

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.749 of 2014

Arising Out of PS. Case No.-214 Year-2011 Thana- BARSOI District- Katihar

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Satyanarayan Yadav S/o Shibu Yadav Resident of Raghunathpur, P.S.- Barsoi,
District- Katihar.

... .. Appellant.

Versus

The State of Bihar

... .. Respondent.

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Appearance :

For the Appellant	:	Mr. Vikram Deo Singh, Advocate. Mrs. Mira Kumari, Advocate. Ms. Shalini Raut, Advocate.
For the State	:	Mr. Prince Kumar Mishra, Amicus Curiae. Ms. S.B. Verma, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

CAV JUDGMENT

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

Date : 19-07-2022

By this appeal, appellant Satyanarayan Yadav, who happens to be husband of deceased Lakhi Devi, is challenging the Judgment and Order dated 04.03.2014 and 06.03.2014 respectively passed by the learned Adhoc Additional Sessions Judge-I, Katihar, in Sessions Trial No.377 of 2012 thereby convicting him of the offence punishable under Section 302 of the Indian Penal Code and sentencing him to suffer life imprisonment apart from imposition of fine of Rs.5000/- and default sentence of simple imprisonment for two months. He, however, came to be acquitted of the offence punishable under Section 4 of the Dowry Prohibition Act. For the sake of convenience, the appellant shall be referred to as an



“accused”.

2. Facts in brief leading to the prosecution of the accused can be summarized thus:

(a). It is case of the prosecution that at about 02.30 P.M. of 20.10.2011, the accused sprinkled kerosene on person of his wife Lakhi Devi at his residential house situated at Raghunathpur and incinerated her by throwing burning match stick at her.

(b). Lakhi Devi (since deceased) married the accused eight years prior to the incident in question. Out of this wedlock, she had given birth to four children. She was cohabiting with the accused at his residential house at village-Raghunathpur falling under jurisdiction of the Police Station-Barsoi. P.W.1 Mansi Kumari is the eldest daughter of the couple.

(c). According to the prosecution case, the accused used to subject Lakhi Devi to cruelty for and on account of demand of dowry. He was insisting her to bring money as well as motorcycle from her parents. He used to beat her on refusal by Lakhi Devi to meet his demands. With the help of villagers, the matrimonial dispute between the couple came to be settled in the past but the accused continued to subject Lakhi Devi to cruelty.

(d). As stated, at about 02.30 P.M. of 20.10.2011, the accused poured kerosene on person of Lakhi Devi at his house and set her on fire. The accused then with the help of villagers took her to the Circle Referral Hospital, Barsoi for medical treatment.



Thereafter, she was referred to the Higher Centre. Her brother-first informant/P.W.9 Naval Kishore Yadav and her father P.W.2 Dinesh Chandra Yadav along with others then started taking Lakhi Devi to the Hospital at Katihar but on the way, near Salmari, Lakhi Devi succumbed to the burn injuries. The dead body of Lakhi Devi was then brought back to her matrimonial house by her brother P.W.9 Naval Kishore Yadav, P.W.2 Dinesh Chandra Yadav-her father and others. They were told by P.W.1 Mansi Kumari, who happens to be daughter of Lakhi Devi that the accused had poured kerosene on Lakhi Devi, set her ablaze and then sprinkled salt on burnt body of her mother Lakhi Devi. That is how, on 21.10.2011, P.W.9 Naval Kishore Yadav lodged report against the accused alleging commission of murder of his sister by the accused. Accordingly, Crime No.214 of 2011 came to be registered with Police Station Barsoi and wheels of investigation were set in motion.

(e). P.W.4 Mirtunjay Kumar, Sub Inspector of Police Station-Barsoi, visited the spot of the incident, i.e., house of the accused situated at Raghunathpur. He inspected dead body of Lakhi Devi and prepared inquest notes. He effected seizure of broken pieces of bangles, hairband, hairclip, locket, the match box as well as container having smell of kerosene from the spot of the incident in presence of Panch witness P.W.6 Subhash Yadav. Dead body of Lakhi Devi was then dispatched for post-mortem examination.

(f). P.W.5 Dr. Ram Rekha Suman, the Medical Officer of



the Sadar Hospital, Katihar, conducted post-mortem examination on dead body of Lakhi Devi on 21.10.2011. Statements of the witnesses came to be recorded and on completion of routine investigation, the accused came to be chargesheeted.

(g). The learned trial court had framed and explained the charge for the offences punishable under Section 302 of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act to the accused. He pleaded not guilty and claimed trial.

(h). In order to bring home the guilt to the accused, the prosecution has examined in all 10 witnesses. Mansi Kumari, six years old daughter of deceased Lakhi Devi came to be examined as P.W.1. This child witness claims to be an eye witness to the incident. Dinesh Chandra Yadav, father of deceased Lakhi Devi, is examined as P.W.2. Devi Ghosh, sister of the mother of Lakhi Devi is examined as P.W.3. She also claims to be an eye witness to the incident. Investigating Officer Mirtunjay Kumar of Police Station-Barsoi is examined as P.W.4. Autopsy Surgeon Dr. Ram Rekha Suman of the Sadar Hospital Katihar is examined as P.W.5. Panch witness Subhash Yadav is examined as P.W.6. Ganesh Chandra Yadav-uncle of the deceased is examined as P.W.7. Tarkeshwar Yadav-another uncle of the deceased is examined as P.W.8. Her brother Naval Kishore Yadav, who had lodged the F.I.R. is examined as P.W.9. Sarfaraj Alam-neighbourer of the deceased is examined as P.W.10.

(i). The defence of the accused was that of total denial.



According to him, Lakhi Devi died because of accidental burns caused to her due to burst of kerosene stove while cooking the food. The defence has examined Anita Devi-mother of the deceased Lakhi Devi as D.W.1 and Deepak Kumar Yadav-neighbourer of the deceased Lakhi Devi as D.W.2.

(j). After hearing the parties, by the impugned Judgment, the learned trial court was pleased to convict the appellant/accused as indicated in the opening paragraph of this Judgment and he is sentenced accordingly.

3. We heard the learned counsel appearing for the appellant at sufficient length of time. He submitted that evidence adduced by the prosecution is discrepant and lacking the assurance which is required in the criminal trial for convicting the accused. The eye witness account given by the daughter of the deceased is too sketchy and this child witness has no competency to depose in the criminal trial. The learned trial court has not taken precaution to test her competency to testify by asking any preliminary question to her. It is further argued that bare perusal of the statement of this witness made before the court is sufficient to reject her version. It is also argued that evidence of another eye witness P.W.3 Devi Ghosh is also far from satisfactory. Her presence on the spot of the incident at the time of the incident is not vouched by P.W.1 Mansi Kumari or D.W.1 Anita Devi-her own sister. The learned counsel for the appellant further argued that even the first informant has not supported the



prosecution case and he is not even declared as a hostile witness. None of the witnesses have stated about the cruel treatment to the victim of the crime in question. With this, by relying on the Judgment in the matter of **P. Ramesh Versus State represented by Inspector of Police**, reported in **(2019) 20 Supreme Court Cases 593**, the learned counsel for the appellant argued that once an eye witness is disbelieved, there remains no evidence to convict the accused by holding that the prosecution has proved the charge.

4. As this appeal was posted for argument for few days in the past and on those dates no body appeared to represent the State of Bihar, i.e., the prosecuting agency, therefore we were constrained to appoint Mr. Prince Kumar Mishra, the learned Advocate, to act as an Amicus Curiae. Mr. Prince Kumar Mishra, argued that it was incumbent on the part of the learned trial court to put some preliminary questions to the child witness in order to ascertain her competency to depose. He further argued that reasonable doubt lurks in the prosecution case as mother of the deceased has disowned the prosecution case while in the dock as the defence witness and there is no effective cross-examination of this witness. He argued that Panchnama of the spot of the incident was not prepared but the Investigator has stated that he had not found any stove on the spot of the incident.

5. The learned A.P.P. appeared finally on 14.07.2022 when we concluded hearing and closed the appeal for Judgment. She



supported the impugned Judgment and Order of conviction and sentence.

6. We have considered the rival submissions and we have also perused the records and proceedings including oral as well as documentary evidence.

7. As seen from the evidence of P.W.8 Tarkeshwar Yadav-uncle of the deceased Lakhi Devi, on getting information from P.W.9 Naval Kishore Yadav, he went to the Hospital at Barsoi and came to know that Lakhi Devi is referred to Higher Centre at Katihar. This witness accompanied Lakhi Devi for reaching her to the Higher Centre at Katihar but as stated by him, Lakhi Devi died on the way. P.W.9 Naval Kishore Yadav, the first informant, has also stated in his evidence that on getting information regarding sustaining burns by Lakhi Devi, he went to her matrimonial house and saw dead body of his sister Lakhi Devi lying there. As per version of P.W.4 Mirtunjay Kumar, on 21.10.2011, he visited the spot of the incident and found dead body of Lakhi Devi at her matrimonial house at Raghunathpur. This witness then dispatched the dead body for autopsy to the Sadar Hospital at Katihar after taking inquest notes. The inquest report proved by this witness shows that the dead body of Lakhi Devi was having burn injuries.

8. P.W.5 Dr. Ram Rekha Suman, the Medical Officer of the Sadar Hospital, Katihar, had conducted post-mortem examination on dead body of Lakhi Devi on 21.10.2011 and found that the dead



body of Lakhi Devi was having 90% fresh deep burn wound. As per version of this witness, Lakhi Devi died because of hypovolumic shock as a result of burn injuries. With this evidence, death of Lakhi Devi by burn injuries is proved by the prosecution. Now, let us ascertain whether the said death is proved to be homicidal and caused by the accused.

9. P.W.9 Naval Kishore Yadav-brother of the deceased Lakhi Devi, had lodged the F.I.R. of the incident with Police Station-Barsoi on 21.10.2011. Though this first informant- brother had alleged in his F.I.R. that the accused used to subject his sister Lakhi Devi to cruel treatment and had burnt her by pouring kerosene oil on 20.10.2011, he has not supported this prosecution case while in the witness box. Though in the F.I.R., this brother has stated that his niece Mansi Kumari had disclosed him that the accused poured kerosene on the person of her mother Lakhi Devi and burnt her, surprisingly, the First Informant P.W.9 Naval Kishore Yadav has not even disclosed about this former statement of P.W.1 Mansi Kumari in his version before the court. This first informant P.W.9 Naval Kishore Yadav has simply stated that his sister Lakhi Devi was married to the accused nine years prior to her death and on getting information about her death, when he went to her matrimonial house on 20.10.2011, he saw his sister Lakhi Devi lying dead thereat. He further deposed that then he submitted written report to Police Station-Barsoi. In cross-examination, he admitted that his sister



Lakhi Devi had never made any complaint against her husband to him.

10. We are surprised to note that though first informant P.W.9 Naval Kishore Yadav had disowned the prosecution case, he was not declared hostile by the prosecution and he was not cross-examined by the prosecution. He has not even stated in his evidence that P.W.1 Mansi Kumari had disclosed about the occurrence to him nor he has spoken about the cruel treatment to his sister by the accused. Thus, evidence of this witness is of no assistance to the prosecution.

11. Next comes the star witness for the prosecution, i.e., P.W.1 Mansi Kumar-six years old daughter of the accused and deceased Lakhi Devi. When she was put in the dock, she was seven years old. We are surprised to note that the learned trial court had not taken care to put a single question to her in order to ascertain her competency to depose. At this juncture, it is apposite to quote the provision of Section 118 of the Indian Evidence Act, 1872, which reads thus:

“118. Who may testify.- All persons shall be competent to testify unless the Court considers that they are prevented from understanding the questions put to them, or from giving rational answers to those questions, by tender years, extreme old age, disease, whether of body or mind, or any other cause of the same kind.”



The learned trial court in order to ascertain whether P.W.1 Mansi Kumari is able to understand the questions put to her and whether she is in a position to answer the questions put to her in rational manner, should have tested her capacity to depose. In the matter of **P. Ramesh** (supra), following are the observations of the Supreme Court found in para-16 of the Judgment:

“16. In order to determine the competency of a child witness, the Judge has to form her or his opinion. The Judge is at liberty to test the capacity of a child witness and no precise rule can be laid down regarding the degree of intelligence and knowledge which will render the child a competent witness. The competency of a child witness can be ascertained by questioning her/him to find out the capacity to understand the occurrence witnessed and to speak the truth before the court. In criminal proceedings, a person of any age is competent to give evidence if she/he is able to (i) understand questions put as a witness; and (ii) give such answers to the questions that can be understood. A child of tender age can be allowed to testify if she/he has the intellectual capacity to understand questions and give rational answers thereto. A child becomes incompetent only in case the court considers that the child was unable to understand the questions and answer them in a coherent and comprehensible manner. If the



child understands the questions put to her/him and gives rational answers to those questions, it can be taken that she/he is a competent witness to be examined.”

12. Similarly, recently in the matter of **Hari Om @ Hero Vs. State of Uttar Pradesh** reported in **(2021) 4 SCC 345** following are the observations of the Supreme Court found in paragraph-22, the relevant portion of which reads thus:

“22. At the outset, we must note the perspective from which the evidence of a child witness is to be considered. The caution expressed by this Court in Suryanarayana that “corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence” is a well-accepted principle. While applying said principle to the facts of that case, this Court in Suryanarayana {(2001) 9 SCC 129} observed: (SCC pp. 133-35, paras 5-9)

“5. Admittedly, Bhavya (PW 2), who at the time of occurrence was about four years of age, is the only solitary eyewitness who was rightly not given the oath. The time and place of the occurrence and the attending



circumstances of the case suggest no possibility of there being any other person as an eyewitness. The evidence of the child witness cannot be rejected per se, but the court, as a rule of prudence, is required to consider such evidence with close scrutiny and only on being convinced about the quality of the statements and its reliability, base conviction by accepting the statement of the child witness. The evidence of PW 2 cannot be discarded only on the ground of her being of tender age. The fact of PW 2 being a child witness would require the court to scrutinise her evidence with care and caution. If she is shown to have stood the test of cross-examination and there is no infirmity in her evidence, the prosecution can rightly claim a conviction based upon her testimony alone. Corroboration of the testimony of a child witness is not a rule but a measure of caution and prudence. Some discrepancies in the statement of a child witness cannot be made the basis for discarding the testimony. Discrepancies in the deposition, if not a ma-



terial particulars, would lend credence to the testimony of a child witness who, under the normal circumstances, would like to mix-up what the witnesss saw with what he or she is likely to imagine to have seen. While appreciating the evidence of the child witness, the courts are required to rule out the possibility of the child being tutored. In the absence of any allegation regarding tutoring or using the child witness for ulterior purposes of the prosecution, the courts have no option but to rely upon the confidence inspiring testimony of such witness for the purposes of holding the accused guilty or not.

*6. This Court in **Panchhi v. State of U.P.** held that the evidence of the child witness must be evaluated more carefully and with greater circumspection because a child is susceptible to be swayed by what others tell him and thus an easy prey to tutoring. The evidence of the child witness must find adequate corroboration before it is relied upon, as the rule of corroboration is of practical*



wisdom than of law (vide Prakash v. State of M.P.; Baby Kandayanathil v. State of Kerala; Raja Ram Yadav v. State of Bihar and Dattu Ramrao Sakhare v. State of Maharashtra).

7. To the same effect is the judgment in State of U.P. Ashok Dixit.....{(2000) 3 SCC 70}.”

13. In State of U.P. v. Krishna Master {(2010) 12 SCC 324}, the Supreme Court has observed thus in paragraphs 36 and 37:

“36. ... This Court fails to understand as to on what principle and on which experience in real life, the High Court made a sweeping observation that it is inconceivable that a child of Madan Lal’s understanding would be able to recapitulate facts in his memory witnessed by him long ago. There is no principle of law known to this Court that it is inconceivable that a child of tender age would not be able to recapitulate facts in his memory witnessed by him long ago. This witness has claimed on oath before the Court that he had seen five members of his family being ruthlessly killed by the respondents by firing gunshots. When a child of tender age witnesses gruesome murder of his father, mother, brothers, etc. he is not likely to forget the incident for his whole life and would cer-



tainly recapitulate facts in his memory when asked about the same at any point of time, notwithstanding the gap of about ten years between the incident and recording of his evidence.

37. This Court is of the firm opinion that it would be doing injustice to a child witness possessing a sharp memory to say that it is inconceivable for him to recapitulate facts in his memory witnessed by him long ago. A child of tender age is always receptive to abnormal events which take place in his life and would never forget those events for the rest of his life. The child would be able to recapitulate correctly and exactly when asked about the same in future. Therefore, the specious ground on which the reliable testimony of PW 2 Madan Lal came to be disbelieved can hardly be affirmed by this Court.”

14. It needs to mention here that competency of the child witness depends on his capacity and intelligence. His understanding of difference between truth and falsehood as well as duty to tell the truth affirms his competency to depose. The decision on the competency of the child witness to testify primarily rests on the decision of the trial Court who has an opportunity to see the child witness, to notice his manner and appearance before the Court as well as his way of answering the questions put to him by the parties.

15. On this background, let us put on record what seven



years old Mansi Kumari says about the incident and whether her version can be said to be the truthful account of the incident. P.W.1 Mansi Kumari had deposed that her father had poured kerosene on person of her mother and had killed her mother prior to one year. She stated that she is eldest amongst her brothers and sisters and on the day of the incident, she was present in the house. In cross-examination, this child witness has given a very strange answer to the defence advocate which if translated in English reads thus:

“ You had caused fall of my mother beneath the roof of the house and set her on fire by sprinkling oil”

P.W.1 Mansi Kumari was under the cross-examination by the learned defence counsel. At that time, she was a child of tender years. Her capacity to testify was not ascertained by the learned trial Judge. On this background, this child witness, upon being questioned by the defence counsel had given the above answer to the defence counsel. This answer given by the child witness to the defence counsel gives an impression that she had attributed killing of her mother to the learned defence counsel. Rightly the learned defence counsel had not continued her further cross-examination and closed her cross-examination by putting only one question to her. From the answer given by P.W.1 Mansi Kumari, a child witness, to the sole question put to her in the cross-examination, we are of the view that she, at the relevant time, had no intellectual capacity to



understand the question put to her and to give rational answer to such a question. We have serious doubt about the capacity of this child witness to recapitulate, the facts of the incident of sustaining burns by her mother. The answer given by this child witness in the cross-examination shows that she was living in the world of her own imagination. Hence, her evidence is required to be kept out of consideration in the process of ascertaining guilt of the accused in respect of the crime in question.

16. It is worthwhile to note that had P.W.1 Mansi Kumari witnessed the gruesome murder of her mother by her father, in the normal course of the human conduct she would have disclosed this fact to her grandfather P.W.2 Dinesh Chandra Yadav and her maternal uncle P.W.9 Naval Kishore Yadav, who had immediately visited the place of the occurrence. However, neither her grandfather nor her maternal uncle are speaking about any disclosure in the form of the former statement of P.W.1 Mansi Kumari in respect of the incident in question. This certainly makes the case of the prosecution doubtful.

17. The next eye witness, according to the prosecution, is P.W.3 Devi Ghosh-sister of mother of deceased Lakhi Devi. P.W.3 Devi Ghosh claims that her house is after two houses from the house of Lakhi Devi. She stated that at about 01.00 P.M. of the day of the incident, she heard shouts and went to the house of the accused. She further stated that she saw the accused assaulting Lakhi Devi and setting her ablaze by sprinkling kerosene oil. When this witness was



subjected to cross-examination, she has stated her inability to disclose names and number of people gathered at the place of the occurrence before as well as after the incident. Her cross-examination shows that the incident took place in the populous locality and there were lot of houses in the vicinity of the place of the occurrence. Still this witness is not in a position to disclose name of a single person who came on the spot of the incident either prior or after the incident. P.W.3 Devi Ghosh has stated that after sustaining the burn injuries, Lakhi Devi was uttering that Satyanarayan Yadav has set her ablaze. Though she claims to be present at the place of the occurrence when the accused was assaulting Lakhi Devi, in cross-examination, this witness has categorically states that she has not attempted to save her niece Lakhi Devi. P.W.3 Devi Ghosh admitted that the accused had called an auto rickshaw and had taken Lakhi Devi to the Hospital.

18. Evidence of this alleged eye witness P.W.3 Devi Ghosh does not appear to be trustworthy and reliable to us. She is Mausi of the deceased. She claims to be present since inception at the spot of the incident. She never attempted to save her niece by intervening and preventing her son-in-law from beating her niece. Even after sustaining burns by her niece, she had made no attempt to extinguish the fire. Though she claims to be present on the spot of the incident from the beginning, she is unable to name any person who has come on the spot of the incident either before or after the



incident. This fact assumes importance because P.W.3 Devi Ghosh is claiming to be the resident of the same locality where the incident took place. In fact, she was residing just two houses after the house of the deceased. She was knowing the residents of the locality. Her inability to disclose names of such person creates a doubt as to whether P.W.3 Devi Ghosh was really present on the spot of the incident, at the time of the incident. Her abnormal conduct of not attempting to save her niece also creates doubt about her presence on the spot of the incident. P.W.1 Mansi Kumari has also not spoken about the presence of P.W.3 Devi Ghosh at the place of the occurrence, which was the house of P.W.1 Mansi Kumari. In a similar manner, this witness has also not spoken about presence of P.W.1 Mansi Kumari on the spot of the incident. Moreover, P.W.2 Dinesh Chandra Yadav-father and P.W.9 Naval Kishore Yadav-brother of the deceased had visited the spot of the occurrence, soon after the incident but P.W.3 Devi Ghosh has not claimed to have stated to both of them regarding the facts allegedly witnessed by her during the course of the incident. In fact, both these witnesses were the nearest relatives of P.W.3 Devi Ghosh and in normal course she ought to have disclosed the gruesome incident allegedly witnessed by her to these persons. She has not done so, casting a shadow of doubt on her version. Thus, evidence of this witness seems to be artificial and not free from shades of doubt. It lacks the assurance required in a criminal trial.



19. P.W.2 Dinesh Chandra Yadav-father of the deceased is not witness to the incident. His evidence is hearsay in nature. He has not stated that either P.W.1 Mansi Kumari or P.W.3 Devi Ghosh disclosed the incident as witnessed by them to him. P.W.2 Dinesh Chandra Yadav has specifically deposed that he had visited the house of the accused. In such contingency had P.W.1 Mansi Kumari and P.W.3 Devi Ghosh witnessed the incident, as claimed, they would have certainly disclosed what was seen by them to this witness. However, P.W.2 Dinesh Chandra Yadav is not claiming to have heard anything about the incident from two alleged eye witnesses to the incident.

20. P.W.6 Subhash Yadav is neighbourer of the deceased. The deceased was daughter of his sister-in-law. P.W.6 Subhash Yadav has acted as a witness to the F.I.R. as well as inquest and seizure Panchnama. His evidence is of no assistance to infer guilt of the accused.

21. P.W.7 Ganesh Chandra Yadav is uncle of the deceased Lakhi Devi. He had accompanied Lakhi Devi from Barsoi Hospital to Katihar and as deposed by him, on the way to Katihar, Lakhi Devi died. His evidence shows that Lakhi Devi was not in a position to talk during the course of his journey.

22. Next witness is P.W.8 Tarkeshwar Yadav-another uncle of the deceased, who stated that Lakhi Devi had returned to her matrimonial house just two days prior to the incident. As per his



version, in the evening hours of the day of the incident, he reached at the house of the accused. As per his version, he saw dead body of his niece. His evidence is also of not much assistance to the prosecution. P.W.10 Sarfaraj Alam, neighbour of the deceased, had turned hostile to the prosecution.

23. This is all about the evidence adduced by the prosecution to prove guilt of the accused in the crime in question. We have noted that neither the version of P.W.1 Mansi Kumari nor the version of P.W.3 Devi Ghosh can be relied upon to base conviction in this serious offence of commission of murder of a wife by the accused. We have noted that conduct of the accused is incompatible to his guilt. P.W.3 Devi Ghosh has stated that it was the accused who got an auto rickshaw and took the deceased to the hospital. According to the case of prosecution, reflected in the F.I.R., it was the accused who had taken the deceased to the hospital by auto rickshaw. Even P.W.8 Tarkeshwar Yadav-uncle of the deceased has stated that he came to know that the accused had taken the deceased to the hospital. If really the accused had intended to kill his wife by incinerating her then it does not stand the reason that he would take her immediately to the Hospital for her medical treatment. It is clear that he had not fled from the spot of the incident.

24. True it is that P.W.4 Mirtunjay Kumar, the Investigating Officer, in his cross-examination has stated that he had not noticed any stove or gas stove in the kitchen of the place of the



occurrence but this fact will not inure to the benefit of the prosecution. Ultimately, the prosecution has to stand on its own legs and cannot harp upon the weakness of the defence. Moreover, this Investigating Officer has not prepared Panchnama of the scene of the occurrence and has not even disclosed what was the instrument used for cooking at the house of the accused where the incident took place.

25. To crown this all, D.W.1 Anita Devi-mother of the deceased has given a fatal blow to the prosecution. The defence witnesses are also entitled to an equal treatment as is given to the witnesses for the prosecution. In this case, mother of the deceased has stated that she was at the house of her deceased daughter Lakhi Devi at the time of the incident. As per version of this witness, when her daughter Lakhi Devi was preparing food, the stove burst and Lakhi Devi sustained burn injuries causing her death. D.W.1 Anita Devi has stated that the accused was not present at the house at the time of the incident. P.W.8 Tarkeshwar Yadav-uncle of the deceased has stated that the deceased had returned to her matrimonial house just two days prior to the incident. This statement lends assurance to the version of D.W.1 Anita Devi that she was with her daughter at the time of the incident, probably because she had accompanied her daughter to the matrimonial house of her daughter.

26. D.W.2 Deepak Kumar Yadav is neighbourer of the deceased and the accused. This witness claimed that after hearing the shouts, he rushed to the house of the accused and found that



D.W.1 Anita Devi was crying thereat. He stated that he as well as D.W.1 Anita Devi tried to extinguish the fire from the person of Lakhi Devi.

27. There is nothing in cross-examination of D.W.1 Anita Devi and D.W.2 Deepak Kumar Yadav which may create doubt on their version about the incident. To say least, the version of both these witnesses creates a reasonable doubt as to whether Lakhi Devi sustained homicidal burns or accidental burns and the benefit of this doubt naturally goes to the accused.

28. In the result, we are of the considered opinion that the prosecution has failed to prove the charge levelleged against the accused and he is entitled for benefit of doubt. Therefore, the following orders:

(I). The appeal is allowed.

(II). The impugned Judgment and Order of conviction and resultant sentence imposed on the appellant/accused is quashed and set aside. He is acquitted of the offence held to be proved against him. The appellant/accused be set at liberty if not required in any other case.

29. We record our appreciation for strenuous efforts taken by Mr. Prince Kumar Mishra, the learned Advocate, appointed to act as Amicus Curiae in assisting us for arriving at the correct conclusion in the matter. We quantify the fees payable to him at Rs.5000/- and direct the High Court Legal Services Authority, Patna to pay the said



amount to Mr. Prince Kumar Mishra, the learned Advocate,
appointed to act as Amicus Curiae to represent the State.

(A. M. Badar, J)

(Rajesh Kumar Verma, J)

P.S./-

AFR/NAFR	AFR
CAV DATE	14.07.2022.
Uploading Date	19.07.2022.
Transmission Date	19.07.2022.

