

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.63 of 2003

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

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1. Ajay Singh @ Pappu, son of Ram Anugrah Singh (since dead)
 2. Ram Anugrah Singh, son of Late Ram Das Singh (since dead)
 3. Phulbaso Devi @ Asha Devi, wife of Ram Anugrah Singh (since dead)
 4. Punam Kumari, daughter of Ram Anugrah Singh, all residents of Bawak, P.S. Punpun, District Patna

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : M/S Kunal Tiwary, Anupam Ran & Aniket Singh, Advocates

For the Respondent/s : Mr. S.A.Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

CAV JUDGMENT

Date: 16-08-2018

This appeal is directed against the judgment and order dated 15.1.2003 passed by Sri Nirmalesh Chandra Lala, the then Ad hoc Sessions Judge, Presiding Officer, Additional Court No.2, Patna in Sessions Trial No. 71 of 1991/446 of 2001 by which the appellants have been convicted under Section 306 IPC and sentenced them to undergo rigorous imprisonment for three years under Section 306 IPC and a fine of Rs.1000/- each with default clause.

2. During the pendency of the appeal, a report was called for from the Senior Superintendent of Police, Patna regarding life status of the appellants and from perusal of the report it appears that appellant Nos. 1, 2 and 3, namely, Ajay Singh, Ram Anugrah Singh



and Fulbaso Devi have died and as such the appeal against them stands abated and now the appeal relates to only one appellant, who is appellant No.4 Punam Kumari, who is alive.

3. Prosecution case as per the fardbeyan of Sobha Kumari, sister of deceased, in short, is that her sister Prabha Kumari was married to appellant Ajay Kumar Singh on 23.5.1986 and after marriage she went to her 'sasural' and thereafter she came to her father's place and deceased had no child from the marriage. Further prosecution case is that on the occasion of Deo jethan her father had gone to village Bauk to meet her sister Prabha Devi and on returning from there he was informed that the members of her sister's sasural had been harassing her and pressurizing her to get the informant married to Arun Kumar, brother of appellant Ajay Kumar and as Prabha Devi did not agree to the marriage, they had been abusing and assaulting her. Further prosecution case is that in the month of Falgun on account of torture of her in-laws she fled away from her sasural and came to Akauna and informed them that the accused appellants always abused and assaulted her and accused persons also did not come to take her back and hence one day prior to the last Ramnavami, on Sunday deceased Prabha Devi herself went to her sasural and thereafter on 4.4.1990 one Upendra Singh of her village came to the informant's house and informed that Prabha Devi had burnt herself



and on getting such information, the informant along with her mother, aunt, uncle and villager reached Potahi Railway Station, and by that time 2 P.G. had arrived at that station, and her sister had already been kept in brake van on a cot for taking her to Patna and one Umesh Singh of village Potahi assisted the informant and others in boarding the compartment adjacent to the brake van but she hurriedly got down and boarded the brake van to see her sister and saw that her sister was lying on a cot and was badly burnt and was asking for water. On enquiry, deceased Prabha Devi told her that on Monday she was not given food and during night of occurrence her husband, father-in-law, mother-in-law and sister-in-law (Nanad), all assaulted her and as the torture was unbearable, she herself set her on fire. It is further alleged that when the train reached at Patna Railway Station, her sister complained of pain in abdomen and told that she would not survive and blood was started oozing out from her mouth. Prabha Devi (deceased) reached P.M.C.H., Patna at about 10.30 A.M. and doctor examined her and informed that she had sustained 90% burn injury and there was no chance of survival and after one hour of her arrival she died.

4. On the basis of aforesaid fardbeyan, Punpun P. S. Case No. 36 of 1990 was registered. Post investigation charge sheet has been submitted, cognizance of the offence has been taken and after



commitment the case ultimately traveled to the file of Sri Nirmalesh Chandra Lala, the then Ad hoc Sessions Judge, Presiding Officer, Additional Court No.2, Patna for trial and disposal.

5. In order to establish its case, the prosecution has examined the following witnesses : PW 1 Dharmendra Kumar, villager, PW 2 Bijendra Singh, father of deceased, PW 3 Suresh Singh, uncle of deceased, PW 4 Urmila Devi, mother of deceased, PW 5 Sbhoba Kumar, sister of deceased and informant, PW 6 Upendra Singh, villager who is said to have informed the father of deceased about burning of the deceased, PW 7 K.K. Tiwari, A.S.I. of Police, who had investigated the U.D. case, PW 8 Dr. Arbind Kumar Singh, who had conducted the post mortem of deceased Prabha Devi and PW 9 Rameshwar Mishra, I.O. of the case.

6. Apart from that the following documents have been brought on record on behalf of prosecution as exhibits, they are Ext.1- letter dated 16.2.1986 of Ram Anugrah Singh, Ext.1/1- letter dated 1.10.1986 of Ram Anugrah Singh, Ext.2- signature of Shobha Kumar on fardbeyan, Ext.2/1- signature of Vijyendra Singh on fardbeyan, Ext.3- carbon copy of fardbeyan, Ext.4- carbon copy of inquest report, Ext.5- carbon copy of challan, Ext.6- endorsement of Rameshwar Mishra, O.C, Punpun on fardbeyan, Ext.7- carbon copy of seizure list and Ext.8- post mortem report.



7. On behalf of defence also five witnesses have been examined, they are DW 1 Mahendra Thakur, DW 2 Rajesh Singh, DW 3 Lal Behari Das, DW 4 Ramashis Paswan and DW 5 Kashi Prasad mainly on the point that the relationship between the deceased and her in-laws was cordial and while she was preparing breakfast in the morning of 4.4.1990 her clothes caught fire, due to which she was badly burnt and became unconscious and was taken to Dr. Satendra Babu and later on carried to Patna and there she died. It is also the case of the defence that she had 90% burning injuries.

8. Learned trial court on conclusion of trial has convicted the appellants under Section 306 IPC and sentenced them as stated above.

9. Being aggrieved by the aforesaid judgment and order the present appeal has been preferred by the appellants.

10. Contention of learned counsel for the appellant is that learned trial court has convicted the appellant on the ground that she made a statement before her death before PW 3 Suresh Singh and PW 5 the informant that she was tortured by the appellants and further stated that her father-in-law, mother-in-law, her husband and her Nanad, the present and surviving appellant, used to assault her and not providing food to her and as she could not bear the same she herself set her on fire. Evidence of PW 5 in paragraph-3 shows that she had 90% burn injury and evidence of Doctor (PW 8) disclosed that in case



of 90% burn injury patient has become immediately unconscious and in such a situation the aforesaid statement, which according to prosecution is dying declaration, does not inspire confidence. Further submission is that evidences of witnesses are contradictory to each other so far her condition is concerned as the evidence of PW 3, para-9 discloses that Prabha Devi, the deceased, was fully burnt and only some part was left on face and when she came to Patna Junction she became unconscious and she was admitted to the hospital in unconscious condition, whereas the evidence of PW 5 discloses that she was taken to hospital by tempo and mother of deceased (PW 4) in her evidence in paragraph 5 disclosed that she had come on rickshaw and evidence of PW 1, para-10 shows that she regained consciousness in hospital. There is absolutely no evidence available on record to show that she was in fit state of mind to make statement, rather evidence shows that she had 90% burn injuries and in dead case and it is not possible for her to give any statement and as such the aforesaid evidence does not inspire confidence. On the basis of aforesaid submission, learned counsel for the appellant submits that the impugned judgment has no basis and conviction of the appellant is not just and proper and not sustainable in the eye of law.

11. On the other hand, learned counsel for the State has submitted that evidence of PW 3 and PW 5 clearly shows that in the



brake van in train she made statement, stating that due to unbearable torture meted to her by her sasural people, i.e., father-in-law, mother-in-law, husband and sister-in-law (Nanad), the present and surviving appellant she herself set her on fire but there is absolutely no evidence available on record to show that she was not in a position to speak and as such learned trial court has rightly relying upon her statement treating to be a dying declaration admissible under Section 32 of Evidence Act has convicted the appellant under Section 306 IPC.

12. In the background of rival submission of both the parties, on perusal of the evidence of PW 3, para-3 disclosed that he had gone to the brake van of train and asked the deceased as to why she had committed such a thing on which she disclosed that since Monday she was not provided food and when she went to prepare food she was not allowed to do so and mother-in-law, father-in-law, husband and her sister-in-law (Nanad), all assaulted her and as such she could not bear it and she herself set her on fire. Evidence of PW 5 further disclosed that she was not provided food and she was assaulted by her sasural people and as she could not bear the torture, she herself set her on fire. It also appears from evidence of PW 5 that at PMCH Doctor informed that she had 90% burn injury and according to this witness she was conscious and also demanded water. Her evidence in paragraph-11 further disclosed that she was lying on a cot in brake van and except



face and leg the whole body was burnt and she was demanding water. Her evidence also shows that she was not unconscious and after reaching the hospital she became unconscious and she denied the suggestion given to her that she was unconscious and was not in a position to speak. PW 3 is another witness on the point of dying declaration and his evidence in paragraph-3 also discloses that deceased had disclosed that she was not provided food and also not allowed to prepare food by her mother-in-law, father-in-law, husband and sister-in-law and she was assaulted by them and due to that she herself set her on fire. Evidence of PW 4, who is mother of deceased, disclosed that by that time she was taken to hospital and she died. Evidence of PW 1, who also claims to have gone along with deceased to PMCH, in paragraph-10 disclosed that she regained consciousness in Patna hospital. Evidence of PW 5 in paragraph-3 further disclosed that she had 90% burn injury and except face and leg her whole body was burnt. Evidence of Doctor (PW 8) disclosed in paragraph-2 that if there is 90% burn injury patient becomes immediately unconscious. It is well settled that for accepting dying declaration as to whether the patient was fit in mental condition to speak, is of the prime importance, whereas evidence of witnesses is contradictory to each other so far the deceased was conscious or not and as to whether she is in condition to speak as she had 90% burn injury. As such, in the



present case, the evidence is not free from reasonable doubt.

13. Another aspect of the matter about which learned counsel for the appellant has raised that if the claim of the prosecution is accepted that she was tortured, not provided food and as she could not bear torture she committed suicide, the prosecution came to know about the same on 4.4.1990 itself on the day she was taken to PMCH but in spite of that no information was given to the police or Chaukidar or in Panchayat till 8.4.1990 when the statement of the informant was recorded first and that also creates a doubt about the prosecution case. In this case I find that first an U.D. case has been lodged on the information of Chaukidar and ASI (PW 7) was sent for enquiry about the U.D. case and he has recorded the statement of Ram Anugrah Singh, father-in-law of deceased at PMCH and he has stated that he did not find any member of informant's side present there. Later on it appears that on 8.4.1990 Darogaji has recorded statement of the informant in his village Akona, there is absolutely no evidence available on record that in between 4.4.1990 to 8.4.1990, either informant (PW 5) or her father (PW 2) approached the police or chaukidar or any other person or file any petition before the court about she was being meted torture and due to that she committed suicide. This is also one of the circumstances that goes against the prosecution.



14. Another aspect of the matter which appears from perusal of the evidence that motive for torture is that accused persons were interested in getting married of informant with debar of the deceased, i.e., younger brother of Ajay Kumar and the witnesses have also stated so in their evidence but there is absolutely nothing available in record to show that father-in-law or mother-in-law has ever approached the father of the deceased for marriage of Shobha Devi, the informant with Arun Kumar, rather evidence of PW 5 in paragraph-16 disclosed that accused persons never went to her house to ask for her marriage and the evidence of PW 4 in paragraph 6 disclosed that appellant Ram Anugrah Singh never asked her for marriage of his son though she has stated that she was not ready to marry her in the house of Ram Anugrah. On the other hand, the evidence of Upendra Singh (PW 6) disclosed that person of Bauk village came and asked for house of Brijendra and informed that her daughter had set herself on fire and that shows that father of deceased had been informed about setting her on fire.

15. Learned counsel for the appellant has also argued that in this case even according to prosecution, she was taken to Dr. Satendra Singh first and Umesh, Jagat were present there and none of them were examined by the prosecution and no explanation was sought for their non-examination.



16. It appears that Jagat and Umesh were family members of the appellants and as such they might not have been examined but non-examination of Dr. Satendra to whose hospital the deceased was taken first is not being examined by the prosecution, he ought to be an important witness about the mental state of deceased and similarly the Doctor who has first examined her (deceased) has also not been examined and only the Doctor, who has conducted the post mortem, has been examined. Had he been examined in this case the defence would have got a chance to cross examine him about the mental state of affairs of the deceased whether she was conscious or unconscious or whether she has been able to speak as the prosecution evidence is contradictory to each other, hence aforesaid question remained unanswered.

17. Learned trial court relying upon the evidence of torture has taken aid of Section 113A of Indian Evidence Act and considering the definition of cruelty under Section 498A IPC has concluded that there shall be presumption against the appellants and on the basis of aforesaid presumption and as defence case that she died while preparing food does not appear to be probable and relying on a decision of Hon'ble Apex Court in the case of Pawan Kumar vs. State of Haryana : 2001(1) P.C.C.R. 284 paragraphs 8 to 10 has convicted the appellant. I am well aware to the settled principle of law as laid



down by Hon'ble Apex Court in the above decision but every case has its own fact and for raising of presumption under Section 113 A the prosecution has to prove the evidence of cruelty beyond all shadow of reasonable doubts and only then the question of presumption shall arise.

18. In the present case prosecution evidence is that the deceased was tortured as appellants were interested in marrying the younger son of Ram Anugrah Singh with the younger daughter of informant and as deceased was resisting the same, due to that she used to be tortured and evidence of PWs 3 and 5 disclosed that she disclosed in the brake van of train that she was not provided food and not allowed even to prepare of food and used to be assaulted by father-in-law, mother-in-law, husband and sister-in-law, the appellants, and as such she herself set her on fire. The evidence is general in nature and all the family members have been named as the persons who used to assault and not provided food to her but it appears from perusal of the order sheet of learned trial court that at the time of occurrence the present appellant Punam Kumari was 17 years of age and in such a situation relying on the evidence that she has also assaulted mainly in absence of any specific allegation against her of torture and assault really does not inspire confidence, as she was a teenage girl at that time and as to why she would be interested in



marriage of his brother with informant, remained unanswered. In such view of the matter, only on the fact and general allegation against the appellant, who was aged 17 years at the time of occurrence, considering that she has also subjected to cruelty and was responsible for committing suicide does not inspire confidence.

19. Learned trial court has also considered the story that she suffered burn injuries while she was preparing food is not at all believable and he has also taken advantage taking into consideration all the above facts on defence explanation as not probable has also considered the same as one of the circumstances. However, once from the above discussion, the dying declaration is itself doubtful and evidence of cruelty against the appellant Punam Kumari does not inspire confidence apart from the other infirmities discussed above as such merely on the ground of defence explanation is not probable and for that the conviction cannot be sustained.

20. In view of entire discussions made above, it appears that learned trial court has not considered all the above aspects of the matter and also not considered the inconsistencies and infirmities, as stated above and convicted the appellant under Section 306 IPC, rather in the above facts and circumstances, as discussed above, the appellant ought to have entitled to benefit of doubt.

21. Accordingly, the appeal is allowed. The impugned



judgment and order are set aside with respect to the appellant Punam Kumari. As the appellant is on bail, she is directed to be discharged from the liabilities of her bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
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