

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.70 of 2013

Arising Out of PS. Case No.-103 Year-2007 Thana- AMNAUR District- Saran

Surendra Prasad @ Munna, Son of Late Kashinath Prasad, resident of Village
- Amnour Dharampur Jaffer, Police Station - Amnour, District - Saran

... .. Appellant

Versus

The State Of Bihar

... .. Opposite Party

with

CRIMINAL APPEAL (DB) No. 56 of 2013

Arising Out of PS. Case No.-103 Year-2007 Thana- AMNAUR District- Saran

1. Kanhaiya Prasad, Son of Late Kashinath Prasad, resident of Village-Amnour
Dharampur Jaffer, Police Station -Amnour, District-Saran.

2. Indu Devi, Wife of Kanhaiya Prasad, resident of Village-Amnour
Dharampur Jaffer, Police Station -Amnour, District -Saran

... .. Appellants

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

(In CRIMINAL APPEAL (DB) No. 70 of 2013)

For the Appellant : Sri Aaruni Singh, Advocate
Smt. Rani Kumari, Advocate

For the Opposite Party : Sri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 56 of 2013)

For the Appellants : Ms. Divya Verma, Amicus Curiae

For the Opposite Party : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 15-07-2019

1. In both the appeals appellants were tried together and
by common judgment they were convicted and sentenced, and as
such, both the appeals were taken up together for hearing and are
being disposed of by this common judgment.

2. All the aforesaid three appellants by judgment dated
05.12.2012 have been convicted for the offence under Section
304B and 201/34 of the Indian Penal Code, 1860 [hereinafter
referred to as the "I.P.C."] and by order dated- 06.12.2012 under
Section 304B of the I.P.C. all the appellants have been directed to



undergo imprisonment for life. Under Section 201/34 of the I.P.C. all the appellants have been sentenced to undergo rigorous imprisonment for two years and to pay fine of Rs. 2,000/- each. In case of default in payment of fine they were directed to further undergo rigorous imprisonment for three months. All the sentences were directed to run concurrently. The judgment of conviction and sentence was passed by Shri Indradeo Singh, learned Adhoc Additional District & Sessions Judge -IV, Saran at Chapra [hereinafter referred to as the “trial judge”] in Sessions Trial No. 30 of 2010 { arising out of Amnour P.S. Case No. 103 of 2007}.

3. The prosecution case has been initiated on the basis of written information submitted on behalf of Gandhi Prasad - P.W. 5 (uncle of the deceased). In the written information informant disclosed that his niece -Rita Devi (deceased) was married about 04 years back with Surendra Prasad @ Munna Prasad [sole appellant in Cr. Appeal (D.B.) No. 70 of 2013], S/o Late Kashinath Prasad, resident of village - Amnour Dharampur Jaffer, P.S. - Amnour, District - Saran according to Hindu rites. Immediately after marriage his son-in-law / Surendra Prasad @ Munna [appellant in Cr. Appeal (D.B.) No. 70 of 2013] started assaulting his niece and pressurizing her to bring Hero Honda motorcycle and Colour T.V. from her parent as dowry. He was repeatedly saying



that till the demand of dowry was not fulfilled, she would be tortured in similar manner and finally he would eliminate her. On 22.10.2007 at about 7.00 Hours on a telephone call from unknown person he got information that his niece was burnt to death by – (1) Brajnandan Rai, (2) his wife i.e. wife of Brajnandan Rai, (3)- Surendra Prasad @ Munna Prasad [appellant in Cr. Appeal (D.B.) No. 70 of 2013], (4) Krishna Prasad (not sent up for trial), (5) Kanhaiya Prasad [appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013], (6) Indu Devi [appellant no. 2 in Cr. Appeal (D.B.) No. 56 of 2013] W/o Kanhaiya Prasad, resident of village – Amnour Dharampur Jaffer, (7) Master of Brajnandan Rai High School, (9) his wife, (10) Arjun Mahto [not sent up for trial], (11) Akhilesh Mahto @ Ukali (not sent up for trial), (12) Mithilesh Mahto (not sent up for trial), all residents of village - Mobarakpur, P.S.- Marhowrah, District- Saran. When the informant with some of the villagers and his nephew went there and reached the in -law's house of his niece, he found that the door was locked. The informant claimed that he was having belief that the aforesaid accused persons due to non fulfillment of dowry had burnt his niece to death and disappeared the dead body. He further stated that his niece (deceased) had informed him and his elder brother -Surendra Prasad (P.W. 2) and other family members that her



husband (appellant- Surendra Prasad @ Munna) was having illicit relation with the wife of Master of Brajnandan Rai High Schol, Amnour. On the bottom of the written report he put his thumb impression. The scribe of the written report was Kameshwar Prasad, S/o Late Nageshwar Prasad of village -Pirona which has been written on the left side in the bottom of the written information. As a witness to the written information Vijay Kumar Singh (P.W. 11) put his signature. On the basis of the said written report on the same day i.e. on 22.10.2007 at 15.00 Hours (3.00 P.M.) a formal F.I.R. vide Amnour P.S. Case No. 103 of 2007 was registered for the offence under Section 304(B)/201/34 of the I.P.C. against:-

- 1- Brajnandan Rai [not sent up for trial].
- 2- wife of Brajnandan Rai [not sent up for trial]
- 3- Surendra Prasad @ Munna [sole appellant in Cr. Appeal (D.B.) No. 70 of 2013]
- 4- Krishna Prasad [not sent up for trial].
- 5- Kanhaiya Prasad [appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013]
- 6- Indu Devi [appellant no. 2 in Cr. Appeal (D.B.) No. 56 of 2013]
- 7- Arjun Mahto [not sent up for trial].
- 8- Akhilesh Mahto [not sent up for trial].
- 9- Mithilesh Mahto [not sent up for trial].

The F.I.R. was received in the court on 23.10.2007.

After registering F.I.R. Police investigated the case however during investigation accusation against six accused persons except three aforesaid appellants was found un-true and as such, accused –Brajnandan Rai, his wife, Krishna Prasad, Arjun Mahto, Akhilesh



Mahto and Mithilesh Mahto were not sent up for trial. However on 13.08.2009 charge-sheet was submitted against aforesaid three appellants. After submission of charge-sheet, on 17.12.2009 learned Chief Judicial Magistrate, Saran at Chapra took cognizance of offence and the case was committed to the court of Sessions on 18.01.2010 and it was numbered as Sessions Trial No. 30 of 2010. On 18.02.2010 charge under Section 304(B)/201/34 of the I.P.C. was framed against all the three appellants which was denied by them and they claimed to be tried.

4. During the trial to establish its case on behalf of the prosecution altogether 19 witnesses were examined. Out of 19 witnesses, P.W. 1- Alok Kumar @ Babloo Kumar is the brother of the deceased, P.W. 2 – Surendra Prasad [father of deceased], P.W. 4 - Maya Devi [wife of informant and aunt of deceased], P.W. 5- Gandhi Prasad [informant and uncle of deceased] and P.W. 11- Vijay Kumar Singh [cousin brother of the deceased] were examined on the point regarding administering torture due to non fulfillment of demand of dowry and information regarding death of deceased due to burn injury. P.W. 3 (Vinay Prasad), P.W. 6 (Deo Narayan Prasad) and P.W. 7 (Umesh Kumar Singh), who were co-villagers of the appellants and also neighbour have deposed that the deceased died due to accidental death since she was caught by



fire and one of the witnesses i.e. P.W. 3 (Vinay Prasad) has said that at the time of accidental death in the house of the appellants there were none except the deceased. P.W. 9 (Ramesh Kumar) who is another co-villager of the deceased and appellants had deposed regarding false implication of the accused persons by the prosecution. P.W. 10 [Shantanand Singh], P.W. 12 [Mahesh Prasad Singh] and P.W. 13 [Mahesh Singh] {all co -villagers of appellants and deceased} are hearsay witness on the point that it was accidental death however since those witnesses have not disclosed as to from whom they got information the same remained uncorroborated, and as such, there is no reason for reliance on such evidence. P.W. 14 and P.W. 15 namely Akhilesh Singh and Rakesh Kumar Yadav respectively are witnesses to the inquest report. P.W. 14 – Akhilesh Singh though had identified his signature on the inquest report but he stated that nothing was done in his presence and only on plain paper his signature was obtained, however, P.W. 15 has identified his signature on inquest report and said that in his presence inquest report was prepared. P.W. 16 [Shiv Kumar] is another co-villager of appellant and deceased who was hearsay witness but in his evidence he has stated that on the date of occurrence one of the accused -Krishna Prasad was not present in the village rather he was residing in Bokaro Steel City. P.W. 19



[Dr. Jaiprakash Singh] on 24.10.2007 was posted as Medical Officer in Sadar Hospital , Chapra and he proved the post mortem examination report, which was marked as Ext. 6. P.W. 17 [Sudeshwar Ravidas] on 22.10.2007 was posted as A.S.I. Amnour Police Station and had investigated the case and during evidence he proved formal F.I.R. marked as Ext. 4 and inquest report [Ext. 5]. P.W. 18 [Lalit Narayan Pandey] is the 2nd Investigating Officer who took charge of investigation on 30.10.2008 however except obtaining attachment order from the court he had done nothing during investigation and P.W. 8 (Ram Daresh Choudhary) on 12.05.2009 had taken up investigation and only he submitted charge sheet. He has further proved the writing and signature in the margin of Ext. 1, which was marked as Ext. 2.

5. After completion of prosecution evidence, on 15.12.2011 evidences and circumstances which were collected during the trial against the appellants were explained to them and their statement under Section 313 of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] was recorded. On 04.12.2012 further statement of one of the accused -Kanhaiya Prasad [appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013] was recorded under Section 313 of the Cr.P.C. Thereafter, as defence witness one Satyendra Prasad was examined as D.W. 1



who only proved certificates issued by Local Mukhiya which were marked as Ext. A and Ext. A/1. Those exhibits were brought on record to show that on the date of occurrence appellants with other three brothers were residing separately. Of- course Krishna Prasad was exonerated by Police, during the trial he was associated as accused under Section 319 of the Cr.P.C. however his case was separately tried.

6. Sri Aaruni Singh, learned counsel, assisted by Smt. Rani Kumari, learned counsel for the appellant Surendra Prasad @ Munna (H/o deceased) in Cr. Appeal (D.B.) No. 70 of 2013 after placing entire evidence has argued that it is a peculiar case in which right from the very beginning prosecution has come out with a false and concocted accusation. He highlights that the scribe of the written report i.e. Kameshwar Prasad was purposely not produced during the trial knowing well that had he been produced for examination he would have attracted prosecution due to the reason that in the evidence it has come that scribe of the written report had introduced some of his co-villagers as accused in the written report and in written report itself in the bottom he has given false address as if he was resident of village- Pirona whereas during evidence it has come that he was resident of Mobarakpur and he was brother of son- in- law of P.W. 5. Number of witnesses



during evidence have stated that those accused persons, namely: Akhilesh Mahto, Mithilesh Mahto, Arjun Mahto , Brajnandan Rai and Master and his wife were residents of Mobarakpur and it has come that scribe of the written report -Kameshwar Prasad was having animosity with them and this is the reason that during investigation accusation against them was not found true and Police exonerated them. He further submits that though P.W. 1 – Alok Kumar @ Babloo Kumar [brother of the deceased], P.W. 2 – Surendra Prasad [father of the deceased], P.W. 4 - Maya Devi [wife of informant] and P.W. 5 – Gandhi Prasad [uncle of deceased and informant of the case] during evidence have come out with a case as if deceased was tortured due to non-fulfillment of demand of dowry but their attention was drawn to their previous statement recorded during investigation and contradiction was taken from the Investigating Officer. During evidence of Investigating Officer it has come that none of aforesaid witnesses during investigation had whispered against appellants regarding demand of dowry and torture.

7. Sri Aaruni Singh, learned counsel for the appellant -Surendra Prasad @ Munna has highlighted the evidence of P.W. 3 (Vinay Prasad), who was neighbour of the appellant and deceased that in his evidence fact has come that this witness immediately



after the occurrence had reached the house of the appellant and saw the dead body. He disclosed that deceased was caught by fire of *dhibri* (lamp) and at the time of occurrence all other family members were not present rather they had gone out of house for “Darshan” during *Durga Puja*. Sri Singh, learned counsel for the appellant has also referred to the evidence of P.W. 6 – Deo Narayan Prasad [another co-villager of the appellant] to impress upon the court that this witness has also said that it was an accidental death. Similar is the evidence of Umesh Kumar Singh (P.W. 7) who is another co- villager. He further submits that despite the fact that some of witnesses, who in categorical term has stated that it was an accidental death, none of those witnesses were declared hostile nor any contradiction has been taken. He submits that once during the trial any prosecution witness gives a picture which is contrary to prosecution case, in such circumstances, prosecution case though otherwise against the accused, may not be relied upon since entire evidence comes into cloud of doubt. He further submits that P.W. 14 (Akhilesh Singh) who was introduced as witness to the inquest report, in his evidence has stated that only on blank paper his signature was obtained. Meaning thereby that this witness has also not supported even the inquest report. Of -course Sri Aaruni Singh has not disputed the fact that P.W. 15



(Rakesh Kumar Yadav) had stood by his evidence regarding preparation of inquest report at the place and time of occurrence where dead body was found. In sum and substance it has been argued that on the basis of aforesaid evidence prosecution has not been able to establish its case that just prior to the alleged occurrence deceased was tortured for non fulfillment of demand of dowry. The evidence which has been brought on record would show that allegation that deceased was tortured and demand of dowry was made, was not disclosed during initial period rather those facts were developed during the trial and this is the reason that witnesses had not stated such fact during investigation before the Investigating Officer. On aforesaid grounds it has been argued that judgment of conviction and sentence is liable to be set aside.

8. Ms. Divya Verma, learned Amicus Curiae appearing in Cr. Appeal (D.B.) No. 56 of 2013 on behalf of aforesaid two appellants has firstly argued that as per the evidence particularly evidence of P.W. 3 (Vinay Prasad) it has come that appellant-Surendra Prasad @ Munna of Cr. Appeal (D.B.) No. 70 of 2013 and two appellants in Cr. Appeal (D.B.) No. 56 of 2013 were residing separately on the date of occurrence. Besides this, it has been argued that prosecution evidence appears to be not reliable. She submits that father of the deceased – P.W. 2 (Surendra Prasad)



though in examination- in- chief has stated that he received information regarding the occurrence from his brother (informant), in paragraph 13 of his cross- examination he accepted that he got information from the accused persons regarding the occurrence. She further highlights that the father of the deceased -P.W. 2 (Surendra Prasad) in paragraph 12 of his cross-examination has admitted that the person who dies due to burn injury are not set on pyre for further burning. She submits that it has come in evidence particularly evidence of P.W. 3 (Vinay Prasad) to the extent that the dead body of deceased after death was brought to the bank of Gandak river and from the bank of river itself dead body was subsequently recovered and inquest report was prepared. Ms. Verma has further highlighted that appellants have been convicted under Section 304(B) of the I.P.C. without compliance of provisions contained in Section 113B of the Indian Evidence Act, 1872. It has been argued that for attraction of Section 304(B) of the I.P.C. it is mandatory on the part of the prosecution to firstly establish that demand of dowry was made and just prior to the occurrence she was tortured due to non fulfillment of demand of dowry, however in the present case it has come that it was not a case of prosecution that deceased was tortured due to non -fulfillment of demand of dowry. It is true that



during examination -in- chief the witnesses have come out with a case that deceased was tortured due to non- fulfillment of demand of dowry but on attention being drawn to their previous statement and in the evidence of Investigating Officer contradiction has been brought on record suggesting that during investigation no such fact was disclosed by the witnesses. Learned Amicus Curiae has further placed reliance on a judgment of the Hon'ble Supreme Court reported in **AIR 1980 SUPREME COURT 1382 State (Delhi Admn.) v. V.C. Shukla** to highlight that if in a criminal trial evidence is brought on record that a witness has falsely implicated the accused persons, reliance may not be placed on such evidence and the case of prosecution may be considered as doubtful. On aforesaid grounds a prayer has been made for setting aside the judgment of conviction and sentence.

9. Sri Ajay Mishra, learned Additional Public Prosecutor opposing the appeals has argued that it is true that scribe of the written report, which is the basis of F.I.R. has not come forward to be examined as prosecution witness but the informant who had put his thumb impression on the written report has supported the version of prosecution case. Besides this, he has highlighted that it is admitted case that deceased who was married to appellant- Surendra Prasad @ Munna died while she was in custody of



appellant -Surendra Prasad @ Munna and as such, onus was on the accused to explain as to how the death had occurred. He further submits that recovery of dead body from the bank of river that too in burnt condition makes it clear that deceased was done to death by burning and with a view to conceal or disappear the evidence her dead body was thrown which was recovered on 23.10.2007. He further submits that in view of the fact that witnesses particularly brother of the deceased, father of the deceased and other family members have stated that demand of dowry was repeatedly made and she was administered torture and done to death, the learned trial judge has rightly passed the judgment of conviction under Section 304(B) of the I.P.C.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record and after going through the same *prima facie* we are of view that prosecution has not been able to establish its case beyond all reasonable doubts rather prosecution case appears to be suspicious right from the very beginning. This is the reason that in the written report which is the basis of F.I.R. number of persons were arrayed as accused. It has come during evidence that scribe of the written report, who was brother of son- in- law of informant, due to animosity had falsely implicated number of persons as accused who were his co-



villagers. False implication is on the face of the written report, since the scribe purposely with oblique motive has described as if he was resident of village -Pirona whereas during evidence it has been established that he was resident of village - Mobarakpur. This conduct itself shows regarding fabrication of the case against the accused persons. The false implication was itself detected by the Investigating Officer during investigation and as such out of 09 accused persons who were arrayed as accused in the F.I.R. six (06) were exonerated by the Police itself during investigation and they were not sent up for trial.

11. However before proceeding it would be necessary to firstly refer to the evidence of informant -P.W. 5 (Gandhi Prasad). P.W. 5 despite the fact that in the written information he had arrayed nine persons as accused, in examination -in- chief he reduced the number of accused persons to four (04). He further has stated that marriage was solemnized 2 ½ years back, whereas in the written report marriage was solemnized about four years back. There is total inconsistency on the point of date of marriage in the evidence of prosecution witnesses. Even Investigating Officer has not bothered to collect any material to establish the date of marriage. We are of the opinion that for holding one guilty for the offence under 304(B) of the I.P.C. it is prime duty on the



prosecution to establish that marriage of deceased was held within seven years from the date of occurrence. However, in the present case the prosecution is not consistent regarding date of marriage of the deceased with the appellant -Surendra Prasad @ Munna. This is reason that informant in the written report before the Police has stated that marriage of deceased with appellant – Surendra Prasad @ Munna was solemnized about 04 years back but during evidence he has come out with a case that marriage was solemnized about 2 ½ years back.

12. Besides this, in examination- in- chief P.W. 5 stated that after marriage *bidagari* took place and accused -Surendra Prasad [appellant in Cr. Appeal (D.B.) No. 70 of 2013], Krishna Prasad [not sent up for trial], Kanhaiya Prasad [appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013] and Indu Devi [appellant no. 2 in Cr. Appeal (D.B.) No. 56 of 2013] started threatening the deceased for providing Colour T.V. and Hero Honda motorcycle whereas in the written report he had described that nine accused persons had demanded dowry and torturing the deceased. He further disclosed that deceased was regularly giving information regarding torture and demand of dowry through telephone. He further submits that while deceased had come on the eve of छठ festival then she had described about the aforesaid demand of



dowry and torture. At this juncture it is relevant to note the fact that one of the witnesses in his evidence has stated that while deceased had come to her parental house on the eve of *Chath Puja* she had described this fact. Sri Aaruni Singh, learned counsel for the appellant has rightly submitted that छठ festival comes much after *Durga Puja* festival. Besides this, witnesses have stated that while she had come during छठ festival she had informed whereas in the case occurrence had taken place during *Durga Puja* festival. It was correctly submitted by Sri Aaruni Singh, learned counsel for the appellant- Surendra Prasad @ Munna that छठ Puja comes much after the end of *Durga Puja* and as such the story built up by the prosecution that during छठ Puja she described regarding demand of dowry and torture appears to be not believable. This witness further stated that deceased was burnt to death and again described the name of only four accused persons in eliminating the deceased. This information was received by him on telephone and then he along with P.W. 11 (Vijay Kumar Singh), Deepak Prasad [not examined], Suresh Prasad [not examined], Malti Kumari [not examined], informant's wife [P.W. 4] and Baby Devi [not examined] went there and visited the house of appellant -Surendra Prasad @ Munna where he saw mark of smoke on the wall and also stated that deceased was burnt to death after tying her on पलंग



(bed) and पलंग was got burn and dead body was not there. In paragraph 3 of his evidence he stated that after two days the dead body was found near Banni Bahuara forest near the bank of river. Of -course in examination -in- chief he has stated that the deceased was tortured and demand of dowry was made, in cross -examination in paragraph 6 his attention was drawn to his previous statement. At the time of examination of the Investigating Officer (P.W. 17) contradiction was taken as to whether this witness had stated before the Police during investigation or not the name of aforesaid four named accused persons. In his evidence though he has stated regarding involvement of Arjun Mahto, Akhilesh Mahto, Brajnandan Mahto and his wife, his attention was drawn to his previous statement in paragraph 6 of his evidence and contradiction was taken from P.W. 17 /Investigating Officer in paragraph 16 in which he had stated before the Police that Kameshwar Prasad (scribe) of the written report himself had written the name of Arjun Mahto, Akhilesh Mahto, Mithilesh Mahto, Brajnandan Rai and his wife as accused. P.W. 5 though in his written information had stated that his son- in-law/ Surendra Prasad @ Munna [appellant in Cr. Appeal (D.B.) No. 70 of 2013] was torturing his niece and demanding dowry but in his evidence he developed its case as if besides husband of the



deceased, Krishna Prasad, Kanhaiya Prasad [Appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013] and Indu Devi [Appellant no. 2 in Cr. Appeal (D.B.) No. 56 of 2013] were also threatening and demanding Hero Honda motorcycle and Colour T.V. In paragraph 8 of his cross- examination he stated that fifteen days after the occurrence there was दशहरा festival. He further deposed that on getting information regarding the occurrence he went to in- law's house of the deceased where he found that house was closed by iron grill gate. Grill was locked however he did not endeavor to open the lock of the grill. In paragraph 9 of his cross -examination he further stated that while he arrived with Police then grill was opened and Police had seized articles such as bed and पलंग etc. and he also put his L.T.I. however during the trial not even a single chit of paper has been brought on record to show as to whether any seizure list was prepared or not nor the Investigating Officer has stated regarding any seizure. In paragraph 11 of his cross examination he stated that in the village - Banni Bahuara his sister Rukminiya was married with Satrudhan Prasad Singh. Bani Bahuara was 10-12 Kosh away from the village: Amnour. In paragraph 12 of his cross examination he stated that Kameshwar Prasad (scribe) of the written report was resident of Mobarakpur which was about 05 Kosh away from Amnour Dharampur Jaffer.



He clarified that 01 Kosh corresponds to 3.00 K.M. however in paragraph 13 of his cross- examination, P.W. 5 deposed that he lodged the case on suspicion. At this juncture, the court is in agreement with the submission of Ms. Divya Verma, learned Amicus Curiae that however strong suspicion may be, no conviction can be approved on such suspicion. Accordingly, in view of the statement made by the informant -P.W. 5 regarding lodging of case on suspicion, the court is of opinion that on such presumption conviction may not be approved.

13. P.W. 1 -brother of the deceased (Alok Kumar @ Babloo Kumar) in his evidence has stated that on 22.10.2007 in the morning at 8.00 Gandhi Prasad (P.W. 5) had telephoned from Patna that Rita (deceased) was burnt to death in her in- law's house. Thereafter he went to Amnour to the house of Surendra Prasad @ Munna Prasad [appellant in Cr. Appeal (D.B.) No. 70 of 2013]. When he reached there he found that grill was locked. Then from the back side of the house he entered and saw that ground floor was closed however on the first floor, where his sister was residing, he noticed that bed and पलंग was having burn mark and he did not find the dead body. All the accused persons of the said house had fled away. Thereafter he went to Police Station and subsequently on 23rd October, 2007 he got information from



Police regarding recovery of dead body. Then he along with Suresh Prasad and Kameshwar Prasad [not examined] went to Police Station and identified the dead body. He also identified the application which he handed over to Police which was in his writing and signature. The same was marked as Ext. 1. He further stated that dead body was taken possession by him and he gave written information which was marked as Ext. 1/1. In paragraph 4 he stated that appellant- Surendra Prasad @ Munna was demanding T.V. and Hero Honda motorcycle. Indu Devi, Kanhaiya Prasad and Krishna Prasad were torturing the deceased for T.V. and motorcycle. He further stated in paragraph 4 of his evidence that in the village itself he got information that accused persons had jointly burnt Rita Kumari and threw the dead body. In paragraph 10 of cross-examination he further stated that Kameshwar Prasad (scribe of the written report) was resident of Mobarakpur. At this juncture it is necessary to notice that Kameshwar Prasad in the written report has shown his address as resident of village- Pirona. In paragraph 11 of his cross-examination he stated that the dead body had already swollen. In paragraph 12 of his cross examination his attention was drawn to his previous statement in which he stated that before the Police he had stated the fact which he stated in paragraph no. 1 and 2



however at the time of evidence of Investigating Officer -P.W. 17 contradiction was taken from the previous statement of P.W. 1 -Alok Kumar @ Babloo Kumar and on examination it is evident that before the Police during investigation he had not stated such fact particularly regarding demand of dowry and torture. Meaning thereby that during trial a case was developed as if deceased was done to death due to torture since there was non fulfillment of demand of dowry and motorcycle.

14. P.W. 2 – Surendra Prasad [father of the deceased] who has stated almost in same manner as if his daughter was being tortured due to non providing of Hero Honda Motorcycle and Colour T.V. as dowry and she was also assaulted. This witness further stated that marriage of deceased was solemnized on 31.05.2005 with appellant -Surendra Prasad @ Munna. His attention was drawn to his previous statement regarding aforesaid fact however on examination of evidence of P.W. 17 particularly paragraph nos. 10, 11, 12 and 13 it is evident that exactly no such fact was disclosed by him to the Police in his statement recorded under Section 161 of the Cr.P.C. Meaning thereby that this witness has also developed a case regarding non -fulfillment of the demand of dowry. This witness in paragraph 12 of his cross -examination has stated that in case of death due to burning the dead body was



not being put on pyre for cremation. In paragraph 13 of his cross-examination he stated that for the first time on 22.10.2007 he received information regarding the occurrence from the accused persons. At that very time he was doing job in Patna and residing at Patna with family. Evidence of P.W. 2 also does not support the prosecution case since the fact which he stated was a developed story not exactly disclosed during investigation.

15. P.W. 3 – Vinay Prasad is a co-villager of the deceased and appellant. He in his examination- in- chief he stated that Surendra Prasad was his neighbour in whose house fire had taken place in which Rita Devi was burnt to death. He stated that he was not aware as to how fire had taken place. He stated that deceased died at the place of occurrence. Thereafter Police arrived. He also saw the dead body. As per this witness occurrence had taken place during दशहरा period. Family members of deceased had gone outside for darshan दर्शन . On that day deceased was having pain in her leg and this was the reason that she had not gone for दर्शन . He further clarified that the in- law's member of deceased had never demanded for motorcycle or Colour T.V. The deceased died since her sari caught with fire from छिबरी (lamp) and it was not a case of intentional burning or suicide. Regarding burning information was given to the father of the deceased on the



same day. He stated that he along with other after death of a person used to carry dead body to the bank of river - Gandak. He clarified that the person who dies due to burning, the dead body was not being cremated. As per this witness, Krishna Prasad, one of the co-accused, was residing with his family at Bokaro. Krishna, Kanhaiya [appellant no. 1 in Cr. Appeal (D.B.) No. 56 of 2013] and Surendra [sole appellant in Cr. Appeal (D.B.) No. 70 of 2013] were residing separately and none had tortured the deceased. On examination of the evidence of P.W. 3 it is evident that this witness was neither declared hostile nor his attention was drawn to his previous statement. In view of evidence of P.W. 3 there is serious doubt on the prosecution case.

16. P.W. 4 - Maya Devi [wife of informant] again has deposed like P.W. 5 (informant) but on attention being drawn to her previous statement in paragraph 5 and on examination of evidence of P.W. 17 at paragraph 14 and 15 it is evident that the fact which she stated in her examination- in- chief was not exactly disclosed by her during investigation. Meaning thereby that this witness has developed the case.

17. P.W. 6 – Deo Narayan Prasad and P.W. 7 - Umesh Kumar Singh both are co- villagers of the appellants and deceased. P.W. 6 in his evidence has stated that occurrence had taken place



in the night between 9.00 P.M. and 10.00 P.M. At that very time he was in his house. On hearing *hulla* that deceased was caught with fire he went to her house and saw that deceased had already died due to the burn injury. He stated that he got information that she was caught fire by *ढिबरी* (lamp). He further stated that family members / inmates of deceased gave information to parents of the deceased. In his cross- examination this witness clarified that earlier neither any demand of dowry was made by in -laws of the deceased nor she was tortured and further reiterated that information regarding the occurrence was given to the father of the deceased by the in -laws of the deceased. This witness further stated that in a case of death due to burning the dead body was not being cremated and it was thrown to the bank of river -Gandak. He further stated that one of the co- accused/ Krishna Prasad was residing in Bokaro and Krishna, Kanhaiya [appellant no. 1 in Cr. Appeal (D.B.) No.56 of 2013] and Surendra [sole appellant in Cr. Appeal (D.B.) No. 70 of 2013] were separate.

18. P.W. 7 (Umesh Kumar Singh) has also stated that all the three brothers of the appellant- Surendra Prasad @ Munna Prasad were residing separately.

19. P.W. 9 – Ramesh Kumar in his evidence has stated that he got information on the next morning that wife of Surendra



Prasad @ Munna died due to burn injury. In paragraph 2 of his cross examination he stated that his statement was recorded by the Police and before Police he had stated that Branjnandan and his wife was falsely implicated. On attention being drawn to his previous statement he stated that he had not stated before the Police that poor innocent Noniya persons of village- Mobarakpur were falsely implicated whereas on examination of evidence of P.W. 17 / Investigating Officer at page no. 62 it is evident that before the Police he had stated that poor Noniya villagers of Mobarakpur village were falsely implicated and Brajnandan and his wife were falsely implicated. He has also stated before the Police that Krishna Prasad was residing in Bokaro and at the time of occurrence he was not present and he was also implicated. Evidence of P.W. 9 also goes to corroborate regarding false implication of some of the accused persons by the prosecution.

20. P.W. 11 is Vijay Kumar Singh [cousin brother of the deceased] however P.W. 11 in his evidence has stated that he got information that the girl was burnt to death due to non fulfillment of demand of dowry but his evidence appears to be hearsay evidence without any corroboration. In paragraph 3 of his evidence he stated that dead body of deceased was found near the bank of river in a bush and he identified the dead body of Rita Devi.



21. Evidence of P.W. 10 - Shantanand Singh, P.W. 12 - Mahesh Prasad Singh and P.W. 13 - Mahesh Singh is based on hearsay evidence without any corroboration, and as such, no reliance can be placed on such material.

22. P.W. 19 - Dr. Jaiprakash Singh on 24.10.2007 was posted as Medical Officer in Sadar Hospital, Chapra and on the same day at 8.45 P.M. he conducted post- mortem examination on the dead body of deceased and noticed the following facts:-

“On external examination – Tongue protruded. There were extensive superficial to deep burn on whole body extending from toe to scalp.

On dissection- All viscera were intact and congested.

Cause of death was shock due to dry heat.

Time since death at about 36 hours of examination.”

He further identified the post mortem examination report which was in his pen and signature and same was marked as Ext. 6. On examination of the evidence of P.W. 19 and post- mortem examination report it is evident that on the dead body only burn injury was found and it was not a case that the deceased was firstly done to death and thereafter dead body was burnt. Medical evidence if examined in consonance with evidence of some of the prosecution witnesses who were residents of the village of appellants and deceased it would appear that submission made by learned counsel for the appellants that the deceased died due to



accidental death appears to be more probable than the inconsistent evidence of other witnesses who are mostly close relatives of the deceased.

23. P.W. 17- Sudeshwar Ravidas on 22.10.2007 was posted as Sub Inspector of Police in Amnour Police Station and he is the main Investigating Officer of the case who has proved formal F.I.R. , which has been marked as Ext. 4 and inquest report [Ext. 5]. It is pertinent to mention that in the case written report has not been got formally proved and exhibited since scribe of the written report i.e. Kameshwar Prasad has not been examined as prosecution witness. P.W. 17 in his evidence has stated that on 22.10.2007 he received the charge of investigation of Amnour P.S. Case No. 103 of 2007 on which date informant - Gandhi Prasad (P.W. 5) had submitted written application and on the basis of same formal F.I.R. was drawn. Thereafter, he visited the place of occurrence and in paragraph 2 of his examination- in- chief he has described regarding the place of occurrence i.e. the room where deceased was residing where he noticed that inside room there was a पलंग (bed) and same was found burnt. Besides पलंग there was a trunk which was having sign of burn however the Investigating Officer had not bothered to seize any of the articles since no seizure list has been brought on record nor it has been stated by



Investigating Officer. He noticed that on the 2nd day of the occurrence dead body was seized which was found near the bank of river in a bush. Same was got identified and it was sent for post mortem examination. He prepared inquest report and same was marked as Ext. 5. Thereafter he recorded re-statement of the informant as well as recorded statement of other witnesses. In paragraph 7 of his cross -examination contradiction was taken in respect of previous statement of P.W. 1. Similarly, in paragraph 10, 11, 12 and 13 of his cross examination contradiction in respect of previous statement of Surendra Prasad (P.W. 2) was taken. Contradiction of P.W. 4 (Maya Devi) was taken in paragraph 14 of his cross -examination. Contradiction to the previous statement of P.W. 5 (Gandhi Prasad) was taken in paragraph 16 of this witness's cross-examination. Similarly, in respect of previous statement of P.W. 9 (Ramesh Kumar) contradiction was taken in paragraph 17 of his cross examination.

24. On examination of the evidence of Investigating Officer / P.W. 17 it is evident that the Investigating Officer has not bothered to verify the actual date of marriage of the deceased with the appellant – Surendra Prasad @ Munna Prasad. The witnesses, even informant, was not consistent regarding date of marriage of deceased with the appellant. Only father of the deceased (P.W. 2)



has come out with a case that marriage of the deceased was solemnized on 31.05.2005. It is true that Sri Aaruni Singh, learned counsel for the appellant has vigorously argued that prosecution has not been able to establish the actual date of marriage but fact remains that father of the deceased was the best person to disclose the date of marriage and had deposed that marriage was solemnized on 31.05.2005. However, in normal course in a case for the offence under Section 304(B) of the I.P.C. onus lies on the prosecution to specifically establish the date of marriage. P.W. 18 (Lalit Narayan Pandey) is the 2nd Investigating Officer who had simply obtained order of attachment from the court and P.W. 8 (Ram Daresh Choudahry) is the 3rd Investigating Officer who only submitted charge sheet. In this case one defence witness i.e. D.W. 1 (Satyendra Prasad) was examined and it is defence case that the husband of the deceased was separate with other persons, and as such, there was no occasion for involvement of the two appellants of Cr. Appeal (D.B.) No. 56 of 2013 in the present case.

25. In view of entire evidence discussed hereinabove it is evident that some of the prosecution witnesses who were never declared hostile have categorically demolished the prosecution case. In the case only family members of the deceased have come out with a case as if deceased was done to death by burning due to



non-fulfillment of demand of dowry however as per evidence it is evident that most of the witnesses, even relative- witnesses of the deceased, had not whispered regarding torture and demand of dowry just prior to the occurrence but during evidence the case was developed. It is a fact that for application of provision under Section 304(B) of I.P.C. it is mandatorily required on the part of prosecution regarding establishing torture and demand of dowry just prior to the occurrence, however prosecution in the present case has miserably failed to establish that just before the alleged occurrence any torture was administered on the deceased or not or any demand of dowry was made. In view of the evidence of independent witnesses who have stated that the deceased died due to accidental catching of burn through ढिबरी (lamp), there is no reason to come to conclusion that appellants were involved in the present case.

26. In view of examination of aforesaid entire evidence, there is no doubt that prosecution has miserably failed to establish its case beyond all reasonable doubts and as such by way of extending benefit of doubt to all the aforesaid three appellants it is desirable to interfere with the judgment of conviction and sentence. Accordingly, judgment of conviction dated 05.12.2012 and sentence dated 06.12.2012 passed by Shri Indradeo Singh,



learned Adhoc Additional District & Sessions Judge – IV, Saran at Chapra in Sessions Trial No. 30 of 2010 [arising out of Amnour P.S. Case No. 103 of 2007, G.R. Case No. 3262 of 2007] is hereby set aside and both the appeals are allowed. Consequent to setting aside of the judgment of conviction and sentence, appellant- Surendra Prasad @ Munna in Cr. Appeal (D.B.) No. 70 of 2013 who is in custody is directed to be released forthwith, if not wanted in any other case. Other two appellants namely: Kanhaiya Prasad and Indu Devi [Cr. Appeal (D.B.) No. 56 of 2013] who are on bail are hereby discharged from liability of their bail bonds.

27. Both the appeals are allowed.

28. Let a copy of first and last page of this judgment be handed over to Ms. Divya Verma, learned Amicus Curiae and learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	23-07-2019
Transmission Date	23-07-2019

