

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.604 of 2015**

Arising Out of PS.Case No. -353 Year- 2009 Thana -CIVIL LINE District- GAYA

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Sanjay Kumar Gupta, son of Sri Ramdeo Sao @ Ramdeo Prasad, resident of Mohalla- Ghugharitand, P. S. Civil Lines, District Gaya.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Sharma-Sr. Advocate
Mr. L. K. Sharma-Advocate

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 03-07-2018

Appellant Sanjay Kumar Gupta has been found guilty for an offence punishable under Section 304B of the I.P.C. and sentenced to undergo S.I. for nine years, under Section 498A of the I.P.C. and sentenced to undergo S.I. for two years, under Section 323 of the I.P.C. and sentenced to undergo S.I. for 15 days, under Section 3 of the D.P. Act and sentenced to undergo S.I. for three months as well as to pay fine appertaining to Rs.3,000/- and in default thereof, to undergo S.I. for three months, additionally, under Section 4 of the D.P. Act and sentenced to undergo S.I. for three months as well as to pay fine appertaining to Rs.3,000/- and in default thereof, to undergo S.I. for three months, additionally, with a further direction to run the sentences concurrently, with a further direction that the period having



undergone during course of trial will be subject to set off in accordance with Section 428 of the Cr.P.C. vide judgment of conviction dated 31.08.2015 and order of sentence dated 03.09.2015 passed by the Additional Sessions Judge-4th, Gaya in Sessions Trial No.544 of 2010/ 29 of 2015.

2. Bimla Devi (PW-3) gave her fard-bayan on 15.11.2009 at about 10.00 a.m. at A.N.M.M.C.H., Emergency Ward, Gaya before the police officials of Magadh Medical P.S. disclosing therein that her daughter Rubi Devi, deceased was married on 17.05.2004 with Sanjay Kumar Gupta, son of Sri Ramdeo Sao @ Ramdeo Prasad of village-Kachnama, P.S. Makhdumpur, at present resident of Mohalla-Ghughari, Narayani Mai Pool, Gautam Chowk, P.S. Civil Lines, District-Gaya, as per Hindu rites and rituals. At the time of negotiation of marriage, her Samdhi advanced demand of dowry and so, during course of marriage, she had gifted Anusa Gadna, utensils handed over cash totaling Rs.3,50,000/-. After marriage, Rubi Devi had gone to her sasural, but she was not allowed to lead peaceful life as her husband Sanjay Kumar Gupta, father-in-law Ramdeo Sao, mother-in-law Usha Devi, brother-in-law Pawan Kumar, Niranjana Kumar, they all began to torture. Sometimes physically manhandling her for fulfilment of demand of dowry. Their torturous activity had gone to such extent that at the time of death of



grand mother of deceased, she was not allowed to visit her Maika. They were demanding Rs.one lac for getting the husband (Sanjay Kumar Gupta) either to have his employment by paying bribe or to initiate his independent business. Anyhow, they have managed Rs.30,000/- and paid to her son-in-law Sanjay Kumar Gupta and after paying the same, he got employment as a Teacher under Shiksha Mitra. Even thereafter, they continued with persistent demand regarding remaining, which her daughter used to inform her frequently and for that, she had also disclosed with regard to torturous activity having attributed at the end of the accused persons. All of a sudden, she received information on 14.11.2009 at about 3.30 p.m. over her mobile No.9308219096 that her daughter Rubi Devi has been burnt completely and her sasuralwala took her to A.N.M.M.C.H. for treatment. Then thereafter, she along with her family members reached at the A.N.M.M.C.H. on 14.11.2009 at about 6.30 p.m. where she came to know that her daughter has died and her dead body has been placed at mortuary. She had not found anybody from her sasural, whereupon, she gone to Civil Lines Police Station and informed. Today, that means to say on 15.11.2009, when she came back at A.N.M.M.C.H., dead body of her daughter was taken for post mortem. It has further been disclosed that the occurrence had taken place at Narayan Mai Chowk, Ghugharitand, P.S. Civil Lines,



District-Gaya on 14.11.2009.

3. The aforesaid fard-bayan was transmitted to Gaya Civil Lines P.S., whereupon Civil Lines P.S. Case No.353 of 2009 was registered followed with an investigation and after completing the same, chargesheet has been submitted against the appellant keeping investigating pending against other co-accused and the same happens to be the basis for trial, meeting with the ultimate result, the subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. Furthermore, it is evident that so many alternative pleas have been taken up at the end of the appellant. First of all, it has been pleaded that accused/ appellant was not at all present on the alleged date and time of occurrence as being a Teacher, he was present at his place of posting. Then, it has been pleaded that deceased was an idiot and for that, she was being treated since long. It might be possible that she got burnt on account of accidental fire. To substantiate the same, apart from oral evidences, documentary evidences have also been led.

5. Prosecution in order to support its case, had examined altogether five PWs, who are PW-1, Parag Anand, PW-2, Ratan Kumar, PW-3, Bimla Devi, PW-4, Dr. Arbind Prasad and PW-



5, Paras Nath Dwedi, I.O. Side by side, had also exhibited as Exhibit-1 series, signature of informant as well as other witnesses over the fard-bayan, Exhibit-2, post mortem report, Exhibit-3, fard-bayan, Exhibit-4, formal F.I.R., Exhibit-5, inquest report. Defence had also examined altogether five DWs, who are DW-1, Anil Kumar, DW-2, Jagarnath Gautam, DW-3, Sarita Kiran, DW-4, Binod Kumar Pandey @ Binod Kumar Sah and DW-5, Vinay Kumar Gupta. Side by side, had also exhibited, Exhibit-A, signature of Sanjay Kumar Gupta (appellant) over attendance register (relating to date 14.11.2009), Exhibit-B series, doctor's prescription, Exhibit-C, signature of informant over compromise petition, Exhibit-D, C.C. of judgment of Sessions Trial No.194 of 2014/ 498 of 2014, Exhibit-E series, C.C. of deposition of respective witnesses concerning above referred Sessions Trial.

6. While assailing the judgment of conviction and sentence, the learned counsel for the appellant has raised various points. The first and foremost happens to be that the case has been compromised and from the compromise petition, it is apparent that subsequently to the event the prosecution party collected correct information regarding the affair, whereupon did not opt to prosecute the appellant and the aforesaid situation has been divulged by none others than own brother of deceased (DW-5). In its continuity, it has



also been submitted that during course of sailing of other Sessions Trial being taken up against the remaining accused, witnesses have not supported the case of the prosecution as a result of which, the other co-accused got acquittal. Exhibit-A, Exhibit-D and Exhibit-E series are the documents which support the finding. That being so, the Court should take notice of the subsequent event, more particularly visualizing on account of real affair having noticed by the prosecution party completely exonerating culpability of the appellant during commission of the alleged occurrence.

7. Then, it has been submitted that plea of alibi has also been taken and for that, apart from Exhibit-A, attendance register. DW-3, Principal of concerned School had supported the same. It has also been submitted that on 14.11.2009, happens to be the Children Day and on which date, the Teachers, Students are being engaged in cultural programme wherein there was active involvement of the appellant and so, the prosecution evidence dragging the appellant under the column of an accused is found completely gutted down. Because of the fact that plea of alibi is found duly proved, whereupon the allegation whatsoever been attributed against the appellant could not survive.

8. Furthermore, it has also been pleaded that deceased was an idiot or was suffering from mental disorder, more particularly



was schizophrenic and for that, she was being treated since last so many years. Unfortunately, it appears that she had gone to cook during course of the same, she sustained accidental fire. In the aforesaid background, it has also been submitted that conduct of family members is also to be seen, who taken the deceased immediately to A.N.M.M.C.H. for treatment where she died during course of treatment. The instant prosecution has been launched only in revengeful manner as when the prosecution party came, they have not seen any of the Sasuralwala. Though they have admitted that deceased was admitted at A.N.M.M.C.H. by her sasuralwala. Had there been any kind of adverse activity at the end of appellant or his family members, then in that circumstance, deceased would not have been taken to A.N.M.M.C.H. for admission as well as treatment.

9. It has also been submitted that so far demand and torture is concerned, apart from being bald in its nature, there also happens to be completely lacking at the end of the prosecution to satisfy that soon before her death, deceased was subjected to torture for demand as well as fulfilment of demand of dowry. To justify the same, it has been submitted that marriage was solemnized in the Year 2004, while enjoying conjugal life, deceased had begotten two daughters, who are staying with the appellant, would not have taken place, had there been strained relationship amongst the spouse. So,



submitted that apart from evidence, suffering from ambiguity in the facts and circumstances of the case, did not justify the finding having recorded by the learned lower Court, whereupon appeal is fit to be allowed.

10. It has further been urged that the present F.I.R. is hit by Section 162 of the Cr.P.C. as the informant and her family members had categorically deposed that before recording of her fard-bayan, she had already informed the Civil Lines Police Station. That being so, it was incumbent upon the prosecution to bring on record the initial version wherein it failed putting doubt over its genuineness apart from legal deficiency persisting on that score, as stated. In any view, the totality of events did not aye the prosecution version.

11. On the other hand, while controverting the submission made on behalf of appellant, it has been submitted that there happens to be consistency amongst the PWs over the manner as well as genesis of occurrence. Furthermore, it has also been submitted that though there happens to be disclosure in the fard-bayan as well as the witnesses also in that Civil Lines P.S. was informed, but during course of cross-examination, neither the informant nor the I.O. were cross-examined on that very score, at least to find out what kind of information was given coupled with after effect. Prosecution as it appears, played fair game by disclosing the same, but the defence



knowingly and intentionally left to cross-examine in order to avail undue advantage. That being so, for want of an opportunity before the witnesses at least the I.O. to enlighten the issue, appellant is precluded to raise the issue that the present F.I.R. is hit by Section 162 of the Cr.P.C. The appellant happens to be very much conscious as is evident from his conduct as during course of defence, had examined five DWs, exhibited large number of documents, then in that circumstance, had there been some sort of legal lacuna also crept up at the end of the police officials, the defence would have spared an opportunity to demolish the same. In the aforesaid facts and circumstances of the case, whatever argument has been made by the learned counsel for the appellant relating to inadmissibility of the present F.I.R. is not at all found entertainable.

12. It has also been submitted that there happens to be no cross-examination at least of PW-2 and PW-3 relating to demand as well as torturous activity having at the end of the appellant as well as his family members. Appellant had not challenged that out of Rs. One Lac was paid by the prosecution party by which, he got an employment as a Teacher under Siksha Mitra. So the activity of the appellant and his family members are found duly exposed.

13. It has also been submitted that whatever activity the prosecution had shown relating to other co-accused in another



Sessions Trial, will not be taken into consideration in the instant trial and so, Exhibit-A, D and Exhibit-E series have got no legal recognition so far instant Sessions Trial is concerned.

14. Furthermore, it has also been submitted that learned lower Court had taken into consideration the deficiency at the end of the appellant over proving the plea of alibi as well as exposing the deceased to be a schizophrenic patient/ suffering from mental disorder for want of non-examination of doctor as well as considering the evidence of DWs and that being so, adverse impact will be taken against the appellant. Apart from this, it has also been submitted that in worst case even accepting the plea of appellant for a moment not admitted that deceased was mentally disordered then why the appellant or his family members allowed her to go to cook and that happens to be a ground which speaks a lot with regard to intention as well as conduct of the appellant. The cumulative effect did justify the finding having recorded by the learned lower Court.

15. For constituting an offence of a dowry death, the following limbs are found to be duly acknowledged:-

- a) The death should be within seven years of marriage,*
- b) The death should be by burnt or bodily injury or otherwise than normal circumstance,*
- c) Soon before death, the deceased would have been subjected to torture for fulfilment of demand of dowry,*



d) Death should be at the end of husband or relative of the husband.

The aforesaid ingredients are to be duly proved at the end of the prosecution. If prosecution fails to substantiate any of the ingredients, then in that circumstance, the event would not fall within the definition of dowry death. In case, the prosecution succeeds in substantiating the aforesaid ingredients, then in that circumstance, the Court will have to presume it a case of dowry death as laid down under Section 113B of the Evidence Act, subject to rebuttal. This happens to be the basic principle while deciding a case of dowry death.

16. Now, facts of this case is to be seen in order to search out whether prosecution has substantiated the allegation or not. Moreover, from the evidences available on the record, having adduced on behalf of respective parties, admitted by respective parties, the following facts are found out of controversy:-

a) Marriage of the deceased on 17.05.2004 and death of deceased on 14.11.2009, that means to say, within seven years of marriage,

b) That too, by burnt.

c) Deceased sustained at her matrimonial house.

d) She was taken to hospital. However, it is not known whether deceased died at hospital or not, for want of injury report.

Now, the remaining ingredients are to be seen in



consonance with the plea having raised on behalf of appellant.

17. Before coming to trace out whether the prosecution has substantiated the other remaining ingredients, first of all, the legal point having raised on behalf of appellant with regard to maintainability of instant case is to be seen. It is needless to say that F.I.R. has to be recorded as provided under Section 154 of the Cr.P.C. irrespective of its nature. It is also to be noted down that for the same occurrence version and counter-version is permissible, but two F.I.R. are not permissible and that happens to be under the garb of Section 162 of the Cr.P.C. Though the appellant was very much acknowledged with the facts since the date of inception of the case by having presence of the facts in the fard-bayan that on 14.11.2009 itself informant rushed to the Civil Lines P.S. and had informed the same, but neither the informant PW-3, Bimla Devi was cross-examined on that very score, at least whether she had made detailed statement before the police with regard to commission of the cognizable offence and in likewise manner, the appellant also failed to cross-examine PW-5, Paras Nath Dwedi, I.O. at least on the score that during course of investigation whether he had gone through the aforesaid disclosure having in the written report to trace out whether the aforesaid information led to registration of the station diary entry or substantial case though on his side, the I.O. is totally blank. It is needless to say



that whenever a witness is not given an opportunity to explain the circumstance, then in that event, the aforesaid plea would not be entertainable. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any



doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

18. So, on his own fault, defence would not be allowed to raise the plea that too, at the present moment, that the instant fard-bayan is hit by Section 162 of the Cr.P.C.

19. Now, proceeding ahead with the evidences available on the record, it is evident that only PW-1, PW-2, PW-3 are the material witnesses, out of whom, PW-3 is the informant, mother of the deceased while PW-2 Ratan Kumar, is own brother. PW-1 is



the cousin brother. From the evidence of PW-1, it is evident that his place of stay is at Dhanbad. In the aforesaid background, he had stated that deceased Rubi Devi was married with Sanjay Kumar Gupta in the Year 2004. She was subjected to torture at her sasural for fulfillment of demand of dowry. Her sasuralwala was demanded Rs. One lac, out of which, Rs.30,000/- was paid by them. The aforesaid amount was handed over by the father of the deceased. Then had disclosed that father-in-law Ramdeo Sao, mother-in-law Usha Devi, husband Sanjay Kumar Gupta and brother-in-law Pawan and Niranjan were demanding the money. Then had disclosed that on 14.11.2009, his cousin brother had informed him that condition of Rubi Devi is precarious. He arrived on 15.11.2009 at hospital and found Rubi Devi dead. He had found her body was completely burnt. He had further stated that she was burnt at her sasural. Somebody brought her and admitted at hospital. Then had stated that because of the fact that remaining dowry amount was not paid on account thereof, she was done to death by burnt. During cross-examination at Para-15, that happens to be with regard to his family affairs as well as affair of the accused. He had further stated that he had not gone to the place where Sanjay Kumar Gupta was employed. He was posted at village-Simarua, P.S.-Rafiganj as a Teacher. He received information at Dhanbad from the brother that Rubi Devi has been burnt. In Para-7,



he had admitted that he was informed that sasuralwala of Rubi Devi had admitted her. In Para-8, he had stated that after receiving information about the aforesaid misfortune, he came to Gaya and gone to A.N.M.M.C.H. where he had seen dead body of Rubi Devi. He had not seen his uncle Ramji Sao (father of the deceased). But he had seen his aunt, brother Ratan Kumar, Vinay Kumar, Manoj and uncle Gopal Prasad. In Para-9, there happens to be contradiction. In Para-10, he had stated that he had made statement before the police regarding the eventualities which he perceived. He had further denied the suggestion that his cousin sister, Rubi Devi was mentally disordered. He denied the suggestion that she was not at all subjected to burnt by her husband, father-in-law, mother-in-law, brother-in-law for dowry. He had denied the suggestion that neither dowry was ever demanded nor she was subjected to torture. He had also denied the suggestion that during course of cooking, she accidentally caught fire. He also denied the suggestion that at the time of occurrence, (appellant/ husband) was not at all present at his house. He also denied the suggestion that at the time of his arrival at the hospital neither Rubi Devi nor her dead body was there rather the same was sent to post mortem since before. Then had denied the suggestion at Para-11 that it is wrong to say that the members of sasuralwala of deceased Rubi Devi had informed regarding burn as well as having been admitted at



the hospital. Then had denied the suggestion that he had falsely deposed.

20. PW-2 is Ratan Kumar. During his examination-in-chief, he had stated that the deceased Rubi Devi was his sister, who died on 14.11.2009 while staying at her sasural. She was married with Sanjay Kumar Gupta on 17.05.2004. At the time of marriage, they have incurred expenses appertaining to Rs.3,50,000/- (cash, ornaments, utensils etc.). After marriage, his sister had gone to her sasural where a demand of Rs. One lac was further made and for that, she was subjected to torture. She used to telephonically inform them and further, requested to have its fulfilment. The demand was being made by Ramdeo Sah, father-in-law, Usha Devi, mother-in-law, husband Sanjay Kumar Gupta, brother-in-law and for that, they all frequently tortured her. In the month of May, he had gone to sasural of his sister where she had also disclosed that accused persons were adamant and for its procurement, she was being physically assaulted. They have consoled her. The accused persons were saying that they have not given Godrej, television and other items in dowry, so they will have to pay Rs.1,00,000/-. Lastly, they anyhow managed Rs.30,000/- and paid the same on the pretext of getting the husband an employment. He had also stated that for the last 2-3 years, her sasuralwala was not allowing her Bidai. Even at the time of Shradh of



his grand mother, they have not allowed her to come. On 14.11.2009 at about 3.30 p.m., he received call on his mobile that her sister had sustained burn injury, whereupon taken to A.N.M.M.C.H. They accordingly rushed. At the time when they reached at the A.N.M.M.C.H., his sister was dead, her dead body was lying at mortuary. None of her sasuralwala was present. Then they have gone to their house. None of them were found. They absconded. Then they returned back to A.N.M.M.C.H. They received dead body after post mortem. They done funeral. He claimed that on account of non-fulfilment of demand of dowry, his sister was done to death by burning. He had further stated that police had come at Magadh Medical College and took statement of hir mother, whereupon, he had put his signature, identified the accused. During cross-examination at Para-9, he had stated that accused was a Teacher on the date of death of his sister. He used to stay at Tankuppa having a sweet shop. He received information telephonically regarding precarious condition of his sister, whereupon he came at A.N.M.M.C.H. on the same day at about 6.30 p.m. He came to know that dead body was lying at mortuary. In Para-10, he had stated that he inquired, who had admitted his sister at hospital. On 14.11.2009, after arrival at Magadh Medical College and even coming to know about death of his sister and the dead body was lying at post mortem house, he had not



informed Magadh Medical Police Station. Information was given at Civil Lines Police Station. He gave information to Civil Lines P.S. that the accused persons have done to death his sister by burn. Police had initiated action. He is unable to say whether police had come to see the dead body at Magadh Medical College. In his presence, police had not come. Inquest was prepared by Police of Magadh Medical College Police Station. It was prepared in his presence. At that very moment, Magadh Medical College Police had taken his statement also. They gone to post mortem house. They received dead body and then, after completion of funeral of dead body, they returned back to their house. At Para-11, there happens to be cross-examination relating to the event of funeral. Then had stated that case was investigated by Civil Lines Police. He had further stated that he had not informed any authority regarding torture having inflicted over the dead body since before. At Para-12, he had stated that they after receiving dead body have gone to the house of the accused along with the dead body, but none was present there. Lock was hanging. Then they returned back and then, funeral was effected. Then there happens to be contradiction. He denied the suggestion that his sister met with accidental fire during course of cooking. Then had denied the suggestion that his family members had informed the police official with regard to accidental death. Then had denied the suggestion that



after taking some time, they conspired and then, second F.I.R. was instituted. Then had denied the suggestion that whatever allegation has been attributed happens to be false.

21. PW-3 is the informant. She had deposed that deceased Rubi Devi was her daughter. She has been murdered by her sasuralwala by burn. She was married with Sanjay Kumar Gupta on 17.05.2004. At the time of marriage, she had gifted cloths, utensils, ornament and cash appertaining to Rs.3,50,000/-. After marriage, Rubi Devi had gone to her sasural. During course of her stay, her sasuralwala advanced demand of Rs.One lac and for that, they began to torture her. Rubi Devi had come to her place twice and during course thereof, she had disclosed the event relating to demand and torturous activity at the end of the accused persons. The accused persons were demanding money to initiate a business. Anyhow, they managed Rs.30,000/- and paid, whereupon his son-in-law got employment as a Teacher under Siksha Mitra Scheme. Even then, the members of her sasuralwala were not satisfied. They continued with demand. On 14.11.2009 at about 3.30 p.m., her son Vinay Kumar received an information with regard to critical condition of Rubi Devi as she sustained burn injury and has been admitted at A.N.M.M.C.H. Then thereafter, they have gone to A.N.M.M.C.H. where came to know that her daughter is dead and her dead body has been kept at the



post mortem room. All the members of her sasural have fled away. Then she had gone to Civil Lines Police Station and informed. On the following day, police officials of Magadh Medical College came and recorded her statement which was read over to her and finding it correct, put her signature. Her son also put his signature. Received dead body after post mortem. She had seen the dead body, which was completely burnt. All the accused persons burnt the deceased on account of non-fulfilment of demand of dowry, identified the accused. During cross-examination at Para-6, she had admitted that she (deceased) had begotten two daughters and they are staying along with their grandmother. She had further stated that she had met with members of the sasuralwala of her daughter before finalization of the marriage. Even after marriage, her son-in-law, daughter had come to her place twice or thrice. About six months prior to the death of her daughter, son-in-law got employment. After employment, her son-in-law had not come to her place. Sasural of her daughter lies at Gaya District itself. Her son-in-law got employment at village-Simarua, P.S. Rafiganj. In Para-7, she had stated that date on which, her daughter met with death, her son-in-law was employed as a teacher, but on that day, he was at his house. Her son-in-law was at his house after taking leave. She had further admitted that she had not informed the police at an earlier occasion with regard to torture having inflicted



upon her daughter. She had received information that her daughter has been taken to Medical College, whereupon they came directly to medical college where they received information regarding her death. They informed Magadh Medical Police Station. They have informed orally, which was scribed by the Darogaji. Dead body was received by her after post mortem. Then thereafter, they came to Civil Lines P.S. along with dead body. Then, they have taken the dead body to her sasural, but none was present there. Then her funeral was done. In Para-8, she had stated that she had not taken the dead body of her daughter to her house. Sasuralwala of Rubi Devi had not performed Shradh. She had got no information. Then had denied the suggestion that her sasuralwala had performed her Shradh during course thereof, they were informed. But they intentionally withheld themselves. After funeral, they have gone to their house, police had not gone. In Para-9, she had stated that her daughter was mentally fit. She was never treated for mental illness before the marriage or after the marriage. Then denied the suggestion that deceased was mentally abnormal on account thereof, she was being treated by psychiatrist Dr. Laxmi Narayan. She had further stated that she had gone to sasural of her daughter on the eve of *Chhaththi* of her daughter's daughter. Her daughter's daughter happens to be kid and so, she could not stay with her. According to her information, her son-in-law had not remarried.



They have not visited sasural of her daughter after the incident. The place happens to be locked. She is unable to say whether her husband or son had talked with sasuralwala of her daughter or co-villagers after the occurrence. Then had denied the suggestion at Para-10 that it is wrong to say that at the time of burning, her daughter was alone. She vehemently opposed and said that all the family members of her sasuralwala were present. Then had denied the suggestion that her son-in-law as well as they themselves were informed by villagers through mobile. Then had denied the suggestion that her daughter was not set ablaze by the accused persons, rather she fallen victim of an accident of fire. Then had denied the suggestion that after concealing the real fact, they have deposed falsely.

22. PW-4 is the doctor, who had found the death of deceased on account of ante-mortem burn injury. Because of the fact that cause of death happens to be out of controversy on account thereof, its detail discussion is forbidden.

23. PW-5 is the Investigating Officer, who had deposed that he was posted as A.S.I. on 15.11.2009 at Civil Lines Police Station. After having been entrusted with the investigation of the Civil Lines P.S. Case No.353 of 2009 by the Officer-in-Charge, he took up the same and during course thereof, gone through the fard-bayan. He recorded further statement of the informant. He had



recorded statement of Ratan Kumar, Parag Anand. He had seen the place of occurrence as pointed out by the informant, which happens to be double storey house of Sanjay Kumar Gupta lying at Mohalla-Narayani Maipur, Gautam Chowk of the accused. Then had gone inside the house, whereupon the detail physical feature of the house. Also shown its boundary. Then, he had taken statement of the witnesses, received post mortem. As accused Sanjay Kumar Gupta had surrendered on 27.01.2010, on account thereof, he had submitted chargesheet after completing the investigation keeping investigation pending against others. Exhibited the relevant document (fard-bayan, inquest report etc.). During cross-examination at Para-5, he had stated that after completing investigation against other co-accused, he had submitted final form. In Para-6, he had stated that he had not found any kind of objectionable material at the P.O. Then, his attention has been drawn towards statement of Anil Kumar, cross-examination over recording of statement of Anil Kumar, Yedunath @ Gautam, Sabender Kumar, Bihari Lal, Devendra Prasad, Chandragupt Kumar, Shiv Narayan, Vishwanath and Sanjay singh, whose house happens to be near about place of occurrence. At Para-7, he had stated that he got information from the District Magistrate Aurangabad that accused happens to be Teacher deployed at Rafiganj. Then contradiction relating to witnesses PW-1, Parag Anand has been drawn up and in



likewise manner, under Para-8 regarding witness Ratan Kumar (which appears to be minor).

24. DW-1 had stated that on 14.11.2009, he had come to the place of his uncle, house was open. It was 2.00 p.m. When he gone inside the room, he had seen fire. Wife of Sanjay Kumar Gupta was burning. There was gas leak, whereupon fire had broken. He tried to extinguish the fire. Then thereafter, called tempo and took her to medical college. During course of treatment, she died. At that very time, two kids were inside the house. His uncle Ramdeo had gone to Bhagalpur to attend meeting. Sanjay, who was Teacher at Simarua, P.S.-Rafiganj, had gone there. No other male member was present. Brother had also gone on his work. Deceased burnt on her own. Accused is innocent and falsely been implicated. During cross-examination at Para-3, he had stated that for the last three years, he is staying at Tekari having a photo copy shop before that, he was staying at Mau. He had also stated that Ramdeo happens to be his own uncle. In Para-5, he had stated that at the time of occurrence, at least 8-10 persons have arrived, but he is unable to identify. In Para-6, he had stated that he had extinguished the fire and during course thereof, his hands had also burnt, but he had not treated for the same. He had not informed anybody, after death, he had informed. Death occurred in between 2.00-2.30 p.m. During course of funeral, he was present. But



he is unable to say the exact date. No other accused was present at the time of funeral. Then had stated that Gautam was along with him while lifting her to hospital over tempo. At about 2.30 p.m. deceased died, whereupon police came and lifted the dead body to post mortem house. Police of Magadh Medical College P.S. had come. He had not made any kind of statement before the police. Then thereafter, he returned back along with Gautam. Then had disclosed that whole body of deceased, wife of Sanjay Kumar Gupta was not burnt rather her face, chest were completely burnt, hands were slightly burnt.

25. DW-2 is Jagannath Gautam. He had deposed that accused Sanjay Gupta happens to be his cousin brother. His wife died on account of gas leaked during course of cooking. Occurrence is of dated 14.11.2009. He had come to Gaya. He along with Anil Kumar Gupta had come to meet. He had gone inside the house and raised alarm, door was closed. There was no response, whereupon they have gone inside and had seen children were weeping, Rubi Devi was lying in kitchen, was groaning, there was flame over her cloth. He along with Anil extinguished the fire and then, called auto and then, taken her to Magadh Medical College where she was admitted. He telephoned Niranjana and informed regarding the occurrence. After 3-4 hours, she died. At that very time, no male person of her family members was there. Sanjay Gupta was at his School. Neither his



brother nor nephew were present. Only two daughters of deceased aged about 2-3 years as well as four months were present. He made statement before the police. During cross-examination, he had stated that he is unable to disclose the ancestral house of the accused. Then had disclosed his ancestral house at village-Ket. In Para-4, he had stated that he had not met with police at Medical College at the time of treatment. Only he along with Anil Kumar was present at the time of death of Rubi Devi. He was present at the hospital. After half an hour of death of Rubi Devi, family members of Sanjay Kumar Gupta came. He had not gone to inform the police. He is unable to say whether the family members of Rubi had gone to police station or they had participated in the funeral of Rubi Devi. At that very occasion, Sanjay Kumar, Pawan Kumar, Niranjana Kumar and others have also participated. Funeral took place on 15.11.2009 at about 9-10 a.m. His statement was recorded after funeral. At that very time, neither Sanjay Gupta nor his family members were present at his house. He had not shown his burnt hands to police. Then had stated that he along with Anil Gupta took the deceased to the hospital over tempo and during course thereof, he had not talked to anybody. At Para-5, he had stated that even after death of Rubi Devi, he remained there. He had gone to his place after funeral. At Para-6, he had further stated that Maikawala of Rubi Devi had also come on the date of



occurrence at the hospital and on same day, they have instituted case at Civil Lines, which he knew. In Para-7, he had stated that police had come at noon. He was not present at the time of statement. He had given statement before the police. On the following day, he came to know regarding institution of the case. At Para-8, he had further stated that police came at the hospital, at that very time, family members of Rubi Devi were not present. In Para-10, he had stated that he had stayed at the house of Sanjay Kumar Gupta for half an hour. During midst thereof, his family members as well as neighbours came there. In Para-11, he had stated that he had tried to extinguish the fire. During course thereof, his hands as well as hands of Anil Kumar Gupta also burnt, but they have not treated.

26. DW-3 is the Principal of Simarua School, who had deposed that Sanjay Kumar Gupta was Teacher of her school in the Year 2009. On 14th, November, there happens to be Children's Day, 5th September, there happens to be Teacher's day, on which day programmes were being organized for the children. Programme of eight schools were organized together, which was performed at Vishambharpur School, but again corrected as she independently organized for her own school and during course thereof, Sanjay Kumar Gupta was present. She had also brought the attendance register and exhibited the same wherein at Page No.21 dated



14.11.2009, there happens to be signature of Sanjay Kumar Gupta (exhibited). In Para-2, she had deposed that she happens to be Principal since the Year 2007, but she is unable to say from which date, Sanjay Kumar Gupta was deployed, but after her joining. Then was cross-examined with regard to organization of the programme on the specified date consisting of eight schools and for that, she was informed by the department wherein the school teachers, students participated. On that day, no teaching was being performed. Then had shown her inability to say, how much time Sanjay Kumar Gupta remained at the school. Then at Para-3 had disclosed that Sanjay Kumar Gupta continued to attend for a fortnight and for that, she also shown the attendance register. Then had shown inability whether Sanjay Gupta took Casual Leave or not after the month of November, 2009. Then had stated that on being noticed to depose, she came to know that Sanjay Kumar Gupta happens to be an accused relating to an offence whereunder his wife has been murdered.

27. DW-4 had deposed that he knew wife of Sanjay Kumar Gupta, who was coming mentally ill since before. Then had specifically stated that she was ill since before marriage. She was treated by the Dr. Laxmi Narayan for about two years and then, had exhibited the prescription.



28. DW-5 Vinay Kumar Gupta, one of the sons of informant (PW-3), had exhibited compromise petition as well as the subsequent event whereunder other co-accused have been acquitted relating to different Sessions Trial as they were prosecuted later on, as witnesses became hostile in the background of compromise.

29. As stated above, there happens to be no denial at the end of the accused/ appellant that deceased had not sustained burnt injury. DW-1, 2 have been produced to depose that accidental fire broken on account of leakage of gas as well as during course of extinguishment of the fire, they have also sustained burnt injury over their hands, but it is not at all found corroborated by the any suggestive evidence as they have themselves disclosed that they have not got their burnt hands treated. Be that as it may, there happens to be specific disclosure at their end that fire broken out on account of gas leaking, there was flame, deceased was lying. While I.O. visited the P.O., nothing was found there, that means to say, the gas cylinder, gas stove, any utensil. None of the witnesses DW-1 and DW-2 spoken, how they had been able to extinguish the fire that means to say, gas stove that means to say, whether they been able to close the knob of the gas cylinder, who removed the gas cylinder, who removed the gas stove, there was no sign of flame over ground as well as over wall, so actually kitchen happens to be the place of occurrence,



became doubtful. Furthermore, neither name of the tempo driver nor registration number has been disclosed. The most ridiculous part appears to be, when there happens to be cross-examination of the I.O. over the scene of occurrence as no objectionable items were found during course of inspection of the P.O. Whether that part goes in favour of accused/ appellant or against the accused/ appellant. Had there been house of the accused to be the actual place of occurrence, there would have been ample sign.

30. Now, coming to remaining aspect, it is evident that there happens to be consistent evidence at the end of PW-2 and PW-3 that there was demand of Rs. One lac and for that, she was being tortured. Though the evidence happens to be suffering from some ambiguity, but they have not denied or confronted or suggested that Rs.30,000/- out of one lac was not at all paid by the prosecution party and on the basis thereof, appellant got employment under Siksha Mitra that means to say, the aforesaid part also not controverted against the defence. In *Bachni Devi and another v. State of Haryana through Secretary, Home Department reported in A.I.R. 2011 SC 1098*, it has been held:-

“17. Learned counsel for the appellants heavily relied upon the following observations made by this Court in the case



of Appasaheb (AIR 2007 SC 763):

"A demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry as the said word is normally understood".

The above observations of this Court must be understood in the context of the case. That was a case wherein the prosecution evidence did not show 'any demand for dowry' as defined in [Section 2](#) of the 1961 Act. The allegation to the effect that the deceased was asked to bring money for domestic expenses and for purchasing manure in the facts of the case was not found sufficient to be covered by the 'demand for dowry'. Appasaheb (AIR 2007 SC 763) cannot be read to be laying down an absolute proposition that a demand for money or some property or valuable security on account of some business or financial requirement could not be termed as 'demand for dowry'. It was in the facts of the case that it was held so. If a demand for property or valuable security, directly or indirectly, has a nexus with marriage, in our opinion, such demand would constitute 'demand for dowry'; the cause or reason for such demand being immaterial."

That means to say, any demand which originate or is connected with the marriage will cover the definition of dowry. That being so, the evidence whatever been at the end of the prosecution is



found duly satisfying the definition of the dowry.

31. Now, coming on the score of alibi, it is evident that PW-3 could not be able to substantiate the same rather she had, during course of cross-examination, stated that she is unable to say from which time to which time Sanjay Kumar Gupta remained present at her school. On the day of occurrence, teaching was not going on. Furthermore, collusiveness of the DW-3 is found very much exposed as the students of the school were to take part along with students of the eight other schools as directed by the Education Department, but she had also stated that she organized independently for her own school and the same is not found at all substantiated by any cogent and reliable evidence. That being so, the plea of alibi having raised on behalf of appellant is found shaky and could not satisfy its reliability. The adverse inference is to be that presence of appellant at the place of occurrence.

32. Furthermore, being an offence non-compoundable, the evidence of DW-5 is not going to give any kind of additional help to the appellant. In likewise manner, the conduct of the prosecution witnesses relating to other trial, relating to co-accused will also not give any lifeline to the appellant.

33. That being so, the finding recorded by the learned



lower Court did not attract interference. Consequent thereupon, this appeal sans merit and is accordingly, dismissed. The appellant had been sentenced to undergo for a period of nine years, which is reduced to seven years considering the admitted fact that two kids are along with his family. Appellant is on bail, hence his bail bonds is cancelled directing him to surrender before the learned lower Court within fortnight to serve out the remaining part of sentence, failing which the learned lower Court will be at liberty to proceed against the appellant in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

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