

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (SJ) No.685 of 2016**

Arising Out of P.S. Case No. -1 Year- 2012 Thana -BIHTA District- PATNA

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1. Anirudh Singh @ Pappu, Son of Jwala Singh.

2. Poonam Devi, Wife of Anirudh Singh.

Both resident of Village-Bisunpura, P.S.-Bihta, District-Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

with

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**Criminal Appeal (SJ) No. 603 of 2016**

Arising Out of P.S. Case No. -1 Year- 2012 Thana -BIHTA District- PATNA

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Sunaina Devi, Wife of Jwala Singh, resident of Village- Bisunpura,  
P.S. Bihta, District Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

with

=====

**Criminal Appeal (SJ) No. 683 of 2016**

Arising Out of P.S. Case No. -1 Year- 2012 Thana -BIHTA District- PATNA

=====

Randhir Kumar @ Munna, Son of Jwala Singh, resident of Village-  
Bishunpura, Police Station- Bihta, District- Patna.

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s



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**Appearance :**

(In CR. APP (SJ) No.685 of 2016)

For the Appellant/s : Mr. Vikram Deo Singh, Adv.

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.603 of 2016)

For the Appellant/s : Mr. Vikram Deo Singh, Adv.

For the State : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.683 of 2016)

For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv.

For the State : Mr. Sujit Kr. Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR**

C.A.V. JUDGMENT & ORDER

**Date: 27-06-2018**

All the three appeals have been heard together and are being disposed of by a common judgment.

2. Heard Mr. N. K. Agrawal, learned Senior Counsel and Mr. Vikram Deo Singh, learned Counsel for the appellants. I have also heard the Counsel for the State.

3. Appellant/Sunaina Devi (in Cr. Appeal (SJ) No. 603 of 2016) and appellants/Anirudh Singh @ Pappu and Poonam Devi (in Cr. Appeal (SJ) No. 685 of 2016) were tried together in Sessions Trial No. 954 of 2012. Appellant/Randhir Kumar @ Munna (in Cr. Appeal (SJ) No. 683 of 2016) was the sole person to be tried in Sessions Trial No. 953 of 2012.



4. In both the Sessions trials, the judgment of conviction and order of sentence was delivered on 24<sup>th</sup> June, 2016 and 28<sup>th</sup> June, 2016 respectively by the learned 1<sup>st</sup> Additional Sessions Judge, Danapur.

5. Appellant/Sunaina Devi (in Cr. Appeal (SJ) No. 603 of 2016) has been convicted under Section 498-A of the Indian Penal Code (*in short the "I.P.C."*) and has been sentenced to undergo rigorous imprisonment for two years, to pay a fine of Rs. 1,000/- and in default of payment of fine to further suffer simple imprisonment for one month.

6. Appellants/Anirudh Singh @ Pappu, Poonam Devi (in Cr. Appeal (SJ) No. 685 of 2016) and appellant/Randhir Kumar @ Munna (in Cr. Appeal (SJ) No. 683 of 2016) have been convicted under Sections 498-A and 304B of I.P.C. and have been sentenced to undergo rigorous imprisonment for two years, to pay a fine of Rs. 1,000/- and Rs. 2,000/- respectively and in default of payments of fine to further suffer simple imprisonment for one year and three years respectively, for the offence under Section 498-A of the I.P.C. and rigorous imprisonment for ten years each for the offence under Sections 304B of the I.P.C.

7. It may be noted that appellant/Sunaina Devi is the mother-in-law of the deceased, whereas the appellants/Anirudh Singh @ Pappu and Poonam Devi, who



are the husband and wife amongst themselves, are the elder brother of the husband of the deceased and sister-in-law of the deceased respectively. Appellant/Randhir Kumar @ Munna is the husband of the deceased.

8. The case of the prosecution is based on the *fardbeyan* statement of the deceased/Dazy Kumari, which was recorded on 30.12.2011 at 11:00 A.M. in P.M.C.H., Patna by A.S.I./N.N. Ram. The aforesaid *fardbeyan* statement was signed by Dinesh Kumar Singh (father of the deceased), Anil Kumar Singh (uncle of the deceased), Murari Kumar Singh (cousin of the deceased) and Renu Devi (mother of the deceased, who has put her left hand thumb impression over the document). The deceased had also put her left hand thumb impression on the aforesaid statement. Dinesh Kumar Singh, Anil Kumar Singh, Murari Kumar Singh as well as Renu Devi have been examined in both the Session trials and their deposition, in both the trials, are in *pari materia*.

9. For the sake of convenience, the deposition of the witnesses recorded in Sessions Trial No. 954 of 2012 is being referred to in this composite judgment.

10. Dazy Kumari (deceased) has alleged that about five years ago, she was married to appellant/Randhir Kumar @ Munna and at the time of marriage, her father and



other family members had given sufficient gifts and money by way of dowry. She was, for sometime, kept well in her matrimonial home but later, money and articles were being demanded from her. On non-fulfillment of the aforesaid demand of money and articles, she was harassed and tortured. She was, therefore, forced to file a case against the accused persons in Bihar Sharif. Later, with the intervention of the family members and others, a settlement was effected and the accused persons, after executing bond for maintaining good behaviour and conduct, brought her back to the matrimonial home. She has further stated that her husband (Randhir Kumar @ Munna) has illicit relationship with his sister-in-law (Poonam Devi) and for this reason, all the accused persons again started torturing her. On 29.11.2012, at about 6 O'clock in the evening, her husband, brother-in-law and sister-in-law sprinkled kerosene oil on her body and set her on fire. Her parents-in-law were standing there, but they did not prevent the accused persons from committing this crime. The parents-in-law, later, ran away. It has further been stated in the aforesaid statement that the cousin mother-in-law of the deceased (Sunita Devi, who has been examined as P.W. 1 in Sessions Trial No. 954 of 2012) took her to Bihta Government Hospital and from there, she was referred to P.M.C.H., Patna where she was admitted for



treatment. When this information reached the parents of Dazy Kumari (deceased), her father, mother, uncle and cousin came to the hospital.

11. The occurrence is said to have taken place under the territorial jurisdiction of Bihta police station.

12. On the basis of the aforesaid *fardbeyan* statement made by Dazy Kumari, a case *vide* Bihta P.S. Case No. 1 of 2012, dated 01.01.2012, was registered for investigation under Sections 498-A, 326 and 307 of the I.P.C. with the aid of Section 34 of the I.P.C. Later, with the death of the deceased (Dazy Kumari) on 05.01.2012, Section 304B of the I.P.C. was added.

13. In the F.I.R., the appellants as well as the father-in-law of the deceased were made accused, but charge-sheet was only submitted against the appellants and not against the father-in-law of the deceased.

14. At the trial, ten (10) prosecution witnesses in both the Sessions trial, referred to above, were examined and the learned Trial Court on the basis of the aforesaid evidence and materials, convicted and sentenced the appellant as aforesaid.

15. Mr. N. K. Agrawal, learned Senior Counsel and Mr. Vikram Deo Singh, learned Counsel, appearing for the appellants, assailed the judgment of conviction and order



of sentence on the ground that the conviction and sentence of the appellants have solely been recorded on the basis of the *fardebayan* statement of the deceased which has been accepted as her dying declaration, but the aforesaid dying declaration is not free from blemish and the circumstances clearly reveal that the aforesaid document was a procured document and not a genuine one and, therefore, such a statement should not have been relied upon. Additionally, it was argued that P.Ws. 1, 8, 9 and 10 have not supported the prosecution version and have not been declared hostile either. They have stated before the Trial Court that the death was accidental because of the deceased having caught fire at the time of cooking food. They have also deposed that all efforts were made to extinguish the fire and to get the deceased treated at Bihta and Patna, but the present case was lodged only after the death of the deceased for the reasons which were unknown and unexplicable to them.

16. Both the learned Counsel further argued that P.Ws. 3, 4, 5 and 6, who have supported the prosecution version, have come up with hearsay evidence only and their depositions suffer from serious lacunae which make them unbelievable/unacceptable. It was also suggested that the *post-mortem* report conducted by Dr. Pankaj Kumar (P.W. 2) reveals that the deceased had suffered 100% burn injuries



and in that event, she remained unconscious throughout. Under such circumstances, it was not possible for her to have given such a statement before the police.

17. What has seriously been argued while canvassing that the dying declaration of the deceased is not a genuine piece of evidence, learned Counsel submitted that the aforesaid dying declaration was recorded by one N.N. Ram/A.S.I. and for no apparent reason, he has been withheld from being examined as a prosecution witness to support the prosecution version and to prove the aforesaid document.

18. It has also been argued on behalf of the appellants that if the factum of the deceased having made a statement before the police on 30.12.2011 is correct, then there was no occasion for the father of the deceased/Dinesh Kumar Singh (P.W. 6) to have lodged a *fardbeyan* (Exhibit-4/1) again on 05.01.2012.

19. In order to appreciate the contentions raised on behalf of the appellants, it would be necessary to refer to the deposition of the witnesses offered on behalf of the prosecution.

20. Sunita Devi (P.W. 1) is the cousin mother-in-law of the deceased. She has deposed before the Trial Court that the occurrence is of the year 2011, when the deceased



caught fire while cooking food. She had gone to the house of the deceased on hearing *hulla* and found that the deceased was burnt all over. She along with the family members of the deceased brought her to the Government Hospital, Bihta; from where she was taken to P.M.C.H., Patna for further treatment. The deceased was hospitalized in P.M.C.H. for about six days and during the course of treatment, she died. At the time of the occurrence, she was cleaning her *veranda* and the appellants were roaming outside. All attempts were made to extinguish the fire by covering the deceased with a blanket, but she received burn injuries. The parents-in-law of the deceased at that time had gone to Bihta market for purchasing household articles. The parents of the deceased were informed about the mishap on telephone on which they arrived at the P.M.C.H. She has further stated that the deceased was taken to hospital on a three-wheeler/tempo. Appellant/Sunaina Devi (mother-in-law) and the father-in-law of the deceased had also visited the hospital. She has further confirmed the fact that the deceased had given her statement before the police and in the aforesaid statement, she had said that she caught fire while cooking food. She has also categorically stated that the deceased constantly remained unconscious and that till 30.12.2011, none of the family members of the deceased had come to the hospital.



The deceased had good relations with her in-laws and she had been residing in her matrimonial home quite comfortably. Except for the face of the deceased, all other parts of the body were severely burnt.

21. What becomes evident from the aforesaid deposition of P.W. 1 is that the deceased had caught fire while cooking food and that every effort was made to extinguish the fire by the appellants. She was brought to Bihta Government Hospital and, thereafter, referred to P.M.C.H., Patna. What comes out clearly from the statement of P.W. 1 referred to above, is that at the P.M.C.H., the deceased never regained consciousness and in the beginning when she had made a statement before the police, she had spoken about her having caught fire while cooking food.

22. Dr. Pankaj Kumar (P.W. 2) conducted the *post-mortem* of the deceased on 05.01.2012. He found *ante-mortem* dermal and epidermal burn injuries all over the body except the sole of the deceased. The cause of death was stated to be burn injuries and its complications. He has also testified to the fact that but for the feet (sole) of the deceased, all other parts were extensively burnt (100% burn injuries). He had no idea whether the deceased was conscious or unconscious during the period of her hospitalization as he had not treated her. He has also



admitted in his deposition that he did not write about the condition of the clothes which the deceased was wearing. The clothes were also not sent for any chemical/forensic examination. The *post-mortem* report (Exhibit-1) does not contain the details of the burn injuries on different parts of the body of the deceased.

23. The perusal of the *post-mortem* (Exhibit-1) and the deposition of P.W. 2 further confirms the fact that the deceased had 100% burn injuries and she died after six days of her being hospitalized in P.M.C.H, Patna. Under such circumstances, it has been argued, that it is difficult to believe that on 30.12.2011, the deceased would have made any statement before the police regarding her being killed because of burning.

24. Renu Devi (P.W. 3) is the mother of the deceased, who has testified to the fact that after the marriage, the deceased was ill-treated in her matrimonial home for which a case was lodged in Bihar Sharif, which ended in settlement. She was informed about the occurrence by her husband. She claims to have gone to the P.M.C.H. along with her husband, brother-in-law, nephew and others. When she went to the P.M.C.H., she found that the deceased was absolutely burnt. Though she has stated in her examination-in-chief that the deceased herself had



given the statement before the police, but her attention was drawn to her previous statement before the police. She has, however, further denied of not having stated before the police that the deceased had informed her that she was put on fire by the accused persons.

25. Anil Kumar Singh (P.W. 4) is the uncle of the deceased, who has supported the prosecution version. When attention was drawn to his earlier statement made before the police that when he had reached P.M.C.H., he had found the deceased unconscious, he denied to have made such statement. He has further stated in his deposition that after the settlement of the dispute between the deceased and the appellants, she had gone back to her matrimonial home where she stayed for two months. After the settlement/compromise, there was no information about any ill-treatment.

26. Similar statement has been given by Murari Kumar Singh, the cousin of the deceased, who has been examined as P.W. 5.

27. Dinesh Kumar Singh (P.W. 6) is the father of the deceased. His deposition is also based on what he heard from the deceased when he visited the hospital. His attention was also drawn to his earlier statement made before the police where he had stated that when he reached



P.M.C.H., the deceased was being treated and was unconscious all the time. However, the aforesaid witness has denied to have made such statement before the police.

28. In this context, it would be necessary to refer to the deposition of Ram Kumar Das (P.W. 7), who is the Investigating Officer of this case. He has stated before the Trial Court that on 01.01.2012, he was posted as A.S.I. in Bihta police station. The *fardbeyan* of the deceased had been transmitted from P.M.C.H. to the police station. The *fardbeyan* is in the handwriting of N.N. Ram/A.S.I., Pirbahore police station. In paragraph 3 of his deposition, he has stated that an effort was made to record the statement of Dazy Kumari but because of her being unconscious, her statement could not be taken. He had recorded the statement of the other witnesses in the hospital. He had also visited the place of occurrence and the matrimonial home of the deceased. He has testified to the fact that Dinesh Kumar Singh (P.W. 6), who is the father of the deceased, had also lodged a *fardbeyan* (Exhibit-4/1). He did not record the statement of either N.N. Ram/A.S.I., who recorded the statement of the deceased or of Gauri Shankar Singh, who had recorded the statement of Dinesh Kumar Singh/P.W. 6 (Exhibit-4/1). He had visited the P.M.C.H., Patna at about 10 O' clock in the day on 01.01.2012. On the same day, he



had taken the statement of all the witnesses. He found the deceased unconscious from the very beginning and her entire body was bandaged. In paragraph 17 of his cross-examination, he has clearly stated that Renu Devi (the mother of the deceased/P.W. 3) did not state before him that the deceased had given her *fardbeyan* statement which is the basis of the case. He has confirmed the fact that P.W. 3 had stated before him that the deceased was unconscious in the emergency ward of P.M.C.H.

29. Similar statements, it has been deposed by P.W. 7, were made by the other witnesses, viz. Anil Kumar Singh (uncle of the deceased/P.W. 4), Murari Kumar Singh (cousin of the deceased/P.W. 5) and Dinesh Kumar Singh (father of the deceased/P.W. 6). Dinesh Kumar Singh (P.W. 6) did not take name of any accused persons before him. Rather, he clearly stated before P.W. 7 that when on being informed about the accident, he came to P.M.C.H., he saw that his daughter was continuously in a state of unconsciousness. He had also told P.W. 7 that the information about the treatment of the deceased in P.M.C.H. was provided to him by the Bihta police.

30. Thus, from the evidence of the Investigating Officer (P.W. 7), it becomes absolutely clear that none of the witnesses, viz. P.Ws. 3, 4, 5 and 6 stated before him that the



deceased had made the statement (dying declaration) in their presence. In fact, all of them have only stated that when they reached P.M.C.H., they found the deceased to be unconscious.

31. Under such circumstances, it has been argued by the learned Counsel appearing for the appellants that it would be difficult to believe that the aforesaid dying declaration was made by the deceased. The reasons for doubting the aforesaid document as genuine have been listed as follows:-

(a.) The A.S.I. of police, who recorded the statement, viz. N.N. Ram has not been examined or any explanation has been offered by the prosecution for his non-examination;

(b.) When the Investigating Officer (P.W. 7) visited the hospital on 01.01.2012, he found the deceased to be unconscious;

(c.) The father of the deceased (P.W. 6) also lodged a *fardbeyan* on 05.01.2012, i.e., the day when the deceased died (Exhibit-4/1) and the person who recorded the aforesaid *fardbeyan* statement, viz. Mr. Gauri Shankar Singh has also not been examined;

(d.) The witnesses, viz. P.Ws. 3, 4, 5 and 6 did not state before the



Investigating Officer (P.W. 7), in their statement, that the *fardebayan* was made by the deceased; rather all of them have unequivocally stated that when they visited the P.M.C.H., they found that the deceased was struggling for life in a state of unconsciousness; and

(e.) The doctor (P.W. 2), who conducted the *post-mortem*, has also confirmed the fact that but for the back portion of the feet (sole) of the deceased, there were extensive burn injuries (100%) over the body of the deceased.

32. For the aforesaid reasons, it has been argued that the dying declaration, which is the basis for convicting the appellants under Sections 498-A and 304B of the I.P.C., is not believable and appears to have been procured for the purpose. In support of the aforesaid contention, it has also been suggested that the deceased was hospitalized for six days and there is no reason why the F.I.R. was registered on 01.01.2012 even when she (deceased) was admitted in P.M.C.H. on 30.12.2011.

33. From the conspectus of the materials brought during the trial, it becomes very obvious that the deceased suffered burn injuries at Bihta and was brought to the Government Hospital, Bihta. If there had been even an



iota of doubt that it was not a case of natural/accidental injury, she would not have been referred to P.M.C.H. by the functionaries of the Bihta Government Hospital. In cases of burn injuries of women, it is incumbent upon the hospital authorities to immediately inform the police. From the deposition of the witnesses, one gets an idea that the Bihta police was informed about the occurrence as the father of the deceased claims to have learnt about the deceased having been hospitalized and being treated in P.M.C.H. by the Bihta police. In this connection, non-registration of any case at Bihta Government Hospital, when there was every possibility of the deceased being in a conscious state, speaks volumes about the dying declaration not being a genuine piece of document. None of the prosecution witnesses have stated about any torture or ill-treatment after the settlement had been arrived at between the in-laws and others and the deceased at Bihar Sharif.

34. It is also worthwhile to mention that P.Ws. 1, 8, 9 and 10, who could be called independent witnesses, have not supported the prosecution version and have only stated that the deceased accidentally caught fire. Since they have not been declared hostile, it would be very difficult to discard their statements as being motivated for the purposes of providing relief to the appellants. From the deposition of



P.W. 1/Sunita Devi, who had admittedly got the deceased to P.M.C.H., it further becomes clear that the parents-in-law of the deceased had also visited the hospital.

35. Thus, on a holistic appreciation of evidence, it is difficult to sustain the conviction of the appellants either under Section 304B of the I.P.C. or under Section 498-A of the I.P.C. The reason for saying so is that none of the witnesses have spoken about any torture or ill-treatment after the deceased had gone to stay with her in-laws, after the executing of bond of keeping good conduct and behaviour by them and the sole document, which has been relied upon by the Trial Court for convicting and sentencing the appellants, not being found genuine and believable.

36. The appellants are required to be given benefit of doubt.

37. Thus, for the reasons aforesaid, the judgment of conviction dated 24<sup>th</sup> June, 2016 and order of sentence dated 28<sup>th</sup> June, 2016 of the appellants, passed by the learned 1<sup>st</sup> Additional Sessions Judge, Danapur in Sessions Trial No. 954 of 2012 and Sessions Trial No. 953 of 2012, arising out of Bihta P.S. Case No. 1 of 2012, are, hereby, set-aside.

38. All the appeals are allowed.

39. Appellant/Sunaina Devi (in Cr. Appeal (SJ)



No. 603 of 2016) is on bail. She is discharged from the liabilities of her bail-bonds.

40. Appellants/Anirudh Singh @ Pappu and Poonam Devi (in Cr. Appeal (SJ) No. 685 of 2016) and appellant/Randhir Kumar @ Munna (in Cr. Appeal (SJ) No. 683 of 2016) are in custody. They are directed to be released forthwith from jail, if not wanted in any other criminal case.

41. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

**(Ashutosh Kumar, J)**

Praveen-II/-

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