

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.1428 of 2017

Arising Out of PS. Case No.-3 Year-2014 Thana- DHARHARA District- Munger

=====

Tinku Paswan, Son of Garib Paswan, resident of village - Mohanpur, P.S. -
Dharhara, District - Munger.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

For the Appellant/s : Mr.Vijay Shankar Shrivastava, Adv.
Mr. Ritesh Kumar Sinha, Adv.
For the State : Mr. Dilip Kumar Sinha, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 11-12-2023

Heard Mr. Vijay Shankar Shrivastava, the
learned Advocate for the appellant and Mr. Dilip Kumar
Sinha, the learned APP for the State.

2. The appellant, who is the husband of the
deceased, has challenged the judgment and order of
conviction and sentence dated 23.09.2017 and



25.09.2017 respectively passed by the learned 1st Addl. Sessions Judge, Munger in Sessions Trial No. 424 of 2014 arising out of Dharhara P.S. Case No. 3 of 2014, corresponding to C.S. No. 416 of 2014, whereby he has been sentenced to undergo R.I. for life for the offence under Section 302 of the I.P.C. and has been directed to pay a fine of Rs. 20,000/- and in the event of non-deposit of the fine, to further suffer simple imprisonment for six months. He has also been sentenced for three years for the offence under Section 498(A) of the I.P.C. and has been saddled with a fine of Rs. 5,000/-, in default of which a simple imprisonment for two months.

3. The sentences have been ordered to run concurrently.

4. As noted above, the appellant is the husband of the deceased.

5. The F.I.R. was lodged by the victim herself, whose statement was recorded by Sanjeev Kumar (P.W. 6) and which statement was signed by the



father and the brother of the deceased.

6. It appears to be rather strange to us that the father of the deceased has not come to the witness stand to support the prosecution case and the brother of the deceased, namely, Gautam Kumar (P.W. 8) has attributed the cause of the death of the deceased to be the burn injuries suffered by the deceased while cooking food.

7. According to the *fardbeyan* recorded by P.W. 6, the deceased was married to the appellant about four years ago and had given birth to twin children. After the birth of the children, she was not treated well in her matrimonial home. She had to rush back to her parent's home. In the month of December, she had come to her matrimonial home when on 07.01.2014, the appellant assaulted her because she had not cooked food. She was set on fire when she retorted against the appellant and asked him how would she cook food when the appellant had not been generating any money.



8. On the basis of the afore-noted *fardebayan* statement of the deceased while she was still struggling with life, a case was initially registered as Dharhara P.S. Case No. 3 of 2014, dated 07.01.2014, under Sections 498(A) and 307 of the I.P.C. With the death of the deceased, Section 304-B of the I.P.C. was added.

9. Charges were framed under Sections 498(A), 304-B and 302 of the I.P.C.

10. The Trial Court, after having examined nine witnesses on behalf of the prosecution, found the accusation against the appellant under Section 304-B I.P.C. to be groundless as there was no evidence of torture because of non-payment of dowry immediately preceding her death. Nonetheless, conviction was recorded under Sections 498(A) and 302 of the I.P.C. and the appellant was sentenced as afore-noted.

11. Four of the witnesses, namely, Bikram Kumar, Gautam Kumar, Anil Paswan and Ram Bilash Gupta (P.Ws. 1, 2, 3 and 4 respectively) have not



supported the prosecution case and have been declared hostile.

12. The *post-mortem* over the dead-body was conducted by Dr. Ram Pravesh Prasad (P.W. 5) on 08.01.2014 at 11:50 A.M. He had not seen the deceased in the Emergency Ward of the Hospital. In fact, the dead-body was brought by one Ghanshyam Yadav, the *Chawkidar* and Umashankar Paswan, the uncle of the deceased as well as Dharnidhar Paswan, the father of the deceased.

13. The deceased was found to have received deep burn injuries on her face, neck, chest, abdomen and the whole of the buttock region. The entire upper and lower lips were burnt. Except for the scalp and the groin, the skin from the body of the deceased had peeled off. On dissection, carbon soot particles were found in the trachea. *Rigor mortis* was found to be present on all the limbs. The cause of death, in the opinion of P.W. 5, was due to severe shock as a result of



the burn injuries faced by her.

14. What is noticeable in the *post-mortem* report is that there was no other injury, deformity or dislocation, except the burn injuries. Thus, for sure, the deceased had died of burn injuries.

15. The Doctor, however, did not find any smell of kerosene oil from the dead-body.

16. It may be noted that according to the allegation, the deceased was sprinkled with kerosene oil and, thereafter, was put on fire.

17. As we have already noted, the father of the deceased never came forward to support the case of the prosecution, but Umashankar Paswan (P.W. 9), who is the uncle of the deceased and who had brought the dead-body to the mortuary for *post-mortem* examination, has stated before the Trial Court that the relation between the couple was very cordial and that the deceased was unconscious in the hospital.

18. The brother of the deceased, namely,



Gautam Kumar (P.W. 8) has attributed the death because of the burn injuries received by his sister while cooking food.

19. In this background, it appears that the deceased would not have been in a position to speak, much less, to give such a detailed statement about what had happened to her on the fateful day. The presence of carbon soots in the trachea makes it very obvious that the deceased would not have been in a position to speak.

20. That the Investigating Officer (P.W. 6) recorded the statement of the deceased in the Emergency Ward of the Hospital, appears to be doubtful for the reason that it was countersigned by the brother and the father of the deceased, one of whom did not support the prosecution case, whereas the other never came forward to support the case. The reason assigned for not recording the statements of Gautam Kumar (P.W. 8) and Dharnidhar Paswan (the father of the



deceased) respectively was their remaining busy in getting medical aid administered to the deceased. If this were so and the statement was recorded in the Emergency Ward of the Hospital, it was the duty of the Investigator (P.W. 6) to have got it certified by any Doctor, attending not, that she was in a position to make such statement.

21. We are in a quandary whether to accept such statement of the deceased recorded by the Investigator (P.W. 6), when the injuries are of such kind which would make it impossible for a person having received such injuries to speak.

22. The law with respect to dying declaration has been well settled by now. It is not always required that statement made by a victim before his/her death is certified by any Doctor. However, in a case of this kind, where there is no one else to support the accusation against the appellants and the statement is being recorded in the Emergency Ward with the victim having



received deep burn injuries, no certificate by a Doctor about the condition of health of the victim while making statement, makes such statement highly doubtful.

23. We say so also for the reason that the evidence against the appellant under Section 304-B I.P.C. was found to be wanting and, therefore, no conviction was recorded under Section 304-B of the I.P.C.

24. Thus, it appears that there was no immediate cause occasioned by the ill-treatment which could have been the cause of death.

25. This gives the learned counsel for the appellant some space to argue that the deceased actually caught fire while cooking. He further supports his contention by drawing our attention to the deposition of the two Investigating Officers, who have said nothing about any incriminating circumstance in the matrimonial home of the deceased. Or at least, it has been argued, the investigation has been totally perfunctory and the



I.O. (P.W. 5) was only making it an open and shut case without any effort to find out as to what was the real cause of the burn injuries.

26. The accusation against the appellant, therefore, is based on surmises and conjectures, if we do not accept the credibility of the so-called *fardbeyan* given by the deceased while being treated in the Hospital. The deceased must have been admitted in the Hospital prior to 04:00 P.M. because the statement was made at 04:00 P.M. in the Emergency Ward of the Hospital on 07.01.2014.

27. There is no record of the time of the death of the deceased.

28. All that we have been able to lay our hands upon is the opinion of the Doctor that the deceased died of burn injuries. The *post-mortem* was held on 08.01.2014 at 11:55 A.M. When did the deceased die thus remain unknown. When these facts are not known, it is difficult for us to accept that the



deceased was in such physical condition that she could have made a detailed statement as has been suggested by P.W. 5.

29. Even otherwise, with respect to allegation under Section 498(A) I.P.C., it has been argued that the deceased was married for more than four years, but there was no complaint in the past about any ill-treatment. The deceased had also given birth to two children out of the wedlock.

30. Except for the statement of the Investigator and the so-called dying-declaration of the victim, there is nothing on record which would even justify the conviction of the appellant under Section 498(A) of the I.P.C.

31. We, perforce, are forced to give benefit of doubt to the appellant.

32. For the afore-noted reasons, the conviction of the appellant under Sections 498(A) and 302 of the I.P.C., referred to above, is set-aside.



33. The appellant/Tinku Paswan is acquitted of the charges levelled against him.

34. The appellant is in Jail since 07th of January, 2014. He is directed to be set at liberty forthwith, unless his detention is required in any other case.

35. The appeal stands allowed.

36. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

37. The records of this case be returned to the Trial Court forthwith.

38. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12/12/2023
Transmission Date	12/12/2023

