

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.34 of 2003

Ashok Kumar@ Ashok Prasad Son of Sri Indradeo Halwai@ Rajendra Prasad
Both Resident of Mohalla- Sabji Bazar, P.S. Bihar, District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Arun Kumar Tripathi, Amicus Curiae

For the Respondent/s : Sri. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

08-01-2019

None appears on behalf of appellant, on account thereof, Sri Arun Kumar Tripathi, learned Advocate has been requested to assist the Court as an Amicus Curiae.

2. Indradeo alias Indradeo Halwai @ Rajendra Prasad (since deceased) and Ashok Kumar have been found guilty for an offence punishable under Section 304A IPC and sentenced to undergo RI for 2 years as well as to pay fine appertaining to Rs. 2000/- in default thereof, to undergo RI for six months additionally by the Presiding Officer, Additional Court No.1, Nalanda at Biharsharif in Sessions Trial No. 179 of 1989/28 of 2002.

3. PW-8, Sahdeo Lal Halwai filed written report before the District Magistrate, Nalanda at Biharsharif (date is not legible) disclosing therein that he got his daughter Manju married with Ashok Prasad Son of Sri Indradeo Halwai@ Rajendra Prasad Resident of Mohalla- Sabji Bazar, Biharsharif



in the month of Asharh 1981 after fulfilling the demand of dowry. While his daughter was staying at his place, without informing the date of Bidai, his Samdhi came and asked for Bidai whereupon, he declined. Then thereafter, his Samdhi approached the local caste people, at whose intervention Bidai was effected but, being a poor fellow could not arrange the money in order to fulfill their expectations. Whereupon, his daughter while staying at her Sasural was constantly tortured, even physically. It has also been disclosed that thrice her Sasuralwala tried to extinguish her and for that, have sprinkled K-oil over her body which she anyhow averted. One day prior to the Holi (Agja/Holika-Dahan) while she was sleeping, her husband, Ashok threw burning lamp over her body as a result of which, flame spread over her body. Her step mother-in-law as well as father-in-law pressed her so that she could not take precaution for extinguishing the flame and had also said that now you have to die. Anyhow, she raised alarm whereupon, her Devar came who removed the clothe in order to save her, till then, she was burnt badly. Her Sasuralwala has not informed. When he along with his wife visited Maghra Mela, there they got information whereupon, they rushed. Father-in-law, mother-in-law, husband of Manju have warned her not to divulge the



truth rather should speak that she herself lit the fire. However, seeing absence of her Sasuralwala, Manju has disclosed the real theme how she has sustained the burn injury. Out of poverty, he was unable to take proper recourse. However, getting certain clue with regard to their Manjan (head of caste man), he approached and with their help, succeeded in filing petition.

4. As directed by the District Magistrate, Nalanda at Bihar Sharif, Bihar PS Case No. 391/1983 was registered for an offence punishable under Section 307, 324 IPC and $\frac{3}{4}$ of the Dowry Prohibition Act and during course of investigation as the deceased had died, it was converted under Section 302 IPC whereunder also charge-sheet was submitted against Indradeo alias Indradeo Halwai @ Rajendra Prasad as well as Ashok Kumar @ Ashok Prasad while Rakhni Devi @ Kamla Devi has been shown as an absconder whose trial, accordingly, got separated. On the basis thereof, trial commenced and concluded in a manner, subject matter of instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. It has also been pleaded that during course of cooking, deceased met with accidental fire but neither oral nor documentary evidence has been adduced at



their end to substantiate the same.

6. In order to support its case, prosecution had examined altogether 10 PWs out of whom PW-1, Manoj Prasad, PW-2, Shyam Babu Gupta, PW-3 Deo Dutt Arya, PW-4, Dr. Brahamdeo Pd. Singh, PW-5, Ajay Kumar, PW-6, Deopati Devi, PW-7, Manohar Pd. Gupta, PW-8, Sahdeo Lal, PW-9, Gulab Jha and PW-10, Baliram Mishra as well as had also exhibited Ext-1 series, signatures of inquest witnesses, Ext-2, Positive Photographs of deceased Manju Devi, Ext-3, Injury Report, Ext-4, Postmortem Report, Ext-5 series, signature of production-cum-seizure list witnesses, Ext-6 series, production-cum-seizure list, Ext-7, recording of statement of deceased, Manju, Ext-8 series, signatures of witness as well as scribe, Ext-9, formal FIR, Ext-10, order of District Magistrate over written report, Ext-11, statement of deceased Manju Devi recorded under Section 161 CrPC, Ext-12, production list. Material Ext-1, the tape. As stated above, nothing has been adduced on behalf of defence.

7. Heard learned Amicus Curiae as well as learned APP. Also gone through the lower court records.

8. PW-4 is the doctor who had admitted the deceased Manju Devi on 27.07.1983 at Sadar Hospital, Nawada and found the following on examination:-



1. Old deep burnt injury over the front and back of both thigh including pelvic region and both legs which had partially healed up. The percentage of burn about 25%.

2. Healed superficial burn injury over both palm and dorsum of hands. Percentage of burn about 4%.

3. Old deep burn injury over the lower part of abdomen just below the umbilicus in healing stage.

There would have been scar of injury no.1. The age of injury could not be ascertained which might be of within six months. Injury no.1 and 3 were grievous and injury no.2 was simple and all the injuries had been caused by fire.

9. During cross-examination, he had stated that though he is not remembering but, certainly, he would have inquired from the attendant of Manju with regard to treatment which she had but, there happens to be no description in the injury report issued by him that any kind of treatment was availed by Manju Devi during intervening period. He had further stated that though, he happens to be an Eye Specialist but on the fateful day, was doing an emergency duty and further, the patient was to be attended by a Surgeon, on account thereof, he had referred the case to Ram Chandra Pd. Sinha, a Surgeon posted at Sadar hospital, Nawada but, he is unable to say



whether he had attended her or not. He had further stated that he had not made any sort of entry regarding physical condition and further, whether the injured was conscious or unconscious.

10. After death of the deceased, postmortem was conducted by Dr. Gulab Jha (PW 9) on 31.07.1983 and found the following:-

1. Old burn injury with granulation tissues 14" x 8" on the outer and middle part of left thigh extending below glial prominence upto below the burn injury being deep.

2. Old deep burnt injury with granulation tissues 14" long extending along her whole right thigh up to the knee.

3. Old burnt injury 10" x 3" on the back of right leg.

4. Burn injury mark 4 1/2" on his back of left leg.

5. Healed burn injury scar mark on the dorsum and front part of right hand.

6. Healed burn injury scar mark on the four fingers of left hand including the thumb.

On the dissection of her skull and annular cavity the right meningeal cavity was found to be osclated and blocked. The injuries were ante-mortem and caused by fire. Time of death within 16 hours.



11. He admitted that septicemia proves to be fatal in majority of the cases and further, happens to be on account of infection and for that so many reasons are responsible. One of the reasons may be negligence in proper treatment or the cleanliness/hygienic condition of the surroundings.

12. Now coming to the ocular evidence, it is apparent from the lower court record, that three kinds of evidences have been adduced. The first happens to be dying declaration, one prepared by PW-7 as well as PW-10, the IO, Ext-7 as well as Ext-11 along with material Exhibit-1, Tape which was played in the court room during course of examination of PW-7. The second kind happens to be relating to carrying of Manju from the place of accused/appellant and for that, apart from family members, PWs-2, 3 and 5 also deposed and the remaining happens to be the family members who are PWs-1, 5, 6 and 8. PW-10 is the IO.

13. From the judgment impugned, it is evident that on account of absence of signature of Manju over so alleged dying declaration having been recorded in the pen of Manohar Pd. Gupta witnessed by Rama Sao proved by PW-7 on account of non examination as well as absence of signature/LTI of Manju, the same was not at all found reliable in evidence and in



likewise manner, para-8 of the case diary which contained the statement of the deceased Manju (Ext-11) also been rejected in view of principle laid down by the Apex Court in ***Munnu Raja v. The state of M.P.*** as reported in ***AIR 1976 SC 2199***.

14. Admittedly, none is an eyewitness to the occurrence. Whatsoever stated by the material witnesses happens to be on the alleged discloser made by the deceased Manju. It is consistent version of the family members, that means to say, PWs-1, 5, 6 and 8 that while they were at Maghra Mela, they came across the news that the deceased has been burnt at the end of her Sasuralwala whereupon PWs-5, 6 and 8 have gone there, stayed there for quite a long time rendering their service as well as taking care of Manju and after spending such long time, they asked for Bidai as she was not properly cared at the end of her Sasuralwala which was facilitated after intervention of PWs-2, 3 and 7 whereupon she was taken to her Naihar where she was under treatment of Dr. Triveni for more than two months. Except one wound, all had healed up. One day, her voice had gone and then she was taken to hospital where, during course of treatment, she died. It has also been disclosed that the case was instituted prior to her death. Then there happens to be discloser that on query the deceased



narrated her woes having been faced while staying at her Sasural and the misfortune whereunder she was put on fire by her husband by way of throwing burning lamp, which was recorded in questionnaire form. The trial court had rightly doubted over authenticity/genuineness of Ext-7 as it contained the date 06.08.1983 that is to say, after death of the deceased and so in the aforesaid background, the evidence of prosecution witnesses became doubtful. Apart from this, while staying at the place of Sasural of Manju, there was absence of PWs-5, 6 and 8. Even after 20 days, when they got information at the end of Manju that her husband had lit fire, then in that circumstance, there should have been proper steps at their end by going to the police station to inform with regard to the misdeeds as well as would have also insisted upon to have Manju admitted at Sadar Hospital or any Hospital of Bihar Sharif but, from the evidence, it is apparent that they have not taken any kind of resort. Apart from this, the prosecution could not be able to substantiate regarding treatment being at their end and while deceased was staying at their place, and further while examining both the doctors, the prosecution failed to suggest regarding presence of septicemia, it has become difficult to differentiate. The learned lower court had also taken into consideration the aspect that



there happens to be long interval in between the act so alleged and the death of Manju and further, the burn injury was not the cause of death rather the infection in the form of septicemia was the cause of death and on account thereof, the learned lower court had observed it a case punishable under Section 304A IPC. Because of the fact that the aforesaid finding has not been challenged at the end of the prosecution, that has become final. Furthermore, in the background of materials as discussed hereinabove, the findings recorded by the learned lower court is found appropriate, legal, just and proper.

15. Now coming to the proper identification of complicity of the accused, it is evident that learned lower court had conceded that there happens to be paucity of evidence to the hilt against appellant, Indradeo but, under para-25 concluded that the appellant, Indradeo alias Indradeo Halwai @ Rajendra Prasad was the Karta of the family of which, the deceased was one of the members and so, it was his moral obligation to have proper treatment at his end whereunder he failed and so, also drawn inference against him is not at all found in accordance with law and that being so, though the aforesaid appellant is dead but, on account of persistence of sentence of fine against him the conviction and sentence recorded against him is found



fit for setting aside whereupon, is set aside and to that extent, appeal is allowed. On account of death of appellant, he is found already exonerated from liability of the bail bond, hence, no order is required.

16. So far, appellant, Ashok Kumar@ Ashok Prasad is concerned, the conviction and sentence recorded by the learned lower court is affirmed. Consequent thereupon, the instant appeal to his interest, is hereby, dismissed.

17. He is on bail, his bail bond is, hereby, cancelled directing him to surrender before the learned lower court within two weeks to serve out the remaining part of sentence failing which, the learned lower court will be at liberty to proceed against him in accordance with law.

18. The first and last pages of the instant judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

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