

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.65 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against judgment of conviction and order of sentence dated 12.01.2009 and 14.01.2009 respectively passed by the 1st Additional Sessions Judge, Patna, in S.T. No.852 of 1997 arising out of Kadamkuann P.S. Case No.69 of 1997]

Sardendu Singh, son of Sri Surendra Sharma, resident of village-Goraula, P.S.-Naubatpur, District-Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (SJ) No. 183 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against judgment of conviction and order of sentence dated 12.01.2009 and 14.01.2009 respectively passed by the 1st Additional Sessions Judge, Patna, in S.T. No.852 of 1997 arising out of Kadamkuann P.S. Case No.69 of 1997]

1. Surendra Sharma @ Surendra Prasad Singh, son of late Harak Narain Singh, &
2. Sakuntala Devi, wife of Surendra Sharma @ Surendra Pd. Singh, both resident of village-Goraila, P.S.-Naubatpur, District-Patna.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (SJ) No. 195 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- PATNA

[Against judgment of conviction and order of sentence dated 12.01.2009 and 14.01.2009 respectively passed by the 1st Additional Sessions Judge, Patna, in S.T. No.852 of 1997 arising out of Kadamkuann P.S. Case No.69 of 1997]

Dwitendu Prasad Sinha, son of Surendra Prasad Singh, resident of village-Goraila, P.S.-Naubatpur, District-Patna.

.... Appellant/s

Versus



The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.65 of 2009)

For the Appellant/s : Mr. Arbind Kumar Mouar, Advocate
Mr. Mithilesh Kumar, Advocate
Mr. Harish Kumar, Advocate
Mr. Raj Krishna Jha, Advocate
Mr. Mayank Kumar, Advocate

For the Respondent/s : Mr. APP
Mr. Nachiketa Jha, Advocate
Mr. Chandra Mohan Jha, Advocate

(In CR. APP (SJ) No.183 of 2009)

For the Appellant/s : Mr. Arbind Kumar Mouar, Advocate
Mr. Mithilesh Kumar, Advocate
Mr. Harish Kumar, Advocate
Mr. Raj Krishna Jha, Advocate
Mr. Mayank Kumar, Advocate

For the Respondent/s : Mr. APP

(In CR. APP (SJ) No.195 of 2009)

For the Appellant/s : Mr. Bijay Kumar Mouar, Advocate
Mr. Shashi Shekhar Sharma, Advocate

For the Respondent/s : Mr. APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 02-11-2018

By judgment of conviction and order of sentence dated 12.01.2009 and 14.01.2009 respectively passed by the 1st Additional Sessions Judge, Patna, in S.T. No.852 of 1997 arising out of Kadamkuan P.S. Case No.69 of 1997, all the four Appellants have been convicted for the offence under Section(s) 306/34 and 498-A/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for eight years with fine of Rs.15,000/- each under Section 306/34 Indian Penal Code and two years rigorous imprisonment for the offence under Section(s) 498-A/34 Indian



Penal Code. In default of payment of fine, all the Appellants have to further undergo simple imprisonment for one year. Both the sentences were ordered to run concurrently.

2. During hearing of these Criminal Appeals, I. A. No.2498 of 2018 has been filed in Cr. Appeal (SJ) No.183 of 2009 stating that Appellant No.2, Shakuntala Devi, of Cr. Appeal (SJ) No.183 of 2009 has died on 20.04.2017 during pendency of the appeal.

3. Similarly, it is also mentioned in the aforesaid Interlocutory Application that Appellant, Dwitendu Prasad Sinha, sole Appellant of Cr. Appeal (SJ) No.195 of 2009, who is son of Appellant No.1 of Cr. Appeal (SJ) No.183 of 2009, has died during the pendency of the appeal.

4. In view of such, Cr. Appeal (SJ) No.183 of 2009 has abated in part in so far as it relates to Appellant No.2, Shakuntala Devi, and Cr. Appeal (SJ) No.195 of 2009 has abated on account of death of sole Appellant (Dwitendu Prasad Sinha).

5. Now, appeals are confined only with respect to Appellant, Sardendu Singh, (Cr. Appeal (SJ) No.65 of 2009) and Appellant No.1 Surendra Sharma @ Surendra Pd. Singh (Cr. Appeal (SJ) No.183 of 2009).

6. The prosecution case as per Informant, Pankaj



Kumar Shahi, is that sister of the Informant namely, Sandhya Kumari, was married with Dwitendu Prasad Sinha, son of Shri Surendra Sharma, about 12 years back. The sister of the informant after marriage was tortured by her husband and other family members in *Sasural* for demand of dowry. It is alleged that adequate articles were given at the time of marriage, but accused persons were under illusion that informant is having more money and they have not given appropriate dowry at the time of marriage and on this account they used to assault the sister of the Informant. They burnt the sister of the Informant and sign of burn injury was present on right elbow. All these matters were informed by his sister through letter. It is further alleged that the Informant and his family members tried to settle the matter, but the accused persons did not agree. The accused persons had stopped to provide food, clothes and essential commodities to his sister. The Informant and his family members used to send money for her expenses. His sister had a son, namely, Aman Kumar, aged about 10 years, who was also tortured by the accused with intention to give pressure upon his sister. The accused persons threatened to kill his sister and they also do not provide any food to her. The Informant, ultimately, kept the son of sister at his house. The sister of the Informant had lodged a case vide Case No.331 of 1996 against her in-laws about 4-5 months earlier. The



Informant and other family members tried to settle the matter, but due to lodging of the case, his brother-in-law in conspiracy with his parents, brother and sister always used to assault her and gave threat to kill her and solemnize remarriage. The Informant received telephonic information on 05.02.1997 that his sister was hanged in a ceiling fan by the accused persons after killing her. The Informant informed Kadamkuan Police Station and he along with his mother, wife and *Mausera* brother went to *Sasural* of his sister at *Jahazi Kothi*, and saw the dead body of the deceased hanging in ceiling fan. Sari was tied in her neck and chest and also in the hook of the fan. Her left leg was lying on the *Palang* folded from knee and sole of her right leg was touching on earth. Her both eyes and mouth were found closed. Bed-sheet, Chair and other articles were found in proper condition. The Informant has suspected that all the accused persons have committed murder of his sister in conspiracy for non fulfillment of demand of dowry with intention to solemnize remarriage of Dwitendu.

7. The police after investigation submitted charge-sheet for the offence under Section(s) 306, 498-A Indian Penal Code. Cognizance was also taken by the Magistrate for the offence under Section(s) 306, 498-A Indian Penal Code. Charge was framed against the accused persons for the offence under Section(s) 302/34,



306/34 and 498-A/34, but the learned Court below after holding trial has acquitted the accused persons for the offence under Section(s) 302/34 Indian Penal Code, and convicted the Appellants for the offence under Section(s) 306/34 and 498-A/34 Indian Penal Code.

8. The prosecution, in all, examined 14 witnesses. Besides oral evidence, several documentary evidence have been produced during trial marked as Ext. 1 to 12/8 as mentioned, in detail, in the impugned judgment.

9. Dr. Ashok Kumar Yadav (PW 11) has performed postmortem on the dead body of deceased Sandhya Shahi. He has stated in his evidence that on 06.02.1997, while he was posted in PMCH, Patna, dead body of Sandhya Shahi, a Hindu female, aged about 32 years, wife of Dwitendu Prasad Sinha at Mohalla *Jahaji Kothi* was brought by Hawaldar Jugal Kishore Ojha to PMCH at 8.30 AM. He conducted postmortem examination over the dead body of deceased Sandhya at 11.00 AM and found following injuries.

- I. One bruise 2" x 1" size was found on the lateral wall of mid of right thigh,
- II. One bruise 2" x 1" size was found on the lateral wall of mid of left thigh,
- III. One ligature mark encircling the neck 15" x ½" wide obliquely placed in front above the thyroid cartilage and in back at the level of 2nd cervical vertebra.



After removal of skin underlying congestion of the tissues were found. Several viscera were persevered and sent for FSL examination. The Doctor has found the injuries on the person of the deceased were ante mortem in nature. Injury No. I and II were simple in nature caused by hard and blunt object. Injury No. III was due to ligature, grievous and dangerous to life. Cause of death was asphyxia. Time of death was between 12 to 24 hours from the time of postmortem examination. The Doctor has proved postmortem report, which has been marked as Ext.5.

The Doctor has stated in his cross-examination that injuries found in postmortem examination were those injuries, which would occur after death of the deceased. He has stated in his cross-examination that if body is hanged then there will be ligature mark. In para 3 of his cross-examination, he has stated that asphyxia may be by strangulation or by hanging. In case of strangulation usually ligature mark will be horizontal around the neck below thyroid. In the present case, doctor has found ligature mark was obliquely and it may be suicidal. Injuries found were ante mortem injuries. Injury Nos. I and II may be possible in case of hanging.

10. Bhushan Singh (PW 1) is *Mausera* (cousin) brother of the deceased. He has stated that on 05.02.1997 at about 9.00-9.30 PM a telephonic message was received by Advocate Clerk



of Rameshwar Shahi that Sandhya Devi was hanged in a ceiling fan after being killed by her in-laws. Thereafter police was informed. He along with Pankaj Shahi, his wife, Indu Shahi, went to her Sasural at *Jahaji Kothi* where police had arrived earlier.

11. Similarly, other cousin brother of the deceased, Sandeep Kumar, (PW 2) has stated that on 05.02.1997 at about 9.00-9.30 PM, he was informed by some one on telephone at his house situated at Park Road that his sister, Sandhya @ Guriya, has been hanged by her in-laws at *Jahaji Kothi* after being killed.

12. Father of the deceased, Ram Chandra Prasad Shahi, (PW 3) has stated that he was informed by his nephew, Sandeep Shahi, on telephone on 05.02.1997 that his daughter, Sandhya @ Guriya is seriously ill. He was further informed on query that Guriya has been hanged after being killed by her in-laws. The informant along with his grandson (*Naati*), Aman Kumar, reached at the residence of his brother, Rameshwar Prasad Shahi at 3.00 AM where he received detailed information about his daughter Guriya. Thereafter, he came to the house of Surendra Singh where he saw deceased, Sandhya, was hanging. He has stated in his evidence that on seeing Sandhya, it appears that after killing she has been hanged. This witness has deposed about detailed description of deceased, Sandhya, regarding her condition in hanging situation as



well as detailed description of the place of occurrence.

This witness has stated in para 18 of his evidence that place of occurrence was the bed room of his daughter and her kitchen is situated towards east from her bed room. He has further stated in para 19 of his evidence that his Samdhi, Surendra Singh and his wife were residing in a room towards south of the building in the ground floor. Dewar of his deceased daughter was residing in 1st floor along with his wife and his mess was with his parents. Mess of his daughter was separate since the year 1986. He has further stated in cross-examination that when he reached the place of occurrence, he found that dead body was hanging with the hook of the roof.

13. Kanti Devi (PW 4) is mother of the deceased. She has stated that her daughter was tortured in her *Sasusral* for demand of dowry. His son-in-law took his daughter on 13.01.1997. Son of her sister, Bhushan, had gone to meet Sandhya on 04.02.1997 at Patna. On 05.02.1997, he informed that his daughter was brutally assaulted by the accused persons. She came to Patna on 05.02.1997 and stayed in the house of Rameshwar Shahi. On that very night at 9.30 PM, someone informed on telephone that Sandhya has been hanged after being killed. Father of Sandhya was at Begusarai. He was also informed. She had gone to *Sasural* of her daughter where



she saw her daughter dead.

In para 9 of her cross-examination, she has stated that her daughter was residing in ground floor in her Sasural. She has two sons, namely, Pankaj and Murari. When she received information about the incident at Patna, Pankaj was also with her. She has further stated in cross-examination that when she arrived at the place of occurrence, she saw the deceased Sandhya hanging from the hook of a fan. Police was present there. She has stated in para 13 of her evidence that she has no documentary proof of giving money to the accused.

14. Bhuwaneshwar Prasad (PW 5) is uncle of the deceased. This witness has stated that on 05.02.1997 at 09.45 PM, he was in the office of Shri R. P. Shahi, Advocate. One telephonic message was received that Sandhya Shahi has died. He gave information in the house of Shahi Jee. He has stated that he did not inform police after receiving information on telephone.

15. Kumar Aman (PW 6) is son of the deceased aged about 14 years at the time of his examination. He has stated that on 05.02.1997 at 10.30 PM when he was sleeping in the house of Nana at Begusarai, *Nana Jee* awoke him to go to Patna. When they reached at Patna, *Mama*, Pankaj Kumar, *Mami* Indu, *Nani* Kanti Devi were weeping. His *Nana Jee* also began to weep. On query, he



was told that his mother has been hanged after being killed by his grandfather, Surendra Sharma, grand mother, Shakutnala Devi, father, Dwitendu, uncle, Sardendu and other accused persons. *Shradh* of his mother was performed in the house of his *Nana* at Begusarai.

In cross-examination, he has stated that his *Nana* is an Advocate.

16. Pankaj Kumar Shahi (PW 7) is brother of the deceased and Informant of the case. He has stated that on 05.02.1997 he came to Patna at the residence of his uncle, Rameshwar Shahi at Kadamkuan, Patna, where someone informed on telephone that his sister has been hanged after being killed in her *Sasural*. He went to the house of his sister in the night and returned back to the house of his uncle. Thereafter, he along with his wife, mother, *Mauseera* brother, Bhushan and Sandeep went to the house of his sister at *Jahaji Kothi* and saw in the light of torch that dead body of his sister was hanging in a fan. Sandeep had informed the police and police had reached there. He has proved the letter dated 19.01.1997 written by Kumar Aman, which has been marked as Ext.3. He has also proved another letter dated 11.11.1997 written by Dwitendu to the uncle of the Informant, which has been marked as Ext.3/1. He has also proved the photo and signature of his sister on



Identity Card marked X for identification.

In cross-examination, this witness has stated that earlier a case under Section 498-A Indian Penal Code was lodged by his sister, which is still pending. Aforesaid case was lodged against the accused persons for the allegation of demand of dowry. Money was given to her in-laws three times by his father but he has no documentary proof for the same.

17. Murari Prasad Shahi (PW 8) is elder brother of deceased, Sandhya Shahi @ Guriya. He has stated that information regarding incident was given to him on 05.02.1997 by his *Fufera* brother Niraj Kumar. He reached Patna in the evening of 06.02.1997 and went to the house of his uncle Rameshwar Prasad Shahi at Kadamkuan where he came to know that accused Dwitendu, Sardendu, their parents, Surendra Prasad Singh and Shakuntala Devi, Krishna Kumar Singh and others have committed murder of his sister for demand of dowry.

In cross-examination, he has stated that earlier proceeding under Section 107 Cr.P.C. was initiated by the deceased against the accused persons.

18. Indu Devi (PW 9) is wife of Pankaj Kumar Shahi (Informant) and Bhabhi of the deceased, Sandhya @ Guriya Kumari. She has stated that she was at the house of his cousin



father-in-law, Rameshwar Prasad Shahi, on 05.02.1997 where information was given on telephone that Sandhya has been killed. She along with her husband, mother-in-law went to *Sasural* of the deceased at *Jahaji Kothi*, Kadamkuan, and saw dead body of Sandhya hanging from fan.

19. Kamendra Prasad Singh (PW 10) is *Mausera* (cousin) brother of the deceased. He had come to Patna on 05.02.1997 and went to the house of Sandhya at 3.30 PM and knocked the door, but door was not opened. Thereafter, Dwitendu and his mother came out from the house, who were puzzled. Both told him that Guriya @ Sandhya has gone to Begusarai after quarrelling. He came to know on 06.02.1997 through telephone that Guriya was killed.

20. Sangeeta Kumari (PW 12) has stated in her evidence that on 06.02.1997 in the school a girl namely Aarti told her that Sandhya has died. She has stated that earlier Sandhya used to come to her house. She had studied with Sandhya at Begusarai. Sandhya was married with Dwitendu, who used to assault Sandhya. She has stated that no assault was committed in her presence. She was not cross-examined by defence.

21. Ziauddin Ahmad (PW 13) is the Investigating Officer of the case. He was posted as Police Inspector-cum-Officer-



in-Charge of Kadamkuan P.S. and was on evening patrolling duty. At 21.45 hrs, he received a wireless message to the effect that a woman has been killed by hanging near *Jahaji Kothi*. At about 21.55 hrs., he arrived at the place of occurrence and Dy. S.P. also arrived there. He found both doors of the said room i.e. the place of occurrence were closed from inside and there was no light in the room. Door was opened by pushing it. He saw the dead body of the deceased Sandhya hanging in a ceiling fan whose neck and waist were tied with Saree. This witness has given detailed description about the condition of the dead body of the deceased Sandhya. The Informant Pankaj Kumar Shahi submitted his written report on the same day at the place of occurrence, which was sent by him to the Police Station for lodging the First Information Report after making endorsement on the written report. Thereafter, he prepared inquest report of the dead body in carbon copy and sent the dead body for post mortem examination. He has given detailed description of the place of occurrence in his evidence. He recorded further statement of the Informant and also the statement of other witnesses. He recorded statement of Dwitendu Kumar and examined his body and found sign of blood on his *Chaddi*, which was seized and seizure list was prepared thereof. He has also made seizure list of various other papers as mentioned, in detail, in impugned judgment.



This witness in para 44 of the judgment has stated that he along with other Officers reached *Jahaji Kothi* on the basis of information received and found both doors of the said room were closed from inside.

22. Krishna Murari Kishan (PW 14) is photographer of Daily News Paper Dainik Jagaran. He had taken photograph of the place of occurrence on 05.02.1997 and 06.02.1997 from different angles.

23. In this manner, from the evidence of the Investigating Officer (PW 13), it is apparent that when he reached the place of occurrence along with other Officers, he found the room closed from inside. Doors were broken by the police party and dead body was found hanging from ceiling fan. This witness has stated in his evidence that room was closed from inside. This witness has given detailed description in his evidence about the condition of dead body of deceased Sandhya.

24. Dr. Ashok Kumar Yadav (PW 11), who had conducted postmortem on the dead body of the deceased Sandhya Shahi, had found ligature mark encircling the neck 15" x ½" wide obliquely placed in front above the thyroid cartilage and in back at the level of 2nd cervical vertebra. He has stated in his cross-examination that in the present case ligature mark was obliquely and



it may be case of suicidal. Injury No. I and II may be caused in course of hanging. Injuries found were ante mortem injuries. The doctor has further stated that if a body is hanged then there will be ligature mark. In case of strangulation usually ligature mark will be horizontal around the neck below thyroid. In the present case, one ligature mark encircling the neck 15" x 1/2" wide obliquely placed in front above the thyroid cartilage and in back at the level of 2nd cervical vertebra was found. In the present case, doctor has found ligature mark was obliquely and it may be suicidal.

25. Father of the deceased i.e. PW 3 has stated in para 18 and 19 that bed room of his daughter and her kitchen is situated towards east from her bed room. Place of occurrence was her bed room. His *Samdhi*, Surendra Singh and his wife were residing in a room towards south of the building in the ground floor. Dewar of his deceased daughter was residing in 1st floor along with his wife and his mess was with his parents. Mess of his daughter was separate since 1986.

26. All the prosecution witnesses including PW 3 have stated that they received information on 05.02.1997 that Sandhya was found hanging in a room with ceiling fan. Thereafter, they went to the place of occurrence and found dead body of Sandhya was hanging from ceiling fan. The police arrived.



Thereafter, police also found dead body hanging with ceiling fan and room was locked from inside.

27. In this manner, none of the witnesses have alleged anywhere that these accused persons have abetted deceased Sandhya Devi to commit suicide. Father of the deceased (PW 3) has stated in his evidence that her daughter was having separate mess since 1986 from these Appellants, who are brother-in-law (Dewar) and father-in-law of the deceased. He has stated in his evidence in para 18 and 19 that his *Samdhi*, Surendra Singh and his wife were residing in a room towards south of the building in the ground floor. Dewar of his deceased daughter was residing in 1st floor along with his wife and his mess was with his parents. Mess of his daughter was separate since 1986.

28. There is no cogent and reliable evidence with regard to the accused persons to have committed torture and made demand of dowry from the deceased. Mother of the deceased (PW 4) and brother of the deceased (PW 7), who is Informant of the case, have stated that they have no documentary proof that money was given to the accused persons by the Informant as dowry. The Doctor has stated in his evidence that injury found on the person of the deceased was suicidal.

29. The prosecution has not brought any cogent and



reliable evidence to show that these Appellants have abetted the deceased to commit suicide.

30. Therefore, this Court finds that impugned judgment of conviction and order of sentence passed by the learned Court below is not in accordance with law.

31. Accordingly, impugned judgment of conviction and order of sentence dated 12.01.2009 and 14.01.2009 respectively passed by the 1st Additional Sessions Judge, Patna, in S.T. No.852 of 1997 arising out of Kadamkuan P.S. Case No.69 of 1997 with regard to Appellant, Sardendu Singh, (Cr. Appeal (SJ) No.65 of 2009) and Appellant No.1 Surendra Sharma @ Surendra Pd. Singh (Cr. Appeal (SJ) No.183 of 2009) is hereby set aside. They are acquitted of the charges levelled against them. They are discharged from the liabilities of their respective bail bond.

32. In the result, Cr. Appeal (SJ) No.65 of 2009 is allowed and Cr. Appeal (SJ) No.183 of 2009 is allowed in part.

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	31-08-2018
Uploading Date	08-11-2018
Transmission Date	08-11-2018

