

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.881 of 2011

(Against the order/Judgment dated 27.07.2011 and the order of sentence dated 02.08.2011 passed by the Sri Jitendra Nath Singh, Additional Sessions Judge, Fast Track Court No.IV, Araria in Sessions Trial No. 335 of 2010/Trial No.025 of 2010 under Sections 304 B IPC.

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Sabir @ Md. Sabir, son of Late Hathi, resident of village- Chakai, P.S. Jokihat,
District- Araria

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Anil Prasad Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

And

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR)

Date: 20-04-2017

The sole appellant has been convicted under Section 304 B of the Indian Penal Code and sentenced to life imprisonment vide judgment of conviction, dated 27.7.2011 and order of sentence dated 02.08.2011 passed in Sessions Trial No.335 of 2010/Trial No.025 of 2010.

2. The fardbeyan of Soni, wife of Sabir, resident of village- Chakai, P.S.- Jokihat, District- Araria recorded by S.I., K. Tiwary of Araria Police Station on 3.2.2007 at 3.15 P.M. at Sadar Hospital, Araria in short is as follows :

3. The informant Soni stated that she was married two



years ago as per Muslim rites with Sabir and her father gave articles worth Rs.25,000/- as dowry. Still her husband Md. Sabir, her father-in-law Md. Jahangir, her mother-in-law Bibi Amrun and others raised demand for cow and buffalo. On account of non-fulfillment of demand, the accused persons used to torture and assault her. On 31.1.2007 at 8.00 P.M., her husband poured kerosene oil and set her on fire as a result of which she got badly injured. For about one month they got her treated locally, which too after sometime was stopped. When her 'Naiher' people learnt about the burn injury, her grandfather came and got her hospitalized in Sadar Hospital for treatment where her fardbeyan was recorded in presence of her grandfather Khuda Bux in Araria Hospital. The police read over her statement and finding the same to be true, had put her R.T.I. on it, in presence of her grand father.

4. After investigation, the police submitted charge sheet under Section 304 B of the I.P.C. against the appellant. The learned Magistrate took cognizance and committed the case to the court of Sessions. Charge sheet was submitted against the appellant under Section 304 B of I.P.C., to which he pleaded not guilty and claimed to be tried.

5. The prosecution, in support of it's case, has examined as many as 13 witnesses, who are as follows :



- i) Moinuddin
- ii) Md. Waris
- iii) Md. Kamro
- iv) Md. Suleman
- v) Monid
- vi) Md. Zahid
- vii) Md. Azam
- viii) Md. Zaimul
- ix) Khudabax
- x) Surendra Lal Das
- xi) Dr. Satyabardhan
- xii) Md. Zamal
- xiii) Nabi Hasan

6. The trial court examined CW-1 (Kameshwar Tiwary), who recorded the fardbeyan of informant and CW-2 (Nilambar Bharti), the I.O. of the case.

7. The defence did not examine any witness nor adduced any documentary evidence. The case of the defence as appearing from mode of cross examination and statement under Section 313 of Cr.P.C. is that the deceased sustained burn injury while cooking, and on suspicion, the appellant has been falsely implicated in this case. The trial court treating the fardbeyan of the deceased as dying declaration coupled with the postmortem report which corroborates the prosecution case and the evidence of court witness, C.W.1, who recorded the fardbeyan of the deceased, convicted the appellant under Section 304 B of the I.P.C.

8. Mr. Anil Prasad Singh, learned counsel appearing for the appellant has assailed the judgment of conviction and sentence. He



submits that there is no eye witness to the occurrence, save and except, the informant herself, who alleged that the appellant burnt her. The informant admittedly sustained burn injury to the extent of 90% and thus it is very improbable that she would have been in a position to make the dying declaration. Besides this, there is no certificate of a doctor that the victim was in a position to make the dying declaration. He next submits that only the grandfather of the deceased from the paternal side came forward to be witness, who too denied there being any quarrel on account of dowry. On the contrary, he stated that he learnt that the deceased died while cooking.

9. Conversely, learned counsel for the State has defended the impugned judgment of conviction and sentence. He stated that he recorded the fardbeyan of the deceased and on finding the same to be true, had put her R.T.I. Furthermore, Dr. Satyabardhan (P.W.11), who conducted postmortem of the deceased, stated that the deceased died of burn injuries and septicemia. There is also no suggestion to the court witnesses that the informant was not in a position to record her fardbeyan, which was made on 3.2.2007 one month after the occurrence.

10. We have heard learned counsel for the parties and perused the materials on record.

11. From the materials on record, it is not in dispute that



Soni was married to the appellant Sabir @ Md. Sabir two years before her death. It is also not in dispute that she died on account of burn injuries. The dispute is only whether she sustained burn injury while cooking or she was deliberately burnt by the appellant. The case of the appellant is that Soni died while she was cooking. As per prosecution case, the appellant Md. Sabir poured kerosene oil on her and set her on fire on 31.1.2007 as her parents failed to fulfill dowry demand.

12. In the instant case, we find that out of 13 witnesses examined by the prosecution. P.W.1, Moinuddin, P.W.2, Md. Waris, P.W.3, Md. Kamro, P.W.4, Md. Suleman, P.W.5, Monid, P.W.6 and P.W.7, Md. Zahid and Md. Azam did not support the prosecution case during trial and were declared hostile. The prosecution drew their attention to their previous statements under Section 161 Cr.P.C. wherein they had supported the prosecution case, which they also denied. P.W.10, Surendra Lal Das is a formal witness and P.Ws.12 and 13, Md. Zamal and Nabi Hasan are witnesses of the inquest. P.W.11, Dr. Satyabardhan conducted postmortem on the dead body of the deceased, who opined that the deceased died on account of burn injury.

13. P.W.9, Khudabax, who is the grand father of the victim, is the only material witness on the point of occurrence apart from the victim, on whose statement the F.I.R. has been lodged.



P.W.9, Khudabax supported the prosecution case that her daughter was burnt to death by the appellant. However, he did not support the prosecution case regarding demand of dowry.

14. The main issue before this Court is whether the appellant killed the victim by burning her due to non-fulfillment of dowry demand. As the murder took place in the house of the appellant, there could not be any eye witness to the occurrence save and except the inmates of the house. However, the victim survived burn injuries for about a month and gave an eye witness account of the occurrence in her fardbeyan at the very first opportunity. She stated that the appellant tortured her for non-fulfillment of the dowry and was finally set on fire by sprinkling kerosene oil. She stated that she was married two years ago, which is not in dispute. As the victim died within a month of burn injury, the trial court rightly treated her fardbeyan as dying declaration.

15. Learned counsel for the appellant had argued that it would not be safe to convict a person on sole testimony of a person who could not be examined because of her death or otherwise.

16. We find that in the instant case, the victim is the informant. On verge of death bed, it would be very unlikely that she would implicate someone, who is not involved in the assault. The fact that the appellant got her treated locally in a secretive manner without



informing her parents is also a strong circumstance against him. Most clinching aspect of the matter is that C.W.1, Kameshwar Tiwary, who was examined as court witness, in his evidence stated that the informant did make her fardbeyan, which is marked as exhibit and finding the same to be true has put her R.T.I. No suggestion has been given to P.W.1 that the informant was not in a position to make the fardbeyan or that he recorded the same incorrectly.

17. Situated thus and in backdrop of discussions made above, we find that the prosecution has succeeded in proving the charge under Section 304 B of I.P.C. against the appellant, beyond all reasonable doubt.

18. In the result, this appeal fails and is dismissed. The impugned judgment of conviction and the sentence is upheld. The appellant, who remained in custody, is directed to serve the remaining part of his sentence after permitting admissible remission.

(Arun Kumar, J)

I agree
Samarendra Pratap Singh,J.

(Samarendra Pratap Singh, J)

N.H./-

AFR/NAFR	AFR
CAV DATE	N/A
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