

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.160 of 2015

Arising Out of PS. Case No. -114 Year- 2013 Thana -LAUKARIA District- WESTCHAMPARAN(BETTIAH)

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Buchan Soni @ Buchuu Soni S/o Shivajee Sah Resident of Village Harnatand,
Police Station Laukariya, District West Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Milind Kumar Mishra, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 26-02-2018

Appellant, Buchan Soni @ Buchuu Soni has been found guilty for an offence punishable under Section 306 of the IPC sentenced to undergo R.I. for seven years as well as to pay fine of Rs.5000/- and in default thereof, to undergo R.I. for six months vide judgment of conviction dated 20.01.2015 and order of sentence dated 21.01.2015 passed by Second Addl. Sessions Judge, Bagaha, West Champaran and in Sessions Trial No.318 of 2014/85 of 2014.

2. Mithilesh Devi, PW.5 filed written report on 17-12-2013 alleging inter alia that her daughter Poonam Devi, was married with Buchan Soni about two years ago. While she was staying at her Sasural, Buchan Soni, Radho Sah, Dinanath Sah, Surendra Sah, Shiv Sah and Phulan Devi began to torture her on the pretext of fulfillment of demand of dowry in lieu of chain, furniture, motorcycle and for that, she was frequently assaulted. In the aforesaid background Buchan Soni had also executed an undertaking. Even then, torture continued and in the aforesaid background, her daughter sprinkled K.Oil on 17.12.2013 and lit fire as a result of



which, she died. After having been informed by the villagers, she rushed, came to her place found the dead body in burnt.

3. On the basis of the aforesaid written report, Laukaria P.S. Case No.114/2013 was registered followed with an investigation as well as submission of charge sheet whereupon trial commenced and concluded in a manner, subject matter of instant appeal.

4. From the lower court record, it is evident that altogether fourteen PWs have been examined who are PW.1-Rekha Kumari, PW.2-Siyaram Sah, PW.3-Lalan Kumar, PW.4-Arjun Sah, PW.5-Mithlesh Devi, PW.6-Prem Nath Sah, PW.7-Rajendra Sah, PW.8-Chandrika Sah, PW.9-Radhe Shyam Vishwakarma, PW.10-Maharun Nisha, PW.11-Mukti Sah, PW.12-Safat Qurashi, PW.13-Dr. A.K. Tiwari, Pw.14-Chhote Lal Ratwani. Side by side had also exhibited exhibit Ext.1-Written report, Ext.2-Postmortem Report.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither oral nor documentary evidence has been adduced on behalf of the appellant.

6. PW.13 had conducted postmortem over the dead body of deceased Punam Devi found the following:

- (i)** 100% burn injury, deep in nature effecting her whole body.
- (ii)** No external injury could be visualized due to burn injury.
- (iii)** External genetaliya was also effected by burn injury.

2. On examination of internal organ, there was laceration of right lobe of liver 3"x1 ½ "x ½".



3. Peritoneal cavity contained blood and blood clots 150 ml.

4. Lungs congested

5. Major airways attained carbonaceous particles.

6. Cardiac Chambers contained cherry red blood.

7. Stomach and urinary bladder was empty.

8. Internal genitalia- normal

9. Rest of the internal organ were congested.

10. All findings were ante-mortem in nature except rigor mortis which was present in all four limbs and was fully set.

11. Cause of injuries- Burn injury by fire and injury to liver was by hard and blunt substance.

12. Cause of death-shock due to fire injuries by burn.

13. Time since death was within 24 to 48 hours.

7. Now, from the evidence of PW.13, it is evident that deceased had died on account of fire, burn injury, ante-mortem in nature. From his cross-examination, it is evident that the doctor had not disclosed that during course of conduction of postmortem smell of k.oil was coming out.

8. So far evidence of PW.14, Investigating Officer is concerned, it is apparent that during examination-in-chief he had not detailed the place of occurrence as well as objective finding relating thereto. That means to say, no effort was ever made at the end of the prosecution on that very score, whereupon it remained unexplained.

9. Now coming to ocular evidence, less said is better.



Right from PW.1 to PW.12 they have not supported the case of the prosecution in any manner. What to say about others, the mother/informant resiled from her earlier statement and was declared hostile.

10. The learned lower court had convicted the appellant for an offence punishable under Section 306 of the IPC and for that purpose, the presumption having in terms of Section 113A of the IPC needs to be recapitulated which reads as follows:

“113A. Presumption as to abetment of suicide by a married woman.—When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the Court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

11. So from plain reading of Section 113A of the Evidence Act, it is apparently clear that prosecution has to satisfy (a) there was cruelty (b) leading to commission of suicide (c) within seven years of her marriage. That means to say prosecution has to substantiate its case on that very score. Cruelty it to be considered in tune with whatever been incorporated under Section 498A IPC. From the evidence available on the record in is found that the prosecution case is found deficient one. Though death is found fully exposed, but none had disclosed the event of torture and further, accused/appellant had provoked or abetted the act of suicide. So, even meeting with abnormal death, will not serve the purpose for want of appropriate level evidence. That being so, the judgment of



conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liabilities.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	A.F.R.
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