellant has been convicted under Section 304-B Indian Penal Code and sentenced to undergo rigorous imprisonment for life by a judgment and order of conviction dated 16th July, 2011 and 20th July, 2011, respectively passed by the Additional Sessions Judge, Fast Track Court No.4, Gaya, in Sessions Trial No.678 of 2007 / 193 of 2009.

2. The case of the prosecution according to PW 4 (Madhusudan Singh), father of the deceased, Mamta, is that he had married his daughter with the Appellant 6-7 years ago. So long her father-in-law was alive, she was kept well but after his death the



Appellant used to demand Hero Honda motorcycle and on refusal he used to assault the deceased. Out of the wed lock, PW 8 (Gaurav Kumar) was also born. The deceased was fed up with the conduct of her husband and used to complain about him to her maternal family including PW 2 (Kamlesh Sharma) before whom she had been assaulted by the Appellant. He had also assaulted her in front of Upendra Sharma, another brother i.e. PW 3. On 26.08.2002, he got telephonic information that his daughter had been burnt at which Kamlesh Sharma (PW2) was informed, who went to see her at village Delha and found her burnt. The Appellant was also present, who challenged him as to how he would save his sister. However, PW 2 took her to the hospital around 4'O clock and he himself reached there at 6.00 PM. He was informed by the deceased in broken voice that the Appellant had sprinkled kerosene oil on her and burnt her. During treatment, she died the next morning at 6.00 AM and then *fard-e-bayan* was given at the hospital at 8.30 on 27.08.2002.

3. During trial, the prosecution examined nine witnesses. PW 1 (Dharmendra Kumar) has been declared hostile. PW 2 (Kamlesh Sharma), PW 3 (Upendra Sharma) are the two brothers of the deceased, whereas, PW 4 (Madhusudan Singh) is the father of the deceased. PW 9 (Kamla Thakur) is the Investigating Officer and PW 5 (Dr. Arbind Prasad) is the Doctor, who performed

Post Mortem Examination, PW 6 (Rajeen Ranjan) and PW 7 (Kuna Ram Vaske) are hearsay and formal respectively.

4. Since case under Section 304-B Indian Penal Code depends on the prosecution satisfying certain ingredients of the offence, we would like to first examine as to whether the marriage had taken place within seven years of the death.

5. In the *fard-e-bayan*, it has merely been stated that the deceased was married 6-7 years ago but later during trial PWs 2, 3 and 4, who are brothers and father of the deceased, state that the deceased was married on 01.12.1995, whereas, the occurrence took place on 26.08.2002 i.e. well within seven years.

6. The next ingredient is as to whether demands of dowry were made soon before the death of the deceased. In its respect, we find from the evidence of PW 2 (Kamlesh Sharma), one of the brothers that after the marriage demand of Hero Honda was being made by the Appellant. PW 3 (Upendra Sharma), another brother of the deceased, stated that demand of motor cycle was being made after the birth of the child, whereas, PW 4 (Madhusudan Singh), father of deceased stated generally that the Appellant used to demand a motor cycle. We, thus, find that none of the witnesses have satisfactorily proved that the deceased was being subjected to torture for ends of dowry soon before her death.

7. In such circumstances, evidently when the

WE F
NOT

ingredients of Section 304-B Indian Penal Code are not satisfied, we are afraid we cannot sustain conviction of the Appellant under Section 304-B Indian Penal Code.

8. As for the offence of murder, we would like to, in brief, examine the evidence of the related witnesses. PW 8 (Gaurav Kumar), son of the deceased and the Appellant is important, who stated firstly that on the date of occurrence he was pushed out of the door and thereafter his father poured kerosene on his mother and burnt her. Later, maternal uncle Kamlesh Sharma (PW 2) came and took his mother for treatment. However, during cross-examination he stated that he used to live with his maternal grand-father and used to study in Govt. Primary School, Gulab Bigha, where his maternal grand-mother used to stay. He had been informed about the death of her mother by the tenants, who had informed his maternal uncle. However, he could not disclose the name of the tenants. Thus, he was not an eye witness to the occurrence.

9. PW 2 (Kamlesh Sharma), PW 3 (Upendra Sharma), PW 4 (Madhusudan Singh), who are the brothers and father of the deceased, are also material witnesses. They have stated as in the *fard-e-bayan* that the Appellant was present at the place of occurrence where the deceased was found burnt which raises a reasonable doubt as to whether the Appellant was at all involved in the death of his wife on account of burn injuries. His conduct

suggests otherwise.

10. As for dying declaration, we find that PW 2 has stated that since morning her husband had been beating her and when she fell down on the bed her husband poured kerosene oil and burnt her. However, the Investigating Officer (PW 9 Kamla Thakur) did not find any such mark on the bed in the room of the deceased.

11. PW 3 (Upendra Sharma) merely stated that the deceased disclosed that the Appellant had sprinkled kerosene oil on her and burnt her.

12. PW 4 (Madhusudan Singh), the Informant and the father of the deceased, has stated that the deceased had given a graphic description that the Appellant had tied her legs and hands and thereafter sprinkled kerosene oil on her and set her on fire.

13. We, thus, find that all the three witnesses have given a different version of the oral dying declaration. It also does not stand to reason as to why dying declaration of the deceased was not recorded by any authority at the hospital after she was admitted there at about 6.00 PM in the hospital on 26.08.2002. There is no explanation about this. The Informant himself did not give any information in its regard till her death and reported the matter only the next morning after her death.

14. We also find from the evidence of PW 6 (Rajeev Ranjan), who is one of the tenants, that on the date of

WEF
NOT

occurrence he had seen the deceased in burnt condition and no doubt some tenants have stated that the Appellants had committed her murder but in cross-examination, he stated that the husband and wife used to live in harmony with each other.

15. We, thus, find that there is complete paucity of any evidence which would conclusively prove the complicity of the Appellant in the murder of the deceased.

16. In view of such, we acquit the Appellant of the charge under Section 304-B Indian Penal Code and set aside the judgment and order of conviction dated 16th July, 2011 and 20th July, 2011, respectively passed by the Additional Sessions Judge, Fast Track Court No.4, Gaya, in Sessions Trial No.678 of 2007 / 193 of 2009.

17. The Appellant, who is in jail, is directed to be released forthwith if not required in any other case.

18. In the result, the appeal is **allowed**.

(Anjana Prakash, J)

AFR
J.Alam/-

(Rajendra Kumar Mishra, J)

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