

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 846 of 2011

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Pappu Yadav, son of Sri Ram Dahin Yadav, Resident of Village - Hinduni, P.S.
Phulwarisharif, District - Patna.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

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Appearance :

For the Appellant/s : Mr. Kumar Sunil (Adv), Amicus Curiae
For the Respondent/s : Mr. Ajay Mishra, Addl. Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 31-07-2018

The sole appellant by judgment dated 19-07-2011 was convicted for commission of offence under Section 304(B) of the Indian Penal Code and by order dated 20-07-2011, he was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 10,000/- (ten thousand). In default of payment of fine, he was directed to further undergo rigorous imprisonment for two years. The appellant, husband of the deceased, was convicted and sentenced by Sri Narsingh Prasad, learned Addl. Sessions Judge, F.T.C. III, Patna in Sessions Trial No. 2530 of 2008/153 of 2009 (arising out of Phulwari Sharif P.S. Case No. 147 of 2008).



2. After the judgment of conviction and sentence, the appellant preferred present appeal under Section 374(2) read with Section 389(1) of Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.'). The appeal was admitted on 06-09-2011, however; considering the accusation, the prayer for bail of the appellant was rejected. The appellant is in custody since 03-08-2008. After admission, when the appeal was listed under the heading 'For Hearing', since repeatedly, none appeared on behalf of the appellant, the Court, considering the fact that the appeal was of the year 2011, instead of deferring the hearing, by order dated 30-07-2018 requested Sri Kumar Sunil, learned counsel, who was present in Court, to assist the Court, as *Amicus Curiae*, and he agreed and thereafter, on 30-07-2018 hearing commenced and today also, hearing commenced and learned *Amicus Curiae* placed the entire case before the Court.

3. Short fact of the case is that on 13-04-2008 at about 11:30 AM in village Hinduni, P.S. Phulwari Sharif, District Patna, Sub-Inspector of Police Sri G.P. Mishra (P.W. 7) recorded *fardbeyan* of Yamuna Rai (P.W. 6), father of the deceased, resident of district Ara at Bhojpur. In the *fardbeyan*, the informant disclosed that in the morning on 13-04-2008, he got information that his daughter Anita Devi, wife of Pappu Yadav (appellant) was done to death by burning. He arrived village



Hinduni, Police Station Phulwari Sharif, Patna and saw that his daughter Anita Devi was lying dead in the house of the appellant due to burn injury. He got information from villagers that 1. Pappu Yadav/appellant (son-in-law of informant), 2. Ram Dahin Yadav (father of appellant), 3. Sanjay Yadav (son of Ram Dahin Yadav), 4. Sunita Devi (wife of Sanjay Yadav) and 5. Daulatiya Devi (wife of Ram Dahin Yadav) all have burnt his daughter to death and after closing door from the outside, they fled away. The informant further disclosed that marriage of his daughter was solemnized as per Hindu rites about 2½ years back with Pappu Yadav (appellant), who with his entire family was demanding golden chain and T.V. from his daughter. The said information was being given by his daughter and due to non-fulfillment of the demand, his daughter was regularly being assaulted. The informant stated that he was poor and according to his capacity during the marriage, he had given some articles to them. He disclosed that his daughter was issueless. The informant claimed that his daughter was done to death by burning due to non-fulfillment of demand of golden chain and T.V. He further stated that regarding assault, earlier also *panchayati* was held, however; his son-in-law (appellant) did not follow the dictates of *Panchayat*. The *fardbeyan* was read over



to him and thereafter, the informant put his signature on the *fardbeyan*.

4. After recording *fardbeyan*, on 13-04-2008 itself, a formal F.I.R. was drawn at 3:30 PM, vide Phulwari Sharif P.S. Case No. 147 of 2008 under Section 304(B) of the Indian Penal Code and Sections 3 & 4 of Dowry Prohibition Act, 1961 against:-

- (i) Pappu Yadav (appellant), husband of deceased,
- (ii) Sanjay Yadav (brother of the appellant),
- (iii) Ram Dahin Yadav (father of the appellant),
- (iv) Sunita Devi (wife of Sanjay Yadav) and
- (v) Daulatiya Devi (mother of the appellant).

Thereafter, the case was investigated. During investigation itself, the appellant was arrested on 03-08-2008 and thereafter, on 30-10-2008 charge-sheet was submitted against the appellant for offence under Section 304-B Indian Penal Code against Pappu Yadav (appellant) keeping investigation pending against others. Subsequently, on 08-11-2008, learned Chief Judicial Magistrate, Patna took cognizance of the offences and thereafter, on 29-11-2008, the case was committed to the Court of Sessions, and it was numbered as Sessions Trial No. 2530 of 2008. On 17-08-2009, charge under Section 304-B of the Indian Penal Code was framed against the appellant. During the trial, to establish its case, from the prosecution side, altogether eight witnesses were examined. Out of eight witnesses, the informant



i.e. father of the deceased (Yamuna Rai) was examined as P.W. 6, Rambabu Rai, uncle of deceased as P.W. 1, Indrajeet Rai, brother of the deceased as P.W. 3, Jaleshwar Yadav (uncle of the deceased) as P.W. 5 were examined on the point that they got information and thereafter, hiring a private vehicle, they arrived Hinduni village, Phulwari Sharif (Patna) from Ara at Bhojpur. All of them are also witnesses on the point that the victim was being tortured due to non-fulfillment of demand of dowry.

5. P.W. 2 Niranjana Kumar is the co-villager of the appellant and he was examined as hearsay witness, whereas Sakaldip Pandit (P.W.4) co-villager of the appellant, since did not support the case, was declared hostile.

6. P.W. 8 Dr. Pankaj Kumar on the relevant date i.e. 13-04-2008 was posted in the Patna Medical College & Hospital, Patna and he conducted *post-mortem* on the dead body of the deceased and he also proved the post-mortem report, which was marked as Ext. 4, whereas, P.W. 7 Ganpati Mishra is the investigating officer of the case and he had also recorded *fardbeyan*.

7. After closure of the prosecution evidence, on 27-06-2011, circumstances and evidences collected against the appellant was explained to him and his statement under Section 313 of the Cr.P.C. was recorded, in which, he took the plea of



innocence and also claimed that at the time of occurrence, he was not at the house, rather he was in the field for doing work. The appellant also claimed to produce evidence and one person namely Vijay Kumar was examined as defence witness no. 1, who supported the stand of the appellant that it was not a case of 'Dowry Death'.

8. Sri Kumar Sunil, learned *Amicus Curiae*, after placing entire evidence, has argued that it was case of accidental death and thereafter, with a view to take back ornaments, which were given to the deceased by the informant side, a false case was instituted. He submits that in the morning, while preparing food, deceased was accidentally caught by the fire and in that accident, she died. According to Sri Kumar Sunil, all the family members at the time of occurrence were in field and after getting information, they returned back, however; due to fear, they had left their house and subsequently, on arrival of the informant & others, the present case was got instituted. Sri Kumar Sunil, learned *Amicus Curiae* further submits that there are apparent inconsistencies in the evidence of the witnesses. He submits that there is inconsistency on the point as to whether the door was locked from the outside or not. He further submits that in the case, none of the independent witness or the neighbour of the appellant has come forward to corroborate the case of



prosecution and as such, it has been argued that it was not a case of dowry death, but it was death due to accident, since the victim died while preparing food in the morning.

9. Sri Kumar Sunil, learned *Amicus Curiae* alternatively has argued that even if this Court is not inclined to interfere with the judgment of conviction, the sentence imposed on the appellant may be reduced, keeping in view the poor background of the appellant and his early age. He submits that the appellant on the date of conviction was aged about 28 years and it has come in evidence both in prosecution evidence as well as defence evidence that informant side as well as appellant were having very poor background and as such, some lenient approach may be taken in reducing sentence. According to Sri Kumar Sunil, even Section 304(B) of the Indian Penal Code prescribes minimum sentence of seven years, which can be extended up to life. However, considering the poor background of the appellant and his age, he requests for reducing the sentence for the period already undergone. He submits that appellant has already remained in custody for about ten years and as such, purpose would be served if the sentence is reduced to the period already undergone.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor submits that it is a specific case of dowry death, since the



appellant himself has admitted in his statement recorded under Section 313 of the Cr.P.C. that his marriage with deceased was solemnized within two & half years from the date of occurrence. He further submits that in view of provision contained in Section 304(B) of the Indian Penal Code, all the circumstances suggest that the appellant was involved in the dowry death, since death had occurred in the house of the appellant and occurrence had taken place within seven years of marriage. He further, by way of referring to evidence of informant i.e. P.W. 6, submits that the informant in his evidence is very much categorical that repeatedly his daughter was tortured & assaulted and demand of dowry was made. He submits that in the *fardbeyan* itself, the informant had stated that earlier *panchayati* was also held, however this appellant had not abided with the terms & conditions of the verdict of the *Panchayat*. He submits that almost in similar manner, P.Ws. 1, 3, 4 and 5 have deposed during the trial. He accepts that there is some minor inconsistency in the evidence, but those inconsistencies are not enough to draw an inference that they are not truthful witnesses. Accordingly, it has been argued that judgment of conviction and sentence may not be interfered with.

11. Besides hearing learned counsel for the parties, we have examined entire evidence both oral and documentary



evidence on record. Before proceeding, it would be necessary to examine as to what the informant i.e. P.W. 6 Yamuna Rai (father of the deceased) has deposed.

12. P.W.6, in his evidence, has stated that on 13-04-2008 in the morning at about 6-7 AM, he got an information that his daughter was done to death by the appellant and his other family members by putting her on fire. After getting information, he along with other witnesses came to Darogaji (दारोगा जी) and gave information. Thereafter, they with police arrived Hinduni village and found that door of the house of his son-in-law was locked from outside and all the inmates had already fled away. On inquiry from the villagers, he could gather that his daughter was done to death by Pappu Yadav (appellant) and his other family members by putting her on fire. However, unlocking the door when he entered inside, he found burnt dead body of his daughter, which was lying in the house. He further deposed that the occurrence had taken place, since the accused persons were demanding T.V. and golden chain, which was earlier being reported by his daughter and due to non-fulfillment of the same, the occurrence had taken place. He further deposed that before the occurrence, one *panchayati* was held in Hinduni village, in which, number of villagers had participated. The said *panchayati* was held with appellant, in



which, appellant had agreed that he would reside with his wife peacefully and never torture her. He further stated that in the said *panchayati*, paper was also prepared. Ofcourse, such paper has not been got exhibited. This witness identified his signature on the *fardbeyan*, which was marked as Ext. 1. This witness was cross-examined at length and even in cross-examination, he had reiterated that demand of dowry was made, which was informed by his daughter. The deceased about 2-4 months back had come to her parents' house and on said occasion also, she had informed regarding such demand and torture. His attention was also drawn to his previous statement recorded before the police, however; on examination of the evidence of the investigating officer i.e. P.W. 7 Ganpati Mishra, it is evident that no such material fact has come to show any apparent inconsistency in the evidence.

13. P.W. 1 Rambabu Rai (uncle of the deceased), P.W. 3 Indrajeet Rai (brother of the deceased), P.W. -5 Jaleshwar Yadav (another uncle of the deceased) too have supported the prosecution case and almost in same terms, they have deposed like P.W. - 6. They were also cross-examined at length, but nothing could be extracted to raise any doubt on the evidence of those witnesses. Even co-villager of the appellant P.W. 2



Niranjan Kumar, ofcourse was examined as hearsay witness, has supported the prosecution case.

14. In the case, Dr. Pankaj Kumar, who on 13-04-2008 was posted as Assistant Professor, Forensic Medicine, P.M.C.H., Patna at 3:05 PM had conducted post-mortem on the dead body of the deceased and noticed following facts:-

“On examination fully to deep antemortem burn was found all over the body except interior abdominal wall around region. The body was found deeply burnt and charred. On front and back of chest, neck, scalp, upper and lower extremity. Fraciac contained article and was congested.

Viscera in general shows congestion.

Stomach contained 25 to 50 gms.

Heart contained blood in right chamber.

Uterus was normal not pregnant.

Opinion:-(i) Time since death - 6 to 24 hours approximately.

(ii) Cause of death:- Burn and its complication.”

The doctor has proved the post-mortem report, which was marked as Ext. 4.

15. The investigating officer Ganpati Mishra (P.W. 7) has proved *fardbeyan*, which was marked as Ext. 1/1, formal F.I.R. marked as Ext. 2 and inquest report as Ext. 3. On examination of



inquest report also, it is evident that dead body in burnt condition was found lying inside house of the appellant.

16. In view of aforesaid evidence, it was established that marriage of deceased was solemnized within two & half years from the date of occurrence, death of the deceased had occurred due to burning, dead-body was found lying inside the house of the appellant and the door of the house was locked from the outside and also that deceased was regularly being tortured due to non-fulfillment of demand of dowry. Such circumstances categorically indicate regarding 'dowry death', in which, involvement of the appellant, being husband, cannot be ruled out and as such, we are of the opinion that the learned Trial Judge has committed no error in passing the judgment of conviction.

17. So far as sentence is concerned, we are in agreement with the submission of Sri Kumar Sunil, learned *Amicus Curiae* and considering the poor background of the appellant as well as his early age, the sentence can be reduced to the period already undergone. It is evident that appellant has remained in custody for about 10 years and as such, the sentence i.e. life imprisonment is modified and reduced to the period already undergone and also considering the poor background of the appellant, fine is waived. Accordingly, the judgment of



conviction is approved and sentence is modified. The appeal against judgment of conviction under Section 304(B) of the I.P.C. is dismissed.

18. Since the sentence has been reduced to the period already undergone, it is, hereby, directed to release the appellant forthwith, if not wanted in any other case.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
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