

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1028 of 2013**

Arising Out of PS. Case No.-37 Year-2011 Thana- KHODAWANDPUR District- Begusarai

Chandan Rai @ Chandan Roy, son of Late Ram Chandra Rai, resident of
Sihma, P.S.- Khodawandpur, O.P.- Chaurahi, District- Begusarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Sri Ajay Thakur, Advocate Mr. Md. Imteyaz Ahmad, Advocate Mr. Nilesh Kumar, Advocate Mr. Malay Kumar Choudhary, Advocate
For the Respondent/s	:	Sri Ajay Mishra, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)**

Date : 03-05-2019

The appellant, husband of the deceased, has preferred the present appeal under Section 374(2) of the Code Of Criminal Procedure, 1973 (hereinafter referred to as the “Cr.P.C.”) against judgment of his conviction and sentence. The appellant by judgment dated 03.10.2013 in Sessions Trial No. 842 of 2011 [arising out of Khodawandpur P.S. Case No. 37 of 2011] has been convicted for commission of offence under Section 304(B) of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”] and by order dated 21.10.2013 he 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 he has been directed to further



undergo simple imprisonment for four months. The judgment of conviction and sentence was passed by Sri Binay Kumar Sinha, learned 3rd Additional Sessions Judge, Begusarai (hereinafter referred to as the “trial judge”) in Sessions Trial No. 842 of 2011.

2. Short fact of the case is that on 09.03.2011 at 16.10 Hours (4.10 P.M.) one Uday Kumar Singh, P.S.I. of Khodawandpur Police Station recorded *fardbyan* of Ajay Singh (P.W. 3), resident of village – Ramdiri, Tola – Ramnagar, P.S. - Matihani, District – Begusarai. The *fardbyan* was recorded in the house of appellant i.e. Chandan Rai @ Chandan Roy at Sihma , Police Station- Khodawandpur. In the *fardbyan* the informant (P.W. 3) disclosed that his niece Soni Devi, aged about twenty years was married with Chandan Rai (appellant) as per Hindu rituals. The marriage was solemnized in Begusarai about three years back and in the said marriage Rs. 51,000/- and 04 Bhar gold and other articles were gifted to the in-laws of the deceased. After marriage when informant’s niece (Soni Devi) went to her in- laws house in village: Sihma after some time the appellant -Chandan Rai, mother-in-law of the deceased: Babu Dai Devi, Nanad (husband sister of the deceased): Archana Devi and nandosi- Krishna Kumar Rai started to pressurize the deceased for providing motorcycle and colour T.V. The niece of the informant



was regularly explaining that since her family was poor and his father had already died such demand can not be fulfilled. Due to the said reason the accused persons were regularly assaulting and administering torture to the niece of the informant. On 09.03.2011 at 11.00 A.M. the informant got information that the aforesaid accused persons by sprinkling kerosene oil on the body of his niece (Soni Devi) had set her on fire in the toilet and she died due to the said burn injury. After getting the said information the informant with his brother - Rajesh Singh (P.W. 1) and other villagers went to the in-laws house of his niece (Soni Devi) in the village: Sihma. While they arrived they noticed that outside the house there was crowd where his another son -in-law namely: Umesh Rai @ Buttan (P.W. 2) who was resident of village- Sihma, P.S.- Khodawandpur with elder niece of the informant namely: Sweety Kumari (P.W. 4) were present there and they informed that the aforesaid four accused persons at about 10.00 A.M. by way of sprinkling kerosene oil on his niece - Soni Devi had burnt her. On *hulla* both husband and wife (i.e. P.W. 2 & P.W. 4) while arrived there they saw that Soni Devi was burning and squirming. The informant further disclosed that Soni Devi in burnt condition was telling the name of the four accused persons that those persons had sprinkled kerosene oil and put her on fire due to non-fulfillment of



demand of dowry. After some time the injured died. While the informant with P.W. 2, P.W. 4 and some of the villagers of Sihma village entered inside the house he noticed smell of kerosene oil and then he saw in toilet his niece - Soni Devi due to burn injury had died. The informant claimed that appellant -Chandan Rai, Babu Dai Devi, Krishna Kumar Rai and Archana Devi, W/o Krishna Kumar Rai all due to non fulfillment of demand of dowry by way of sprinkling kerosene oil had burnt her niece (Soni Devi) to death. The said *fardbyan* was read over to him and after finding it correct he put his signature in presence of his brother -Rajesh Kumar Singh (P.W. 1) and Umesh Rai (P.W. 2). As a witness to the said *fardbyan* Rajesh Kumar Singh (P.W. 1) and Umesh Rai (P.W. 2) also put their signature. The said *fardbyan* was forwarded to Khodawandpur Police Station and thereafter a formal F.I.R. vide Khodawandpur P.S. Case No. 37 of 2011 was drawn on 09.03.2011 at 22.00 Hours (10.00 P.M.) under Section 304B / 34 of the I.P.C. against: (1) Chandan Rai, (2) Babu Dai Devi, (3) Archana Devi and (4) Krishna Kumar Rai. After investigation on 23.06.2011 charge sheet was submitted only against the appellant keeping investigation pending against others. After submission of charge sheet on 02.07.2011 learned Chief Judicial Magistrate, Begusarai took cognizance of the offence and thereafter the case was



committed to the court of Sessions on 24.08.2011. In the case on 16.01.2012 charge under Section 304(B) of the I.P.C. was framed against the appellant which he denied and claimed to be tried.

3. To establish its case on behalf of the prosecution altogether seven witnesses were examined. Out of seven witnesses, informant (Ajay Singh) is P.W. 3, who is uncle of the deceased, P.W. 1 (Rajesh Kumar Singh) is another uncle of the deceased, P.W. 2 (Umesh Rai @ Buttan) is the husband of elder sister of the deceased namely: Sweety Devi (P.W. 4), P.W. 5 (Dr. Gopal Mishra) had conducted post mortem examination on the dead body of the deceased whereas P.W. 7 (Vishwanath Paswan) is a formal witness who has only proved the inquest report. The case was investigated by P.W. 6 (Amar Nath Singh) and he had finally submitted charge sheet.

4. After conclusion of the prosecution evidence on 16.05.2013 appellant was questioned with the incriminating circumstances and evidences and his statement under Section 313 of the Cr.P.C. was recorded in which he claimed to be innocent and also took the plea of *alibi* and stated that at the time of occurrence he had gone to Hanuman Nagar. A further defence was taken that the deceased had given ornaments to his Sarhu (P.W. 2) and since it was not returned his wife (deceased) on the same day



in between 9.30 and 10.00 committed suicide and he returned back to his house after 11.00. Besides taking such defence at the time of recording his statement under Section 313 of the Cr.P.C., on behalf of the defence altogether six witnesses were examined, namely: D.W. 1 (Ram Udit Rai), D.W. 2 (Renu Devi), D.W. 3 (Chandrakala Devi), D.W. 4 (Rajeev Kumar Rai), D.W. 5 (Ram Bhushan Rai), D.W. 6 (Ganga Prasad Chaudhary). Almost all the defence witnesses have taken the same plea as if the deceased had committed suicide due to dispute of ornament.

5. Sri Ajay Thakur, learned counsel assisted by Sri Malay Kumar Choudhary, learned counsel for the appellant after placing entire evidence on record has firstly argued that prosecution has not been able to establish that deceased prior to the occurrence was subjected to cruelty due to non fulfillment of demand of dowry. He submits that prosecution witnesses have not stated as if the deceased was tortured for non-fulfillment of demand of dowry. He further submits that prosecution case is not believable in view of the fact that first version of the case has been suppressed by the prosecution. He further submits that evidence in respect of demand of dowry is general and omnibus and no specific evidence has been brought on record regarding demand of dowry. No documentary evidence has also been brought on record.



He further submits that to the reasons best known to the prosecution mother or own brother of the deceased have not come forward to depose in favour of prosecution. Number of witnesses though were examined during investigation were not produced as prosecution witness. He submits that it appears that purposely those witnesses have not been examined since prosecution was having idea that in case of examination of such witnesses the prosecution case would have been demolished.

6. Sri Ajay Thakur, learned counsel for the appellant has alternatively argued that if the court is not inclined to interfere with the judgment of conviction, this court may take lenient view in respect of period of sentence. He submits that appellant who is in early age has been sentenced to undergo rigorous imprisonment for life for the offence under Section 304-B of the I.P.C. According to Sri Thakur the provision prescribes minimum sentence of seven years imprisonment however the appellant has already completed about eight years in custody.

7. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeal has argued that though in the F.I.R. besides the appellant (husband of the deceased), other in- laws members were arrayed as accused, initially charge sheet was submitted only against the appellant and investigation was kept pending against



the other accused persons. As per evidence of prosecution witnesses particularly P.W. 1, P.W. 2 & P.W. 3 the prosecution has been able to establish that repeatedly the deceased was tortured due to non fulfillment of demand of dowry. He submits that marriage of the deceased with the appellant was solemnized only three years back and within one month from the date of her arrival in the in-laws house the appellant along with his family members started pressurizing the deceased to bring motorcycle and colour T.V. from her parents, however since the victim's father had already died and her family position was precarious, it was difficult for them to fulfill the demand and in case of such non-fulfillment the victim was regularly tortured and even she was assaulted. Four months back from the date of occurrence the victim was in her parents' house however the appellant persuaded the victim to go to her in-laws house thereafter she went and within a short period the present occurrence had taken place in which the deceased was firstly poured with kerosene oil and she was set on fire by way of locking her in toilet. Sri Mishra submits that it is true that number of witnesses have not been examined but fact remains that now- a- days it is difficult to secure the evidence of independent witnesses and this was the reason that in the case only close relatives of the deceased have come forward to support



the prosecution case. The oral evidence has also been supported by medical evidence. He has referred to the evidence of the doctor - Gopal Mishra (P.W. 5) who conducted post mortem examination on the dead body of the deceased had found during post mortem examination that the deceased was having 100 % burn injury and there was smell of kerosene oil also coming out from the body. In such situation, according to Sri Mishra, the learned trial judge has rightly passed judgment of conviction. In respect of submission advanced by Sri Thakur, learned counsel for the appellant regarding reducing the period of sentence, it has been argued by Sri Mishra that considering the gravity of the offence that the deceased was burnt to death by way of locking in toilet this court may not take lenient view.

8. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same we are of opinion that the learned trial judge has committed no error in passing judgment of conviction and sentence however before proceeding it would be necessary to cursorily refer to the evidence which has been brought on record. In the case P.W. 1 (Rajesh Kumar Singh) was the uncle of the deceased and in his evidence he deposed that marriage of her niece Soni Devi was solemnized with the appellant according to Hindu



rites about four years back from the date of his evidence. His evidence was recorded on 30th March 2012. In the marriage Rs. 51,000/- cash and 04 Bhar gold ornaments besides clothes, furnitures and other articles were provided and thereafter *bidagari* had taken place and she went to her in- laws house. Only after one month from the marriage when the victim was taken back after *bidagari* to her parental house, the victim informed her mother that the four accused persons, who were named in the F.I.R., were pressurizing to bring motorcycle and colour T.V. After one year thereafter the appellant -Chandan Rai took back the deceased to his house in village: Sihma and again started demanding the aforesaid articles. The witness stated that his niece telephonically had informed him that the accused persons due to non fulfillment of demand were assaulting her. Thereafter P.W. 1 (Rajesh Kumar Singh) with 2-3 other persons went to the village: Sihma and tried to convince the accused persons. Again thereafter accused persons started demanding dowry and administering torture. The victim again informed the same thing. About four months back from the date of occurrence the deceased was again brought to her parental house where she again narrated regarding administering torture on her due to non-fulfillment of the said dowry by the accused persons including the appellant. In paragraph 5 of his evidence he



stated that about three months back from the date of occurrence the appellant (Chandan Rai), on the pretext that his mother was ailing, took back his niece Soni Devi to village -Sihma and thereafter again he started assaulting her. About ten days prior to the occurrence he got information but this witness could not go however his another niece - Sweety Devi (P.W. 4) who was residing nearby the house of the appellant along with her husband went there to see her and asked the accused persons not to assault her and assurance was given that within ten days motorcycle and T.V. will be provided. On the date of occurrence appellant along with other accused persons sprinkled kerosene oil on the niece of the informant and ignited her by way of locking her in toilet. He got information from one of the residents of the same village through telephone. Then this witness along with others went to the village Sihma and saw the dead body of Soni Devi. He also noticed smoke mark on the wall of the toilet. In paragraph 13 of his cross examination he clarified that the house of Umesh (P.W. 2) was near the house of the deceased. His statement was recorded by the Police. In paragraph 21 of his cross examination his attention was drawn to his previous statement recorded under Section 161 of the Cr.P.C. however on examination of the evidence of the Investigating Officer it appears that there were some exaggeration



from his statement recorded under Section 161 of the Cr.P.C. to his evidence recorded , however such exaggeration or variance is not so material.

9. P.W. 2 (Umesh Rai @ Buttan) is the husband of elder sister of the deceased. His wife - Sweety Devi (elder sister of the deceased) has been examined as P.W. 4. P.W. 2 (Umesh Rai) in his evidence has stated that on the date and time of occurrence he was in his own *Dallan* and he heard *hulla* that Soni Kumari was being burnt to death. This witness along with his wife reached the house of the appellant -Chandan Rai. Then he saw that smoke was coming out from his toilet and latch of the door was closed from outside. Number of villagers had arrived. Then he opened the latch of the door from outside. The injured -Soni Kumari came out and fell down. Her whole body was burnt. He further stated that Soni Kumari was raising *hulla* and telling that four accused persons which includes the appellant had ignited her and she was locked in toilet and thereafter she fell down and within fifteen minutes she died. The reason for the occurrence was explained by this witness that accused persons were demanding colour TV and motorcycle as dowry whereas father of the deceased was not alive and her family was not in a position to give such articles and this was the reason that Soni Kumari was regularly being tortured. In paragraph



8 of his cross examination this witness has stated that marriage of the deceased (Soni) was solemnized on pursuation of this witness and he had played an important role in her marriage. It is pertinent to mention that this witness is the neighbour of the appellant and resident of village: Sihma, P.S. - Khodawandpur, District - Begusarai. The house of appellant was about 15 steps up on the Western side of the house of this witness. In paragraph 17 of his cross examination he has stated that on hearing *hulla* when he went to the place of occurrence he saw that about twenty five persons had already arrived there. He further deposed that in his presence *fardbyan* of Ajay Singh -P.W. 3 [informant] was recorded however his signature on the *fardbyan* was taken in Police Station. In paragraph 30 of his cross examination his attention was drawn to his previous statement to the extent that in his statement under Section 161 of the Cr.P.C. he had not stated the fact that the deceased before her death had made oral dying declaration in which she had named the four accused persons including the appellant. Contradiction to this statement was taken in paragraph 40 of the evidence of P.W. 6 -Amar Nath Singh, the Investigating Officer of the case.

10. P.W. 3 (Ajay Singh) is another uncle of the deceased. In his evidence almost he reiterated the fact which was



incorporated in his *fardbyan* and he proved his signature on the *fardbyan* which was marked as Ext. 1. In his evidence also it has come that the deceased was regularly being tortured by the appellant and other three members of the in-laws family and she was being pressurized to bring motorcycle and colour T.V. as dowry. This witness was also cross examined however no important fact could be extracted to raise any suspicion on the credibility of his evidence.

11. P.W. 4 (Sweety Devi) is the wife of P.W. 2 (Umesh Rai) and elder sister of the deceased. She supported the prosecution case regarding torture due to non fulfillment of demand of dowry and also burning the deceased to death due to non-fulfillment of demand of dowry however in her evidence no elaboration has been made.

12. P.W. 7 (Vishwanath Paswan) is a formal witness and has proved the inquest report, which was marked as Ext. 4.

13. P.W. 5 (Dr. Gopal Mishra) on 10.03.2011 was posted as Civil Assistant Surgeon in Sadar Hospital, Begusarai and on the same day he conducted post mortem examination on the dead body of the deceased and noticed the following facts:-

“(1) Superficial to deep burn over whole of body, burnt about 100%, blacken in colour, covered with soot and **smell of kerosene oil** coming out from the body.

(2) On dissection found the following:-



(1) Skull – Brain matter congested
(2) Thoracic cavity – Both lungs congested. Heart -empty
(3) Abdominal cavity- All stated viscera congested.
Stomach -empty
Bladder -empty
Time elapse since death within 24 hours.
Cause of death - death was due to neurogenic and hypovolaemic shock as a result of above mentioned injuries caused by dry flame.”

He further stated that the post mortem report was prepared by him and it was in his pen and signature and same was marked as Ext. 2. On examination of the evidence of P.W. 5 (Dr. Gopal Mishra) as well as post mortem report it is evident that deceased was having 100 % burn injury and doctor had also noticed smell of kerosene oil coming out from the body of the deceased. In view of injuries found in the post mortem examination the defence of the appellant that the deceased committed suicide cannot be believed particularly in view of oral evidence which we have discussed hereinabove.

14. The Investigating Officer (Amar Nath Singh) was examined as P.W. 6. On examination of his evidence it appears that he has not done his job of investigation in fair and positive manner however in his evidence he has proved formal F.I.R., which has been marked as Ext. 3. In paragraph 3 of his evidence he has explained regarding the place of occurrence i.e. the toilet in the premises of the appellant where he noticed mark of burn



clothes. Surprisingly in the same paragraph he has deposed as if he was informed that in the said toilet the deceased locking the latch of the door from inside had burnt herself. Such statement of the Investigating Officer appears to have been given due to some extraneous consideration. In normal course it is difficult to comprehend that one can firstly pour kerosene oil on himself or herself and set himself or herself on fire and remain stagnate without any move to come out even after heat of such burning. Outrightly such suggestion is required to be rejected. In his evidence the Investigating Officer has not deposed any other relevant facts however on examination of his evidence in his cross examination it is established that intentionally or unintentionally he has committed serious error. In paragraph 23 of his cross examination he has stated that in his presence after breaking the door of toilet the deceased was not taken out since before his arrival the injured was taken out. He further admitted that he had not noticed the broken latch of the door nor he had prepared any seizure list. In paragraph 24 of his cross examination he has stated that while he arrived at the place of occurrence he saw that dead body was lying in courtyard of the house. On examination of his evidence it transpires that the Investigating Officer had not bothered to pick up any material exhibit from the place of



occurrence. There is no reason to doubt that the Investigating Officer has not proceeded in proper manner. His evidence is indicative of the fact that he has not done investigation in its right perspective. If in such serious offence this is the attitude of the Investigating Officer certainly such action is required to be deprecated, however at least in his evidence he has described about the place of occurrence. In any event if the evidence is otherwise credible merely on the ground of some error committed by the Investigating Officer an accused may not be allowed to go unpunished.

15. On examination of entire evidence, besides apparent error committed by the Investigating Officer, we are of considered opinion that the learned trial judge has rightly passed the judgment of conviction and sentence. In view of entire evidence which we have discussed hereinabove we are of considered opinion that the learned trial judge has committed no error in passing judgment of conviction and sentence. So far alternative argument of learned counsel for the appellant for reducing the period of sentence is concerned, the court, in view of the fact that deceased was burnt to death by locking in toilet, is of opinion that it is not a case for taking lenient view. Accordingly, judgment of conviction dated 03.10.2013 and sentence dated- 21.10.2013 passed by Sri Binay



Kumar Sinha, learned 3rd Additional Sessions Judge, Begusarai in Sessions Trial No. 842 of 2011 (arising out of Khodawandpur P.S. Case No. 37 of 2011, G.R. Case No. 660 of 2011) is hereby approved and the appeal stands dismissed.

16. However before parting with the judgment, since we have noticed apparent incompetency and error committed by the Investigating Officer namely: Sri Amar Nath Singh, in terms of the judgment of the Hon'ble Supreme Court reported in (2014) 5 Supreme Court Cases 108 (State of Gujarat vs. Kishanbhai and others), we hereby direct the Home Secretary, Government of Bihar, Patna to get the conduct of the Investigating Officer of the case enquired and take appropriate action against such erring Officer.

17. Let a copy of this order be sent to the Home Secretary, Government of Bihar, Patna for its compliance

(Rakesh Kumar, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-05-2019
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