

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.43 of 2018

Arising Out of PS. Case No.-438 Year-2014 Thana- BANKA District- Banka

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1. Bikash Yadav @ Vikash Kumar Yadav..
 2. Prabhat Yadav.
 3. Bidhu Yadav, All Sons of Late Parmanand Yadav, resident of Desara, P.S. Banka, District- Banka.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajiv Kumar Singh, Advocate
		Mr. P.K. Sinha, Advocate
For the State	:	Smt. Abha Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 24-08-2018

Heard learned counsel for the appellants and the State.

2. The appellants have been convicted under Sections 304B/34 of the Indian Penal Code by the learned Fast Track Court No. 1, Banka vide judgment dated 07.12.2017 passed in Sessions Trial No. 171 of 2015/G.R. No. 1981 of 2014 arising out of Banka P.S. Case No. 438 of 2014 and have been sentenced to undergo rigorous imprisonment for seven years.

3. The appellant no. 1 is the husband of the deceased whereas appellants no. 2 and 3 are the younger brothers of the appellant no. 1. The appellants are alleged to have killed the deceased by putting her on fire.

4. The case of the prosecution rests on the written report of Ashish Kumar Yadav/P.W. 3 who is the



brother of the deceased, which was lodged on 07.10.2014. He has alleged that his sister Priyanka Kumari (deceased) was married to appellant no. 1 on 1st of May, 2014. For sometime, the deceased was kept well in her matrimonial home. However, shortly thereafter i.e. about 2 months prior to the occurrence, the deceased was being pressurized for bringing a motorcycle and household items by way of additional dowry. The aforesaid information was given to the informant and others by the deceased but the issues got resolved on P.W. 3 making the appellant no. 1 understand that money for purchase of the aforesaid articles shall be given at the convenience of the family members of the deceased.

5. On 06.10.2014, he went to village Desra along with his mother and left his mother at the house of his elder sister. Thereafter he claims to have gone to the house of the deceased and saw that the appellants and others were fighting with the deceased. In his presence also, the deceased was abused for not bringing additional dowry referred to above. Thereafter, P.W. 3 claims to have come back to his elder sister's house and informed about the happenings at the matrimonial home of the deceased to his mother. A day later, the brother-in-law of appellant no. 1 viz. Anjan Yadav called him on telephone and informed that his sister had received burn injuries. On such



information, P.W. 3 immediately rushed to the matrimonial home of the deceased but he found the house locked. On enquiry from neighbourhood, he learnt that the deceased had been taken to a doctor for treatment. Thereafter, he informed about the occurrence to his elder brother-in-law and along with him, went to Sadar Hospital, Banka. He found the deceased in the emergency ward of the hospital. Thus, it was alleged by P.W. 3 that the appellants and others had killed the deceased by setting her on fire.

6. On the basis of the aforesaid written report, a case vide Banka P.S. Case No. 438 of 2014 dated 07.10.2014 was registered for investigation under Sections 304B/34 of the Indian Penal Code.

7. After investigation, chargesheet was submitted against the appellants, whereupon cognizance was taken and the case was committed to the court of Sessions for trial. Be it noted that the investigation with respect to other accused persons was kept pending.

8. The trial court, after examining nine witnesses on behalf of the prosecution and six witnesses on behalf of defence, convicted and sentenced the appellants as aforesaid.

9. Mr. Pankaj Kumar Sinha, learned advocate appearing for the appellants submitted that the evidence against the appellants is deficient and the allegation of



demand of dowry and consequent torture could not be established. He has further submitted that but for P.W. 3/informant, nobody has supported the prosecution version. Even P.W. 3 has in his examination-in-chief has stated that the relationship between the deceased and the appellant no. 1 was very cordial and that at the time of her death, she was pregnant for four months. The trial court, it has further been argued, did not take into account that the appellant no. 1 had also received grievous burn injuries while trying to douse fire and save the deceased. The deceased was admitted in the hospital by the elder brother of appellant no. 1. The other persons who could have thrown light on the correctness of the prosecution version have not been examined and no plausible explanation also has been offered for their non-examination.

10. In order to test the aforesaid arguments, it would be necessary to briefly refer to the deposition of the witnesses.

11. Panchanand Yadav and Mithilesh Yadav who have been examined as P.W. 1 and 2 respectively have not supported the prosecution version. P.W. 1 has been declared hostile whereas P.W. 2 has stated that he learnt that the deceased died while cooking food.

12. Ashish Kumar Yadav/ P.W. 3 has supported the prosecution version; but in his deposition he has clearly



stated that the relationship of the deceased with appellant no. 1 was very cordial and only about two months ago, a demand was made for motorcycle and other household articles. In his cross-examination, he has further stated that the deceased had come to her parental home but had not made any complaint against the appellants or her in-laws. After she left her parental home, such demand was made which was communicated by the deceased to her family members. On 06.10.2014, the brother-in-law of the appellant no. 1 informed P.W. 3 that the deceased had suffered burn injuries. In the emergency ward of the hospital at Banka, P.W. 3 saw his sister lying dead. On enquiry from the doctors on duty, he was told that the appellants had got her admitted in the hospital. The records, on inspection by him, revealed that one Prabhat Yadav had got the deceased admitted in the hospital. Aforesaid Prabhat Yadav is the elder brother of the appellants. The entire body of the deceased was found to be burnt. In the last part of his deposition, he has stated that he has no complaints against appellant no. 1 and others.

13. From the deposition of the aforesaid witness, it becomes very clear that after the marriage, the deceased was kept well in her matrimonial home. When she came to her parental home, she did not have any complaints



against any of the in-laws including the appellants. Thereafter, only on one occasion, the aforesaid prosecution witness could know about the demand of motorcycle and other household articles. However, such demand also was very vague as it has not been stated that what household items were being demanded apart from the motorcycle.

14. Be that as it may, the aforesaid story of demand of additional dowry has not been supported by anyone of the witnesses. Surprisingly, the mother of the deceased also has not been examined. The brother-in-law of the deceased who had accompanied P.W. 3 to the hospital has also not been examined and no explanation has been offered for their non-examination.

15. What is relevant to be discussed is the deposition of the Doctor viz. Dr. Mukesh Kumar, who has been examined as P.W. 4. He had conducted the post-mortem over the dead body and had found burn injuries on the entire part of the body extending to 90 percent. The corpse was found to be in a pugilistic posture which is usually to be found in serious cases of burn injuries. What is intriguing is that the doctor found three of the ribs of the deceased fractured. The middle phalanx (band of the middle finger) was also found to be fractured.

16. There is no dispute that the deceased died of burn injuries and not because of the fracture of the ribs.



Merely because some of the ribs were found to be fractured, it cannot be taken to mean that prior to her death, she was subjected to any assault.

17. Learned counsel appearing for the appellant has submitted that the fact that appellant no. 1 and others attempted to extinguish the fire for saving the deceased, there could be a possibility of the deceased receiving injuries in the process of being saved. Had it not been the case, there would have been other injuries on the subcutaneous layer of the body. That apart, there is nothing in the post-mortem report or in the deposition of P.W. 4 to indicate that the fracture of the ribs was ante-mortem or that it contributed to or accelerated the death.

18. In this context, learned counsel for the appellant has drawn the attention of this Court to the deposition of Tital Yadav/P.W. 5 who, in some measure, has been described to be an eye-witness to the occurrence. P.W. 5 has stated that on the day of the occurrence, appellant no. 1 and the deceased had fought amongst themselves. On hulla, he went to the house of the appellant and found that the appellant no. 1 as well as his wife (deceased), both, had received burn injuries. Both of them had been brought to Banka and in the night, the deceased succumbed to the injuries.



19. The fact that P.W. 5 did not know who brought the deceased as well as appellant no. 1 to Banka confirms the fact that P.W. 5 had not seen even one part of the occurrence and is only a hearsay witness. In his cross-examination, P.W. 5 has clearly stated that he being a neighbour of the appellants had information that the relationship between the appellant no. 1 and the deceased was very cordial and that the deceased was in the family way. He has also claimed to have heard from others that the deceased caught fire while cooking and when it was found that she had received extensive burn injuries, she was brought to hospital for treatment. He had also heard that the accused persons were sent to jail at the instance of the father of the deceased.

20. Thus, from the deposition of the aforesaid witness also, this Court gets no clue about the cause of the deceased receiving burn injuries.

21. The investigating officer of the case viz. Basant Kumar Singh has been examined as P.W. 6. He has testified to the fact that information about the occurrence was received by the inspector of the concerned police station on telephone. Thereafter, the investigation was handed over to him. The FIR, according to P.W. 6 was registered at about 11:00 AM. He has further stated that he did not make any note in the diary about the condition



of the room where the deceased is said to have caught fire. However he has testified to the fact that P.W. 5 had told him that he had seen the appellant no. 1 and the deceased being taken to Banka for treatment on a three wheeler. He has also testified to the fact that P.W. 1, had during the course of investigation, told him that the deceased had caught fire and was taken to Banka for treatment.

22. It appears from the deposition of aforesaid witness that necessary notings were not made by him while inspecting the place of occurrence. However, the absence of any material indicating that the deceased had caught fire while cooking, it cannot be said that the defence of the appellant is incorrect. It only speaks about the lopsided investigation by P.W. 6. The other prosecution witnesses viz. Kailash Yadav and Adhik Lal Yadav who have been examined as P.W. 8 and 9 have not supported the prosecution version and have stated that the relationship between the deceased and the appellant was very cordial and that the appellant no. 1 had received injuries while trying to save the deceased from being burnt.

23. The defence witnesses have reiterated about the innocence of the appellants. It would only be relevant to refer to the deposition of D.W. 2/Dr. Somen Kumar



Chatterjee. D.W. 2 was posted as a Senior Resident in the Emergency Department at the hospital at Bhagalpur. He had treated appellant no. 1 at about 04:30 PM. He found grievous burn injuries on the person of appellant no. 1. The appellant no. 1 was discharged after treatment on 21.11.2014. He has proved Ext. A which is the injury report of appellant no. 1. He has stated that though he informed about such burn injuries to the police but he was never interrogated. There was no police complaint available before him when he had treated appellant no. 1.

24. The brother-in-law of appellant also has been examined as D.W. 3. His deposition is also in support of the defence of the appellants.

25. From the materials available on record, the demand of dowry and consequent torture has not been proved. Though there is a solitary statement of P.W. 3 about such demand but the same has not been reiterated by any other prosecution witness. The only other persons who could have testified to the aforesaid facts, were the mother and brother-in-law of the deceased but they have not been examined at the trial. Independent persons claimed to have heard that the deceased caught fire while cooking. The fact that appellant no. 1 also received burn injuries further buttresses the contentions of the appellants that there was no deliberate attempt on the part of the



accused persons to set ablaze the deceased. The aforesaid proposition on behalf of the defence further gets strengthened by the fact that at the initial stage also, when the FIR was lodged by P.W. 3, he had stated in the written report that when he reached the matrimonial home of the deceased on being informed by D.W. 3 that the deceased had been burnt, he did not find anybody in the house. However he was told by persons of the neighbourhood that the accused persons and other members of the family had gone to Banka for admitting the deceased in hospital for her treatment. Thus, at no point of time, any witness but for P.W. 3, has stated about any ill-treatment meted out to the deceased soon before her death. In the absence of the proof of the fact that soon before her death, the deceased was subjected to any cruelty or harassment, the offence of 304B cannot be said to have been made out. In that event, direct evidence was necessary for holding the appellants guilty.

26. The circumstances indicate that there was cordial relationship between the spouses. The circumstances further indicate that a serious effort was made to rescue the deceased. The appellant no. 1 has received grievous burn injuries. Had there been any deliberate attempt to set the deceased on fire, attempt would have been made by the accused persons to dispose



off the dead body rather than bring the deceased to Banka and get her admitted in the hospital.

27. The deceased definitely has died of burn injuries but how did she catch fire remains in mystery. There is no evidence with respect to any ill-treatment or any specific overt act by any of the appellants.

28. Thus, benefit of doubt has to be given to the appellants.

29. For the reasons aforesaid, the judgment and order of conviction and sentence passed in Sessions Trial No. 171 of 2015/G.R. No. 1981 of 2014 is held to be unsustainable in the eyes of law and the same is set aside.

30. The appeal is allowed. The appellants are acquitted of all charges.

31. The appellants are in custody. They are directed to be released forthwith, if not required in any other case.

32. A copy of the judgment be communicated to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NA
CAV DATE	NA
Uploading Date	28.08.2018
Transmission Date	28.08.2018

