

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.238 of 2013

Arising Out of PS.Case No. -48 Year- 2010 Thana -CHAPRA MUFFASIL District- SARAN

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1. Bhageran Ram S/O Late Nathun Rai R/O Village - Lohara, P.S. Chapra
Muffasil, Distt. – Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Neeraj Kumar Sanidh, Amicus Curiae

For the Respondent/s : Mr. S.N. Prasad, A.P.P

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 01 -05-2017

We have heard learned Amicus Curiae in support of the
appeal as well as Mr. S.N. Prasad, APP for the State.

2. The sole appellant has been held guilty under Section
304B IPC and sentenced to undergo R.I. for life by the judgment of
conviction dated 29.11.2012 and the order of sentence dated
01.12.2012 passed by learned IVth Additional Sessions Judge, Saran
at Chapra in Sessions Trial No. 45 of 2011 (arising out of Chapra
Mufassil P.S. Case No 48 of 2010).

3. The victim, in the case, is daughter-in-law of the
appellant. She was married to the son of the appellant about five years
ago. On 07.03.2010, she received burn injuries while living at the
Sasural. Immediately, she was carried to the Chapra Sadar Hospital



from where she was referred to the Patna Medical College and Hospital on the same day. On the morning of 08.03.2010, P.W.-7 recorded her statement which bore her thumb impression in presence of her father. Nearly 10 days thereafter, the victim died of the burn injuries. The statement of the victim recorded by P.W.-7 was treated as the basis of F.I.R. which was drawn on 27.03.2010. The prosecution case as per Ext.-4, in brief, is that she (the deceased) was married with the son of the appellant about five years ago. Her husband was working in Punjab in connection with his livelihood. She had no issue. She was residing at the village house of her husband along with the appellant. The in-laws started demanding golden neckless and motorcycle and on account of non-fulfilment of such demand, she was being subjected to torture and harassment. On 07.03.2010, the appellant and the elder brother of her husband, along with others, sprinkled kerosene oil on her and she was put on fire. Alarm was raised which attracted the neighbours who brought her to the Sadar Hospital and from there she was referred to the P.M.C.H. where her father (P.W.-1), mother (P.W.2-Janki Devi), brother (P.W.-4) as well as husband (D.W.-1) also arrived. Her statement was recorded there at the P.M.C.H. by P.W.-7. Upon death, it appears, the police also recorded statement of the father of the deceased. However, the same was not treated as an F.I.R. On the basis of F.I.R. lodged by



the victim, the investigation ensued wherein death inquest proceeding was carried out and the body was sent for post-mortem. P.W.-5 is the autopsy surgeon who performed the autopsy and submitted the post-mortem examination report (Ext.-2). The statements of the witnesses were recorded and on conclusion thereof, the charge-sheet was submitted whereon cognizance was taken and the case was committed to the Court of Sessions for trial. On transfer, the case came on the file of the Trial Judge where the charges were framed and read over to the accused to which he pleaded not guilty. To prove the case, the prosecution examined 07 witnesses besides exhibiting the document(s) such as the inquest report (Ext.-1/1), port-mortem report (Ext.-2) and the fardbeyan (Ext.-4). The defence also examined 03 D.Ws. to demonstrate false implication of the appellant in the case. D.W. 1 is the husband of the victim and D.W.-2 and 3 are the two neighbours of the appellant. On critical analysis of the evidence adduced on behalf of the prosecution, the learned Trial Court found cogent evidence against the appellant and held him guilty as noted above. The fardbeyan made by the victim on 08.03.2010 before the Police and recorded by the P.W.-7 in presence of P.W.-1 was considered as the dying declaration. The Court found it a voluntary one having been made under a fit state of mind. The oral evidence of P.Ws.-1, 2 and 4 corroborated the prosecution case and thus placed



complete reliance thereon.

4. It has been submitted by learned Amicus Curiae that the dying declaration was antedated. It was not promptly acted upon. The victim survived for several days thereafter. Her statement before the Police on 08.03.2010 loses its shine. The learned Trial Court erred in treating her statement as dying declaration, particularly, when the doctor (P.W.-5) found 100 % burn injury on her person. From the evidence of P.Ws.-1, 2 and 4, it would appear that they had come together, on hearing the news, to Chapra and from there to P.M.C.H. P.W.-1, in his evidence, has stated that he had come from Kolkata five days after the occurrence. This is a severe jolt to the prosecution case as the evidence of P.Ws.-2 and 4 shall become automatically contradictory. It has also been urged that the doctor did not find presence of kerosene oil on the person of the victim. The case projected by the prosecution should not, therefore, be believed. He would also urge that if the victim was first treated at Chapra, the prosecution, in all fairness, ought to have examined any one from the Hospital at Chapra to prove the prosecution case which has not been done. No specific date of demand of dowry has come in the evidence of the prosecution. The ingredients of Section 304B IPC are lacking.

5. Mr. Prasad, APP, on the other hand, submits that P.W.-7, on getting information about the admission of the patient of burn



injury, under orders of the authority, reached the hospital and recorded fardbeyan of the victim on 08.03.2010 at 8.30 p.m. in presence of her father (P.W.-1) who had arrived there. Statement recorded before the Police can very well be treated as dying declaration if the victim subsequently dies and therefore could not have given her statement. The victim was truthful when she did not implicate the husband who was not present in the house and only implicated the appellant and another co-accused. Her statement was later treated as dying declaration. Her statement read along with the evidence of her father (P.W.-1) and brother (P.W.-4) prove without any doubt that the victim was subjected to torture/harassment by the appellant and the other in-laws on account of non-fulfilment of demand of dowry. Indisputably, within 07 years of marriage, the incident had occurred. The victim died of the burn injuries sustained by her in a very suspicious circumstance. Once these facts are proved, the burden lies on the prosecution to prove that they are innocent and that her death was accidental or suicidal. The prosecution has completely failed to discharge the said legal liability.

6. We have considered the submissions made by the parties and perused the materials on record. The victim received burn injury while she was at her Sasural. According to the prosecution, kerosene oil was poured on her by the appellant and thereafter she was set



ablaze. Neighbours intervened and carried her to Chapra where intimation was sent to the family members of the victim and immediately she was also rushed to P.M.CH. On the following morning, on getting requisition, P.W.-7 arrived. P.W.-7 is the Sub-Inspector of Police, Pirbahore in the city of Patna. Finding her condition precarious, P.W.-7 recorded her fardbeyan at the P.M.C.H. where she was admitted in the Emergency Ward of the P.M.C.H at bed no. 9. Her thumb impression was obtained in presence of the P.W.-1. Recording of the statement of the victim by P.W.-7 at the Emergency Ward of the P.M.C.H. on 08.03.2010 has been supported by P.W.-2 (mother of the victim) as well as P.W.-4 (brother of the victim) who had also arrived at the hospital with P.W.-1. P.W.-7 has stated that although major part of her body was burnt but she was conscious and was in a position to make statement. Her thumb was not burnt and, as such, the thumb impression was taken on her statement in presence of her father (P.W.-1). The father of the deceased has also stated that the victim was in sense and was talking

7. Counsel for the appellant has submitted that the declarant survived for several days thereafter. She was, therefore, not in imminent fear of death. Her statement, therefore, should not be treated as a dying declaration. In the case of *Najjam Faraghi @ Nijjam Faruqui vs. State of West Bengal* [(1998) 2 SCC 45], the



Hon'ble Apex Court, negating the said contention, observed as under:-

“There is no merit in the contention that the appellant's wife died long after making the dying declarations and therefore those statements have no value.”

8. The Apex Court, while observing above, took notice of the second paragraph of sub-section (1) of Section 32 which reads as follows:

“Such statements are relevant whether the person who made them was or was not, at the time when they were made, under expectation of death and whatever may be the nature of the proceeding in which the cause of his death comes into question.”

9. We shall, on this issue, refer to the evidence of doctor (P.W.-5) who, in his cross-examination, has stated that a person, having received the injury of the kind sustained by the deceased, can be or may not be unconscious. On a consideration of the aforesaid, we find no substance in the contention of the appellant that because the declarant survived for few days after making such declaration, it shall not be treated as the dying declaration. We are mindful of the findings of the doctor (P.W.-5) that the victim had received serious burn injuries on her entire body. We may also note that it is not always necessary that a dying declaration should be certified by a doctor before reliance could be placed on the same. In a case like this, the Court should satisfy from the material on record that it is safe to place



reliance on such declaration even in absence of such certificate. The Hon'ble Apex Court in *Maniben vs. State of Gujarat (A.I.R. 2007 S.C. 1932)* while dismissing the appeal of accused observed that "dying declaration need not be ceased to be only because death took place 25 days after the incident. All attempts would be made to save a precious life of a 25 year old young woman. The doctors must have tried their best. Dying declaration which is recorded in expectation of death, need not be discarded only because death took place after a few days. What is necessary for the said purpose inter alia is that the statement had been made by a person who cannot be found or who is dead and thus incapable of giving evidence". In the case in hand, the victim survived for 11 days and her statement was recorded by Police on the following day of occurrence in presence of the family members.

10. The principles of admissibility of dying declaration has been discussed by the Hon'ble Apex Court in *Ravikumar alias Kutti Ravi vs. State of T.N. [(2006) 9 SCC 240]* wherein the Apex Court opined as under:

"5. Section 32 of the Evidence Act, 1872 is an exception to the general rule against hearsay. Sub-section (1) of Section 32 makes the statement of the deceased admissible which is generally described as "dying declaration". The dying declaration essentially means statements made by the person as to the cause of his death or as to the circumstances of the transaction resulting in his death. The admissibility of the dying declaration is based upon the principle that the sense of impending



death produces in man's mind the same feeling as that of a conscientious and virtuous man under oath. The dying declaration is admissible upon consideration that the declarant has made it in extremity, when the maker is at the point of death and when every hope of this world is gone, when every motive to the falsehood is silenced and the mind is induced by the most powerful consideration to speak the truth. Notwithstanding the same, care and caution must be exercised in considering the weight to be given to these species of evidence on account of the existence of many circumstances which may affect their truth. The court has always to be on guard to see that the statement of the deceased was not the result of either tutoring or prompting or a product of imagination. The court has also to see and ensure that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy itself that the deceased was in fit mental condition to make the dying declaration, has to look for the medical opinion. Once the court is satisfied that the declaration was true and voluntary, it undoubtedly, can base its conviction on the dying declaration without any further corroboration. It cannot be laid down as an absolute rule of law that the dying declaration cannot form the sole basis of conviction unless it is corroborated. The rule requiring corroboration is merely the rule of prudence....."

11. In the light of the evidence on record, we have no hesitation to conclude that the declaration was made by the victim while she was in imminent fear of death. It related to the circumstances under which she received the injury. The evidence of the doctor gives credence to our view that a person having received such injury may not be unconscious.

12. We shall now advert to the contention of the appellant that in face of the evidence of P.W.-1 in para 2 that he reached



hospital five days after the occurrence, the presence of P.W.-1 as well as P.Ws.-2 and 4 be disbelieved. The said submission has been made on an incorrect reading of the evidence of P.W.-1. Learned A.P.P placed before us paragraph 2 of his evidence wherefrom we find that this witness had, in fact, stated that after reaching his home, he came to Chhapra hospital. The accuseds had brought her to Chapra Sadar Hospital on the same day. We, therefore, do not find any substance in the said contention of the appellant.

13. It has been argued with much vehemence that the statement of the victim recorded on 08.03.2010 was not acted upon until the victim died 11 days after the occurrence when a fardbeyan made by P.W.-1, the father of the deceased was also recorded. In order to dredge out the truth, we have perused the investigation record as also Exts.-1/2 and 1/3 which are the signatures on the said fardbeyan of P.W.-1. True it is that statement of the father was recorded on 19.03.2010 but the same was not made basis of the case and no investigation was carried out consequent thereto. Insofar as Ext.-4 (declaration of victim) is concerned, we find that it was sent to the Chapra Police Station on 08.03.2010 itself vide DR No. 464 of 2010. We cannot lose sight of the fact that entire family members remained at Patna in connection with treatment of the victim. The victim survived for 11 days thereafter and ultimately succumbed to



those injuries on 19.03.2010. Immediately thereafter, the post mortem was conducted and the body was handed over to the family members of the deceased. In such view of the matter, registration of formal F.I.R. on 27.03.2010 by the Chapra Police shall not be considered as a serious flaw in the prosecution case. The entire family members, except the husband, were made accuseds. The appellant in the case is the father-in-law of the deceased. We do not know what happened to the two other accuseds cited in the First Information Report. There may be no one present in the house. The family members of the victim were at Patna. These facts glaring from the record cannot be ignored by the Court to take a very technical view that there has been delay in recording the fardbeyan. Any such plea requires consideration in the particular setting of facts. The prosecution has explained the circumstances.

14. The case can be viewed with a different angle also. The deceased received burn injuries in the house where the appellant was present. The husband of the deceased was away in connection with his livelihood. Under the legal provision, the appellant owes an explanation to those circumstance as it was a fact especially within his knowledge. We do not find any cogent explanation through the evidence of D.Ws. about the circumstances in which the deceased got herself engulfed in fire within the four walls of her Sasural.



15. One of the submissions of the appellant is that the doctor did not find any sign of kerosene oil on the body of the deceased. It is to be noted that the deceased survived for more than 10 days after the incident. Presence of any sign of kerosene oil is not expected on the body. Furthermore, it is also kept in mind that the doctor found 100 % burn injury on her body.

16. The conclusion of the discussions of the relevant evidence produced by the prosecution is that the prosecution has succeeded in proving its case of having intentionally set the deceased on fire which resulted in her death. It was so done as the family members of the deceased had not satisfied their demand of dowry. It was preceded by torture on her.

17. Consequently, we do not find merit in the appeal. It is, accordingly, dismissed.

(Kishore Kumar Mandal, J)

Sanjay Kumar, J: I agree.

(Sanjay Kumar, J)

Pankaj/-

AFR/NAFR	NAFR
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