

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.556 of 2013

Arising Out of PS. Case No.-218 Year-2009 Thana- ALAMGANJ District- Patna

1. Arjun Sao son of Late Gudar Sao
2. Dulari Devi wife of Arjun Sao, both are Resident Of Village- Patandevi (Garhpar), Police Station- Alamganj, District- Patna
3. Rajesh Kumar son of Shyam Narayan Baidya (Shyambabu Sah) Resident Of Village- Kajibag, Police Station- Alamganj, District- Patna

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 609 of 2013

Arising Out of PS. Case No.-218 Year-2009 Thana- ALAMGANJ District- Patna

Pradeep Kumar @ Guddu @ Pappu son of Arjun Sao Resident Of Village- Patandevi (Garhpar), Police Station- Alamganj, District- Patna.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 556 of 2013)

For the Appellant/s : Dr. Rajesh Kumar Singh

For the Respondent/s : Mr. D.K. Sinha, APP

(In CRIMINAL APPEAL (DB) No. 609 of 2013)

For the Appellant/s : Dr. Rajesh Kumar Singh

For the Respondent/s : Mr. S.C.Mishra, APP

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA)

Date : 15-05-2019

1. Heard learned counsel appearing for the appellants and the learned Addl. P.P. appearing for the State.



2. These appeals are directed against the judgment of conviction dated 24.04.2013 and the order of sentence dated 30.04.2013, passed by Sri Ganesh Prasad Singh, Additional Sessions Judge II, Patna City in Sessions Trial No. 656 of 2010/ 712 of 2010/ 1242 of 2010, arising out of Alamganj P.S. Case No. 218 of 2009, whereby and whereunder the appellants have been convicted under sections 302/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs. 15,000/-. In default of payment of fine, the appellants have further been directed to undergo imprisonment for six months.

3. The prosecution case, in brief, is that the informant namely, Mathura Prasad (P.W.1) gave his fardbeyan on 01.10.2009 alleging precisely therein inter alia that his daughter Sandhya alias Guria was married to the son of the Arjun Sao (appellant no. 1 in Cr. Appeal No. 556 of 2013) namely, Pradeep Kumar @ Guddu @ Pappu (appellant in Cr. Appeal No. 609 of 2013) in accordance with Hindu religious rites in the year 2003. Two children were begotten out of the wedlock. In the evening of 01.10.2009, the son-in-law of the informant telephonically informed his son



Sanandan Prasad (P.W. 3) that the daughter of the informant is serious. After receiving such information, the informant alongwith his family members came to the residence of Arjun Sao and found that the local police had already reached there. The informant claims to have seen his daughter lying dead on the roof of the house as she had burnt. It is further alleged that the appellants and others used to demand dowry and the son-in-law of the informant demanded rupees five lacs for purchasing printing machine as well as for construction of his house. Because of such pressure, the informant had paid rupees one lac. However, the demand continued and because of non-fulfillment of the said demand, the daughter of the informant was killed by the accused persons.

4. On the basis of the aforesaid fardbeyan of the informant, Alamganj P.S. Case No. 218 of 2009 was registered on 01.10.2009 for the offence under section 304B and 120B of the Indian Penal Code against seven F.I.R. named accused. After investigation, the police submitted charge-sheet under section 304B/34 I.P.C. on 29.12.2009 against the appellants, Dulari Devi and Pradeep Kumar. On 19.03.2010 police submitted supplementary charge-sheet



under section 304B/120B/34 I.P.C. against appellant, Arjun Sah and on 08.07.2010 police submitted another supplementary charge-sheet under section 304B/34 I.P.C. against the accused Mohan Sah and Sanjay Sah. The accused, Rajesh Kumar and Pinky Devi were not sent up for trial. Thereafter cognizance was taken in this case on 23.01.2010 and the case was committed to the Court of Sessions for trial on 07.04.2010. Charges were framed against the appellants on 30.11.2010 for the offence punishable under sections 304B/34 I.P.C., 120B/34 I.P.C., 498A/34 I.P.C. to which the appellant pleaded not guilty and claimed to be tried. On 30.11.2010 charges were framed against the accused persons namely, Mohan Sao and Sanjay Sao under section 304B and 120B/34 I.P.C. On 29.04.2011 charges under section 302/34 I.P.C. and Section 120B I.P.C. was framed against Pradip Kumar @ Guddu @ Pappa, Dulari Devi, Arjun Sao, Mohan Sao and Sanjay Sao. Thereafter, a petition under section 319 Cr.P.C. was filed by the informant to issue summons against the co-accused Rajesh Kumar and Pinki Kumari for facing trial and after hearing them, the Court on 22.02.2012 framed charge against them also under sections 304B, 120B, 4998A and 302/34 I.P.C.



5. During trial, the prosecution has examined altogether 11 witnesses. P.W. 1/ Mathura Prasad (informant), P.W. 2/ Kanti Devi (wife of the informant), P.W. 3/ Sanandan Prasad (son of the informant), P.W. 4/ Sant Kumar (son of the informant), P.W. 5/ Dr. Ashok Kumar Yadav, the doctor who conducted the *post mortem* examination of the deceased, P.W. 6/ Kumari Kiran, I.O. of the case, P.W. 7/ Manju Bala Bhokta, Second I.O. of the case, P.W. 8/ Sanjay Kumar, P.W.9/ Ramji Ram, P.W. 10/ Mahendra Sahu and P.W. 11/ Vishnu Sharma.

6. In order to establish the charge, the prosecution has proved the following documents as exhibits :

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|---------------------|--|
| <i>Exhibit -1</i> | <i>Signature of Mathura Prasad on the fardbeyan</i> |
| <i>Exhibit -1/1</i> | <i>Signature of Sananand Prasad on the fardbeyan</i> |
| <i>Exhibit -2</i> | <i>Post Mortem Report</i> |
| <i>Exhibit-3</i> | <i>Seizure List</i> |
| <i>Exhibit-4</i> | <i>Envelope</i> |
| <i>Exhibit-5</i> | <i>Signature of Sanjay on the Seizure List</i> |
| <i>Exhibit-6</i> | <i>Signature of Ramji Ram on Seizure List</i> |
| <i>Exhibit-7</i> | <i>Fearbeyan</i> |
| <i>Exhibit-8</i> | <i>Formal F.I.R.</i> |
| <i>Exhibit-9</i> | <i>Inquest Report</i> |
| <i>Exhibit-10</i> | <i>Challan</i> |



7. The appellants in their statements under section 313 of the Code of Criminal Procedure have said that they are innocent and have falsely been implicated in this case.

8. During trial, three witnesses namely, Gayatri Devi, Mallu Sahu and Ram Pravesh Sahu have been examined on behalf of the defence.

9. Before reaching to any conclusion, it is felt necessary to firstly examine the evidence of all the witnesses.

10. P.W. 1/ Mathura Prasad, who is father of the deceased and the informant of the case, has stated in his evidence that his daughter Sandhya Rani @ Guria was married on 26.05.2003 with Pradeep Kumar (appellant). In the marriage, he had given jewelry and other house hold articles.

On her first return from in-laws' place, she informed that her father-in-law, Arjun Sah, mother-in-law, Dulari Devi, elder and younger brothers of the son-in-law, namely, Sanjay Sao and Mohan Sao, sister of son-in-law, Pinky Devi and the brother in-law of the son-in-law, Rajesh Kumar and the son-in-law used to demand rupees five lacs



as dowry and also used to torture her.

On this, this witness gave rupees one lac to his son-in-law so that his daughter may live peacefully in her in-laws place, but they continued to demand dowry.

On 01.10.2009 at 6 P.M. the son-in-law, Pradeep Kumar informed his son, Sanandan Prasad on his mobile that his daughter is serious. On this, this witness, his wife, Kanti Devi, son, Sanandan Prasad, daughter-in-law, Shashi Devi and son Sant Kumar went to the in-laws place of his daughter and saw that she was lying dead in burnt condition on the third floor of her in-laws house. He had also seen there a 15 liter container of kerosene oil. Police was present there and had arrested the mother-in-law, Dulari Devi and brother-in-law, Rajesh Kumar. Rest of the accused persons had fled away.

This witness has identified his signature and the signature of his son, Sanandan on the fardbeyan, which have been marked as Exhibits- 1 and 1/1.

In his cross examination, this witness has identified the photographs of his both sons, Sanandan and Sant with the accused during pilgrimage to Amarnath (Exhibit-A-A/VII).



He also identified the application under section 319 Cr.P.C. (Exhibit-A) and the signature of advocate, Tilak Sao on the Protest Petition (Exhibit-B).

The defence has cross examined this witness at length, but could not demolish his evidence given in examination-in-chief and either mostly irrelevant questions were asked or the same queries were made repeatedly.

11. The evidence of Kanti Devi, P.W. 2, the mother of the deceased, is same as of the informant. The defence has cross examined this witness also at length, but could not demolish the evidence as given in examination in chief and irrelevant questions were asked or the same queries were repeated.

12. P.W. 3./ Sanandan Prasad, who is brother of the deceased, in his evidence has repeated the version of the fardbeyan and has given the same evidence as have been given by his father and mother. In long cross examination, the defence could not extract anything which could strengthen their case.

13. P.W. 4/ Sant Kumar, the other brother of the deceased, has also repeated the same version has given in the fardbeyan. The only new fact he stated is that at an



average he visited his sister's in-laws' place twice in 2003, 2005, 2006, 2007 and 2008 and on every occasion she stated to have been assaulted with fists and slaps and lathi-danda. He has further stated he never got her treated and he did not know whether her in-laws had got her treated or not. He only used to advise her to sponge with warm water. Whenever assaulted, she used to come to her parental house.

14. P.W.5/ Dr. Ashok Kumar Yadav, has stated in his evidence that on 02.10.2009 he was posted at N.M.C.H. Patna. On that day at 10.30 P.M. he conducted the *post mortem* of deceased, Sandhya Rani @ Guria and found the following :-

Rigor Mortis was positive. Tongue protruded.

Dermo Epidermal burn injuries were found from the head to legs; both front and back including upper extremities. There were blackening and peeled off skin and signing of hairs at places over the body.

On internal examination : Cranial and Spinal Canal – Brain Congested, Thorax – Heart -rt filled, lungs -congested, Soots found in congested Trachea, Abdomen – Stomach -Scanty mucoid fluid, bladder-empty, uts- NAD, other viscera – NAD.

Above mentioned burn injuries were antemortem, grievous and dangerous to life in ordinary course of



nature and caused by flame of fire.

In the opinion of the Doctor the cause of death is shock due to burn injuries and its complication, and the time of death is within 12 to 24 hours from the time of P.M. examination. The *post mortem* report has been marked as Exhibit-2.

15. It is the evidence of P.W. 6/ Kumari Kiran, who is Investigating Officer of this case, that on 02.10.2009 she was posted at Women Cell, Patna as the Officer-in-Charge and on that date she was given the charge of investigation of Alamganj P.S. Case No. 218 of 2009 registered under section 304B, 120B I.P.C. She was given the charge of fardbeyan, F.I.R., Inquest Report and 4 photographs of the deceased.

For identification, the photographs were marked as Exhibit- X, X/1, X/2 and X/3 and the signature on the envelope was marked as Exhibit- X/4.

The witness visited the place of occurrence which is a three storied building and found that all the members of the family were living in separate rooms with their respective family.

The witness seized a plastic jerkin of the



capacity of 15 liters, prepared the seizure list and took the signature of independent witnesses Mahendra Sah and Santh Sah. This witness has proved the seizure list as Exhibit-3.

He again took the evidence of witness, Mathura Prasad (informant). He also recorded the evidence of witnesses, Kanti Devi, Sanandan Prasad, Sant Kumar, Girija Devi, Gayatri Kumari, Mallu Sahu and Ram Pravesh Sahu. No local witness supported the case of the informant.

The locality of the place of occurrence is densely populated. She visited the place so many times but did not take the evidence of local persons.

She did not seize anything except the said Jerkin but had seen a gas stove on the roof.

Due to her transfer, she gave the charge of this case to S.I., Manju Bala.

16. The evidence of P.W.7/ Manju Bala, who is the second Investigating Officer of this case, is only that she submitted charge-sheet against the accused persons showing the accused, Rajesh Kumar and Pinky Devi as innocent.

17. It is the evidence of P.W. 8/ Sanjay Kumar,



that the deceased was his sister-in-law and on information of her murder/death he had gone to the place of occurrence at 12.30 P.M. on 02.10.2009 from where the S.I. had seized a Gallon. He had put his signature on the seizure list. The witness has identified his signature as Exhibit- 5.

18. P.W. 9/ Ramji Ram has stated that on hearing about the death of daughter-in-law of Arjun Sah he had gone to the house of the accused where the dead body was lying on the third floor. The S.I. had prepared an Inquest Report on which he had put his signature. He proved his signature on the Inquest Report as Exhibit-6.

In his cross-examination, he stated that he had heard that the daughter-in-law of Arjun Sahu has died due to burn injuries and he had gone to verify the same.

19. The only evidence of P.W. 10/ Mahendra Sahu is that nothing was seized in his presence but the police had taken his thumb impression on a blank paper. The prosecution has declared this witness as hostile and was cross questioned in which he retracted from his earlier statement.

In his cross-examination conducted by the defence, he stated that he came to know that the deceased



died due to catching fire while cooking.

20. It is the evidence of P.W. 11/ Vishnu Sharma that on 01.10.2009 he was posted at Alamganj Police Station as Police Sub Inspector. He was informed by the Officer-in-Charge that a girl had died due to burn injuries in the house of Arjun Sao near Patandevi Temple. On this, he alongwith the Officer-in-Charge reached at the place of occurrence which was the third floor of the house of Arjun Sao. There, the dead body of a woman was lying in burnt condition. The mother-in-law of the deceased and her son-in-law were present there and were crying. In the meantime, the father, brother of the deceased and other persons also reached there. He recorded the fardbeyan of the father of the deceased on the instructions of the Officer-in-Charge. The fardbeyan is in his writing and it also bears his signature. It also bears the signatures of Mathura Prasad and his son Shailendra Prasad. It also bears the endorsement in the writing and signature of Officer-in-Charge, Syed Wasimul Haque. The entire fardbeyan alongwith endorsement has been marked as Exhibit-7.

The formal F.I.R. is in the writing of Munshi, Lalan Kumar Singh and it bears the signature of the Officer-



in-Charge, Syed Wasimul Haque. Formal F.I.R, has been marked as Exhibit-8.

The Inquest Report was also prepared by this witness and its carbon copy has also been proved by him as Exhibit-9.

The challan for sending the dead body was also prepared by this witness and its carbon copy has also been proved him as Exhibit-10.

12. The defence has also examined three witnesses. All the three witnesses are witnesses to the Charge-sheet, but they were not examined by the prosecution.

13. It is the evidence of D.W. 1/ Gayatri Devi that on 01.10.2009 she was living in the house of Arjun Sao as a tenant. On that very day, the deceased was cooking on the roof. She alongwith others heard the screaming sound of the deceased on which they rushed to the roof and saw that the deceased was severely burnt and the Gas cylinder had gone off. At that very time, none was present there on the roof. This witness also stated that when she went to the roof on hearing the screaming, she saw the deceased in burnt and dead condition.



14. It is the evidence of D.W. 2/ Mallu Sah that the incident took place about 3-4 years ago. He was at his shop when he heard that the deceased had got burnt while cooking on Gas. He had not gone to the place of occurrence.

15. D.W. 3/ Ram Pravesh Sah has stated in his evidence that on seeing the smoke he went to the place of occurrence and saw that the deceased had burnt to death. He came to know that she caught fire while cooking. At that time she was alive, later on she died. There was none present at the place of occurrence when the occurrence took place.

22. Sri Ajay Thakur, learned Sr. Counsel appearing for the appellant submitted that on the same set of evidence three accused persons have been acquitted by the Sessions Court while four accused persons have been found guilty and have been convicted. In its detailed judgment, after considering all the facts and circumstances, this was not held to be a case of dowry death by the Sessions Court and the accused persons were held guilty for committing murder, and therefore, there is no question of presumption against the accused persons.

So far as the conviction in case of murder is concerned, there is no eye witness to the alleged occurrence.



There is no independent witness and only members of the family have come forward to give evidence while the place of occurrence is a three storied building situated in a densely populated locality. The tenants, who live in the same building and are witnesses to the charge-sheet, have intentionally not been examined by the prosecution. It is the defence side which has brought these independent witnesses, who are tenants of the same building and had reached the place of occurrence at the first instance, as defence witnesses and it is their specific evidence that the deceased died accidentally while cooking. The Investigating Officer had also found a gas stove on the roof.

There is no motive behind the alleged murder. All the witnesses have stated that the accused Arjun Sao has four daughters-in-law and they all are leading a happy and peaceful life, in such circumstances, why would anyone kill his youngest daughter-in-law ?

17. As an alternative argument, it was submitted by Mr. Thakur that in the fardbeyan the informant has specifically stated that his son-in-law, Pradeep (appellant) was always demanding rupees five lacs for setting a printing press and for constructing a house. He was given rupees one



lac by the informant, but even thereafter he continued to demand the money and on non-fulfillment he used to torture the deceased and ultimately killed her.

Even otherwise, the concept of joint family is no more and even the I.O. had found that father-in-law with mother-in-law, his sons with their wives were living separately. The daughter and her husband do not live in his house.

In such circumstances, it cannot be said that without any motive all the members of the family together will kill the youngest daughter-in-law of the family.

Even if, on the basis of evidence available, it is considered to be a case of murder (the Sessions Court has already negated it to be a case of dowry death), only the husband can be held responsible for all this not the entire family.

18. Sri Ajay Mishra, learned Addl. P.P. appearing for the State has vehemently opposed these submissions and the appeal. It was submitted by him it is a case of heinous murder of a 28 year old woman who has two children.

He submitted that the doctor in the post mortem examination found that the tongue of the deceased was



protruded from which it is evident that her murder was cause by pressing her neck, due to the severe burning of the body, the doctor did not find any mark of ligature on the neck, and thereafter to give it a colour of a misshapening, she was taken to the roof and burnt there and a gas stove was placed there to give an impression that she died accidentally while cooking. Had this been a real fact, the I.O. would have found cooked, under-cooked, uncooked food, vegetables, water etc. alongwith the gas stove. Secondly, defence witnesses have stated that they rushed to the roof on hearing the screaming, but according to D.W. 1 she had already died while as per D.W. 3 she died subsequently, but they do not say as to what they did to extinguish the fire, whether they poured water or not, whether they put a blanket or thick cloth on the burning body or not. The Investigation Officer also did not find any sign of effort to extinguish the fire. According to D.W. 3, when he reached at the roof the deceased was alive. In this situation, it is quite unnatural as to why no steps were taken to take her to a hospital when the place of occurrence is a densely populated locality of the town.

To flee away from the place of occurrence after



giving information on phone and not to inform the police about the occurrence and simply giving statement under Section 313 Cr.P.C. that he would depose, brings the husband in the shadow of doubt because the defence witnesses give contradictory statements and their conduct is unnatural.

Recovery of the dead body of the wife in a severely burnt condition in the house of her husband, fleeing of the husband from the place of occurrence without informing the police about the occurrence, absence of any evidence to the effect that the husband lives or works in a different town are such questions which were to be answered by the husband, but he has completely failed to discharge this liability.

19. This Court is in agreement with the submissions advanced by Sri Mishra and the alternative submissions advanced by Sri Thakur. Accordingly, Cr. Appeal No. 609 of 2013 is dismissed and the judgment of conviction dated 24.04.2013 and the order of sentence dated 30.04.2013, as against the appellant, Pradeep Kumar, is affirmed.

Cr. Appeal No. 556 of 2013 is allowed and the judgment of conviction dated 24.04.2013 and the order of



sentence dated 30.04.2013, as against the appellants, Arjun Sao, Dulari Devi and Rajesh Kumar, is set aside.

Since the appellants, Arjun Sao and Dulari Devi are on bail, they are discharged from the liability of their respective bail bonds and the appellant, Rajesh Kumar, who is in custody, is directed to be released forthwith, if not required in any other case.

(Arvind Srivastava, J)

Rakesh Kumar, J : I agree.

(Rakesh Kumar, J)

mcv/-

AFR/NAFR	NAFR
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