

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1018 of 2016

Arising Out of PS. Case No.-418 Year-2014 Thana- HAJIPUR District- Vaishali

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Sujit Kumar S/o Late Hariharnath Singh, R/o Village- Medni Malkatra, P.S.-
Hajipur Town, District- Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant : Mr. Ajay Thakur, Advocate.
Ms. Rina Sinha, Advocate.
Ms. Swati Sinha, Advocate.
For the Respondent : Mr. Bjipin Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 11-05-2018

The appellant/Sujit Kumar who is the husband of the deceased/Neetu Singh has been convicted under Section 304-B of the Indian Penal Code vide judgment dated 30.09.2016 passed in Sessions Trial No. 88 of 2015 (arising out of Hajipur Town P.S. Case No. 418 of 2014) by the learned Additional Sessions Judge-III, Vaishali at Hajipur and by order dated 01.10.2016, he has been sentenced to undergo rigorous imprisonment for seven years.

2. The appellant was put on trial for having poured Kerosene Oil over his wife/deceased leading to her death.



3. The prosecution version is based on the fardbeyan/statement of the deceased which was lodged on 28.05.2014. In the aforesaid statement, the deceased has stated that she was married to the appellant on 07.12.2009 in accordance with Hindu religious rites. Right after the marriage, the appellant and other member of his family demanded Rs. One Lakh and motorcycle by way of dowry. Non fulfillment of the same has led to her mental and physical torture. She had also filed a case earlier against her in-laws and the appellant vide Hajipur Town P.S. Case No. 45 of 2011 and Hajipur Town P.S. Case No. 263 of 2011. Later, she along with the appellant (husband) started residing in a rented accommodation at Anwarpur (Hajipur). On 23.05.2014, the appellant and other members of his family came and sprinkled some inflammable substance over her body. She could smell of Kerosene. It has been alleged that thereafter she was put on fire. When she had received burn injuries, the accused persons informed her brother on telephone and also brought her to Sadar Hospital, Hajipur. From there, her brother took her to P.M.C.H. for better treatment.

4. On the basis of the aforesaid fardbeyan/statement lodged on 28.05.2015, a case vide Hajipur P.S. Case No. 418 of 2014 dated 30.05.2014 was registered for investigation for offences under Sections



498 A, 324, 326, 307 and 34 of the Indian Penal Code. With the death of the deceased on 29.05.2015 *i.e.* a day after, Section 304-B was added. It may be noted here that the aforesaid fardbeyan/statement was made by the deceased at 18:10 hours at P.M.C.H. in presence of a police officer which was recorded/scribed by one Dhananjay Kumar Singh, Sub-Inspector-cum- Incharge, TOP, P.M.C.H. The aforesaid statement has not been certified by any doctor to have been made by the deceased.

5. The police after investigation submitted chargesheet against the appellant only under Section 304-B of the I.P.C. thereafter cognizance was taken and the case was committed to the court of Sessions for trial.

6. The trial court, after examining 12 witnesses on behalf of the prosecution and 3 witnesses on behalf of the defence, convicted and sentenced the appellant as aforesaid.

7. The learned counsel for the appellant, while assailing the aforesaid judgment and order of conviction submitted that the deceased died because of her having caught fire while cooking in her matrimonial home and there was no mental and physical torture of the deceased prior to her death. It has further been submitted that the deceased was not in a position to make such statement as



she had been under treatment for burn injuries from 23.05.2014 at Sadar Hospital, Hajipur whereafter she was brought to P.M.C.H. The witnesses have made discrepant statements at the trial. In fact, it has been argued, the appellant himself brought the deceased to the hospital for treatment and if there was any truth in the allegation that he had sprinkled Kerosene Oil over the body of the deceased and her set on fire, he would not have done so. The information about the occurrence was also given by him to the brother of the deceased viz. Nand Kishore Kumar (P.W. 7). Lastly it has been argued that if at all the deceased was treated in the Sadar Hospital, Hajipur after the occurrence, fardbeyan should have been recorded there only. There was no reason for either the deceased while she was alive or any one of her family members of having waited for so long for lodging the F.I.R. against the appellant and other members of his family. The major part of the prosecution version set out in the fardbeyan/statement was found to be false by the police during investigation and only the appellant and none else was put on trial.

8. The learned counsel for the State, however has submitted that the deceased had made a dying declaration and had categorically stated that the appellant along with other members of his family had set her on fire



leading to such burn injuries which has ultimately caused her death. The other prosecution witnesses have also supported the prosecution version. The fact that earlier also, with respect to bad treatment meted out to the deceased, she had lodged two cases against the appellant and others, is suggestive of the fact that the deceased was troubled for non-fulfillment of dowry soon before her death, thus bringing the case squarely within the mischief of Section 304-B of the I.P.C.

9. In order to appreciate the contentions of the parties it would be first necessary to analyze the fardbeyan/statement of the deceased. As noted earlier, the fardbeyan has been recorded on 28.05.2014 in the emergency burn ward of P.M.C.H. at 18:10 P.M. On the right hand side of the statement is the impression of the left toe of the deceased which has been identified by the sister of the deceased viz. Rupa Singh who has been examined as P.W. 10. The other witness to the document is Nand Kishor Kumar, the brother of the deceased who has been examined as P.W. 7. The aforesaid fardbeyan has been scribed by Dhananjay Kumar Singh, Sub-Inspector-cum-Incharge TOP of P.M.C.H. There is no certification whatsoever of any doctor that the patient/ the deceased was in a proper physical condition for making any such statement. It ought to be borne in mind that



admittedly the occurrence took place 23.05.2014, when she was brought to Sadar Hospital, Hajipur. She had been under treatment for four days when she was brought to the P.M.C.H. On the recording of aforesaid fardbeyan, the same was forwarded to the S.H.O., Hajipur Town police station for registering a case as the place of occurrence fell within the territorial jurisdiction of Hajipur Town Police Station.

10. What is surprising is that if the deceased had been put on fire after sprinkling Kerosene Oil on her, she ought to have made the aforesaid statement in the Sadar Hospital, Hajipur. If she were not in a position to make such statement, a case should have been lodged immediately when the other members of the family of the deceased who have been examined at the trial as prosecution witnesses, had come to Hajipur to see her. If at all it were a case of bride burning, before admitting the deceased in Sadar Hospital, Hajipur, a case would have been registered. Without registering a case, there would have been no occasion for the Hospital Administration of Sadar Hospital, Hajipur to have admitted a patient, that also a young lady with serious burn injuries. The only condition in which no F.I.R. could have been registered at Hajipur could be that there was no desire in the mind of either the deceased (while she was alive) or the other



family members of prosecuting the appellant. This is possible only when the deceased would have caught fire while cooking food and not when she was put on fire by the appellant and other accused persons.

11. In this context it would be relevant to see the post-mortem report of the deceased. The post-mortem was conducted by Dr. Shiv Ranjan Kumar (P.W. 6) who held the autopsy on 30.05.2014. He found dermo-epidermal burn involving whole body surface area except both legs including the sole, back of abdomen and the upper portion of the buttocks. The burnt area was infected with pus. Dark brown crusts were present at various places. All the injuries were ante-mortem in nature and the cause of injury was flame burn. The death was due to burn and its complications. The time elapsed since death was between 12:00 hours to 30:00 hours approximately from the time of post-mortem. All the internal organs were found to be congested.

12. P.W. 6 (the doctor) has also stated before the trial court that such injury is possible while cooking food. He did not find any smell of Kerosene at the time of conducting the autopsy. Rigor mortis had begun appearing in the dead body within 3 hours.

13. The nature of ante-mortem burn injuries clearly reveal that the entire burn injuries were on the



upper portion of the body excluding the legs, front side of the abdomen and upper portion of the buttocks. This means that even the upper portion of the torso was seriously burnt. Under such circumstances, it becomes rather doubtful that after four or five days of the treatment at Hajipur, the deceased would have been able to make such detailed statement at P.M.C.H. where she was transferred. It has also to be kept in mind that a day after, the deceased died of such burn injuries.

14. It would further be relevant in the context to examine the deposition of the brother, mother and sister of the deceased viz. P.Ws. 5, 7 and 10 respectively.

15. Krishna Devi, the mother of the deceased (P.W. 5) has, in her cross examination, stated that in Hajipur Hospital where her daughter was admitted, she found the members of the family of the in-laws as well. While she had visited her daughter in Hajipur Hospital, she had a talk with her. Thereafter she along with others took the deceased to P.M.C.H. for better treatment.

16. Similarly, Nand Kishore Kumar (P.W. 7), the brother of the deceased has also stated in his cross examination that the deceased was admitted in Hajipur Hospital by her in-laws. When he along with other family members reached Hajipur Hospital, the family of the appellant were also present. He has admitted that the



deceased used to live separately from her in-laws, along with her husband in a rented accommodation where she used to cook food for the family.

17. Rupa Singh (P.W. 10) has, in her cross-examination has stated except for the legs of the deceased, she had burn injuries at all places.

18. Two inferences could be drawn from the aforesaid statement of the witnesses referred to above. One, that the family members of the appellant had got the deceased admitted in Sadar Hospital and were present in the Hospital till the arrival of P.Ws. 5, 7 and 10; and secondly, that the deceased had a talk with her mother. Obviously therefore, the other witnesses also would have heard the version of the deceased. If at all the appellant or his family members would have had attempted to kill the deceased by burning her, the deceased would, while she was alive and under treatment at Hajipur, have stated so to the aforesaid witnesses. It does not appear to be convincing that for four days while the deceased was being treated in Sadar Hospital, Hajipur and if she were in a position to speak, she would not state anything about the appellant or others. Either the appellant or his family members had not made any attempt to kill the deceased or the deceased was absolutely not in a position to speak. These are the only two conditions in which a case against



the appellant and his family members would not have been instituted at Hajipur. To clarify, if the deceased was in a position to speak at Hajipur and no case has been registered at Hajipur it could be presumed that she had not alleged anything against the appellant or others. Similarly, if the deceased was not in a position to speak anything the family members of the deceased would not have known the cause of the occurrence and the fardbeyan which has been recorded after four days of the occurrence in P.M.C.H. emergency ward cannot be accepted as the version from the mouth of the deceased. If the deceased was not in a position to speak at Hajipur, there is no reason to believe that her situation would have improved a day before her death at P.M.C.H. In either condition, the statement of the deceased becomes doubtful. The further reason for doubting the correctness/genuineness of the fardbeyan/statement is that P.W. 7 has stated that the deceased was kept inside glass chamber and he had signed the document by going inside. No certification by any doctor and the scribe of the fardbeyan not having been examined as a witness by the prosecution further give a death knell to the prosecution version.



19. The other witnesses viz. P.Ws. 1, 2 and 3 have not supported the prosecution version and have been declared hostile. P.W. 12 is only a formal witness.

20. That the deceased admittedly was staying separately from her in-laws along with her husband (appellant) at Anwarpur in a rented accommodation is only indicative of the facts that the relationship between the appellant and the deceased was cordial. It is further gets confirmed by the fact that the appellant had taken the deceased to the hospital at Hajipur. The deceased herself did not remember the name of her landlord while giving her fardbeyan/statement further established that the house was taken on rent by the appellant *i.e.* her husband.

21. Thus, it is difficult for this court to accept the version of the deceased which is said to have been given by way of fardbeyan a day before she died.

22. The appellant therefore, has to be given the benefit of doubt. For the aforesaid reasons, it is difficult to sustain the conviction and sentence of the appellant.

23. The judgment and order of conviction dated 30.09.2016 and 01.10.2016 respectively passed in Sessions Trial No. 88 of 2015 (arising out of Hajipur Town P.S. Case No. 418 of 2014) is set aside.

24. The appeal is allowed.



25. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.

26. A copy of the judgment be transmitted to the Superintendent of jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
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