

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.522 of 2018

Arising Out of PS. Case No.-122 Year-2001 Thana- MADHUBANI TOWN District-
Madhubani

Shyam Sunder Sharma, son of Late Hari Ram Sharma, resident of Mohalla-
Shivaji Nagar, P.S. Nagar, District-Darbhanga.

... .. Appellant.

Versus

1. The State of Bihar.
 2. Kailash Sharma, son of Ganesh Prasad Sharma.
 3. Bishnu Sharma, son of Ganesh Prasad Sharma.
- All 2 to 3 are resident of Mohalla-Shankar Chowk, P.S. Nagar, District-
Madhubani.

... .. Respondents.

with
Criminal Appeal (SJ) No. 728 of 2018

Arising Out of PS. Case No.-122 Year-2001 Thana- MADHUBANI TOWN District-
Madhubani

1. Bishnu Sharma, son of Ganesh Prasad Sharma, resident of Mohalla-
Shankar Chak Ward No.4, P.S. Madhubani Town, District-Madhubani, at
present resident of Mohalla-Gola Road, Ward No.19, Muzaffarpur, P.S.
Muzaffarpur Town, District-Muzaffarpur.
2. Ganesh Prasad Sharma, son of Late Prahlad Sharma, resident of Mohalla-
Shankar Chak Ward No.4, P.S. Madhubani Town, District-Madhubani.
3. Kailash Sharma alias Kailash Kumar Sharma, son of Ganesh Prasad
Sharma, resident of Mohalla-Shankar Chak Ward No.4, P.S. Madhubani
Town, District-Madhubani.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

(In Criminal Appeal (DB) No. 522 of 2018):

For the Appellant	:	Mr. Rajendra Jain, Advocate. Mr. Pradeep Kumar Sinha, Advocate.
For the State	:	Mr. Shivesh Chandra Mishra, A.P.P.
For the Respondent Nos : 2 & 3.	:	Mr. Ajay Kumar Thakur, Advocate. Mr. Md. Imteyaz Ahmad, Advocate. Mr. Nilesh Kumar, Advocate.

(In Criminal Appeal (SJ) No. 728 of 2018):

For the Appellants	:	Mr. Ajay Kumar Thakur, Advocate. Mr. Md. Imteyaz Ahmad, Advocate. Mr. Nilesh Kumar, Advocate.
For the State	:	Ms. Shashi Bala Verma, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
and



**HONOURABLE MR. JUSTICE RAJENDRA KUMAR
MISHRA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 13-02-2019

Heard learned counsel appearing for the appellant in Criminal Appeal (DB) No.522 of 2018 as well as learned counsel appearing for the respondent nos.2 and 3 in the aforesaid criminal appeal. Also, heard learned Additional Public Prosecutor for the State on the point of admission as well as I.A. No.1525 of 2018, which has been filed under Section 378(3) of the Code of Criminal Procedure.

2. I.A. No.1525 of 2018 has been filed on behalf of the appellant in Criminal Appeal (DB) No.522 of 2018, who happens to be the father of the deceased, praying therein for grant of leave to file and pursue this appeal. He comes under the ambit of the victim and has right to challenge the Judgment of acquittal.

Accordingly, I.A. No.1525 of 2018 is allowed and the appellant in Criminal Appeal (DB) No.522 of 2018 is permitted to pursue this appeal.

3. Criminal Appeal (DB) No.522 of 2018 as well as Criminal Appeal (SJ) No.728 of 2018 have been preferred against the Judgment dated 26.02.2018 passed in Sessions Trial



No.252 of 2008/22 of 2017 by the learned Fast Track Court-I, Madhubani, and that is why learned Single Judge vide order dated 09.07.2018 passed in Criminal Appeal (SJ) No.728 of 2018, directed the office to list the aforesaid Criminal Appeal (SJ) No.728 of 2018 with Criminal Appeal (DB) No.522 of 2018 and, accordingly, both the above stated criminal appeals have been listed together.

4. Criminal Appeal (DB) No.522 of 2018 has been filed by the informant of Madhubani P.S. Case No.122 of 2001 and having filed the above stated criminal appeal, he challenged the impugned Judgment dated 26.02.2018 on the ground that the private respondent nos.2 and 3 ought to have been convicted for the offence punishable under Section 304-B of the Indian Penal Code but the learned trial court instead of convicting them for the offence punishable under Section 304-B of the Indian Penal Code, convicted the aforesaid private respondents for the offence punishable under Section 498-A of the Indian Penal Code.

5. Criminal Appeal (SJ) No.728 of 2018 has been preferred by the private respondents of Criminal Appeal (DB) No.522 of 2018 as well as one co-convict Ganesh Prasad Sharma against the Judgment of conviction and sentence Order.



6. The factual matrix of the prosecution case is that the appellant in Criminal Appeal (DB) No.522 of 2018 gave his fardbeyan on 11.05.2001 to this effect that the marriage of his daughter, namely, Sonu Sharma, (deceased) had taken place 5 years ago with the private respondent no.2 but, after marriage, she was subjected to cruelty and harassment due to non-fulfillment of illegal demand of dowry. The informant Shyam Sunder Sharma further claimed that on 11.05.2001 at about 10.00 A.M., he got information that his daughter, namely, Sonu Sharma, was put on fire by her husband and other in-laws and having got the aforesaid information, he went to the house of in-laws of the deceased and found the deceased in injured condition. The deceased was taken to the hospital and, thereafter, on the basis of the fardbeyan of the appellant/informant, Madhubani Town P.S. Case No.122 of 2001 for the offences punishable under Sections 498-A, 324 and 307/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act was registered. However, after the death of the deceased Sonu Sharma, Section 304-B of the Indian Penal Code was added.

7. The police, after investigation, submitted the charge-sheet and, accordingly, the private respondents as well as



co-convict Ganesh Prasad Sharma were put on trial and, accordingly, they stood charged for the offences punishable under Sections 498-A, 307 and 304-B of the Indian Penal Code.

8. During trial, the prosecution examined its witnesses and got exhibited certain documents. The defence, too, examined some witnesses and got exhibited certain documents. However, one Court's Witness No.1, namely, Rabindra Nath Tripathi, the then Judicial Magistrate, Darbhanga, was also examined and the aforesaid Court's Witness No.1 proved the Ext.A, the statement of the deceased recorded by the Court's Witness No.1, after institution of the present case.

9. The learned trial court having seen the aforesaid Ext.A passed the impugned Judgment, convicting the respondent nos.2 and 3 and co-convict Ganesh Prasad Sharma for the offence punishable under Section 498-A of the Indian Penal Code. However, the learned trial court taking note of Ext.A, acquitted the respondent nos.2 and 3 and co-convict Ganesh Prasad Sharma from the charges framed under Sections 304-B and 307 of the Indian Penal Code.

10. Learned counsel appearing for the appellant assailed the impugned Judgment, arguing that Ext.A was



recorded on 12.05.2001, while the deceased was in custody of her in-laws and, as a matter of fact, she was pressurized by her in-laws to make statement in their favour and out of fear, she made statement before the Court's Witness No.1. Learned counsel further submitted that the statement of the deceased was again recorded by the Investigating Officer on 15.05.2001 and the aforesaid statement was incorporated by the Investigating Officer in the case diary, which has been exhibited as Ext.6. He submits that in Ext.6, the deceased, very clearly, stated that the private respondents and others set her on fire due to non-fulfillment of the illegal demand of dowry. Learned counsel further submits that the learned trial court completely ignored the statement made by the deceased in Ext.6. He submits that Ext.6 ought to have been treated by the learned trial court as dying declaration of the deceased and, therefore, in the aforesaid circumstance, this appeal should be allowed.

11. On the other hand, learned counsel appearing for the private respondents supports the Judgment of acquittal, arguing that the learned trial court rightly acquitted the private respondents from the charges framed under Sections 307 and 304B of the Indian Penal Code having relied upon Ext.A. He submits that even if it is assumed that the deceased had made



statement before the Investigating Officer on 15.05.2001, then also, there were two contradictory statements of the deceased and, therefore, the learned trial court rightly disbelieved the Ext.6. He further submits that there is nothing before this Appellate Court to differ with the findings recorded by the learned trial court in respect of acquittal of the private respondents for the offences under Sections 304-B and 307 of the Indian Penal Code.

12. Having heard the contentions of both the parties, we went through the record and, in our view, Criminal Appeal (DB) No.522 of 2018 can be disposed of on admission stage itself.

13. It is admitted case of the prosecution that after the institution of the present case, the statement of the deceased was recorded by the Court's Witness No.1 on 12.05.2001, while she was admitted in the hospital. Court's Witness No.1 claimed that he went to Darbhanga Medical College and Hospital, Darbhanga, on 12.05.2001 on the direction of the learned Chief Judicial Magistrate, Darbhanga, and recorded the statement of the deceased. Court's Witness No.1 has proved the statement of the deceased Sonu Sharma, recorded by him, as Ext.A and the perusal of Ext.A goes to show that in the aforesaid Ext.A, the



deceased Sonu Sharma claimed that she was caught in fire accidentally, while she was boiling milk. In the aforesaid statement although she has levelled allegation of torturing as well as demand of dowry but she did not make responsible to her in-laws including her husband for setting her on fire. However, Ext.6 goes to show that in case diary, the Investigating Officer incorporated the fardbeyan of the deceased Sonu Kumar, which was recorded by him on 15.05.2001 and the aforesaid entry of the case diary has been marked as Ext.6. The original fardbeyan of the deceased Sonu Sharma has not been brought on record nor the same has been exhibited. Therefore, in our view, Ext.6 is not admissible in evidence. However, even if it is assumed that the contents of fardbeyan of the deceased Sonu Sharma recorded on 15.05.2001 by the Investigating Officer has been brought on record by the prosecution, then also, in view of contradictory statement made by deceased in Ext.A, no reliance can safely be placed on Ext.6. Moreover, the original fardbeyan of the deceased Sonu Sharma has not been brought on the record and, therefore, the Ext.6 is not admissible in evidence.

14. We also went through the impugned Judgment and we find that the learned trial court has given valid reasons



for acquittal of private respondents from the charges framed under Sections 304-B and 307 of the Indian Penal Code and we do not find any ground to interfere into the findings of acquittal recorded by the learned trial court.

15. Therefore, on the basis of the aforesaid discussions, Criminal Appeal (DB) No.522 of 2018 stands dismissed on the admission stage itself.

16. So far as Criminal Appeal (SJ) No.728 of 2018 is concerned, the same be placed before the appropriate Bench under the appropriate heading.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2019.
Transmission Date	18.02.2019.

