

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.817 of 2017

Arising Out of PS. Case No.-148 Year-2010 Thana- MOHANIYA District- Kaimur (Bhabua)

Ram Jinish Paswan, Son of Late Ramadhar Paswan, Resident of Village-
Barej, P.S.- Mohnia, Distt.- Kaimur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Alka Verma, Advocate

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 21-06-2023

Heard Ms. Alka Verma, learned counsel for the

appellant and Mr. Dilip Kumar Sinha for the State.

The appellant stands convicted under Section 302 of the Indian Penal Code and has been sentenced to undergo rigorous imprisonment for life, a fine of Rs. 10,000/- and in default of payment of fine to further suffer rigorous imprisonment for one year by the judgment and order of sentence dated 28.01.2015 and 30.01.2015 respectively, passed in Sessions Trial No. 340/2010,



90/2013 by the learned Adhoc Additional Sessions Judge III, Kaimur at Bhabhua.

The Trial Court has directed that the fine so realized from the appellant shall be given to the minor daughter of the deceased.

The appellant is the husband of the deceased who is alleged to have poured kerosene oil over her and set her on fire for having demanded her share of money from the sale-proceeds of the family land. The occurrence of burning took place on 05.05.2010, but the deceased died on 08.05.2010.

The prosecution story unfolds in the FIR lodged by the younger brother of the deceased viz. Rajnath Paswan, who has been examined as P.W. 6 at the trial. The FIR was lodged on 08.05.2010 with the disclosure that at about 9:00 A.M. on the same day, he telephonically learnt that his elder sister aged about 40 years has died because of burning. On such information, he along with his villagers Ramdeo Yadav, Mithilesh Pandey (P.W. 4), Babu



Lal Yadav, Ramashish Yadav (P.W. 2) and his mother Manjhari Kunwar (P.W. 1) went to the matrimonial home of his sister, only to find her dead in the courtyard. His niece Soni Kumari (aged 10 Years)/P.W. 5 was weeping near the dead body. On being questioned, she told the informant that about 4-5 days before, the father-in-law of the deceased Ramadhar Paswan had sold family land and there was some dispute between aforementioned Ramadhar Paswan and his two sons, the one being the appellant, for apportionment of the sale-proceeds. While heated discussions were going on between Ramadhar Paswan and his two sons, the deceased intervened and stopped her husband/appellant from fighting. Thereafter she came back home when she was assaulted by the appellant and his brother whereafter kerosene oil was poured on her and fire was lit which ultimately led to her death. The appellant, according to the information learnt by P.W. 6, ran away. The deceased was not taken to hospital for treatment but



locally she was treated with emollient cream etc. When she died, the information was provided to P.W. 6.

On the basis of the aforementioned disclosure, Mohaniya P.S. Case No. 148/2010 dated 08.05.2010 was registered for investigation against the appellant under Section 302 of the IPC. The Police, after investigation, submitted chargesheet whereupon cognizance was taken and the case was committed to the Courts of Sessions for trial.

The Trial Court after examining eight witnesses on behalf the prosecution convicted and sentenced the appellant as aforesaid.

The learned counsel for the appellant has submitted that though the main witness of the case is Soni Kumari (P.W. 6), the daughter of the deceased, who was only 10 years old when the occurrence had taken place and 14 years of age when she had deposed before the Court but her statement, even if believed, does reflect that



there was any intention of the appellant to kill the deceased.

It has further been urged on behalf of the appellant that with the non-examination of the Investigating Officer of this case, the appellant stood severely prejudiced as no attention could be drawn to the earlier statements made in that regard by the witnesses during the trial. The further line of the argument is that if there was a dispute for distribution of the sale-proceeds of the family land, there was no reason for the appellant to have killed his wife as the appellant and his brother were also demanding their share from their father.

Assuming the statement of Soni Kumari/P.W. 5 to be true, she had only asked for her specific share in the sale-proceeds and that also for the purposes of marriage of the minor daughter when she would have come of age. This was not such a rebellion which would have enraged any same person in killing his wife.



It has further been argued that if the act of pouring kerosene oil and setting the deceased on fire is accepted, then also it does not stand to reason why the deceased would be allowed to live for three days and that also without there being any interference from any quarter.

Had the appellant ever intended to cause the death of the deceased, he would not have permitted her to live for three days when she died of the burn injuries on 08.05.2010.

No independent person, Ms. Verma argues, has supported the prosecution case and all the witnesses are only hearsay. She has further argued that the perception of a ten year old daughter of the house cannot be taken as a version so sacrosanct that it cannot be doubted in any one of its parts.

As opposed to the aforementioned contention, Mr. Dilip Kumar Sinha, learned APP has submitted that from a bare reading of deposition of P.W. 5, it would appear that



she has offered evidence of sterling quality without any embellishment. A girl of 10 years at the time of occurrence can never be presumed to be a *non compos mentis*. She saw the occurrence and when her mother died, promptly informed her maternal uncle (P.W. 6) who along with others came to the house and the criminal case was initiated.

Mr. Sinha further submitted that if it were not for the intention of causing the death of the deceased, the deceased would have otherwise been administered treatment which was never done and she was allowed to perish without any medical help.

There is yet another circumstance which makes the case *open and shut* for the appellant *viz.* of his having absconded after the occurrence. The very conduct of the appellant, it has been argued, is an admissible piece of evidence under Section 8 of the Indian Evidence Act.

The appellant knew the nature and quality of his act and the act of burning the deceased, therefore, would



be presumed to have been executed with the intention of causing a bodily injury to the deceased which was sufficient in the ordinary course of nature to cause death, thereby bringing the case within the four corners of Section 300(thirdly) of the IPC.

On the aforementioned submissions, Mr. Sinha therefore, urged that no interference is required with the judgment and order of conviction and sentence of the appellant.

In this background we have examined the records and have gone through the deposition of the witnesses.

The mother of the deceased viz. Manjhari Kunwar/P.W. 1 who had also accompanied her son to the matrimonial home of the deceased and had heard Soni Kumari/P.W. 5 speak about the occurrence, has not supported the prosecution case and has been declared hostile.

Similarly, Shankar Paswan/P.W. 3 has also been declared hostile.



Rest of the witnesses barring P.Ws. 5 and P.W. 6 have only offered to say what they heard from Soni Kumari/P.W. 5. They were requested by the P.W. 6 to accompany him and his mother to the matrimonial home of the deceased. Thus, they are not the eye witnesses to the occurrence or the first source of the information about the occurrence in which the deceased lost her life.

Per force only the two witnesses aforesaid have supported the prosecution case in its entirety.

As noted-above, the 10 years old daughter of the deceased and the appellant was present in the house when the occurrence is said to have been committed. She has narrated before the trial Court exactly the same set of facts and the same sequence of events which she had narrated to her maternal uncle (P.W. 6) when he had visited her home for the first time after being informed about the death of her mother. She reiterated, standing in the witness-box, that her grandfather had sold the family land and there was some dispute between her grandfather



and her father and uncle for distribution of the sale-proceeds. Her late mother/deceased had tried to interfere and also suggested to the appellant not to fight. She then came back home.

Be it noted that from her deposition, it appears that at the time of the occurrence, the grandfather of Soni Kumari/P.W. 5 was staying separately. In the later part of the occurrence, when the deceased demanded her share in the sale-proceeds for the purposes of spending it in her daughter's marriage, she was assaulted by lathi by the appellant and his brother and was also set on fire.

We do not have any reason to disbelieve the statement made by a fourteen years old child who had witnessed the occurrence while she was ten years old.

The continuity and the clarity in her statement makes us absolutely sure that she saw the occurrence, understood it and correctly narrated it.

However, what we have noticed is that according to her consistent statement, a demand of distribution of



the sale-proceeds of the family land by the appellant and his brother from their father resulted in some unsavory exchange of words which goaded the deceased in interfering and forestalling the appellant from taking the fight any further. This had happened on 05.05.2010. On the same day, when the deceased had come back home and had demanded her share from her husband/appellant, she was attempted to be burnt. She did not die then. She survived for three days without any medical help.

P.W. 5/Soni Kumari has however stated that home treatment was given to the deceased for three days but she ultimately succumbed to the burn injuries.

The deposition of Dr. K. N. Tiwary/P.W. 7, the Doctor who conducted the post-mortem, fully confirms and ratifies the correctness of the statement made by Soni Kumari/P.W. 5. The deceased had died of 90% burn injuries and the time of death was fixed at 24 - 36 hours prior to the post-mortem examination. The body was sent for post-mortem examination on 08.05.2010 and the post-



mortem examination was done at 8:00 A.M. on 09.05.2010.

What is of relevance is that a specific statement was made by Soni Kumari/P.W. 5 that before the deceased was burnt, she was assaulted by lathi by the appellant and his brother but the Doctor did not find any laceration or injury by lathi on the body of the deceased.

To that extent, there appears to be some exaggeration in the deposition of Soni Kumari/P.W. 5.

Be that it may, the fact remains that the deceased died of burn injuries which primarily was caused by the appellant. The Only explanation which the appellant has given in his 313 Cr.P.C. statement is that the deceased died while cooking food because of the cooking stove bursting, a staid but absolutely unacceptable defence.

The house of the appellant and the deceased stood at secluded place and therefore, no witness came forth from the neighbourhood. Under such circumstances,



it was incumbent upon the appellant to have explained the circumstances which was in his knowledge, as ordained under Section 106 of the Evidence Act.

Not having done so at the instance of the appellant further raises doubts about his defence.

We must indicate that merely because the appellant ran away after the deceased got injured, may not be taken as a conduct to surely come to the conclusion that the appellant was guilty.

However, all the circumstances seen together do make out a case against the appellant that he caused such bodily injury to the deceased which in ordinary course of nature would have caused her death.

The Informant/P.W. 6 has supported the prosecution case on the lines of Soni Kumari/P.W. 5 because she was the primary source of information to him.

After having said that, we find it difficult to completely overlook the fact that the deceased survived for



three days when rudimentary treatment was afforded to her at the instance of the appellant.

This makes us think again as to whether there was an intention on the part of the appellant to cause such bodily injury as is likely to cause death. The appellant surely did not have the intention to cause the death of the deceased.

Had it not been the case, the deceased would not have been allowed to let live for her to become a witness if she survived. There was no older person in the house to suggest anything otherwise. This fact alone makes us think that the action of the appellant was in a fit of temper, when he got enraged on the deceased asking for her respective share in the sale-proceeds of land. He may have had the knowledge that the act committed by him would cause her death but may not have harboured the same intention of causing death.

We therefore, are satisfied to take the view that the appellant committed an act of causing such bodily



injury as is likely to cause death with the knowledge but not the intention of causing death, bringing the case of the appellant within the category of culpable homicide not amounting to murder, punishable under Section 304(1) of the IPC.

Thus, for the reasons aforenoted, we convert the conviction of the appellant from Section 302 to one under 304(1) of the IPC and further hold that the period of custody which the appellant has already undergone (approximately 13 years) would be sufficient to meet the ends of justice.

Thus, the conviction of the appellant under Section 302 is altered to one under Section 304(1) of the IPC and the sentence awarded to the appellant is modified to the period of custody which he has already undergone.

The appeal stands partially allowed.

The appellant shall be released forthwith from custody, if not detained or required in any other case, but subject to his having paid the fine.



The fine so collected shall be deposited with Soni
Kumari/P.W. 5.

(Ashutosh Kumar, J)

(Shailendra Singh, J)

krishna/Annu

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.06.2023
Transmission Date	NA

