

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.355 of 1994

Against the judgment of conviction dated 6th July, 1994 and order of sentence dated 12th July, 1994 passed in Sessions Trial No.165 of 1993 by 3rd Additional Sessions Judge, Saran, Chapra.

-
1. Jagdeo Kahar, son of late Banarsi Kahar
 2. Kalawati Devi, wife of Jagdeo Kahar
 3. Rabindra Kahar, son of Jagdeo Kahar
 4. Prem Kahar, son of Jagdeo Kahar

All residents of Mohalla Ratan Pura Dharm Nath Mandir, Police Station
Bhagwan Bazar, District Saran, Chapra.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Pramod Kumar, Advocate
For the Respondent/s : Ms. S. B. Verma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-12-2017

The appellants herein, who are father-in-law, mother-in-law, brother-in-law and the husband of the deceased, have filed this appeal and challenge their conviction ordered by the 3rd Additional Sessions Judge, Saran, Chapra in Sessions Trial No.165 of 1993 vide judgment dated 6th of July, 1994 and convicting them to



undergo life imprisonment for offence under Section 302/34 of the Indian Penal Code.

During pendency of the matter, a report has been received from the Superintendent of Police, Saran on 08.12.2017 which goes to show that appellant No.1 Jagdeo Kahar has died and, therefore, the appeal as far as it pertains to appellant no.1 Jagdeo Kahar is concerned it stands abated as he seems to have died on 27.04.2010 as is evident from the death certificate enclosed by the Superintendent of Police. The appeal, therefore, proceeds only with regard to appellant no.2, mother-in-law of the deceased, appellant no.3 Rabindra Kahar, brother-in-law of the deceased and appellant no.4 Prem Kahar, the husband of the deceased.

All the appellants were prosecuted on account of death of Madhuri Devi, wife of appellant no.4 Prem Kahar, which allegedly took place on 14.04.1992. They are charged for the offence under Section 302/34 of the Indian Penal Code so also under Section 304B of the Indian Penal Code. However, they have been acquitted of the charges under Section 304B of the Indian Penal Code and have been convicted only under Section 302/34 of the Indian Penal Code.

It is the case of the prosecution that on 14.04.1992 at about 6 P.M., an FIR was registered in Police Station Bhagwan Bazar on



the statement of one Ram Naresh Singh, Hawaldar to the effect that Madhuri Devi, daughter of Ramdas Mahto, was married to Prem Kumar about three years back. She used to live with her husband Prem Kumar as well as other family members which included the appellants herein, the father-in-law, the mother-in-law and the brother-in-law. Allegations of demand of dowry were made and it is said that she was subjected to cruelty. It is stated in the FIR that on 14.04.1992 at about 4 P.M, the informant, namely Hawaldar Ram Naresh Singh, P.W..16, along with constable Hare Ram Dubey, P.W.1, were holding *Gasti* duty when at about 7 P.M., P.W.6 Surendra Kahar reached and told them that the deceased was burnt to death by the accused persons in their house and the dead body was lying there. They rushed to the house and they found that the deceased was lying in a room which was full of smoke, she had been burnt, smoke was coming from her body and a *Chowki* was put on her body upside down which was also burning. She had been burnt to a larger extent and except her hand, the entire body was burnt.

Based on the same, postmortem was conducted and in the postmortem report conducted by Dr. Dinesh Kumar Ojha, P.W.12 it was found that the deceased was about 23 years of age. She died because of burning. It was also found that her eyes were closed,



tongue was protruding and there were deep burns up to the bone depth with antimortem bleeding in various parts of body.

Based on the same, statements of various persons were recorded and it is seen that to the police authorities the statements of witnesses were recorded and it transpires that the deceased was beaten up by the accused persons, her husband Prem Kumar hold her legs, kerosene was poured by her mother-in-law and appellant Rabindra Kahar, the brother-in-law gave match stick for burning her. The charge-sheet was filed and in the evidence 17 witnesses were examined. After trial, the allegation against them under Section 304B of the Indian Penal Code was not proved and, therefore, the appellants were acquitted of the same. However, surprisingly, main witnesses to the prosecution, P.W.2 Pancho Devi, P.W.5 Baharan Kumar, P.W.6 Surendra Prasad and P.W.11 Raj Kumar, who are said to have seen the occurrence, turned hostile and retracted from their statements. They were, therefore, declared hostile. Even the witnesses to the inquest report, P.W.3 and P.W.4, namely Jai Kisun Kahar and Chandra Kant Singh, did not support the case of the prosecution. However, P.W.1 Hare Ram Dubey, P.W.15 Tribhuwan Prasad Srivastava and P.W.16 Ram Naresh Singh, who had gone to the house on information received immediately after the occurrence, found that the deceased was



burnt, there was smoking in the entire room, smoke was also coming out from the body of the deceased and a *Chowki* put upside down on her body was on a burnt condition. Accused persons told the police officials who had come that the deceased suffered burnt injuries while she was cooking and they were trying to put sand and water to put away the fire. Even though, the witnesses who had seen the incident have turned hostile, but from the statement of P.W.1 Hare Ram Dubey and P.W.16 Ram Naresh Singh, what is made out is that when these persons reached the place of occurrence, there was still fire in the body of the deceased who was dead and the Chowki burning on her body, which was not at all removed by the accused persons, was a peculiar circumstance which could not be explained by the accused persons. That apart, it is seen that the story of the appellants was that the deceased sustained the fire injury when she was cooking and to the Investigating Officer they pointed out a stove which, according to them, was used by the deceased for cooking and she caught fire from the aforesaid stove. If the statement of the I.O. and the seizure of the stove and the condition of the stove is taken note of, we find that P.W.15, S. I. Tribhuwan Prasad Srivastava clearly points out that the stove was in a bad shape, it was not in a fit condition for being used, it had holes on its body and no



kerosene could be poured and retained in it and it could not be used for cooking purpose. Even if, this explanation of the accused persons are accepted, it is surprising that the deceased as per the postmortem report had not suffered any burn injury in any part of her hands, it was only her body which was burnt and the question of the *Chowki* still burning on her body is not at all explained by the appellants. It is a case where the incident happened in the house of the appellants, the dead body was found in a burnt condition with a *Chowki* still burning on the body and the explanation given by the appellants for the burning injuries sustained is not at all satisfactory. On the contrary, it is a false story.

Under Section 106 of the Indian Evidence Act, 1872, when any fact is especially within the knowledge of any person, the burden of proving that fact is upon such a person. In the present case, the injuries were sustained by the deceased due to burning inside the house, where the appellants were the only persons. Apart from the appellants, two witnesses, who were present in the house, namely P.W.6 Surendra Prasad and P.W.5 Baharan Kumar, who had narrated the story to the police about the appellants committing the offence have turned hostile.



Even though, learned counsel for the appellants vehemently argued that eye witnesses have not supported the case of the prosecution, the circumstantial evidence is not sufficient enough to convict the appellants, we are of the considered view that in this case the appellants have failed to discharge their burden under Section 106 of the Indian Evidence Act and have not explained as to how the deceased sustained fire injuries. That apart, the circumstances that have come on record, clearly shows that when they were present in the house, the deceased had sustained burnt injuries. The story of her burning herself while cooking is not at all convincing as is evident from the statement of investigating officer, P.W.15 Tribhuwan Prasad Srivastava, and there is no reason to disbelieve the statements of P.W.1 Hare Ram Dubey and P.W.16 Ram Naresh Singh, who had seen the deceased in her room which was full of smoke, a *Chowki* was burning on her body and she having sustained serious burnt injuries. The evidence of these witnesses along with medical evidence and the circumstances only point out to the guilt of the appellants and if after taking of the circumstances in detail, the learned Court has convicted the appellants, we see no reason to interfere into the matter. It is a case where in the facts and circumstances and the evidence that have come on record, the appellants are seen to have committed the



offence and there is no reason to acquit them by exonerating from the allegations levelled against them.

Accordingly, finding no merit in the appeal, the same shall stand dismissed. The conviction is upheld. The bail bonds of the appellants stand cancelled and they shall be taken into custody to serve their sentence.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2017
Transmission Date	19.12.2017

