

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.478 of 2014

Arising Out of PS.Case No. -15 Year- 2013 Thana -CHUTIA SAHAYAK District- SASARAM
(ROHTAS)

=====

Sudhir Mishra Son of Upendra Mishra R/o Village Padariya, p.S. Chutia, District
Rohtas (Sasaram)

.... Appellant

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sheojee Mishra, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, Add. P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: -11-2017

This appeal is directed against the judgment and order dated 04.08.2014 and 06.08.2014 respectively passed by Shri Ram Pratap Asthana, Adhoc ADJ IV, Rohtas at Sasaram whereby and whereunder appellant aforesaid has been convicted under Section 304(B) of the Indian Penal Code (hereinafter to be referred as 'the I.P.C.') and further sentenced to undergo RI for ten years.

2. Facts in brief of the prosecution story may be stated as under- It is said that informant's sister Rubi (the deceased) was married with the Appellant Sudhir Mishra on 07.05.2009 and she had two children out of her wedlock with the appellant. The father of Rubi (now deceased) died one year after the marriage and thereafter, she was subjected to harassment on demand of a motorcycle. it is alleged



that informant's sister used to inform the informant that inmates of her 'Sasural'' abuse and torture her and also threaten to kill her and it is also told by her mother-in-law Malti Devi and sister-in-law Puja Kumari that appellant would be remarried after killing deceased Rubi,. Informant had earlier once gone for 'Bidai' of his sister but it was not allowed. On 30.04.2013, the deceased Rubi was talking to her mother on phone which was snatched away by the appellant and then switched off and during the course deceased Rubi had told that inmates of her 'Sasural'' wanted to kill her. Further case is that on 01.05.2013, deceased Rubi was killed and dead body was burnt. This information was given by the appellant Sudhir Mishra himself and he had also assured that dead body would be burnt after the arrival of the informant and others. Deceased Rubi was not brought to any hospital for treatment nor any information was given to Police Station. On the basis of written report of informant filed on 02.05.2013, Chutia PS Case No 15/2013 was registered and after investigation, charge sheet was submitted against the appellant, accordingly cognizance was taken.

3. After commitment of the case, the trial proceeded. Prosecution has examined altogether 11 witnesses which will be dealt with hereinafter. From the trends of cross-examination as also the statement recorded under Section 313 Cr.P.C., defence stand is of



total denial and of false implication.

4. On perusal of the judgment under appeal, I find that learned court below has found that deceased came to her death within seven years of her marriage and the dead body was cremated hurriedly. He has further found that there was demand of motorcycle in dowry which was not fulfilled and for that deceased was being tortured and subjected to cruelty. Learned court below has further held that prosecution has well proved the charges by adducing cogent and corroborative evidence.

5. Learned counsel appearing for the appellant submitted that learned court below has completely failed to appreciate the evidences available on the record rather he has gone more sentimental than realistic in his approach. The testimonies of P.W.1 to P.W.5 have not been considered at all while they all are independent witness, being the co-villager of the appellant. He further submitted that it is clear from the evidence that there was no demand of dowry at the time of marriage and the deceased gave birth to two children within five years span of marriage indicating that there was cordial relationship between the appellant and the deceased but learned court below has completely ignored the evidences of witnesses in this regard. Learned counsel further contended that I.O. (P.W.11) has contradicted the evidences of the informant and others as regards the place of



occurrence and P.Ws. are not consistent with each other. He lastly argued that judgment under appeal is otherwise bad-in-law and is fit to be set aside.

6. On the other hand, learned Additional P.P. fully reiterated and supported the prosecution version and contended that appellant has been rightly convicted and sentenced and hence judgment under appeal deserves no interference.

7. On close scrutiny of the evidence available on the record in the background of contention of the parties, I find that P.W.1 to 5 are namely Dilip Mishra, Mahesh Chandra @ Mahendra Mishra, Narendra Chowdhry, Sheshnath Mishra and Ravindra Pandey respectively. They all are co-villagers of the appellant and have not been declared hostile. They all have stated that deceased was wife of appellant and she came to her death in her '*Sasural*' due to fire break out. They have also stated that there was cordial relationship between husband and wife and it was appellant who informed the inmates of her '*Naihar*' i.e. brothers about the death of Rubi (deceased) and the dead body was cremated in presence of her brothers and uncle. These P.Ws. have also stated categorically that the father of appellant worked at Fusero (Bokaro) and his mother and sister had gone to attend marriage ceremony at her '*Naihar*' and thus there were not present in the house on the day of occurrence. P.W. 2 has stated in



cross examination that appellant on the day of incident was working in the field and he reached home after his arrival there. PW4 has stated in his chief that deceased came to her death in her '*Sasural*' due to fire broke out and at that time appellant was working in his field. These P.Ws. have further consistently stated that the marriage of appellant with deceased was performed in cordial atmosphere and there was no demand of dowry and further they had not heard about any dispute/quarrel between husband and wife.

8. P.W.6 is the informant himself. He has stated that Rubi (deceased) was his sister who married with appellant on 07.05.2009. Initially, inmates of her '*Sasural*' behaved well with her and after the death of father, they started to torture her on demand of motorcycle. The demand was not fulfilled. he further deposed that on 01.04.2013, he went to '*Sasural*' of his sister to do '*Bidai*' but appellant, his mother and sister did not allow. On 30.04.2013, her sister told on phone that inmates of her '*Sasural*' would kill him. This witness has further stated in chief that on 01.05.2013, appellant informed him on phone that he has killed his sister, come and meet him. Then he and others went there and found the house locked. He further stated that then he went to police station and gave written report. He has proved his signature thereat as Ext-1. This witness has further deposed in chief that they started to search where the dead body was burnt and it



was found that in the south of the house, the dead body has been burnt. Then he informed the police and next morning '*Darogajee*' came and inspected the place.

9. In his cross, P.W.6 first stated that Narayan Mishra was the middleman in the marriage of his sister with appellant but he has not been examined. In para 3, he stated that marriage was performed in cordial atmosphere and there was no demand of dowry. In para 4, he deposed that after marriage he had gone 6-7 times to '*Sasural*' of his sister and had become well acquainted with the neighbour of appellant but has failed to disclose his name. In para 5, he has stated that on 01.05.2013, he went to village Parariya (appellant's village) with PW 7, 8 and 10 and remained in the village for two hours. He further deposed that thereafter he went to police station and stated orally to '*Darogajee*' but he told to come next morning. Next morning, he filed written report at Police station. This witness has further deposed that on 02.05.2013 he came to appellant's house with Darogajee. In para 8, he stated that in the deceased's room, there was blood in 5'x7' area and flour was spread over it and bones and a jute bag were found where dead body was burnt but nothing was seized by the police. In para 11, he has categorically stated that he came to learn from his sister about torture to her by inmates of her '*Sasural*' and on 30.04.2013, she had telephonically talked to her



mother but she has not been examined. In this para, attention of the witness towards contradictions appeared in between his statement before the police and given in Court has been drawn and then he stated that he did not write in his written report that on 01.05.2013 Sudhir Mishra told him on phone that he has killed the informant's sister and asked him to come and meet him. In para 12, suggestion has been put to this witness to this effect that deceased Rubi while cooking caught fire and died due to burning and dead body was burnt in their presence and also at their instance and further, he told the appellant to give money by selling the deceased's share in the property and when he did not meet the demand, this false case was lodged. This suggestion has been denied by him.

10. P.W.7 is the brother of PW6 as also deceased's brother. He has stated in chief that deceased marriage with appellant was performed on 07.05.2009 and she was subjected to torture on a demand of motorcycle and further on 01.05.2013, all the inmates of her '*Sasural*' killed the deceased. On information he went to '*Sasural*' of his sister and did not see the dead body. PW6 lodged the case. In cross, he deposed that there was no demand of dowry or motorcycle at the time of marriage. In 2010, deceased father died and at that occasion, appellant's father had come to attend the ceremony and till that time, there was cordial relationship. In para 5 of his cross, his



attention has been drawn towards his previous statement and then he stated in his own way. In para 6, similar suggestion to that of P.W.6 has been put to this witness and he has denied the same. But he has stated on his own that he had gone inside the house with '*Darogajee*' and found blood there and there was no signal of burning fire.

11. P.W.8 happens to be the uncle of the deceased. He deposed that on 01.05.2013, it was informed to PW6 on phone that Rubi has died. He then told him to ask them to keep the dead body intact. He with PW6 and others came to appellant's house which was locked. They then came to police station at about 8 PM and '*Darogajee*' told that case will be lodged in the next morning. They stayed whole night at the police station. Next day, the case was lodged and then they along with police came to appellant's house. This witness has further stated in cross that there was no sign of burning in the house and there was sprinkles of blood on the wall as also on the floor. Similar suggestion has been put to this witness which he denied.

12. P.W.10 is the uncle of the deceased. He has stated in chief that the deceased Rubi's marriage was performed on 07.05.2009 and one year after the marriage, inmates of her '*Sasural*' started to torture her on demand of a vehicle. On 01.05.2013 he learnt that the deceased Rubi was killed by the appellant and his family members. This witness in cross has stated that he came to learn about torture and



demand of dowry as also killing of the deceased from PW6. This witness is clearly hearsay witness.

13. P.W.11 is the I.O. of the case. He has stated that on 02.05.2013, he was posted as officer-in-charge of Chutiya P.S. and on this day, PW6 came to Police Station and filed a written report on which FIR was drawn up and he took up investigation of the case. He further stated that during investigation, he recorded the statement of witnesses and inspected the place of occurrence. He has stated that place of occurrence is Southern room of the deceased and its wall and various goods of the room were found in burnt condition. In the west of this room, there was kitchen and cooked food was found lying there. He further inspected the place situated in the South of the village where the dead body was stated to be burnt and he found the remains of burning there. In para 7 of his cross, he has categorically stated that except burning remains nothing was found in the room which could be seized. He further stated that at the burning place of the dead body, there were ashes only and there was no bamboo and unburnt bones there. No jute bag stained in blood was found there. He has further stated in clear terms in para 8 that he did not find blood stains either on the walls on floor of the room nor he found flour sprinkled on the floor over the blood stains in the room which was not locked. In para 9 of his cross, he stated during investigation, he



prepared production cum seizure list (Ext.- A) of the video and photographs produced by witness Ravindra Nath Pandey, the maternal uncle of appellant who has stated before him that on 01.05.2013, there was marriage of his daughter and the mother and sister of appellant had come to attend the marriage ceremony. In para 11, 12, 13 and 14, he has been confronted with the statements of P.Ws. 6, 7 and 8 and then he has contradicted their versions as regards place of occurrence and the place where dead body was said to be burnt.

14. On careful appraisal of the evidences, discussed hereinabove, following things are well emerged out:

i. Appellant's marriage with deceased Rubi was solemnized on 07.05.2009 and it was held in cordial atmosphere and further there was no any demand or demand of dowry made at that time. It is well clear that after marriage deceased came to her '*Sasural*' and remained there and from the wedlock with the appellant, she gave birth to two children i.e. one son and one daughter.

ii. It further appears not disputed that deceased came to her death on 01.05.2013 i.e. within just four years of her marriage in her '*Sasural*' and her dead body was burnt on the same day in south of the village. it



is also manifest from the evidences of P.W.6, 7 and 8 that it was the appellant who informed the informant (P.W.6) as about death of his sister and he requested to come and see her.

iii. It also appears that appellant's father was in private job at Fusero, Bokaro and his mother and sister were not present on 01.05.2013 in the house as they had gone to attend marriage in an another village situated at a distance. Thus, on 01.05.2013, appellant alone was present in the village in which incident in question took place.

15. It is the case of prosecution as per written report of P.W.6 that one year after marriage of deceased with appellant, his father died and thereafter, a demand of motor cycle was put forward and on that account, appellant and his family members used to torture his sister and the deceased used to inform about the same on phone. It has been further stated that informant had gone to have '*Bidai*' of his sister (deceased) but it was not allowed. Further on 30.04.2013, his sister was talking to her mother on phone but appellant snatched the phone and switched it off.

16. The mother of informant (PW6) has not been examined nor any explanation of the same has been offered. PW6 has



stated that his mother disclosed that the deceased was telling that appellant and other inmates of her '*Sasural*' wanted to kill her. But this statement is purely hearsay, hence not admissible in law because the mother has not been examined. In the written report, it has not been stated when informant P.W.6 had gone to appellant's village for '*Bidai*' of his sister and '*Bidai*' was refused. It is manifest from evidences that there was no any demand of dowry on the part of the appellant at the time of marriage nor any such demand was made for one year after marriage. P.Ws. 6,7 and 8, who are the brothers and uncle of the deceased have stated in their evidences as about demand of motorcycle by the appellant and torture on that account being subjected to deceased. But P.Ws. 1 to 5 who are the villagers of the appellant have been consistently deposed that there was cordial relationship between the deceased and the appellant and they did not ever heard or saw any quarrel happened between them. Furthermore, it is also clear from the evidences that just within four years of marriage, the deceased gave birth to two children; one son and one daughter in the wedlock with the appellant and they all were residing in the village in question. This also indicates good relationship between the appellant and deceased. All these circumstances makes out prosecution story as about demand of motorcycle on the part of appellant and torture being subjected to deceased due to non-



fulfilment of the demand, not convincing and reliable.

17. Prosecution version is that on 01.05.2013, appellant informed PW6 on phone at 12.45 PM that Rubi has died and dead body will be burnt after their arrival, but it was done before that. It is also the case of prosecution that deceased was neither brought to hospital for treatment nor local police was informed.

18. P.Ws. 6, 7 and 8 have consistently stated that Rubi was killed but they have not disclosed in what manner she was killed. These P.Ws. have not stated that deceased was killed by putting her on fire. On other hand, defence version is that the deceased was cooking meal in the house and during the course, she came to clutches of fire which resulted into her death. PW6, informant was then informed and after the arrival of informant and other family members, the dead body was cremated by burning in their presence and at their instance.

19. On careful scrutiny of the testimonies of P.Ws. 6, 7 and 8 on one hand and the testimony of P.W.11 (I.O.) on the other hand, I find that they materially contradicted to each other as to "place of occurrence". P.W. 6 (informant) has first stated in his chief that on 01.05.2013 appellant informed him on phone stating he has killed your sister, come and meet her. This is nothing but exaggerated statement of this witness and there is nothing like that in his written



report, which is the basis of this case. He further stated in his chief that he went inside the house of appellant with '*Darogajee*' (P.W.11) and found blood was lying in the room over which flour was sprinkled. He has stated nothing as about any burning sign found in the house. P.W.7 has simply stated that after getting information, he reached at the '*Sasural*' of his sister and did not see the dead body of his sister and none was found in the house. P.W. 8 has stated that he also went to appellant's village with P.W. 6 and found the house locked and then they went to Police station. He further deposed in chief that on information by someone that dead body has been burnt in the south of the village, we went there and found remains of burning and also a *jute bora* smeared in blood near the tree. This witness has also stated in chief that he went inside appellant's house with police and found blood sprinkled on the wall and floor of the room. But all these statements do not find place in his previous statement before police as in this regard, his attention towards previous statements has been drawn in para 8 of his cross. On the contrary, P.W.11 (IO) has categorically stated that he found the remains of burning in the room and no blood was found in the room. He further did not find any blood smeared jute bag at the place where dead body was burnt. These contradictions are vital to prosecution and indicate that P.Ws. 6, 7 and 8 are not truly speaking.



20. The testimony of P.W.11 (I.O.) fortifies the evidences of P.Ws. 1 to 5 in which they have stated that Rubi died due to burning while cooking meal in the house and at that time, appellant was working in the field and he reached his house sometime later.

21. As per written report and evidences of P.Ws. 6 to 8, the case of prosecution that deceased was killed by the appellant and other inmates of her '*Sasural*' and dead body was hurriedly burnt. However, it is manifest from evidences that on the relevant date, appellant alone was in the village and his father was at his workplace at Bokaro and further his mother and sister had gone to her '*Naihar*' to attend marriage ceremony of her brother's daughter. Under the situation, prosecution version that deceased was killed by appellant and others, does not inspire confidence at all.

22. The occurrence as alleged is said to have happened on 01.05.2013 and informant (P.W. 6) got the information on the same day before noon. But FIR of this case was lodged on 02.05.2013 at 08.30 AM on the basis of written report filed by P.W. 6 on 02.05.2013. It appears from the evidence of PW6 that he has tried to explain the delay by stating that on 01.05.2013 itself, he went to police station at 8 PM but '*Darogajee*' told him to come next day. But P.W.11 (I.O.) has stated that on 02.05.2013, P.W. 6 filed written report on which FIR was lodged. In para 11 of his cross, he has



categorically denied that on 01.05.2013, prosecution party has come to police station and stated orally about the incident and they stayed in the night at the police station. These inconsistencies as about delay in lodging the case, adversely affect the prosecution case and signifies that F.I.R. was lodged after proper thought and deliberation.

23. In the light of circumstances, discussed above, this Court is of the view that prosecution is full of doubt and prosecution has failed to prove the story of demand of dowry and deceased being subjected to cruelty soon before her death that too in connection with demand of dowry, beyond all shadow of doubts.

24. Accordingly, this appeal is allowed, impugned judgment of conviction and order of sentence is set aside.

25. As the appellant is in custody, he is directed to be released forthwith, if not required in connection with other case.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
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