

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.59 of 2014

Against the judgment of conviction dated 19.11.2013 and order of sentence dated 26.11.2013 passed by Shri Anil Kumar Jha, the learned Ad-hoc Additional Sessions Judge-3, Purnea, in Sessions Trial No. 1219 of 2010 with Sessions Trial No. 617 of 2011, T.R. No. 60 of 2010/T.R. No. 83 of 2011 (arising out of G.R. Case No. 1270 of 2010, Khajanchi Hat P.S. Case No. 184 of 2010).

Md. Perwez Alam @ Perwez Alam Son of Abdul Ghaffar Resident of Mohalla - Kali Prasad Tola (Yadav Tola) P.S.- K. Hat, District - Purnea

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 20 of 2014

Abdul Gaffar Son of Late S.K. Jabbar, Resident of Kali Prasad Tola, (Yadav Tola), Madhubani, P.S.-K-Hat, District-Patna.

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 48 of 2014

- 1. Bibi Parwana Khatoon @ Parwana Khatoon, wife of Md. Hasan @ Hassan Raja.
 - 2. Md. Hasan @ Hasan Raja, Son of Late Kamruddin.
- Both are Resident of Sabutar, P.S- K. Nagar, District- Purnea.

.... Appellant

Versus

The State of Bihar

.... Respondent/s

Appearance :
(In CR. APP (SJ) No. 59 of 2014)

- For the Appellant : Mr. N. A. Shamsi, Advocate.
- Mr. Md. Anisur Raman, Advocate.
- For the informant : Mr. Ranjay Kumar Singh, Advocate.

For the State : Mr. S. A. Ahmad, A.P.P.

(In CR. APP (SJ) No. 20 of 2014)

For the Appellant : Mr. Jagdish Prasad Bhagat, Advocate.

For the State : Mr. Binod Bihari Singh, A.P.P.

(In CR. APP (SJ) No. 48 of 2014)

For the Appellants : Mr. N. K. Agrawal, Senior Advocate

Mr. D. N. Tiwary, Advocate.

For the informant : Mr. Ranjay Kumar Singh, Advocate.

For the State : Mr. Sujit Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 09-02-2016

Heard learned counsel for the appellants, learned counsel for the informant as well as learned counsel for the State.

2. Three appeals having being heard together and disposed of by common judgment as three appeals arise out of the same judgment of conviction dated 19.11.2013 and order of sentence dated 26.11.2013 passed by Shri Anil Kumar Jha, the learned Ad-hoc Additional Sessions Judge-3, Purnea, in Sessions Trial No. 1219 of 2010 with Sessions Trial No. 617 of 2011, T.R. No. 60 of 2010/T.R. No. 83 of 2011 (arising out of G.R. Case No. 1270 of 2010, Khajanchi Hat P.S. Case No. 184 of 2010), by the appellant, namely, Md. Perwez Alam had been convicted for offence under Section 304B/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and appellants namely, Bibi Parwana Khatoon, Md. Hasan and Md. Abdul Gaffar have been convicted for offence under Section 304B/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years.



3. The prosecution case as alleged in the First Information Report by the informant Md. Faisal alleging there in that his sister was married with Md. Parwez at Kali Prasad Tola (Yadav Tola), Madhubani, P.S. K. Hat on 30.09.2009. After remaining his sister at her sasural for some days there was demand of dowry as Freeze, washing machine and cash worth Rs. 5,00,000/- and she was subjected to cruelty. It is further alleged that several times the informant along with others went to the sasural of his sister to have compromise, but even then Parwana Khatoon sister of husband of the victim and Md. Hasan husband of Parwana Khatoon who used to live in sasural used to threat to kill the sister of the informant unless she brought articles and money from her naihar. It is further alleged that on 30.05.2010, the informant and prosecution party was informed on telephone that sister of the informant was ill. The informant on the next day went to sasural of his sister and saw that his sister had been done to death by sprinkling kerosene oil set on fire by her husband, father-in-law, brother-in-law, Nanad and mother-in-law of the victim.

4. On the Fardbeyan, F.I.R. lodged and the police on written report by the informant, investigation proceeded. The I.O. inspected the P.O., inquest report prepared, seizure list was prepared with regard to Chhapal, Dabba, Badna etc. and other articles and found the dead body. Thereafter, the dead body was sent for post mortem



examination. The I.O. inspected the P.O. which is house of Abdul Gaffar. In front of the house there was a vacant land and courtyard in the back portion and to the west of courtyard there are two rooms and adjoining there is kitchen, bathroom of pucca construction covered with tin in which burn dead body of the victim was found and roof cover with tin found besmeared with black smoke. Thereafter, the I.O. recorded further statement of the informant and evidence of other witnesses. After completing investigation, charge sheet submitted. Cognizance taken and case was committed to the Court of Sessions. After framing of the charge trial proceeded.

5. During trial, eight witnesses were examined on behalf of the prosecution. P.W. 1 is Syed Masoof, P.W. is 2 Md. Azam Rad, the uncle of the victim, P.W. 3 is Shamim Akhtar, P.W. is Taleba Kauser, sister of the informant. P.W. 5 Md. Faishal, the informant itself, P.W.6 is Dr. Umesh Kumar who conducted post mortem examination on the person of the deceased, P.W. 7 Arti Kumari Jaiswal, Inspector of Police who conducted investigation and P.W. 8 is Lal Babu Prasad, is also Investigating Officer.

6. The defence has also adduced ten witnesses as D.W.1, Md. Mozammil Hussain, D.W. 2 is Md. Shamim, D.W.3 is Manish Kumar Srivastava, D.W. is 4 Raghunandan Yadav, D.W.5 is Rahul Kumar, D.W. 6 is Mukesh Kumar, D.W. 7 is Nakir Yadav, D.W.8 is

Dani Yadav, D.W.9 is Md. Jasir and D.W.10 is Sanni Yadav.

7. The case of the prosecution as per evidence of P.W.5, the informant and he had deposed that marriage of his sister Tamkinat Ara @ Bulbul had performed on 30.09.2009. On 30.05.2010 in the morning at 5.30 P.M., he got information from Abdul Gaffar(father-in-law of the victim) that the condition of Tamkinat alias Bulbul is very serious and on received information he proceeded to sasural of his sister and found there no body was present and all the accused persons were absconding, then he went into the room of his sister but he did not found his sister in the room. During the course of search, he went inside the bathroom and saw 100% burnt dead body of his sister Tamkinat Ara was lying there and smell of kerosene oil and saw flowing kerosene oil in the Nala. He further stated in paragraph 10 of his examination-in-chief that whole wall of bath room and roof of asbestos was got blackened due to smoke and he also found one empty plastic container of kerosene oil lying in the corner of the bath room. Thereafter, he informed his relatives by phone. After he along with his cousin brother Syed Masoof, P.W. 1 went to police station at 8.30 but O.C. was not present there as he had gone to attend some Ministers. Again at 12.00 Noon he went to police station, but the Darogajee was not returned. Again at 1.30 P.M. he went to police station and at that time Darogajee came to return in the police station



then he gave written report. The Darogajee came at the place of occurrence at 2.00 P.M. where he prepared Inquest report. P.W. 2 is relative as brother of the informant. P.W.1 had supported the prosecution case and stated that on received information from Md. Faishal they went to sasural of the victim and saw the dead body of the victim was lying in the bath room with burn injury as well as smell of kerosene oil came out and kerosene oil floating in the drain. P.W. 3 had also supported the prosecution case regarding marriage of the victim. Further case of the prosecution as per evidence of the informant, demand of dowry was made by accused persons who are husband, Nanad, Nandoshi, father-in-law and mother-in-law of the deceased and the victim was done to death for non-fulfillment of demand of T.V. Freeze and washing machine. The informant had further stated that his sister Tamkinat Ara used to disclose with regard to demand. Further the informant went to sasural of his sister to meet with her and also used to ring her and the victim used to disclose about subjecting cruelty. P.Ws, 1, 2, 3 and 4 have also been supported regarding demand and subjecting cruelty. P.W. 3 had also disclosed that victim herself used to disclose about assault and subjecting cruelty by her husband, Nanand and Nandoshi, father-in-law and mother-in-law. P.W.4 had specifically asserted about subjecting cruelty. P.W.6 is the doctor who conducted post mortem examination

on the person of the deceased and found the following injuries;

- (i) ***Rigor Mortis present in all four limbs and trunk;***
- (ii) ***Tongue was protruded between teeth;***
- (iii) ***Burnt blood clot from/in ear opening;***
- (iv) ***100% burn of five degree with smell of kerosene oil and roasted smell, line of redness along burn area absent, vesiculation and sign of inflammation was absent, formation of granulation tissue absent indicating post mortem burn.***

8. The doctor had opined that these injuries are sufficient to cause death. He had also found fracture of tracheal rings, larynx and hyoid bone was found. Right chamber full and left chamber empty, lungs congested, stomach contain semi digested food, small and large intestine- gas faced, urinary bladder- empty and uterus- normal and empty. Cause of death due to asphyxia due to strangulation.

9. Defence set up as per evidence of defence witnesses that, though, marriage solemnised within three years and occurrence took place on 30.05.2010 in the morning and there was fire setting in the bath room and smoke coming out and death of the victim caused by electrocution. Further defence that at the time of occurrence, the husband was in his shop and father-in-law of the victim had been to Masque to perform Namaj and Nanad and Nandoshi used to live at the

house and were not living at sasural. In support of this contention about residence of the appellant, a residential certificate had been filed by Md. Hasan and PAN card and service book of Parwana Khatoon showing her as a Panchayat teacher appointed on the basis of salary of Rs. 4000/- per month.

10. The trial court taking into consideration the evidence of witnesses convicted the appellants for offence under Section 304B/34 of Indian Penal Code.

11. Learned counsel for the appellant Mr. Shamshi appearing on behalf of Md. Perwez Alam in Cr.Appeal (SJ) 59 of 2014 submitted that in the First Information Report there was no specific mentioned about subjecting cruelty attributed to the husband. It has further been submitted that victim died in bath room and defence witness stated that there was electric wiring in wash room and hence death of the victim was caused due to short circuit and getting burn to death by short circuit cannot be ruled out. Further stated that defence witnesses had stated that they rushed to the place of occurrence and showing flame of fire and claim that cause of death of the victim by burn injury due to electric shock.

12. Learned counsel appearing on behalf of appellant, namely, Abdul Gaffar in Cr.Appeal (SJ) 20 of 2014 submitted that he is father-in-law of the victim and aged about 82 years old and at the

time of occurrence he was performing Namaj in Mosque.

13. With regard to appellants Bibi Parwana Khatoon and Md. Hasan in Cr. Appeal (SJ) 48 of 2014, it is submitted that they were Nanad and Nandoshi of the victim and they were living separately from the house of the accused persons and in support of their contention they filed residential certificate, PAN Card and service book of Bibi Parwana Khatoon showing the address of Village-Sabutar, P.S. K. Nagar, District-Purnea. However, service book of Bibi Parwana Khatoon suggests that she was appointed as a Panchayat teacher at the rate of Rs. 4000/- per month.

14. Learned counsel for the State opposed the submission made by learned counsel appearing on behalf of the appellants and submits that in the plain reading of the First Information Report itself indicates that there is specific allegation against the husband as marriage of the victim solemnised on 30.09.2009 and after some days of her resident at sasural, she was subjected to cruelty for demand and she always used to be assaulted and hence contends that this language itself indicates involvement of the husband as to whom the victim was married. Further allegation that one Bibi Parwana Khatoon sister of the husband and husband of Bibi Parwana Khatoon also live in sasural and they also threatened to kill the victim. It is further contended that victim died in her matrimonial home in the bath room, though, there



was burn injury on her person, but cause of death as stated by the doctor who conducted post mortem examination of the victim cause of death by asphyxia due to strangulation as the doctor found fracture of tracheal rings, larynx and hyoid bone was found. It is only possible cause of strangulation. The doctor had also found 100% burn of five degree with smell of kerosene oil and roasted smell, line of redness along burn area absent, vesiculation and sign of inflammation was absent, formation of granulation tissue absent indicating post mortem burn and opined that cause of death due to asphyxia itself indicates death of the victim by strangulation and after death attempt was made to burn, smell of kerosene oil found on the dead body of the victim and hence defence set up by the accused persons that death by burn due to electric shock is ruled out and does not inspire confidence.

15. Having regard to the fact I proceed to consider the submission as to whether the prosecution has been able to prove the charges beyond all reasonable doubt. However, in order to seek conviction under Section 304B of Indian Penal Code against a person for the dowry death, the prosecution has obliged to prove that: (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within seven years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by



any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry and (e) to such cruelty or harassment the deceased should have been subjected soon before the death. Once the ingredient for offence under Section 304B of Penal Code is established then Section 113B of Evidence Act presumption arises that accused persons have inmates of the house and have done to dowry death and once set up then accused persons has to explain.

16. However, having regard to the fact that evidence of the doctor indicates that post mortem burn and opined that cause of death due to asphyxia itself indicates death of the victim by strangulation and dead body found in the bath room. It is apparent that death is in suspicious circumstances or otherwise than normal circumstances. Further it is asserted that marriage of the victim solemnised within seven years. Furthermore, evidence of the prosecution that marriage of the victim solemnised on 30.09.2009 and occurrence took place on 30.05.2010 within a year of the marriage and there is allegation of demand and subjecting cruelty and witnesses have also supported the prosecution case and there is evidence that one day prior to the occurrence witness went to sasural of the victim and victim disclosed about demand and subjecting cruelty. Hence, prosecution has been able to prove that soon before the death the victim was subjected to

cruelty. Hence for offence under Section 304B of Indian Penal Code has been established.

17. So far defence of the accused persons are two folds that the victim died by electrocution and D.Ws. 1 to 10 come to depose that they saw flame of fire came out in the bath room and when they reached there, they saw victim died in the bath room and kerosene oil floating in the drain. However, the doctor found that fracture of tracheal rings, larynx and hyoid bone was found. It is only possible cause of strangulation. Hence defence set up that cause of death of the victim by electrocution has not been established nor probability in view of evidence of the doctor that victim died by strangulation and had also found 100% burn of five degree with smell of kerosene oil and roasted smell, line of redness along burn area absent, vesiculation and sign of inflammation was absent, formation of granulation tissue absent indicating post mortem burn and opined that cause of death due to asphyxia itself indicates death of the victim by strangulation and after death to burn smell of kerosene oil found on the dead body of the victim which has not been challenged by the defence witnesses. Hence defence set up is not sustainable. Further defence set up on behalf of Bibi Parwana Khatoon and Md. Hasan that they were not residing at the sasural and filed three Exhibits- 'A', 'B' and 'C' as residential certificate, PAN card and Service book of Bibi Parwana



Khatoon there is address of at Village-Sabutar, P.S. K. Nagar, District-Purnea, issued by the S.D.O. However, the evidence of the prosecution that they used to live at naihar, but there is no serious challenge by the prosecution witnesses that Bibi Parwana Khatoon used to live in her naihar neither any certificate of working in school or attendance register was produced to show that on the date of occurrence she was in the school and certificate issued in the name of Md. Hasan for residential certificate does in all probabilities to show that he used to live in the Village- Sabutar. Further the certificate issued in the year 2008 a2nd occurrence took place in the year 2010 and no certificate has been found in the year 2010 and this document had been proved without any evidence of the person who issued the document, having been examined cannot be relied upon.

18. Hence I find and hold that prosecution has been able to prove the charge against the husband, Nanad and Nandoshi.

19. So far, Abdul Gaffar, appellant in Cr.Appeal (SJ) 20 of 2014 is concerned, he is aged about 82 years old and there is no specific allegation against him. The impugned conviction of accused appellant and the sentence passed against him by the judgment and order, under appeal, are hereby set aside and this **appeal is allowed**. The accused-appellant is held not guilty of the offence, which he stands convicted of, and he is hereby acquitted of the same.

20. Since the appellants Bibi Parwana Khatoon @ Parwana Khatoon and Md. Hasan @ Hasan Raja are on bail, their bail bonds are hereby cancelled.

21. So far appeals against appellant, namely, Md. Parwez Alam in Cr.Appeal (SJ) No. 59 of 2014 and appellants namely Bibi Parwana Khatoon @ Parwana Khatoon and Md. Hasan @ Hasan Raja in Cr. Appeal (SJ) No. 48 of 2014 **are dismissed.**

m.p.
N.A.F.R.

(Gopal Prasad, J)

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