

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.789 of 2013

Arising Out of PS. Case No.-59 Year-2010 Thana- SHRI NAGAR District- Madhepura

Kumhiya Devi, wife of Late Shyam Sunder Mehta, resident of Village-
Madhubani, Police Station- Srinagar, District- Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 773 of 2013

Arising Out of PS. Case No.-59 Year-2010 Thana- SHRI NAGAR District- Madhepura

1. Damodar Mehta, son of Late Mohan Mehta
2. Dukhilal Mehta, son of Late Mohan Mehta
Both resident of Village- Madhubani, Police Station- Srinagar, District-
Madhepura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 789 of 2013)

For the Appellant/s : Sri Shailendra Kumar Singh, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 773 of 2013)

For the Appellant/s : Sri Shailendra Kumar Singh, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 16-10-2019

1. Appellants in both the Appeals were tried together

and were convicted and sentenced by the common judgment



passed by learned Additional Adhoc District & Sessions Judge- 1st , Madhepura, and as such, both the Appeals were taken up together and are being disposed of by this common judgment.

2. The sole appellant in Cr. Appeal (D.B.) No. 789 of 2013 by judgment dated- 11.07.2013 has been convicted for the offence under Section 304(B) , 304 Part II and Section 201 of the Indian Penal Code, 1860 [hereinafter referred to as the "I.P.C. "] and by order dated 12.07.2013 under Section 304(B) of the I.P.C. she has been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 5000/-. In case of default in payment of fine she has been directed to further undergo simple imprisonment for three years. Under Section 304 Part II of the I.P.C. she has been sentenced to undergo rigorous imprisonment for ten years and to pay a fine of Rs. 3000/-. In case of default in payment of fine she has been further directed to undergo simple imprisonment for two years and under Section 201 of the I.P.C. she has been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs. 1000/-. In case of default in payment of fine she



has been directed to undergo simple imprisonment for one year.

3. Both appellants in Cr. Appeal (D.B.) No. 773 of 2013 by the same judgment dated: 11.07.2013 have been convicted for offence under Section 201 of the I.P.C. and by order dated 12.07.2013 both have been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 1000/- each. In case of default in payment of fine, both have been directed to further undergo simple imprisonment for six months. The judgment of conviction and sentence was passed by Sri Prabhu Dayal Gupta, learned Additional Adhoc District & Sessions Judge -1st , Madhepura [hereinafter referred to as the 'trial judge'] in S. Tr. No. 54 of 2011 (arising out of Srinagar P.S. Case No. 59 of 2010). After conviction and sentence appellants have preferred the aforesaid Appeals under Section 374 (ii) of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Cr.P.C.).

4. Short fact of the case is that a written information addressed to the Officer-in-Charge, Srinagar Police Station was filed under the left thumb impression of Satya Narain Mehta (P.W. 5). The informant in its written report disclosed



that his daughter- Kari Devi was married about 05 years back in the village - Madhubani, Police Station:- Srinagar, District - Madhepura with Ramesh Mehta, S/o Late Shyam Sunder Mehta. Out of the said wedlock the deceased was having a one year old male child. After marriage till the date of written report the in-laws of his daughter were demanding motorcycle and She-buffalo and they were not doing *bidai* of his daughter. On 30.09.2010 in the morning at 4.00 A.M. someone from in-laws side of his daughter telephonically informed him that Kumhiya Devi [appellant in Cr. Appeal (DB) No. 789 of 2013], wife of Late Shyam Sunder Mehta in the same night after pouring kerosene oil on his daughter had set her on fire. After getting information the informant with his son -Nathan Mehta (P.W.2), neighbour- Ravindra Mehta (P.W. 1) and others came to in- laws house of his daughter and inquired about the occurrence then he got information that in the preceding evening itself there was some quarrel in between his daughter and mother-in-law (sole appellant in Cr. Appeal (D.B.) No. 789 of 2013) and due to the said reason in the same night his daughter and her one year old son were ignited after pouring kerosene oil in which his daughter received



serious burn injuries and died. In the written information it was further disclosed that the informant got information that his maternal grandson (*Naati*) had also received serious burn injuries and subsequently he too died. After getting information that stealthily dead body of his daughter was being burnt on the Eastern V.C. from the house he alongwith others went there and saw that, (1)- Dukhi Mehta (appellant no. 2), (2)- Damodar Mehta (appellant no. 1) [both in Cr. Appeal (DB) No. 773 of 2013], (3)- Mahanand Mehta, (4)- Pradeep Mehta, (5)- Manoj Mehta, (6)- Ramesh Mehta all jointly were burning the dead body. On being opposed by the informant and his companions, all threatened him for dire consequences and thereafter the informant and his companions were constrained to flee away. The informant in the written report further disclosed that he got information that with his daughter his one year old maternal grandson both were burnt to ashes in the same pyre. The informant further disclosed that in-laws members of his daughter had not given any information regarding the incident to him. Accordingly he requested for taking legal action. On the bottom of the written report the informant put his L.T.I. and as a witness to the



written information Nathan Mehta (P.W. 2) also put his L.T.I. on 30.09.2010. On the basis of the said written report on the same day i.e. on 30.09.2010 a formal F.I.R. vide Srinagar P.S. Case No. 59 of 2010 was registered for the offence under Section 304(B) / 201/34 of the I.P.C. against seven accused persons, namely:-

1- Kumhiya Devi [mother-in-law of the deceased and sole appellant in Cr. Appeal (D.B.) No. 789 of 2013],

2- Dukhi Mehta (appellant no. 2 in Cr. Appeal (D.B.) No. 773 of 2013),

3- Damodar Mehta (appellant no. 1 in Cr. Appeal (D.B.) No. 773 of 2013)

4- Mahanand Mehta (not sent up for trial),

5- Pradeep Mehta (not sent up for trial),

6- Manoj Mehta (not sent up for trial),

7- Ramesh Mehta [husband of the deceased (trial separated)].

5. After registering F.I.R., Police investigated the case. During investigation appellant - Kumhiya Devi was arrested and on 30.11.2010 charge sheet was submitted against Kumhiya Devi [appellant in Cr. Appeal (D.B.) No. 789 of 2013] keeping investigation pending against others. Thereafter, on 08.12.2010 learned Chief Judicial Magistrate, Madhepura, took cognizance of the offence. On 25.02.2011 the case of Kumhiya Devi was committed to the court of Sessions and it was numbered as Sessions Trial No. 54 of 2011. On 23.03.2011 charge under Section 304B, 302, 306,



201 of the I.P.C. was framed against appellant -Kumhiya Devi and thereafter on 21st May, 2011 Rabindra Kumar Mehta was examined as P.W. 1. Subsequently, supplementary charge sheet was submitted on 29.04.2011 against both the appellants namely, Damodar Mehta and Dukhi Mehta, who are appellants in Cr. Appeal (D.B.) No. 773 of 2013 and on 25.05.2011 the case of both the appellants were committed to the court of Sessions and it was numbered as S. Tr. No. 54(A) of 2011. On 29.06.2011 charge under Section 304B , 302, 306, 201 of the I.P.C. was framed against both the appellants in Cr. Appeal (D.B.) No. 773 of 2013. Appellants in both the appeals at the time of charge had denied the charge and claimed to be tried. On 19.08.2011 S. Tr. No. 54(A) of 2011 was amalgamated with S. Tr. No. 54 of 2011 and after amalgamation Ravindra Mehta who was already examined as P.W. 1 in S. Tr. No. 54 of 2011 was again examined as P.W. 1 on 17/08/2011.

6. During the trial for the purposes of establishing the case from prosecution side altogether ten witnesses were examined. Out of ten witnesses, P.W. 2- Nathan Mehta is brother of the deceased, P.W. 4 - Ram Lakhan Mehta (uncle of



the deceased), P.W. 5 - Satya Narain Mehta is the informant and father of the deceased whereas, P.W. 1 (Ravindra Mehta) and P.W. 3 - Baijnath Mehta are the co- villagers of the informant. P.W. 6 - Buchi Mehta is the co-villager of the appellant. P.W. 7 (Sukhdeo Mehta), P.W. 8 (Maheshwari Mehta) and P.W. 9 (Kapildeo Mehta) since did not support the prosecution case, they were declared hostile. P.W. 10 (Krishna Bali Singh) is the Investigating Officer of the case.

7. After completion of prosecution evidence, on 14.03.2013 circumstances and evidences collected against the appellants were explained to them and their statement under Section 313 of the Cr.PC. was recorded in which they claimed to be innocent, however the learned trial judge on the basis of evidence on record has passed the impugned judgment of conviction and sentence, which has been assailed in the aforesaid Appeals.

8. Sri Shailendra Kumar Singh, learned counsel for the appellants in both the appeals after placing entire evidence has argued that prosecution has completely failed to establish its case beyond all reasonable doubts even then the learned trial judge in a mechanical manner has passed the judgment of



conviction and sentence. It has been argued that informant - P.W. 5, who is the father of the deceased in his written report has not at all disclosed the name of the person who gave information regarding death of his daughter, whereas, P.W. 2 - Nathan Mehta (brother of the deceased and the son of the informant) in his evidence has stated that one Shailendra Mehta had telephonically informed regarding the occurrence, however the said Shailendra Mehta has not been examined as prosecution witness. He further submits that prosecution has not at all been able to establish the case of administering torture on the daughter of the informant due to non fulfillment of the demand of dowry, which fact is evident from the evidence of P.W. 6 (Buchi Mehta) who is the resident of the in-laws village of the deceased. In paragraph 4 of his cross examination P.W. 6 has categorically stated that in between husband and wife there was cordial relation. Sri Singh, learned counsel for the appellants has further argued that though prosecution has alleged regarding demand of dowry made by the appellants but on this point the informant had never filed any complaint to anyone. Accordingly, he submits that evidence on the point of demand of dowry is completely



uncorroborated. Learned counsel for the appellants has further argued that informant -P.W. 5 in his evidence has stated that husband of the deceased forcibly took the child from the lap of his mother (appellant)- Kumhiya Devi and threw him in fire whereas, P.W. 2 (brother of the deceased) in his evidence has stated as if the child was thrown by the mother-in-law in the fire. He further submits that there is complete inconsistency in the oral evidence and also the learned trial judge has incorrectly convicted appellant- Kumhiya Devi for the offence under Section 304 Part II of the I.P.C. due to the reason that no such charge was framed in the case. Accordingly, it has been argued that learned trial judge has incorrectly passed judgment of conviction under Section 304 Part II of the I.P.C. and sentenced under the same Section. Besides technicality, in the evidence there is no consistency and in absence of consistent and cogent material, even then the learned trial judge has incorrectly passed judgment of conviction and sentence.

9. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the aforesaid appeals has argued that it is established case of the prosecution that death of informant's



daughter had occurred within seven years from the date of her marriage that too due to non-fulfillment of demand of dowry by the appellant- Kumhiya Devi. He submits that death of the deceased had occurred in not normal circumstances and it is further evident that hurriedly the accused persons disposed of the dead body by burning the same to ashes. He submits that prosecution has successfully established the case of demand of dowry and also torturing the deceased due to non fulfillment of the demand. He submits that hurriedly disposal of the dead body further corroborates the culpability of the appellants. According to Sri Mishra, learned Additional Public Prosecutor there is evidence that dead body was burnt to ashes just within two hundred yards from the in- laws house of the deceased and the Investigating Officer - P.W. 10 had found substantial evidence on both the places of occurrence. Firstly the Investigating Officer had noticed burnt mark in the room where 1st occurrence had taken place and at the 2nd place of occurrence where the dead body was burnt he has found ashes which consistently corroborates that daughter of informant was done to death due to non fulfillment of demand of dowry and death had occurred within five years from the date of



marriage and dead body was hurriedly disposed of by the same accused to ashes which suggests that the learned trial judge has rightly passed judgment of conviction so far appellant-Kumhiya Devi is concerned. In respect of other two appellants in Cr. Appeal (D.B.) No. 773 of 2013, Sri Mishra, learned Additional Public Prosecutor has argued that there is evidence of atleast three witnesses i.e. P.W. 1, P.W. 2 and P.W. 5 that those two appellants had actively played role in disappearance of the evidence and as such the learned trial judge has rightly convicted them for offence under Section 201 of the I.P.C. and appropriate sentence has been imposed which requires no interference.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same we are of considered opinion that the learned trial judge has committed no error in passing judgment of conviction and sentence particularly convicting appellant - Kumhiya Devi under Section 304(B) and 201 of the I.P.C. So far conviction of appellant- Kumhiya Devi under Section 304 Part II of the I.P.C. is concerned there are certain evidences which create doubt regarding the culpability of



appellant – Kumhiya Devi. The informant (P.W. 5) - Satya Narain Mehta [father of the deceased] in his evidence has stated that his son- in- law namely: Ramesh Mehta forcibly took maternal grandson of the informant from the lap of appellant – Kumhiya Devi and threw him in fire, whereas, P.W. 2 [brother of the deceased] has given a different story and as such, on this very issue it is difficult to come to a definite conclusion regarding culpability of appellant -Kumhiya Devi for such offence.

11. The informant- Satya Narain Mehta (father of the deceased) was examined as P.W. 5. His evidence was recorded on 25th January, 2012 and in his examination-in-chief he stated that marriage of his daughter- Kari Devi (deceased) was solemnized with Ramesh (son of the appellant- Kumhiya Devi) about six years back from the date of his evidence. When she went to her in -laws' house she was blessed with a male child. The in-laws members kept her for 1-2 year with calm and decently and thereafter they started to assault her and pressurizing her to bring She- buffalo and motorcycle. This demand was being made by his समधिन (appellant- Kumhiya Devi) and Ramesh (son-in-law). This information



was given by the deceased over telephone. Subsequently he got information that his daughter was burnt. Then he with his son and Ravindra Mehta (P.W. 1) went there. They went there on motorcycle of Ravindra (P.W. 1) and on inquiry he got information that in the preceding night there was quarrel in between *Saas -Putohu* and in the preceding night Ramesh and his mother (appellant- Kumhiya Devi) by pouring kerosene oil had ignited *Machis*. Thereafter, he inquired about his daughter. Then he got information that by the side of the channel the accused persons were burning the deceased. He went there and saw mother-in-law (appellant) / Kumhiya Devi, husband (Ramesh), Dukhi Mehta [appellant no. 2 in Cr. Appeal (D.B.) No. 773 of 2013], Damodar Mehta [appellant no. 1 in Cr. Appeal (D.B.) No. 773 of 2013], Mahanand, Pradeep, Manoj Mehta and other villagers were engaged in burning the dead body. This witness tried to prevent, then he was abused and also threatened for the same consequences. Thereafter, this witness requested for handing over the grandson. Thereafter, his son -in- law took him from the lap of his mother and threw him into the fire. The written report was prepared on which he put his identification. He claimed that



due to delay in payment of dowry the accused persons had killed his daughter and she was never allowed to return back. This witness in paragraph 5 of his cross examination has categorically stated that two years after the marriage from him also demand of dowry was made however regarding this he had not given any information either to Police or Panchayat. In paragraph 8 of his cross-examination he stated that Police had arrived while there was flame however Police could not took out the dead body since it was already burnt. He reiterated in paragraph 10 of his cross examination that Kumhiya Devi (appellant) was the mother-in-law of the deceased. Despite the fact that P.W. 5 was cross- examined at length nothing could be extracted to create any doubt on his evidence.

12. P.W. 1 - Ravindra Mehta on whose motorcycle the informant with his son had visited the place of occurrence in his evidence has stated that he was knowing the fact that marriage of daughter of Satya Narain Mehta (P.W. 5) namely, Kari Devi (deceased) was solemnized with Ramesh Mehta about five years back and the deceased was having one son. In paragraph 2 of his evidence he stated that the deceased was in



her in -laws' house. On being asked by Satya Narain and informed that his daughter was done to death this witness through his motorcycle had gone there where dead body was burning. It was the dead body of deceased -Kari Devi. He stated that he got information that in the evening her mother -in- law had quarreled and they were demanding She -buffalo and motorcycle. In paragraph 2 of his evidence he stated that the child was thrown in the fire by mother- in- law whereas, P.W. 5 in his evidence has stated that the child was thrown by his son-in- law after taking him from the lap of the appellant - Kumhiya Devi (*Saas*).

13. P.W. 2- Nathan Mehta is the own brother of the deceased and the son of the informant - P.W. 5. He too has stated similar to the evidence of P.W. 5. This witness was cross- examined at length however on examination of his entire evidence we do not find any inconsistency save and except inconsistency on the point of throwing of the child in the fire. This witness has stated that *Budhi* i.e. appellant - Kumhiya Devi had thrown the child in the fire whereas, P.W. 5 -informant has stated that it was his son -in- law who threw the child in fire.



14. P.W. 3 (Bajinath Mehta) in his evidence has corroborated regarding marriage of the deceased and also regarding torture due to non fulfillment of the demand of dowry in respect of motorcycle and She -buffalo. He also stated that in -law members of daughter of informant had never given any information to the informant. He was cross examined but he stood truthful.

15. P.W. 4 (Ram Lakhan Mehta) is another co-villager of the informant. He too has stated almost like P.W. 3.

16. P.W. 6 (Buchi Mehta) is the resident of different *Mauza*. He in his evidence has stated on the point that daughter of Satya Narain Mehta was married with Ramesh Mehta who subsequently died but he stated that he died in her in -laws' house. In paragraph 4 of his cross examination he stated that Ramesh Mehta was his neighbour and his wife's relation with mother-in -law and husband was cordial.

17. P.W. 7 (Sukhdeo Mehta), P.W. 8 (Maheshwari Mehta) and P.W. 9 (Kapildeo Mehta) all are residents of village - Madhubani, which is the village of the appellants, however, since they did not support the prosecution case, they were declared hostile.



18. P.W. 10 (Krishna Bali Singh) on 30.09.2010 was Officer- in- charge of Srinagar Police Station on which date he received written information of informant- Satya Narain Mehta and on the basis of the said information a formal F.I.R. vide Srinagar P.S. Case No. 59 of 2010 was registered on 30.09.2010 for the offence under Section 304B / 201/ 34 of the I.P.C. After registering the case he himself took up investigation of the case. During his evidence he identified the formal F.I.R. which was marked as Ext. 1. Thereafter, he recorded re-statement of the informant and recorded statement of Nathan Mehta (P.W. 2), Ravindra Mehta (P.W. 1), Baijnath Mehta (P.W. 3) and thereafter he visited the place of occurrence. In his evidence he described about the place of occurrence. 1st place of occurrence was the thatched house of Ramesh Mehta (husband of the deceased). He noticed that the bed which was kept on cot in the room was burnt on its maximum area and there was sign of blackening due to smoke on the thatched wall. He also noticed smell of kerosene oil which was coming from the floor. Some clothes and articles which were found near the cot were also found burnt and scattered. In his evidence he stated that in the same room



while daughter -in- law of the appellant was sleeping with her child they were poured by kerosene oil and thereafter they were burnt to death. He stated regarding the second place of occurrence in paragraph 3 of his evidence. The second place of occurrence was about 200 meters away near the V.C. of one Deo Narain Mehta where he also noticed cow dung cake and got information that with the help of cow dung cake and other things the dead bodies were burnt. In his evidence he stated that after finding the case true he submitted charge sheet. Accordingly as per evidence of Investigating Officer both the places of occurrence were fully established.

19. On minute examination of the evidences which we have discussed hereinabove, we do not find any error in the judgment of conviction and sentence save and except that there is some doubt on the point of throwing the child (maternal grandson of the informant) into fire on which point there are serious contradictions, and as such, we are of opinion that appellant - Kumhiya Devi can be extended benefit of doubt so far her conviction under Section 304 Part II is concerned, otherwise, her conviction under Section 304(B) and Section 201 of the I.P.C. requires no interference.



Similarly, participation of both the appellants in Cr. Appeal (D.B.) No. 773 of 2013 to the extent of disappearance of evidence is concerned same has been established by specific oral evidence of P.W. 1, P.W. 2 and P.W. 5 and as such, there is no reason to interfere with the judgment of conviction and sentence in respect of both the appellants.

20. Accordingly, judgment of conviction and sentence dated 11.07.2013 and 12.07.2013 respectively passed by Sri Prabhu Dayal Gupta, learned Additional Adhoc District & Sessions Judge -1st, Madhepura in S. Tr. No. 54 of 2011 (arising out of Srinagar P.S. Case No. 59 of 2010) is hereby approved save and except her conviction and sentence under Section 304 Part II of the I.P.C. in respect of appellant - Kumhiya Devi and her conviction and sentence under this Section is hereby set aside. With aforesaid modification both the Appeals are dismissed.

21. Since both the appellants in Cr. Appeal (D.B.) No. 773 of 2013 are on bail, their bail bond is hereby cancelled and they are directed to surrender before the court below for serving remaining sentence period forthwith



otherwise the learned trial judge may take appropriate steps
for securing their attendance.

(Rakesh Kumar, J)

Anjani Kumar Sharan, J:- **I agree.**

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
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