

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.560 of 1994

Arising Out of PS.Case No. -null Year- null Thana -null District- BHAGALPUR

[Against the judgment of conviction and order of sentence dated 25th February, 1994, passed by the Additional Sessions Judge, Naugachia, in Sessions Case No.185 of 1992 arising out of Gopalpur P.S. Case No. 133 of 1991 corresponding to G.R. Case No.569 of 1991]

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Kapil Deo Yadav, son of Maharaj Yadav, resident of villae-Bhawanipur, P.S.- Gopalpur, District- Bhagalpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. P. Mehta, Amicus Curiae

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

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

&

HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY PRIYA)

Date: 06-01-2018

1. Mr. Awadhesh Kumar Singh, Advocate, was earlier appointed as Amicus Curiae to assist the Court, but he has not appeared today on behalf of the appellant to assist the Court. In view of such, Mr. P. Mehta, Advocate, is appointed as Amicus Curiae to assist the Court.

2. Sole appellant has been convicted for the offence under Section 302/34 Indian Penal Code for committing murder of his wife, Sabita Devi, and has been sentenced to undergo rigorous imprisonment for life under that count by judgment of conviction



and order of sentence dated 25th February, 1994, passed by the Additional Sessions Judge, Naugachia, in Sessions Case No.185 of 1992 arising out of Gopalpur P.S. Case No. 133 of 1991 corresponding to G.R. Case No.569 of 1991.

3. Prosecution case on the basis of the *fard-e-beyan* given by the father of the deceased is that his daughter, Sabita Devi, was married with the appellant. She had gone to her *Naihar* about ten days prior to the occurrence because she was assaulted by her husband and other family members. She narrated about the incident to the informant and told that she would not go to her *Sasural*. It is further alleged that four days prior to the occurrence this appellant and another accused, Moffil Yadav, came to his house for taking the daughter of the informant on *Vidai*, but he told them to take her back after *Chhat* festival. It is further alleged that daughter of the informant had gone to hospital for treatment and when she was coming back to her house on rickshaw, son-in-law of the informant, Kapildeo Yadav, and Moffil Yadav assaulted her near railway line and forcibly dragged her to their house. The informant learnt next day from the boys of Bhawanipur that her daughter Sabita Devi has been burnt alive by the accused persons and kept confined in a room. Thereafter, informant went to the *Sasural* of his daughter and took her to Naugachia Hospital for treatment. He came to know from his



daughter that her father-in-law and brother-in-law were trying to rape her. Formal First Information Report was drawn on the basis of the aforesaid *fard-e-beyan* and thereafter police after investigation submitted charge-sheet.

4. The Trial Court after holding trial convicted the appellant for the offence under Section(s) 302/34 Indian Penal Code and sentenced him to undergo rigorous imprisonment for life. Other two accused persons also faced trial, but the Trial Court acquitted them of the charge.

5. Learned Amicus Curiae has submitted that besides dying declaration of the deceased, there is no other material against the appellant in support of the occurrence. He has further submitted that on similar dying declaration other two accused have been acquitted by the Court below and this appellant has been convicted. Learned Amicus Curiae has further submitted that even if dying declaration is taken to be correct, then also there is no other evidence with regard to corroboration of the dying declaration.

6. Learned APP has submitted that dying declaration was recorded by the Block Development Officer (PW 1), who appeared in the Court to prove dying declaration. He stated that the same was recorded in presence of Dr. Ram Naresh Singh (PW 4), who certified that she was in sound state of mind for giving dying



declaration. Learned APP has further submitted that dying declaration given by the deceased three days prior to her death cannot be burst aside simply on the ground that there is no corroboration of the dying declaration by other independent witnesses. He has further submitted that dying declaration is the last statement of the deceased, which normally cannot be thrown away lightly as it is expected that a person, who is lying on the death bed, will not speak lie.

7. During trial, prosecution has altogether produced eight witnesses.

8. PW 1 (Sarjug Prasad Mandal) is the Block Development Officer, who has stated before the Court in his evidence that he had written the dying declaration of the deceased in presence of Dr. Ram Naresh Singh (PW 4) and the Deputy Superintendent of the Hospital. The deceased put her RTI in his presence. He has proved the dying declaration in his evidence which has been marked as Ext.1. There is no cross-examination by defence on the point of dying declaration not being genuine.

9. PW 4 (Dr. Ram Naresh Singh) held post mortem examination and found extensive burn injuries on the person of the deceased, which was almost 80%. All wounds were ante mortem burn wounds. He opined that death was due to extensive burn



injuries. He has further stated in his cross-examination that he was present at the time of dying declaration. She was in conscious condition at the time of giving dying declaration.

10. The informant, Chedi Yadav, who is father of the deceased, has been examined as PW 3. He has supported his case in his evidence as given in the *fard-e-beyan* and stated that when her daughter had gone to hospital for treatment, she was taken forcibly by his son-in-law (Kapildeo Yadav) and co-accused, Moffil Yadav, to their house. He has also stated in his evidence that prior to the occurrence his son-in-law and Moffil Yadav had come to his house to take away his daughter on *Vidai*. He told them to take her back after *Chhat* festival, but when she had gone to the hospital for treatment, they forcibly dragged her to their house and set her on fire. He learnt of the occurrence from the villagers of Bhawanipur and thereafter he went to the *Sasural* of his daughter and found her in serious condition. Then, she was brought to hospital with the help of the villagers. She gave her statement in the hospital and named appellant and Moffil Yadav for setting her on fire. The daughter of the informant died in course of treatment.

11. Investigating Officer (Bishwanath Singh) of the case has been examined as PW7. He has stated in his evidence that he received carbon copy of the *fard-e-beyan*. He has proved the *fard-*



e-beyan as Ext.4. He has stated that he has recorded statement of the informant and the deceased. He visited the place of occurrence, which is the house of Kapildeo Yadav (appellant). He found sign of kerosene oil lying between door and *Kothi* and the place of occurrence was found to be washed out by someone.

12. PW 5 (Narain Singh) has stated in his evidence that he has submitted charge-sheet in the case.

13. PW 2 (Gauri Shankar Yadav) is formal witness, who has proved his signature on the *fard-e-beyan* as well as signature of Ganesh Yadav.

14. PW 6 (Sunil Kumar Yadav) and PW 8 (Bhagwati Sharan Jha) have been declared hostile by the prosecution as they have stated to have not seen the occurrence. In the cross-examination, both witnesses have stated that they got information about the death of Sabita Devi due to burn injuries.

15. Defence has not examined any witness. It is admitted position that defence has not produced any witness assailing sanctity of dying declaration.

16. Argument was merely made before the Court below that since deceased was suffering from great physical pain because of extensive burn injuries, it cannot be presumed that she was in fit state of mind to give her dying declaration.



17. In the instant case, from perusal of the dying declaration (Ext.1), it appears that the same was recorded by the Executive Magistrate i.e. Block Development Officer in presence of the Doctor, who had given certificate that the victim was in conscious state of mind to give dying declaration. In the dying declaration, victim has stated in clear terms that the appellant had set her on fire. After recording of her dying declaration, the victim died after three days. The post mortem report also supports the death of the victim by burn injuries as doctor has found extensive burn injuries on her person.

18. This Court after looking into the evidence of the Investigating Officer (PW 7) finds that he has stated before the Court in his evidence that the occurrence took place in the house of this appellant and when he reached the house of the appellant he found sign of kerosene oil lying between door and *Kothi* and the place was found to be washed out by someone. Besides this, there is evidence of the informant (PW3) to the effect that the deceased had come to her *Naihar* from *Sasural* on account of torture committed by the appellant and she was not ready to return to her *Sasural* and one day prior to the occurrence while she had gone to Hospital on rickshaw, the appellant and other accused persons forcibly took her to her *Sasural* and committed the occurrence. The informant after learning



about the occurrence from the villagers visited the *Sasural* of the daughter and found her in serious condition. Thereafter, he took her to Hospital for treatment where she subsequently died during course of treatment on account of extensive burn injuries.

19. It is the consistent view of the Court that normally corroboration is necessary to prove the evidence against the accused, but in the matter of dying declaration, it is the view of the Court that it is solemn piece of evidence and it is normally expected that a person, who is lying on the death bed, will not speak lie.

20. However, the Court is required to look into the authenticity of the dying declaration. In the instant case, after looking into Ext.1 (dying declaration), it appears that same was recorded by the Block Development Officer in presence of the Doctor, who had given certificate that she was in conscious state of mind and the aforesaid statement given by the deceased in dying declaration also gets support from the evidence of the Investigating Officer (PW 7) given in the Court, where he has stated that occurrence has taken place in the house of the appellant. He also found sign of kerosene oil lying between door and *Kothi*. The defence has not produced any evidence assailing the sanctity of dying declaration.

21. Therefore, this Court is of the view that no doubt can be raised against the dying declaration and the same is genuine



piece of evidence. The learned Court below has not committed any illegality in convicting the appellant for the offence under Section 302/34 Indian Penal Code by placing reliance on the dying declaration and other evidence as mentioned above.

22. Accordingly, impugned judgment of conviction and order of sentence passed by the learned Court below is hereby affirmed.

23. This Criminal Appeal is, accordingly, dismissed having no merit in it.

24. Bail bond of the appellant is hereby cancelled. He is directed to surrender before the Court below to serve out the sentence.

25. The Court below is directed to take appropriate steps in accordance with law for arrest of the appellant in the event the appellant does not surrender voluntarily to serve out the sentence.

(Ajay Kumar Tripathi, J)

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	14-01-2018
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