

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.669 of 2014**

Arising Out of PS. Case No.-129 Year-2011 Thana- NATHNAGAR District- Bhagalpur

1. Yashoda Devi, wife of Sri Janardan Rajak.
2. Pinku Rajak, Son of Sri Janardan Rajak,
3. Bebi Devi, daughter of Sri Janardan Rajak & Wife of Sri Amit Rajak, Permanently residing at village Laltipur, P.S. - Kharik, District - Bhagalpur.
4. Janardan Rajak, Son of Late Kajraili Rajak, all are the resident of Vill - Mohanpur (Narga), P.S. - Nath Nagar, District - Bhagalpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Sanjiv Sharan, Advocate
For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 18-08-2022

By this appeal, appellants/convicted accused, are challenging the Judgment and order dated 11.06.2014 and 20.06.2014 passed by the learned 1st Additional Sessions Judge, Bhagalpur, in Sessions Trial No. 491 of 2012 between the parties, thereby convicting them of the offence punishable under Section 302 r/w Section 34 of the Indian Penal Code and sentencing them to suffer rigorous imprisonment for life. They however were acquitted of the offence punishable under Section 304B r/w 34 of the Indian Penal Code. For the sake of



convenience, the appellants shall be referred to in their original capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. Accused No. 1 Yashoda Devi is mother-in-law, accused no. 2 Pinku Rajak is husband, accused no. 3 Bebi Devi is sister-in-law whereas accused no. 4 Janardan Rajak is father-in-law of the deceased Bebi Devi wife of Pinku Rajak. She married Pinku Rajak 6 to 7 years prior to her death. After her marriage, she started cohabiting with her husband, i.e., accused Pinku Rajak at village Mohanpur falling under the jurisdiction of Police Station Nathnagar in Bhagalpur District of Bihar in a house shared by other accused persons also.

B. The incident in question allegedly took place at about 5 P.M. of 01.09.2011 at the residential house of the accused persons located at Mohanpur village. On that day, all accused persons quarreled with Bebi Devi (since deceased). Thereafter, the accused no. 4 Janardan Rajak and his wife accused no. 1 Yashoda Devi had sprinkled Kerosene oil on person of Bebi Devi wife of Pinku Rajak and set her ablaze. Bebi Devi (since deceased) sustained burns. Thereafter, she was therefore taken to Mayaganj Hospital, Bhagalpur.



C. During the course of treatment of Bebi Devi (since deceased) at Mayaganj Hospital, Bhagalpur, P.W. 9 Subodh Narayan Singh, ASI posted at that hospital had recorded her FIR at about 8.30 P.M. on 01.09.2011 itself. It was sent to Nathnagar Police Station for appropriate action.

D. After giving her preliminary medical treatment, Bebi Devi (since deceased) was referred to the higher centre, i.e., Appolo Burns Hospital, Patna, where she succumbed to the burn injuries on 08.09.2011. On 09.09.2011, Crime No. 129 of 2011 came to be registered against the accused persons at Police Station Nathnagar for the offences punishable under Sections 498A, 341, 504 and 307 of the Indian Penal Code came to be Section 302 of the Indian Penal Code came to be added so also the offence punishable under Section 304(B) r/w Section 34 of the Indian Penal Code. Wheels of investigation were then sent for in motion. Inquest notes were prepared by inspecting the dead body of Bebi Devi wife of Pinku Rajak. It was then dispatched for autopsy. P.W. 13 Dr. Rajiv Ranjan Das, Medical Officer of N.M.C. Hospital., Patna conducted postmortem examination on the dead body of Bebi Devi wife of Pinku Rajak on 08.09.2011.

E. Statement of witnesses came to be recorded by



the Investigating Officer, P.W. 10 Rameshwar Singh, ASI. He inspected the spot of the incident. After completion of the investigation, the accused persons were charge sheeted.

F. The learned trial court had framed and explained the charge to the accused persons. They pleaded not guilty and claimed trial. In order to bring home the guilt to the accused persons, the prosecution has examined in all thirteen witnesses. Co-villagers Prakash Sah, Rita Devi, Lukri Devi, Sone Lal Mandal and Vishwanath Mandal @ Vishwajeet are examined as PW 1 to PW5. Sushila Devi who happens to be mother of deceased Bebi Devi is examined as PW 6. Mili Devi, wife of brother of deceased Bebi Devi is examined as PW 7. Lallan Nath Rajak, brother of the deceased Bebi Devi is examined as P.W. 8. ASI Subodh Narayan Singh, who recorded the dying declaration of Bebi Devi is examined as P.W. 9. The Investigating Officer, Rameshwar Singh is examined as PW 10. Dr. Mani Bhushan Sinha, Medical Officer of Mayaganj Hospital is examined as PW 11. Amarnath Rajak, brother of the deceased Bebi Devi is examined as PW 12. Autopsy Surgeon, Dr Rajiv Ranjan Das is examined as PW 13.

G. The defence of the accused persons was that of total denial. They however did not enter in the defeance.



3. After hearing the parties, by the impugned Judgment and order, the learned trial court was pleased to convict the accused persons and to sentence them as indicted in the opening para of this Judgment.

4. We heard the learned counsel appearing for the appellants at sufficient length of time. He argued that there is delay in lodging the FIR as the printed FIR was prepared on 09.09.2011. It is further argued that there was no traces of Kerosene Oil either on the spot or on the cloths, which were not even seized by the Investigator. He further argued that the second statement of the deceased was never recorded. PW 12 Amarnath Rajak, in whose presence the dying declaration was allegedly recorded has stated in his evidence that he had not heard statement of his sister Bebi Devi. With this, it is argued that the prosecution has failed to prove the guilt and therefore, the accused are entitled to acquit.

5. The learned Additional Public Prosecutor opposed the appeal by contending that the dying declaration of deceased Bebi Devi is sufficient to base conviction and the prosecution has proved the charges levelled against the accused persons by adducing evidence of all the relevant witnesses.

6. We have considered the submissions so



advanced and we have also perused the record and proceedings including oral as well as documentary evidence adduced by the prosecution.

7. It is not in dispute that Bebi Devi who happens to be wife of accused no. 2 Pinku Rajak had sustained burns injury and she died because of burn injuries on 08.09.2011. As the charge held to be proved against the accused persons is the one punishable under Section 302 r/w Section 34 of the Indian Penal Code, it will have to be seen whether the prosecution has proved that Bebi Devi died homicidal death. After death of Bebi Devi occurring on 08.09.2011 at the Appolo Burn Hospital, Patna, her dead body was inspected and after taking inquest notes, it was sent for postmortem examination at NMC Hospital, Patna. PW 13 Dr. Rajiv Ranjan Das had conducted postmortem examination on dead body. His evidence shows that the deceased had suffered burn injuries and those injuries have resulted in septicemia. According to the opinion of the Autopsy Surgeon, burns were antimortem burns and Bebi Devi died due to septicemia as well as asphyxia caused by infected burn injuries. This evidence of the Autopsy Surgeon went unchallenged during course of cross-examination and as such we see no reason to disbelieve his evidence which is even



supported by contemporaneous report of postmortem examination. With this evidence, we put on record that the prosecution has proved that Bebi Devi died because of complications such as septicemia due to anti mortem burn injuries. Now let us examine whether death of Bebi Devi occurring on 08.09.2011 is homicidal or not.

8. The prosecution has proved statement of Bebi Devi allegedly made by her on the very same day of the incident while taking treatment at Mayaganj Hospital, Bhagalpur. PW 9 Subodh Narayan Singh, ASI who was deputed to that hospital has claimed to have recorded that statement of Bebi Devi at 8.30 P.M of 01.09.2011. It is in his evidence that in the Surgical Ward of that hospital, he had recorded statement as given by Bebi Devi wife of Pinku Rajak and had sent to Nathnagar Police Station for necessary action. As per his version, Bebi Devi sustained burn injuries at that time. In cross-examination, he admitted that he had not received any certificate in the form of intimation from that hospital regarding admission of a patient with burn injuries. He however clarified that as he was on duty at that hospital, he recorded the statement of Bebi Devi. He further stated in his cross-examination that hands and legs of Bebi Devi were badly burnt.



9. P.W. 11 Dr. Mani Bhushan Sinha claims to be a witness in whose presence statement (Ext. 1) of Bebi Devi was recorded at Mayaganj Hospital on 01.09.2011. It is in his evidence that on 01.09.2011, he was on duty at Emergency Surgical Ward of Mayaganj Hospital. On that day, as per version of this witness, police had recorded statement of Bebi Devi and had obtained toe impression of Bebi Devi on that statement. He stated that thereafter he signed that statement. P.W. 11 Dr. mani Bhushan Sinha testified that the statement as was given by Bebi Devi was recorded by the police. In cross-examination, this witness has stated that he had noted on the Bed Head Ticket of the patient that the patient is in conscious and oriented state. However, this witness clarified that Bed Head Ticket is not on record of the Court.

10. As per prosecution case, the dying declaration of Bebi Devi was also recorded in presence of PW 12 Amarnath Rajak who happens to be brother of the deceased. However this brother has stated in his evidence that he had not heard the utterances of his sister Bebi Devi wife of Pinku Rajak made to the police. As per his version, when he went there, police asked him as to who he is and when he disclosed that he is brother of Bebi Devi, police asked him to put his signature and that is how



he put is his signature on the alleged statement of his sister Bebi Devi. PW 12 Amarnath Rajak has categorically stated that he had not heard statement of his sister Bebi Devi.

11. This is the oral evidence regarding officially recorded statement of deceased Bebi Devi. After giving this alleged statement on 01.09.2011, Bebi Devi succumbed to burn injuries on 08.09.2011 at Appolo Burns Hospital, Patna. As testified by Autopsy Surgeon PW 13 Dr. Rajeev Das, the death was because of complications arising out of burn injuries to her. Thus, the statement allegedly given by Bebi Devi and recorded by PW 9 Subodh Narayan Singh is certainly a dying declaration of Bebi Devi. It is statement made by Bebi Devi as to cause of her death and the circumstances of the transaction which have resulted in her death. Therefore, this dying declaration is an admissible piece of substantive evidence as per Section 32 of the Evidence Act.

12. Now one will have to ascertain whether this dying declaration can be acted upon in order to base conviction. It is well settled that there is neither rule of law nor rule of procedure that the dying declaration can not be acted upon without corroboration. If the Court is satisfied that the dying declaration is true and voluntary, conviction can safely be based



on such blemishless and reliable statement of the deceased as to the cause of her death. However, it is trite that if the dying declaration is shrouded in mystery of suspicious circumstances then unless it is corroborated in material particular by other evidence, it can not be acted upon to base conviction. This is so because maker of such statement is not available to the accused for cross-examination. It can not be a statement of law that the dying declaration is always truthful and trustworthy.

13. In the case in hand, the dying declaration of Bebi Devi is allegedly recorded by PW 9 Subodh Narayan Singh, ASI in presence of her brother PW 12 Amarnath Rajak. This is case of the prosecution. However PW 12 Amarnath Rajak has totally disowned statement of his sister Bebi Devi by stating that he had not heard her statement. This is a circumstance which creates doubt in the prosecution case.

14. The dying declaration can be relied on to base conviction only when it is made in fit state of mind by the maker thereof. In the case in hand, as seen from evidence of Autopsy Surgeon, deceased Bebi Devi had sustained 90 per cent burns. PW 11 Dr. Mani Bhushan Sinha claims that he was present while recording dying declaration of Bebi Devi. In his chief examination, he has stated that in his presence, the police



had recorded statement of Bebi Devi and had obtained her toe impression on that statement. He further states that then it was written thereon that Bebi Devi was in a fit condition and the statement as made by Bebi Devi was recorded. Thereafter he claims to have signed that statement. If we peruse the statement of Bebi Devi allegedly recorded by PW 9 Subodh Narayan Singh then it becomes clear that this Medical Officer PW 11 Dr. Mani had not given any certificate on that statement to the effect that Bebi Devi was in a fit condition to make that statement. To crown this all, PW 11 Dr. Mani Bhushan Sinha while in the witness box has not claimed to have examined Bebi Devi prior to recording her statement by PW 9 Subodh Narayan Singh in order to ascertain fitness of Bebi Devi for giving her statement. In cross-examination, this Medical Officer claims that on the Bed Head Ticket of Bebi Devi he had written that the patient is conscious and oriented. For the reason best known to the prosecution that Bed Head Ticket is not filed along with the charge-sheet and thus contemporaneous record of medical condition of Bebi Devi is not brought on record by the prosecution in order to enable the court to place explicit reliance on her dying declaration allegedly recorded by PW 9 Subodh Narayan Singh ASI. Thus, we are not having any evidence to



show that deceased Bebi Devi was conscious and well oriented to the time and place and was in fit mental as well as physical condition to make an elaborate statement as to cause of her death.

15. The Supreme Court in the matter of **Laxman vs. State of Maharashtra** reported in **(2002) 6 SCC 710** has summarized the law on the dying declaration. In para-3 the Constitution Bench has held thus:

“3. The juristic theory regarding acceptability of a dying declaration is that such declaration is made in extremity, when the party is at the point of death and when every hope of this world is gone, when every motive to falsehood is silenced, and the man is induced by the most powerful consideration to speak only the truth. Notwithstanding the same, great caution must be exercised in considering the weight to be given to this species of evidence on account of the existence of many circumstances which may affect their truth. The situation in which a man is on the deathbed is so solemn and serene, is the reason in law to accept the veracity of his statement. It is for this reason the requirements of oath and cross-examination are dispensed with. Since the accused has no power of cross-examination, the courts insist



that the dying declaration should be of such a nature as to inspire full confidence of the court in its truthfulness and correctness. The court, however, has always to be on guard to see that the statement of the deceased was not as a result of either tutoring or prompting or a product of imagination. The court also must further decide that the deceased was in a fit state of mind and had the opportunity to observe and identify the assailant. Normally, therefore, the court in order to satisfy whether the deceased was in a fit mental condition to make the dying declaration looks up to the medical opinion. But where the eyewitnesses state that the deceased was in a fit and conscious state to make the declaration, the medical opinion will not prevail, nor can it be said that since there is no certification of the doctor as to the fitness of the mind of the declarant, the dying declaration is not acceptable. A dying declaration can be oral or in writing and any adequate method of communication whether by words or by signs or otherwise will suffice provided the indication is positive and definite."

In the case in hand, there is no evidence worth mentioning to show that the deceased was fit to make the statement as to cause of her death.

16. As the evidence regarding the mental as well as



physical condition of Bebi Devi for making coherent statement is scanty and doubtful, let us examine whether the prosecution by an independent evidence has corroborated her statement as to cause of her death. PW 10 Rameshwar Singh ASI is the Investigator who had visited spot of the incident. He has, in his evidence only disclosed who are the resident of the adjoining houses and what is the boundary of the house wherein the incident had happened. He claims to have inspected the spot of the incident. However he has not spoken about the condition of the spot of the incident when he inspected it. A prudent Investigator ought to have inspected the spot keeping in mind whether there are traces of Kerosene on the floor, whether container of Kerosene oil is lying on the spot of the incident so also the burn pieces of clothes of the victim. This would have helped the prosecution to send those articles for chemical analysis. Traces of Kerosene on burn clothes would have corroborated the dying declaration of Bebi Devi allegedly recorded by PW 9 Subodh Narayan Singh. This was not done by the prosecution for the reason best known to it. Thus, there is no corroboration to the dying declaration of deceased Bebi Devi, wife of Pinku, from the situation prevalent on the spot of incident.



17. Co-villager PW 1 Prakash Sah, PW 2 Rita Devi, PW 3 Lukri Devi and PW 4 Sone Lal Mandal (who was declared hostile by the prosecution) and PW 5 Vishwanath Mandal have not spoken anything in support of prosecution case. There evidence is to the effect that married life of Bebi Devi was happy and she was not having any quarrel with the accused persons. On the contrary, these witnesses are stating that after sustaining burns, accused persons had taken Bebi Devi to the hospital for her medical treatment. Thus, evidence of these witnesses is not of any assistance to the prosecution to prove the charge. It is not corroborating the dying declaration of Bebi Devi.

18. PW 6 Sushila Devi is mother mother of the deceased. As per her version, her daughter sustained burns at the house ot the accused persons and she died at the Appolo Burn Hospital, Patna. This witness feigned ignorance about the mode and manner in which her daughter sustained burns at the house of her in-laws. In cross-examination, this mother went on saying that her daughter had never made any complaint to her against her in-laws, prior to her death. She has stated that she herself has no complaint against in-laws of her daughter. Similar evidence of PW 7 Mili Devi who is wife of brother of the



deceased. This witness has claimed that she had no talks with deceased Bebi Devi prior to her death. PW 8 Lallan Nath Rajak is brother of the deceased. She has stated that after sustaining burns by Bebi Devi he had been to the Hospital and saw that the accused persons were taking care of her treatment. He stated that when he had been to the hospital, he has noted this fact. The next witness is PW 12 Amarnath Rajak, the other brother of the deceased. We have already dealt with his evidence. In addition, this witness has stated that prior to her death, his sister Bebi Devi had made no complain against her husband or in-laws. This witness has also stated that accused persons have provided medical treatment to his sister by admitting her to the hospital. This conduct of accused persons reflected from evidence of near and dear ones of the deceased is incompatible to their guilt. These relatives of the deceased had an occasion to meet the deceased during the course of her hospitalization of about 8 days. They had tonnes of opportunities to have a word with the deceased as to cause of sustaining burn injuries by her. However none of these near relatives of the deceased are corroborating the officially recorded dying declaration of Bebi Devi. This implies that Bebi Devi had not spoken anything against the accused with her near relatives. This is the circumstance which



cast a shadow of doubt on case of the prosecution. That apart, there seems to be no motive with the accused persons to eliminate the deceased.

19. In view of foregoing discussion, we are unable to place explicit reliance on the dying declaration of Bebi Devi to form a sole basis for convicting accused persons. Evidence of the prosecution is certainly infirm and laconic. Even witnesses examined by the prosecution are not supporting the charge. In the result appeal succeed with the following order:-

(a). The appeal is allowed.

(b). The impugned judgment and order of the learned Trial Court is quashed and set aside. The appellants-accused are acquitted of the offence alleged against them. The appellants-accused who are undergoing jail sentence be set at liberty forthwith if not required in any other case. Bail bonds of the accused who are released on bail by suspending their sentence stands canceled.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

Bhardwaj/-

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