

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.948 of 2016

Arising Out of PS. Case No.-90 Year-2014 Thana- BUXAR MUFFSIL District- Buxar

1. Shri Bhagwan Das @ Bhagwan Das Ram son of late Gudari Ram,
2. Chandrawati Devi, wife of Bhagwan Das Ram,
Both residents of village Chausa Bazar, P.S. Buxar M, District Buxar.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Digvijay Kumar Ojha, Adv.
For the Respondent/s	:	Mr. Bipin Kumar Rai, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 01-04-2019

Appellants Chandrawati Devi, Bhagwan Das @ Bhagwan Das Ram have been found guilty for an offence punishable under Section 307 of the Indian Penal Code and each one has been sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs. 20,000/- in default thereof to undergo R.I. for three months, additionally, vide judgment of conviction dated 21.09.2016 and order of sentence dated 26.09.2016 passed by Additional District and Sessions Judge 4th, Buxar in Sessions Trial No. 384/2014.

2. Kiran Devi while was admitted at P.H.C. Chausa in burnt condition on 24.04.2014 gave her *fardbeyan* at about 10.40 a.m. disclosing therein that on the same day at about 9.00



a.m. while she was taking recess in her room, at that very moment her mother-in-law Chandrawati Devi and father Bhagwan Das came, out of whom, her mother-in-law was carrying K. Oil which she sprinkled over her body and then lit fire. She began to raise alarm whereupon, the neighbours rushed in rescue and then, lifted her to hospital. Till then, she has suffered a lot. Her head, neck as well as face has become burnt. At several places over her body there happens to be blisters. The motive of occurrence has been shown as, her husband used to stay at Delhi in order to earn his livelihood whereupon, her father-in-law, mother-in-law did not permit her to stay at her sasural. In the aforesaid background she was residing at her *Maika*. On the preceding evening she has come from her *Maika* without taking permission from in-laws and, on account thereof they firstly abused and then have committed this offence.

3. On the basis of the aforesaid *fardbeyan*, Buxar Muffasil P.S. Case No. 90/2014 has been registered following with an investigation as well as submission of charge-sheet, facilitating the trial meeting with the main result subject matter of instant appeal.

4. Defense case as is evident from mode of cross-examination as well as statement recorded under Section 313 of



the Cr.P.C. is that of complete denial. It has further been pleaded that on the alleged date and time of occurrence the informant herself set on fire in the background of dispute prevailing at her *Maika* as a result of which, she has come to this place in absence of in-laws who were engaged as labourers by Ramnath Koiri. After having been informed, they took the victim to the hospital, incurred all medical expenses but, after coming under influence of her *Maikawala* got this case filed. However, nothing has been adduced in defense.

5. In order to substantiate its case prosecution has examined altogether nine P.Ws who are P.W. 1 Chhangari Devi, P.W. 2 Sunil Ram, P.W. 3 Fulchand Ram, P.W. 4 Kiran Devi, P.W. 5 Dr. Yogendra Singh, P.W. 6 Rambabu Prasad, P.W. 7 Arbind Rai, P.W. 8 Dr. Anil Kr. Singh and P.W. 9 Dhirendra Kumar Singh as well as also exhibited:

Exhibit 1 - Injury report in the pen of Dr. Yogendra Singh.

Exhibit 2 – Signature of the informant over the *fardbeyan*.

Exhibit 3 – Injury report prepared by P.W. 8 Dr. Anil Kumar Singh

Exhibit 4 – Formal F.I.R.

Exhibit 5 – *Fardbeyan*.

Exhibit 6 – Endorsement over *fardbeyan*.



As stated above, nothing has been adduced on behalf of defense.

6. While assailing the judgment impugned, learned counsel for the appellants has submitted that the finding so arrived at by the learned lower court is not at all based upon the materials available on the record and that being so, is fit to be set aside. In order to justify such plea, it has been submitted that main I.O. has not been examined. On account of non-examination of I.O. appellants have suffered a lot, at least by having examination of the I.O. the actual place of occurrence would have been identified which was necessary, more particularly in the background of the fact that as per prosecution case it was room where P.W. 4 the informant was recessing and during course thereof, occurrence is said to have taken place. On the other hand, there happens to be consistent defense version that she attempted to commit suicide. So, had there been examination of the main I.O., the real scenario would have been exposed.

7. It has further been submitted that neither P.W. 4 Dr. Yogendra Singh nor P.W. 8 Dr. Anil Kumar Singh have found smell of K. Oil coming from the wound. P.W. 8, during course



of cross-examination has admitted that there was no smell of K. Oil coming from the wound. That means to say the basic feature of the prosecution case is found completely demolished. Once, the story of K. Oil gone, the manner of occurrence changed. Then in that circumstance, the story of attempt to suicide appears to be more probable than the version of the prosecution case.

8. Apart from this, it has also been submitted that from the evidence available on the record, it is evident that save and except P.W. 4 the victim herself, none is an eye-witness of the occurrence. P.W. 3 is the father. P.W. 7 is the brother whose evidence also look unworthy as, apart from being not an eye-witness to the occurrence, their evidences, as is evident, appear to be exaggerated one which could not be brought up on record on account of non-examination of I.O. Furthermore, the evidence of P.W. 1 as well as P.W. 2 who are the co-villagers of the appellants also substantiated that while P.W. 4 was under flame, at that very moment presence of these appellants was not at all. Furthermore, during course of cross-examination they have admitted that appellants have gone to harvest under the Ramnath Koiari. So submitted that considering the evidence in its totality in consonance with the circumstance, it could be



inferred that the prosecution has not been able to substantiate its case. Accordingly, this appeal is fit to be allowed after setting aside the judgment of conviction and sentence recorded by the learned lower court.

9. On the other hand, the learned A.P.P. while supporting the finding recorded by the learned lower court has submitted that there happens to be consistency in the evidence of the victim P.W. 4 inspite of lengthy cross-examination whereupon, the judgment impugned did not attract interference.

10. Apart from having been admitted at the end of the appellants, be it an attempt to commit suicide or homicide, the fact remains that P.W. 4, the victim who happens to be the daughter-in-law of these appellants during course of her stay at her *Sasural* had sustained burn injuries. The finding of the doctor happens to be the additional support. Only P.W. 4 deposed against the appellants, they were under obligation to rebut, but having failed on that score, did justify the finding.

11. P.W. 5, a Ayurvedic Doctor who was posted at P.H.C. at that crucial moment had examined the P.W. 4 on 24.04.2014 at about 11.05 a.m. and found the following:-

(in deposition it has been ascribed in Devnagari script however, injury report is in the Roman script)



(1.) Face boil.

(2.) Burn boils on back of neck.

(3.) Burn boils on upper part of the chest.

(4.) Whole body pain.

Referred to sadar Hospital Buxar for the best treatment. During course of cross-examination he has admitted that he had not treated the patient. He simply administered Tetanus injection as well as also administered Saline and has referred the patient. He has informed the police also.

12. P.W. 8 is Dr. Anil Kumar Singh who on 24.04.2014 at about 12.30 p.m. examined the victim and found the following being doctor deployed at sadar Hospital.

(i) Epidermal Burn (Blister) on face whole Head involving burn of hair.

(ii) Dermo epidermal burn on back of neck.

(iii) Dermo epidermal burn on upper part of Chest.

(iv) Multiple spotty blisters on forearms and abdomen.

13. Patient was treated primarily and referred to higher burn care centre (B.H.U. Varanasi/P.M.C.H. Patna) for specialised treatment on 28.04.2014 as disfigurement of face and neck may be possible. On question whether the injuries



were dangerous to life the doctor opined that he is not certain and so was unable to answer exactly. During course of cross-examination, he has stated that he has not found smell of K. Oil coming out from the wound, had not found any sign of assault, had not found the injuries to be dangerous to life.

So, from the evidence of the doctor it is evident that defense had not questioned whether there was possibility of the aforesaid burn injuries to be suicidal.

14. From the evidence of these two doctors, it is apparent that they have not disclosed with regard to percentage of the burn. In likewise manner they have not distinguished the stage as, the burn injuries as identified by the **Modi in his classic book “Medical Jurisprudence and Toxicology”** has opined, first degree is of redness of skin only, the second stage being acute inflammation and blisters and the third stage destruction of the cuticle and part of the true skin. Furthermore, if the burn happens to be accidental one, the flame has its direction lower to upper, in case of suicide also, there happens to be direction of the flame lower to upper but, in case of an attempt to commit an offence by others, it would be according to the location of the body so aimed at. From the finding of the doctor it is crystal clear that upper part of body got affected.



15. As stated above, none is an eye-witness, so the evidence of victim has got privacy who examined herself as P.W. 4. During course of her evidence, P.W. 4 has stated that the occurrence is of dated 24.04.2014 at about 9.00 a.m. At that very time she was lying over cot at her *Sasural*. Her father-in-law, mother-in-law came. Then thereafter, her mother-in-law came with a bucket full of K. Oil poured over her mouth and then lit fire. She came under flame. Her father-in-law, mother-in-law ran away therefrom. She came out from her house shouting whereupon, the villagers came and extinguished fire. Then they took her to hospital. A day prior to the occurrence she had come from her Naihar. Her mother-in-law, father-in-law began to assault by saying that they are unable to bore her expenses and so, they will not allow her to stay. They have also threatened that they will not take food prepared by her. Her husband resides at Delhi. Her husband was also not looking after her. Her father-in-law, mother-in-law asked for a Hero Honda motorcycle. In Chausa she was examined then at sadar Hospital Buxar then, Banaras then at Gajipur. She is still under treatment. On account of fire she has sustained injuries over her Face, Head and Body. Identified the accused. She has further stated that since the day of occurrence she is being cared by her



Naiharwala. None from her *Sasural* visited her place. During cross-examination at para 12 she has denied the suggestion that her husband was ready to keep her but, she herself disowned.

16. In para 13 she has stated that now she is not ready to live with her husband. In para 14 she has stated that marriage was solemnized about a year ago from the date of occurrence. After marriage, she came to her *Sasural* where she remained for six months. During course thereof, none had taken food having been cooked by her. She had further stated at para 15 that one day prior to the occurrence she had come to her *Sasural*. In para 16 she had stated that none had accompanied her from *Naihar* rather she had come alone from her *Naihar*. In para 17 she had stated that after taking permission from her *Naiharwala* she has come to her *Sasural*. In para 18 she had stated that there was no any dispute before 23.04.2014 nor there was any *Panchayati*. There was no demand of motorcycle before 23.04.2014. On 23.04.2014 there was dispute amongst her as well as father-in-law, mother-in-law. The dispute arose soon after coming to her *Sasural*. The dispute prolonged the whole night. Then at para 25 she had categorically answered on a question that after commission of the occurrence the accused persons ran away. At para 26 she had stated that the occurrence took place on



24.04.2014 at about 9.00 a.m. In para 27 she had stated that she met with her father at Buxar Hospital. In Para 28 she had stated that police had recorded her statement on the same day at Chausa Hospital. At that very time, her father was not there. In Para 30 she had stated that she was groaning due to burn pain, but she was able to speak. Then had denied the suggestion having at para 31 and 32 that her *Sasuralwala* had incurred whole medical expenses. She denied the suggestion that her husband took her to Banaras for the treatment. She had stated that her father and brother took her to Buxar. Then had denied the suggestion that at the time of occurrence her father-in-law, mother-in-law were engaged by Ramnath Koiari for harvesting and as she has come from Naihar after quarreling hence attempted to commit suicide.

17. P.W. 1 and P.W. 2 are the co-villagers of the appellants. P.W. 1 and P.W. 2 both have stated that after hearing alarm, they came to the house of Chandrawati Devi. Then there happens to be difference in their tone, as P.W. 1 had stated that he called the villagers who lifted Kiran Devi from the roof and then fire was extinguished. During course of cross-examination she had stated that at that very time, the accused persons have gone to harvest. While P.W. 2 had stated that they have



extinguished the fire who lit the fire they have not seen. Kiran Devi had not disclosed anything. During course of cross-examination he had stated that both the accused have gone to harvest. P.W. 3 is the father. He, certainly is not an eye-witness to the occurrence and deposed whatever been disclosed by the victim whom he met at sadar Hospital and during course of cross-examination at para 5 he had admitted that he had not seen the occurrence. In para 6 of his cross-examination he had stated that the *Sasuralwala* of Kiran Devi took her to the Hospital and then abandoned her. He got Kiran Devi treated. He incurred all medical expenses. Then denied the suggestion so far other aspect is concerned. Para 20, 21, 22 and 23 is there wherein he had stated that he had not met with the father-in-law, mother-in-law of his daughter since after the occurrence. He had further stated that after having information about the occurrence, he had gone to sadar Hospital where he met with victim who was treated at Buxar sadar Hospital. P.W. 7 is the brother of the victim. During examination in chief, there happens to be some sort of development over demand of dowry, which in the facts and circumstances in the case, the learned lower court had disbelieved the same hence, needs no reference. Then had stated that after coming to know about the occurrence, they came to



the Hospital and met with Kiran Devi. Kiran Devi had disclosed the whole event. Then after having been referred by the doctor, took her to Banaras, then to Gajipur where she was properly treated. During cross-examination at para 12 he had denied the suggestion that medical expenses was incurred by the *Sasuralwala*. In para 13, 14 he had stated that his sister was treated at Banaras in Maxwell Hospital for more than a month. In para 15 he had stated that he met her sister at Buxar sadar Hospital. In para 18 he had stated that his sister had gone to her *Sasural* after having their consent. Then had denied the suggestion.

18. P.W. 6 is the part I.O., who took charge of the investigation on 05.07.2014, received supplementary injury report, completed investigation and then submitted charge-sheet. He has done nothing. P.W. 9 is the police official who had recorded his *fardbeyan* and then, on the basis thereof, formal F.I.R. was drawn up (exhibited). He had stated that during course of *fardbeyan*, victim had not disclosed with regard to demand of motorcycle. He had further stated that victim had not alleged that with an intention to kill she was burnt. He had not seen any cloth soaked with K. Oil. As stated above, nothing has been adduced on behalf of defense.



19. From the evidence available on the record, more particularly, that of P.W. 4, it is evident that she was not cross-examined on the occurrence. In the background of the fact that the incident of burning has not been controverted on account thereof, there should have been some sort of cross-examination in the background of suggestion having been given to the P.W. 4 in order to give a probability that it was a case of attempted suicide. Unless and until there happens to be an opportunity before the witness to explain the circumstances, nothing could be considered adverse to that. That being so, more suggestion during course of cross-examination will not give any benefit to the appellants.

20. In likewise manner, though neither D.W. has been examined nor the appellants who were themselves capable to enter into witness-box as provided under Section 315 of the Cr.P.C. came to explain the same. P.W. 1 as well as P.W. 2 were also not cross-examined on that very score. What was elicited that P.W. 1 had stated that the victim was over the roof. While P.W. 2 had not spoken on that very score, makes the situation more clumsy. In any view of the matter, the occurrence had taken place inside the house of the appellant and so, apart from the fact that victim had reiterated the version pointing out her



finger against the appellants being author of the crime, in terms of section 106 of the Evidence Act, the obligation was over the appellants to explain the circumstances. Furthermore, it is also evident that during course of argument the learned counsel for the appellants could not succeed in showing that on account of non-examination of the I.O. he has suffered.

21. In **Lahu Kamlakar Patil v. State of Maharashtra** reported in (2013) 6 SCC 417.

“18.It is an accepted principle that non-examination of the investigating officer is not fatal to the prosecution case. In Behari Prasad v. State of Bihar (1996) 2 SCC 317, this Court has stated that non-examination of the investigating officer is not fatal to the prosecution case, especially, when no prejudice is likely to be suffered by the accused. In Bahadur Naik v. State of Bihar(2000) 9 SCC 153, it has been opined that when no material contradictions have been brought out, then non-examination of the investigating officer as a witness for the prosecution is of no consequence and under such circumstances, no prejudice is caused to the accused. It is worthy to note that neither the trial Judge nor the High Court has delved into the issue of non-examination of the investigating officer. On a perusal of the entire material brought on record, we find that no explanation has been offered. The present case is one where we are inclined to think so especially when the informant has stated that the signature was taken while he was in a drunken state, the panch witness had turned hostile and some of the evidence adduced in the court did not find place in the statement recorded under Section 161 of the



Code. Thus, this Court in Arvind Singh v. State of Bihar(2001) 6 SCC 407, Rattanlal v. State of J&K(2007) 13 SCC 18 and Ravishwar Manjhi v. State of Jharkhand(2008) 16 SCC 561, has explained certain circumstances where the examination of investigating officer becomes vital. We are disposed to think that the present case is one where the investigating officer should have been examined and his non-examination creates a lacuna in the case of the prosecution.”

22. Taking into account overall situation more particularly, evidence of P.W. 9 who had not spoken with regard to presence of any cloth having smell of K.Oil, absence of evidence of doctor P.W. 8 who had stated that he had not found smell of K. Oil coming out from the injuries. Further, in the background of the fact that victim had herself admitted that right from her arrival on 23.04.2014, they all quarrelled whole night and on the following day, the occurrence took place, might be out of provocation. That being so, the intention could not be gathered and in likewise manner the knowledge whereupon the conviction so recorded by the learned lower court with regard to section 307 of the Indian Penal Code did not find favour. Though from the evidence of the doctor, it is evident that he failed to identify the degree of burn and in likewise manner, category whereunder the injury could have been bracketed. However, considering the fact that face of female has burnt and



on account thereof it could be a grievous injury and for that, section 326 of the Indian Penal Code is found duly applicable. As such the appellants are found and held to be guilty for an offence punishable under Section 326 of Indian Penal Code.

23. Now coming over sentence, it has been submitted at the end of learned counsel for the appellants that appellant Chandrawati Devi happens to be under custody since 19.09.2014 and further, the co-appellant Bhagwan Das @ Bhagwan Das Ram has also remained under custody during the intervening period as well as from the date of judgment dated 30.03.2017 having no specific allegation. Also submitted that they are ready to pay compensation and for that fine amount be enhanced.

24. Considering the facts and circumstances of the case in consonance with the modification whereunder an offence under Section 326 Indian Penal Code has been found to be applicable in place of 307 Indian Penal Code, that too not supported by the nature of injury rather location of injury over face of a female the sentences are directed to be the period having undergone however, the quantum of fine at the end of the learned lower court of Rs. 20,000/- is enhanced to Rs. 50,000/- and on deposit, Rs. 75,000/- will be paid to the informant/victim



P.W. 4 on proper identification after having her appearance on notice. The fine amount should be deposited within four weeks failing which, each of the appellants will have to undergo R.I. for one year, additionally.

25. In terms of modification as indicated above, this appeal is partly allowed.

(Aditya Kumar Trivedi, J)

vinita/-

AFR/NAFR	AFR
CAV DATE	NA
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