

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.668 of 2012

Arising Out of PS. Case No.-99 Year-1998 Thana- TARARI District- Bhojpur

1. Lal Bahadur Singh
2. Bir Bahadur Singh
Both sons of Late Monacca Singh, both resident of village & P.O. Barka Gaon , P.S.- Tarari , District - Bhojpur At Ara

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with
Criminal Appeal (DB) No. 537 of 2012

Arising Out of PS. Case No.-99 Year-1998 Thana- TARARI District- Bhojpur

Chano Kuer , wife of Late Monacca Singh , resident of village & P.O.- Barka Gaon, P.S.- Tarari, district- Bhojpur At Ara.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (DB) No. 668 of 2012)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate
Sri Ajay Kumar Tiwari, Advocate
Sri Pratik Mishra, Advocate

For the Respondent/s : Sri Shiwesh Chandra Mishra , A.P.P.

(In Criminal Appeal (DB) No. 537 of 2012)

For the Appellant/s : Sri Kanhaiya Prasad Singh, Sr. Advocate
Sri Ajay Kumar Tiwari
Sri Pratik Mishra, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 28-11-2017

The aforesaid two Appeals were preferred against judgment of conviction of the three appellants. By judgment dated 5th May, 2012, Sri D.P. Singh, learned 2nd Additional Sessions Judge,



Bhojpur at Ara (hereinafter referred to as “trial judge”) has convicted the three appellants for offence under Section 304B and 201 of the Indian Penal Code , 1860 (hereinafter referred to as the “I.P.C.”) in Sessions Trial No. 120 of 2003 [arising out of Tarari P.S. Case No. 99 of 1998] . The learned trial judge has passed order of sentence directing both the appellants in Cr. APP (DB) No. 668 of 2012 to undergo rigorous imprisonment for life for offence under Section 304B of the I.P.C.. Both the appellants in Cr. APP (DB) No. 668 of 2012 have further been sentenced to undergo rigorous imprisonment for three years under Section 201 of the I.P.C. and fine of Rs. 5,000/- each. The appellant /Chano Kuer in CR. APP (DB) No. 537 of 2012 was sentenced to undergo rigorous imprisonment for ten years under section 304B of the I.P.C. and she has further been sentenced to undergo rigorous imprisonment for three years under Section 201 of the I.P.C. and fine of Rs. 5,000/-. It has been further directed that in case of default of payment of fine, all the three appellants shall under go simple imprisonment for further six months.

Short fact of the case is that on 4.11.1998 at about 5.00 P.M. the Sub Inspector Of Police Sri Rameshwar, Officer- In- Charge of Tarari Police Station / P.W. 5 recorded fardbyan of Brindanand Singh / P.W. 4. The fardbyan was recorded in the



village - Barka Gaon, Police Station :- Tarari, in the district of Bhojpur. In the fardbyan the informant/ Brindanand Singh disclosed that grand daughter of his maternal brother was married on 20th May, 1997 in village: Barka Gaon with Bir Bahadur Singh / appellant no. 2 in Cr. APP (DB) No. 668 of 2012. After marriage the girl was residing in her in -laws house, where she was regularly tortured by the aforesaid three appellants regarding dowry. The accused persons were demanding T.V., Scooter etc. and due to non- fulfillment of dowry she was regularly being assaulted by the accused persons. On the date of fardbyan i.e. 4.11.1998 at 1.30 P.M. he got information that Bir Bahadur Singh /appellant no. 2 in CR. APP (DB) No. 668 of 2012 , Lal Bahadur Singh /appellant no. 1 in Cr. APP. (DB) No. 668 of 2012 and Chano Kuer / sole appellant in Cr. APP (DB) No. 537 of 2012 jointly by administering poison had killed the wife of Bir Bahadur Singh. After getting information he reached near western “ *bauli chirar*” where he noticed that both the appellants of Cr. APP (DB) No. 668 of 2012 were going to burn wood and cow dung cake with a view to burn the dead body. The informant wanted to prevent them but they hurriedly proceeded to burn the dead body. Thereafter, the informant rushed to Tarari Police Station for giving information and subsequently, with Police Officials and



Police Force they reached to the place of occurrence where his fardbyan was recorded. The informant claimed that all the accused persons had tortured the deceased due to non -fulfillment of dowry and thereafter, by administering poison she was done to death and dead body was burnt near the western side of the village. He further stated that in-laws of the girl with the reason of dowry had never allowed the deceased to go to her parents' house. After reading his fardbyan, which was recorded by the Police Officer the informant put his signature. The said fardbyan was also identified by one Chandrama Singh. After recording fardbyan, a formal F.I.R. vide Tarari P.S. Case No. 99 of 1998 was registered on 4.11.1998 at about 20.00 hours (8.00 P.M.) for offence under section 304(B)/ 201/ 34 of the I.P.C. and Section 3 / 4 of the Dowry Prohibition Act, 1961 against all aforesaid three appellants. During investigation the investigating officer seized half burnt wood and half burnt cow dung cake which was giving smell of kerosene oil. The investigating officer inspected the place of occurrence and recorded re-statement of informant and other witnesses. Finally, during investigation the case was found true against all the three appellants and thereafter, on 31.12.1998 charge- sheet was submitted. After submission of charge -sheet the learned Magistrate took cognizance of offence on 15.4.1999.



Thereafter, police papers were supplied and in compliance with the provision under Section 207 of the I.P.C. on 10.2.2003 the case was committed to the court of Sessions. It is pertinent to notice that in the case cognizance order was passed in the month of April, 1999, however committal of the case took about four years and it was committed on 10.2.2003 and again after much delay on 1.11.2004 charges could be framed under section 304(B) and 201 of the I.P.C. against all the accused persons. Since the accused persons denied charges and claimed to be tried, the prosecution to establish its case examined altogether five witnesses. Out of five witnesses; P.W. 4/ Brindanand Singh is the informant, who has claimed that he was the main mediator in solemnizing marriage of deceased with appellant no. 2 / Bir Bahadur Singh [in Cr. APP. (DB) No. 668 of 2012]. P.W. 1 / Mitra Nand Singh, P.W. 3 / Nityanand Singh are full brother of deceased, whereas P.W. 2/ Chandrama Singh is the co-villager of the accused and P.W. 5 / Rameshwar [Sub Inspector Of Police] at the relevant time was the officer -in- charge of Tarari Police Station.

Before proceeding, it would be necessary as to what P.W. 4/ informant has stated . P.W. 4 / Brindanand Singh [informant] in his evidence has stated that he was the main person who had got



marriage of deceased solemnized with Bir Bahadur Singh. He stated that appellant no. 2/ Bir Bahadur Singh [in CR. APP (DB) No. 668 of 2012] was resident of village- Barka Gaon, whereas deceased was resident of village- Neknam Tola, Police Station- Barhara. After marriage the girl had gone to her in-laws house which was very nearer to the house of the P.W 4. He stated that in-laws of Galuri @ Babli Devi @ Savita Devi (deceased) were regularly assaulting her regarding non- fulfillment of dowry particularly providing Scooter , T.V. etc. He stated that marriage was solemnized on 20th May, 1997 and occurrence in the case had taken place on 4th November, 1998 at about 1.30 P.M. Anyhow he got information regarding killing of the deceased and thereafter, he rushed to the place of occurrence and noticed that dead body of Babli Devi @ Savita Devi @ Galuri Devi (deceased) was kept at the place of cremation. He claimed that after seeing the face of the deceased, he noticed that her color had changed and he inferred that she was done to death by administering poison. He stated that he requested the accused persons not to burn the body and firstly inform the parents of the deceased, which was not given heed to by the accused persons and hurriedly they started sprinkling kerosene oil on the dead body and tried to burn the same. When the accused persons did not stop in proceeding with the burning,



the informant immediately rushed to the Police Station and thereafter, with 'darogaji' he arrived at the place of cremation. He proved the fardbyan, which was marked as Exhibit- 2 and he also proved the signature of Brindanand Singh/ informant on the fardbyan, which was marked as Exhibit - 2/1. This witness was cross- examined at length, but nothing could be extracted to draw any adverse inference on his evidence. In paragraph no. 27 of his cross- examination though he stated that he was informed by the neighbourers that Galuri had died and thereafter he *suo motu* stated that he got information that she was done to death by administering poison. He further stated in paragraph no. 29 that when he reached at the cremation place at that very time the dead body had not started burning and he had seen the dead body. He further stated that after seeing the face, he noticed that color had changed. In paragraph no. 30 he has further stated that while he returned with the Police dead body had already burnt, which took about one hour . In paragraph no. 34 he clarified that if dead body is burnt with the aid of kerosene oil within one hour dead body can be burnt.

P.W. 1/ Mitra Nand Singh is the brother of the deceased and he stated in his evidence that his sister was married on 20th May , 1997 with Bir Bahadur Singh and after marriage she went to her



in-laws house. He stated that 5-6 years prior to the date of marriage he was residing in the same village i.e. Barka Gaon in the house of Brindanand Singh / P.W. 4. He made categorical statement that after marriage the aforesaid appellants were regularly demanding T.V., Scooter etc. as dowry for which they were regularly torturing her and also assaulting her. He claimed that whenever he went to the house of her sister (i.e. accused) his sister narrated everything regarding demand of dowry and torture. In cross -examination in paragraph no. 3 he stated that Brindanand Singh was his distant relative and on the date of deposition i.e. 1st March , 2005 he stated that he was not residing in the said village. About 2-3 months after the occurrence he had left living in the village- Barka Gaon. In paragraph no. 6 he stated that on 5.11.1998 he visited village Barka Gaon and he got all information.

P.W. 2 / Chandrama Singh is the co-villager of the appellants and he stated that he was also instrumental with Brindanand Singh /P.W. 4 in getting the marriage of deceased solemnized with Bir Bahadur Singh and he stated that the deceased was tortured regularly due to non -fulfillment of dowry like T.V., Scooter etc. In paragraph no. 2 of his evidence he further stated that after killing the accused persons started hurriedly burning the dead



body by sprinkling kerosene oil and thereafter, Police was informed and Police arrived at the place of occurrence, however accused persons after arrival of Police fled away and in his presence Police recorded fardbyan of Brindanand Singh and he also proved his signature on the fardbyan, which was marked as Exhibit -1. In cross -examination he admitted that there was some criminal cases amongst him and accused (appellants) . He further stated that he had seen while dead body was burning and after arrival of Police accused persons had fled away.

P.W. 3 / Nityanand Singh was also own brother of the deceased and he almost stated like P.W. 1 and corroborated that his sister was married with the accused Bir Bahadur Singh on 20th May, 1997 and thereafter, she was regularly tortured due to non-fulfillment of demand of dowry and she was also assaulted. He further stated in paragraph no. 3 that regarding demand of dowry he had also informed his father and his elder brother. At this juncture it is necessary to indicate that P.W. 1 /Mitra Nand Singh is the elder brother of the deceased and elder to P.W. 3 . He further stated that on 5.11.1998 Chandrama Singh /P.W. 2 and Brindanand Singh/ P.W. 4 had arrived in his village and they informed regarding the fact that his sister was killed by administering poison. He further reiterated in paragraph no. 5 of



his cross - examination that Chandrama Singh and Brindanand Singh /P.W. 2 and P.W. 4 respectively were close friend of his Baba (grand father) and they had informed him on 5.11.1998 that his sister Savita was killed by administering poison and her dead body was also burnt and disposed of.

In the present case evidence of the investigating officer/ Sri Rameshwar (P.W. 5), has got much relevance due to the reason that the investigating officer has stated that while he reached the place of occurrence where dead body was bring burnt, he noticed the smell of kerosene oil and thereafter, he seized half burnt wood as well as half burnt cow dung cake, which were giving smell of kerosene oil and thereafter, seizure list was prepared, which was marked as Exhibit - 4. This witness has stated that on 4.11.1998 i.e. the date of occurrence he was posted as officer- in- charge of Tarari Police Station and on the same date he had recorded fardbyan of Brindanand Singh, which was already proved and marked as Exhibit- 2. He stated that on the basis of fardbyan he prepared a formal F.I.R., which was marked as Exhibit -3. He seized half burnt wood and half burnt cow dung cake , which were giving smell of kerosene oil and seizure list was marked as Exhibit -4. In paragraph no. 8 of his cross-examination he stated that on 4.11.1998 at 4 P.M. he left Police



Station for the place of occurrence and reached the place of occurrence at 4.30 P.M. and returned to the Police Station at 20.00 Hour (8.00 P.M.) and at 8.00 P.M. formal F.I.R. was drawn. He clarified that for the first time i.e. at 4.30 P.M. he reached the second place of occurrence i.e. the place where dead body was burnt. At this juncture, it is necessary to notice that informant in his evidence has stated that he had arrived at the place, where dead body was put for burning, at about 1.30 P.M. and he tried to prevent the accused from burning but since the accused persons did not give any heed to his request, he immediately rushed to the Police Station and Police Station as per the investigating officer was about 3 Kilometers away from the place of occurrence and as such, the time consumed in arrival of the Police at the place of occurrence and disposal of the dead body corroborates the prosecution story. The investigating officer has stated that after getting information he left police station at 4.00 P.M. and 30 minutes were consumed in his arrival at the place of occurrence i.e. at 4.30 P.M., so in between 1.30 P.M. and 4.30 P.M. sufficient time was there for disposal of the dead body, however, at the place where dead body was burning the investigating officer had found half burnt wood and half burnt cow dung cake giving smell of kerosene oil. He further stated that seizure list in relation to



seizure of half burnt wood and half burnt cow dung cake was also signed by the witnesses. In paragraph no. 16 he stated that on 4.11.1998 after returning to Police Station again he recorded re-statement of Chandrama Singh and statement of other witnesses and statement of P.W. 3/ Nityanand Singh was recorded by him on 6.11.1998 in his own village. Though during his evidence previous statement of P.W. 2 and P.W. 3 recorded under section 161 of the Cr.P.C. was referred to the investigating officer /P.W. 5 to suggest that certain fact was not disclosed by those witnesses, this witness i.e. the investigating officer has reiterated that whatever was said by the aforesaid two witnesses was deposed in the court, however there were some changes in respect of the words, but fact remains the same. He has accepted in his cross-examination that he had not recorded statement of parents of the deceased.

Sri Kanhaiya Prasad Singh, learned senior counsel, assisted by Sri Ajay Kumar Tiwari, learned counsel for the appellants, after placing entire evidence i.e. oral and documentary evidence, has argued that prosecution has completely failed to explain as to why parents of the deceased had not come forward either to give statement before the Police or depose in the court. By way of referring to the evidences of P.W. 1, P.W. 3 and also investigating



officer, he has argued that both mother and father of the deceased were alive, but no reason has been assigned for their non-examination. It has been argued by Sri Singh, learned senior counsel, that those two persons were the best persons to say as to whether any demand of dowry was made or not. He has argued that in absence of their evidence, the prosecution has completely failed to establish as to whether any demand of dowry was made or not, and if there was no demand of dowry, there is no question of torturing for dowry and as such, appellants were not required to be convicted with the aid of Section 113B of the Evidence Act. He has also argued that for conviction under section 304B of the I.P.C. it is necessary to establish that immediately before the death there was any torture for demand of dowry, however in the present case, according to Sri Kanhaiya Prasad Singh, learned senior counsel, there is no such evidence. He further has argued that no reliance can be placed on the evidence of P.W. 2/ Chandrama Singh who was co-villager of the appellants since admittedly there was criminal case pending in between the appellants as well as witness- Chandrama Singh. Sri Singh has also placed evidence of P.W. 2 specially paragraph no. 2 to discredit the the evidence of informant /Brindanand Singh. He submits that though Brindanand Singh in his evidence has stated



that he was distant relative of the deceased, P.W. 3 /brother of the deceased has stated that he was having no relationship with Brindanand Singh /P.W. 4, rather P.W. 4 /Brindanand Singh was friend of his grand father . On aforesaid grounds it has been argued that prosecution has not proved its case beyond all reasonable doubt and as such, appellants deserve to be given the benefit of doubt. Alternatively, it has been argued that it has not been established as to how the deceased was done to death, however on the plea of disposal of the dead body, in worst case it could be a case under Section 201 of the I.P.C.

Sri Shivesh Chandra Mishra, learned Additional Public Prosecutor submits that it is a clear cut case of death due to non-fulfillment of dowry. He submits that two brothers of the deceased, who have been examined as P.W. 1 and P.W. 3 have categorically stated that their sister was being regularly tortured and assaulted due to non- fulfillment of demand of dowry. He further submits that the conduct of the accused also suggests that she was done to death and her dead body was hurriedly disposed of by way of burning and sprinkling kerosene oil and this fact has also been noticed by the investigating officer besides the evidence of P.W. 2, who is the co-villager of the appellants as well as P.W. 4, who is the informant of the case as well as co -villager



of the appellants. He has argued that both the P.W. 2 and P.W. 4 were instrumental in solemnizing marriage of the sister of P.W. 1 and P.W. 3 with appellant no. 2 in Cr. APP (DB) No. 668 of 2012 i.e. Bir Bahadur Singh. It has been argued that in the present case the prosecution has established the case regarding demand of dowry, torturing due to non- fulfillment and killing of sister of P.W. 1 and P.W. 3 and thereafter, hurriedly disposing of the dead body and as such, the learned trial judge has rightly held them guilty under section 304B and Section 201 of the I.P.C. and as such, the judgment impugned requires no interference.

Besides hearing learned counsel for the parties, we have examined entire materials available on record. On going through the evidences we are satisfied that prosecution has fully proved its case beyond all reasonable doubt. Marriage in the present case was solemnized only on 20.5.1997 and within a very short period on 4.11.1998 she was done to death and hurriedly her dead body was disposed of. The informant, who is co-villager and also instrumental in solemnizing marriage of the deceased with appellant no. 2 /Bir Bahadur Singh [in CR. APP (DB) No. 668 of 2012] is very much consistent that he after noticing information regarding killing of the deceased by administering poison rushed to the place where dead body was kept for burning and he had



seen the face of the deceased and noticed that color of her face had changed and thereafter, this witness requested the accused persons to inform the parents of the deceased, but the accused persons hurriedly started burning the dead body and thereafter, he was left with no option but to rush to the Police Station. Thereafter, the informant /P.W. 4 reached Police Station and informed the Police and arrived at the place of occurrence with the Police Official i.e. the investigating officer and other Force, however, in the meanwhile, dead body of the deceased was already disposed of by burning and remains were there, which was noticed by the investigating officer. Thereafter, the investigating officer had also noticed smell of kerosene oil and he seized half burnt wood and half burnt cow dung cake giving smell of kerosene oil, which fact is evident from Exhibit -4 i.e. seizure list. The investigating officer /P.W. 5 has also reiterated that he had smelled the smell of kerosene oil. Moreover, the witnesses have made consistent statement that after marriage the deceased was never allowed to return back to her parents' house and brothers were informed by the deceased regarding torture and assault due to non-fulfillment of dowry, so in this case, the prosecution has established it that before death the deceased was tortured due to non- fulfillment of



dowry and thereafter, she was done to death and hurriedly dead body was disposed of.

Considering the point that prosecution has proved its case beyond all reasonable doubt, we are of the considered opinion that the learned trial judge has committed no error in passing the judgment of conviction and sentence. Accordingly, both the Appeals are dismissed.

Since the appellant no. 1 in CR. APP (DB) No. 668 of 2012 and sole appellant in CR. APP (DB) No. 537 of 2012 are on bail, in view of dismissal of the appeals and affirmance of the judgment of their conviction, their bail bonds stand canceled and they are directed to surrender before the court below forthwith.

(Rakesh Kumar, J)

(Mohit Kumar Shah, J)

praful/-

AFR/NAFR	AFR
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