

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.821 of 2017

Arising Out of PS. Case No.-60 Year-2015 Thana- BELAGANJ District- Gaya

1. Hemant Paswan, Son of Late Ram Pravesh Ram Paswan, Resident of Village- Lodipur, P.S.- Belaganj, District- Gaya.

2. Ranjan Paswan @ Ranjeet Paswan @ Ranjeet Pashwan @ Ranajan, S/o Hemant Paswan, Resident of Village- Lodipur, P.S.- Belaganj, District- Gaya.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. N.K. Agrawal, Sr. Advocate. Mr. Sudhir Kumar Sinha, Advocate. Mr. Arvind Kumar, Advocate. Mr. Kumar Rajdeep, Advocate.
For the Respondent/s	:	Mr. Satya Narayan Prasad

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 14-12-2023

1. We have heard Mr. N.K. Agrawal, learned Senior Advocate for the appellants and Mr. Satya Narayan Prasad, learned APP for the State.

2. The appellants, who are father-in-law and husband of the deceased respectively, have been convicted under Sections 302, 307, 323 and 498A/34 of the Indian Penal Code, *vide* judgment dated 25.05.2017



passed by the learned Sessions Judge, Gaya, in Sessions Trial No. 514 of 2016, G.R. No. 1850 of 2015, arising out of Belaganj P.S. Case No. 60 of 2015. By order dated 29.05.2017, they have been sentenced to undergo R.I. for life, to pay a fine of Rs. 30,000/- and in default of payment of fine, to further suffer imprisonment for two years for the offence under Section 302 IPC. For the offence under Section 307 of IPC, they have been sentence to undergo R.I. for ten years, to pay a fine of Rs. 20,000/- and in default of payment of fine, to further suffer imprisonment for one year. For the charge under Section 323 of IPC, the appellants have been sentenced to undergo imprisonment for one year. For the offence under Section 498A of IPC, the appellants have further been sentenced to undergo R.I. for three years, to pay a fine of Rs. 5,000/- and in default of payment of fine, to suffer imprisonment for six months.

3. All the sentences have been ordered to run concurrently.



4. The case is based on the so-called dying declaration of the deceased, who is said to have given her fardbeyan statement before the Officer In-Charge of Belaganj Police Station (P.W. 3) on 24.04.2015.

5. In the aforementioned fardbeyan statement, the victim had alleged that when she had sought permission from her mother-in-law (not put on trial) in the night of 23.04.2015 to go in the neighbourhood to attend a marriage, she was abused and her children were taken away from her. Later in the night at about 11 O' Clock, her husband/appellant Ranjan Paswan along with his parents came and doused her with petrol, which was taken out from the motorcycle and was set on fire. The fire was lighted by appellant no. 1.

6. Thereafter, leaving the deceased burning, the accused persons ran away, closing the door of the room behind them. On her shouts, many people of the neighbourhood came and opened the door. In order to give it a colour of accidental fire while cooking, the



appellant no. 2, her husband tried to extinguish the fire by coming close to her body and in the process, he too was injured. There had been a past history of cruelty at the hands of the appellants and her mother-in-law. On this occasion she was very severely burnt.

7. On the basis of the afore-noted statement, which was recorded by P.W. 3, a case initially was registered *vide* Belaganj P.S. Case No. 60 of 2015, dated 24.04.2015 under Sections 341, 323, 307, 498A/34 of the IPC. Later, after the death of the deceased, Section 302 of IPC was added.

8. It appears that the mother-in-law of the deceased was not put on trial.

9. The Trial Court has examined only four witnesses including the Doctor, who conducted the postmortem over the dead body and the I.O. of this case, who had recorded the fardbeyan. The two other witnesses; one being the mother of the deceased and the other whose sister was married in the village of the



appellants, have not supported the prosecution case and have been declared hostile.

10. It appears from the judgment that the Court below has fully relied upon the dying declaration of the deceased and the deposition of the I.O. to come to the conclusion that the appellants had killed the deceased.

11. We have noticed that on the fardbeyan which was recorded in the Emergency Ward of Belaganj Primary Health Centre, the victim had put her R.T.I. (Exhibit- 1). She died after about 10 days of treatment in P.M.C.H. There is no signature of any person as a witness to the recording of the fardbeyan.

12. On the scrutiny of the deposition of P.W. 3 (the I.O.), we have found that he himself in Paragraph- 2 of his cross-examination has said that when he had gone to see the victim, she was not in a position to give her statement. After the statement was recorded, P.W. 3 visited the house of the victim. During the course



of inspection of the house, one plastic bottle was found to be burnt. The house of the mother of victim (P.W. 1) was located nearby. He is said to have recorded the statement of the mother of the victim (P.W. 1), Ashok Paswan (P.W. 2), Kumkum Devi (not examined) and others. He claims that all these persons supported the prosecution version.

13. This appears to be rather strange that the two other persons, who have been examined viz., P.Ws. 1 and 2, have not at all supported the prosecution version.

14. It appears that the I.O. did not even try to know as to how the deceased was brought to Belaganj Primary Health Centre and lodged in the Emergency Ward. Somebody must have brought her to the hospital. In his cross-examination, he has said that he was present in the hospital from before but was never informed by anybody about either the occurrence or the victim having been brought by somebody. In such an event, it appears



to be highly unlikely that the victim would be left abandoned in the Emergency Ward of the hospital. Either she would have been brought by her in-laws or her mother, who though has not supported the prosecution case and has been declared hostile, but has admitted of having brought the victim in an injured condition to the hospital.

15. According to the fardbyean statement, the three children of the victim/deceased were taken away from her. How old were the children and where were they remains unknown. The I.O. has not recorded anything about the children of the deceased or there being the witnesses to the occurrence. The house according to his evidence, appeared to be a joint house of the deceased, her husband and her parents-in-law.

16. Apart from this, we have also found from the deposition of P.W. 3 that the appellant no.2/husband was also injured, which injury was received while trying to extinguish fire. Though, according to the



fardebayan statement of the deceased, it was only an affectation of appellant no. 2 in order to avoid the gaze of the people and prevent the family from being prosecuted for burning the deceased; but the injuries on appellant no. 2 do not appear to be minor.

17. We say so for the reason that according to P.W. 3, he had sent appellant no. 2 to hospital for being treated. Very surprisingly again, the injury report of appellant no.2 has not been brought on record.

18. This, therefore, makes us wonder as to how P.W. 3 recorded the statement of the victim, who alleged that she was put on fire by the appellants.

19. In order to test whether such statement could have been made by the victim in the burnt condition, we have examined the deposition of the Doctor as also the post-mortem report, which is Exhibit- 1/1. The post-mortem report clearly discloses dermo- epidermal burn injuries on whole of the body surface except the front of lower chest and abdomen. The injuries were



found to have been caused by flame and the death was assessed to be due to the burn injuries and its complications.

20. In the cross-examination, Dr. Shiv Ranjan Kumar, (P.W. 4) has specifically stated that the face, mouth, lips and eyes of the deceased were completely burnt. In such condition, P.W. 4 has asserted, no statement could be made by anybody. The injuries could also be accidental.

21. The post-mortem examination has been done in the P.M.C.H. This, therefore, pre-supposes that the deceased was brought from Belaganj to P.M.C.H. When was it done, remains unknown. Who all had accompanied the deceased while she was still struggling for life from Belaganj to P.M.C.H. at Pribahore in Patna, also remains unknown.

22. The I.O. has admitted that for six days that the deceased survived, she was not in a position to speak and, therefore, her further statement was not



recorded.

23. Thus, it appears that the very story of the deceased having been burnt at the hands of the appellants is incorrect. Even if it were correct, the deceased, while alive, would not have in a position to speak and give such detailed statement to the I.O.

24. No witness to the fardbeyan further confounds the issue and confirms our belief that the deceased was not in a position to speak.

25. The other lapses in the investigation namely of not finding out the motorcycle from which petrol was taken out and used for burning the deceased; the age and the statements of three children of the deceased who allegedly were taken away from her make the investigation highly lopsided.

26. We have also examined the deposition of P.Ws. 1 and 2 even though they have been declared hostile. The deceased had solemnized love marriage with appellant no. 2. Ever since the marriage, according to



P.W. 1, the deceased and her husband stayed separately though in the same house. If this were true, there was no necessity for the deceased to have taken permission of her mother-in-law to go in a marriage function in the neighbourhood, which actually was the flash-point for the deceased to be attempted to be burnt alive.

27. All these lapses make the prosecution case highly doubtful.

28. It is unfortunate that a lady has died of burn injuries but the evidence is not strong enough for convicting the appellants under Section 302, 307 and 323 of the IPC. So far as the offence under Section 498A is concerned, the same has neither been made out nor proved during the Trial.

29. We are left with no option then than to set aside the judgment and order of conviction of the appellants.

30. The appeal is allowed.

31. The conviction of the appellants are set



aside. They are acquitted of the charges.

32. It is informed by the learned Advocate that the appellants are in jail.

33. They are directed to be released from jail forthwith, if not detained or wanted in any other case.

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

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

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

krishna/manoj-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19.12.2023
Transmission Date	19.12.2023

