

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.942 of 2017**

Arising Out of PS. Case No.-40 Year-2011 Thana- SISWAN District- Siwan

Sanjeet Kumar Singh, Son of Late Prabhunath Singh, Resident of
Village – Tarenva Madhopur, Police Station -Siswan, District -Siwan.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 944 of 2017

Arising Out of PS. Case No.-40 Year-2011 Thana- SISWAN District- Siwan

1. Usha Devi, Wife of Upendra Singh, Resident of Village – Kachnar,
Police Station – Siswan, District – Siwan.
2. Minu Kumari, Daughter of Late Prabhunath Singh, Resident of
Village – Tarenva Madhopur, Police Station -Siswant, District -Siwan

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 942 of 2017)

For the Appellant/s : Mr. Udit Narayan Singh, Adv.
Mr. Gajendra Kumar Singh, Adv.
Mr. Rajiv Kumar, Adv.

For the Respondent/s : Mr.Sri Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (DB) No. 944 of 2017)

For the Appellant/s : Mr. Udit Narayan Singh, Adv.
Mr. Gajendra Kumar Singh, Adv.
Mr. Rajiv Kumar, Adv.

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

**CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and**

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-10-2023



1. The appellants in the two appeals are the husband and sister-in-laws of the deceased.
2. They have been convicted under Section 304 B of the I.P.C. vide judgment dated 30.05.2017 passed by learned Additional District and Sessions Judge -cum- Fast Track Court No. 171 in Sessions Trial No. 192 of 2012 and by order dated 31.05.2017, they have been sentenced to undergo imprisonment for life.
3. The F.I.R. has been lodged by the father of the deceased namely Raman Singh (P.W. 3). He has alleged in his FIR, recorded by Tej Narayan Paswan (P.W. 5) on 05.04.2011, that his daughter was burnt to death. On the same day, he had received a telephonic information that at 7:30 in the evening that the deceased has been put on fire. On such information, he along with his villagers came to the matrimonial home of the deceased and found that one of the rooms on the ground floor was still on fire,



which was being doused by many villagers. After the fire was extinguished, he saw the dead body of his daughter, who appeared to him to be totally burnt. The deceased was married to appellant/Sanjeet in the year 2008 and ever since the marriage, she was not treated well by her in-laws. The deceased used to complain regarding bad treatment in her matrimonial home. Because of such treatment to the deceased, P.W. 3 had brought her to his own house. Only four days ago, appellant/Sanjeet came and took her away with the assurance that he shall keep his wife at Patna and not at his village home. Appellant/Sanjeet works at Patna in a private organization. It was, therefore, asserted by P.W. 3 that deliberately the deceased was put on fire by the appellant and others. This fardbeyan led to the lodging of the Siswan P.S. Case No. 40 of 2011 dated 05.04.2011 for the offences under Sections 304 B and 120 B of the I.P.C. The police after investigation submitted charge-



sheet only against the appellant and not against others whereupon the appellants were put on trial. The Trial Court, after having examined five witnesses on behalf of the prosecution including the Doctor (P.W. 4) and the I.O. (P.W. 5), convicted the appellants under Section 304 B of the I.P.C. and sentenced them for life imprisonment.

4. Mr. Udit Narayan Singh, the learned advocate for the appellants has submitted that though the deceased had died within two years of her marriage in her matrimonial home but the accusation of her being put on fire by the appellants is incorrect. He has further submitted that there is no evidence on record to demonstrate that shortly before the death, the deceased was subjected to any act of cruelty for non payment of dowry and, therefore, the offence under Section 304 B of the I.P.C. would not get attracted. He has also submitted that from the evidence on record, it would appear that even though



many villagers had assembled at the place where the fire had still not been doused, but none of them have been brought to witness-stand for them to depose before the trial court so as to elicit the correct version from them. An independent witness would have no affinity with either of the parties, who would be expected to state the truth. There is no explanation also of non examination of any one of those witnesses.

5. Lastly, it has been submitted that the Trial Court in a hurried manner, employed the tool of Section 106 of the Evidence Act and finding no explanation by the appellants about the cause of death of the deceased, convicted them under Section 304 B of the I.P.C. The Trial Court completely forgot that persons whose statements were recorded by the police during the course of investigation had appeared before the Trial court as defence witnesses and had explained the circumstance of the deceased having



been burnt when she had bolted herself inside the room and had attempted to commit suicide which proved to be successful. The door had to be broken open to douse the fire. It has also been urged on behalf of the appellants that none of the circumstances from which the guilt of the appellants have been inferred, were ever put to be accused persons under Section 313 of the Cr.P.C., for them to explain the circumstances of the death in a better manner.

6. As opposed to the aforementioned contentions, Mr. Abhimanyu Sharma, the learned A.P.P. has submitted that the evidence of the grandfather, mother and father of the deceased who have been examined as PWs 1, 2 and 3 respectively clearly demonstrate that there was a demand of dowry and ill treatment because of none fulfillment of the same.

7. The parents of the deceased have stated in clear terms that there was a demand of Rs. 4 lakhs



and a car. The deceased was ill treated. The mother of the deceased had gone on to state before the Trial Court that she had seen the appellant/Sanjeet assaulting the deceased in her presence. It was only for this kind of treatment to the deceased in her matrimonial home, that she was brought back to her parental home. Appellant/Sanjeet had, only few days before the occurrence, come to the house of P.W. 3 and gave assurance of keeping the deceased at his rented house at Patna and took her away but ultimately the deceased was killed at the hands of the appellants. The two other appellants, apart from appellant/Sanjeet, are the married sisters-in-law of the deceased who have played an active role in the deceased being taunted at ill treated and finally killed by burning her.

8. The evidence of PWs. 1 to 3 in this context requires to be analyzed for finding whether it was necessary for the Trial Court to have employed the



provisions of Section 106 of the Evidence Act which could have been done only if the prosecution was able to proof the case beyond all reasonable doubts and some exceptional and pre-eminently some circumstances which could have been deciphered only by the appellants, was not done by them at the trial.

9. Brahmanad Singh (P.W. 1), the grandfather of the deceased has stated that on 05.04.2011 somebody in his village had told him that his granddaughter has been killed. He disclosed such information at his home and thereafter, along with his son (P.W. 3) and about 15-16 persons of the village went to the matrimonial home of the deceased. He had not found any persons of the family of the appellants in the house. The doors of the house were left ajar by the time P.W. 1 had reached there. The police had also arrived . He along with his villagers entered inside the house along with police party and had found the dead body of his granddaughter. She



was completely burnt and had died. In the torch light which was carried by the investigator, all the persons saw that there was a mark around the waist of the deceased as if she had been tied with a rope. In his presence, the inquest report was prepared. The police thereafter took the dead body to police station and he came back home by around 9:30 P.M. He has also stated in his examination-in-chief that he had learnt that appellant/Sanjeet was otherwise interested in a girl of *Manjhi* village with whom he wanted to marry.

10. The deceased had been carrying pregnancy of three months. His son (P.W. 3) had lodged the fardbeyan at the place of occurrence only. The matrimonial home of the deceased, accordingly, (P.W. 1) is located at a distance of 2 kms from his house. The matrimonial home is surrounded by other houses including the house of Baldev Singh, the Sarpanch of the village before whom the fardbeyan of P.W. 3 was recorded. The deceased had studied till intermediate.



She was residing in the upper portion of the house, which had all the amenities. He had no idea as to when the act of torture began and how was the deceased tortured. Whenever he had visited the matrimonial home of the deceased, he was allowed to meet the deceased in her room and he also was always accorded a very warm and hospitable welcome. The deceased had never attempted to commit suicide in the past. What is absolutely noticeable in the deposition of P.W. 1 is that at the time when he visited the matrimonial home of the deceased, he had found that water in huge quantity was used for dousing the fire. The police had arrived after minutes of his arrival at the place of occurrence. When questioned, P.W. 1 has denied that he had stated before the police that the deceased did not want to stay in her matrimonial home. He had also not told the police that he had heard the information that the deceased died of burning. However, he has



admitted of letting the police know that he had visited the house of the deceased alongwith his other family members and many villagers.

11. The mother of the deceased (P.W. 2) has supported the prosecution case so far as the allegation of torture for non fulfillment of dowry demand is concerned and has also stated that the deceased was taken away from her parental home on the assurance of keeping her at Patna. The deceased had told her sometimes that her husband wanted to marry somebody in village *Manjhi* and because of that, the dispute between the couple used to take place. The demand of car and cash started after a month of the marriage.

12. The father of the deceased (P.W. 3) has supported the allegation which he has levelled in the FIR. However, in cross-examination, he has stated that for the first time, his father (P.W. 1) was told in the local market that the deceased had been killed by



burning her. (It may however be noted that in the fardbeyan, he stated that he received a telephonic information about the death of the deceased). On such information having been shared by his father (P.W. 3) he along with many others whose names has been listed in his deposition went to the matrimonial home of the deceased. Seeing them, the accused persons including the appellants tried to run away. However, when they reached the house, nobody was available. The deceased had already died. The door of the room was also burnt from inside. However, he did not find the bedding on the cot to have been burnt. The clothes which the deceased had been wearing had burn marks. There was only one cot in the room and the other furniture was a solitary bench which also appeared to have been burnt. A burnt rope also was found in the room. It was then that the police was informed who came later and the fardbeyan of P.W. 3 was recorded. In the same breadth, he has



stated that the police officer had scolded him, which sent him doubting that the police may not investigate the case fairly and therefore, protest petition was filed by him (Ext. 1). He did not remember the date when he had first gone to mediate and intercede with the accused persons on the asking of the deceased. However, he had not forgotten to mention that the marriage ceremony was solemnized with great pomp and show. The family of the accused persons /appellants, according to P.W. 3, is well respected in the area. He also could not know the name of the person who had told about the occurrence to his father in the local market, where after all of them had visited the matrimonial home of the deceased. He has admitted that many persons had accompanied him and his father to the place of occurrence.

13. The police did not seize any burnt article at the place of occurrence. He has affirmed that he had stated before the police that he had mediated



between the accused and the deceased. Many of the statements that he had made before the trial court, he had not stated before the police and his attention to such statements before the police was drawn. However he has denied to have not made such statement to the police which he had made before the Trial Court.

14. The Investigating Officer of this case (P.W. 5) does not claim to have arrested anyone of the accused persons during the course of investigation. This appears to be rather surprising. He was entrusted with the investigation of the case on 05.04.2011. He has also stated before the trial court that the information about the occurrence was received in the police station at 07:30 PM on the basis of which an entry was made in the station diary, which entry is not on record. The name of the person who had informed the police station was neither recorded nor P.W 5 remembered it. It is also not



stated in the station diary that the police party proceeded for the place of occurrence. The I.O. made use of a torch to examine the P.O. but this fact was not stated in the police papers. On being questioned, he has confirmed that P.W. 2 had told him that the deceased never wanted to stay in her matrimonial home. Whereas Lal Baccha (DW1) and Rameshwar Singh had told him during the course of investigation that the deceased had committed suicide. Sudama Ram (DW2) had also told him during the course of investigation that he had rushed to the house of the appellants and had found the door of the room where the occurrence took place, closed from the inside. With the help of four to five persons, the door was broken. There was smell of kerosene oil in the room. With the help of the villagers who had arrived at the place of occurrence, the fire was doused. P.W. 1 had also told him that the deceased never wanted to stay in her matrimonial home and when he learnt that the



deceased has died of burn injuries, he had come alongwith his family members to the place of occurrence.

15. As we have noted in the deposition of P.W. 5, Lal Baccha Singh and Sudama Ram (D.Ws. 1 and 2) have made statements which indicate that the deceased died of burning but the harm was self inflicted, perhaps to commit suicide. They had also made such statements before I.O. which fact stands confirmed by the I.O. in his deposition before the Trial Court.

16. P.W. 4, the doctor who had conducted the postmortem on the deceased found the entire body to have been burnt. He could detect smell of kerosene oil from the body. The postmortem report further confirmed that the deceased was carrying pregnancy of two months. The death was opined to be because of shock due to deep burn injuries and asphyxia caused by fire flames. The time of death was fixed



between 06 to 24 hours of the postmortem examination.

17. After having gone through the deposition of witnesses, we have found lapses on the part of prosecution which assume great importance as it has led to the truth not come to the fore. The source of information to P.W. 1 and 3 as also to the I.O. was not disclosed during the Trial. P.W. 1 was told by somebody in the market that the deceased was put on fire whereas P.W. 2 claims to have learnt on telephone about the occurrence. The information about an occurrence in the matrimonial home of the deceased was received in the police station at 07:30 in the evening about which an entry was made in the station diary. Such station diary entry ought to have been produced before the Trial Court for it to know as to what was the first information in the police station. What was the reason for the police officer scolding P.W. 3 at the P.O. remains unknown. Did the



police officer find in the first instance that false accusation is being made by the family members of the deceased? When P.W. 1, along with others including PW2 and 3 arrived at the place of occurrence, he did not find anybody in the house. However, PW3 who had been accompanying PW1 claims to have seen the accused persons / appellants running away from the house. Under normal circumstances, such minor difference in the deposition of witnesses, who claim to have seen some part of the occurrence, would not have assumed any importance. However, in the present case, the accusation is based mainly on the circumstances, namely, the circumstance of the deceased dying in her matrimonial home; of her having come to her matrimonial home only four days ago; of a demand of car and cash having been put up by appellant /Sanjeet only shortly and the ill treatment to the deceased for her to have gone back to her parental



home after the marriage. Nobody has claimed to have seen the act of putting the deceased on fire. Because the deceased died in the room which was found bolted from inside, some doubts do creep in whether the harm was self inflicted. The two defense witnesses, who had been examined by the police had along with others rushed to the house and had forcibly opened the door which had been bolted from inside. The deceased deliberately kept the door locked and committed suicide.

18. Those two defense witnesses were not the first timers but had also participated in the investigation with their version of the occurrence. In this background, non examination of anyone of the witnesses, who could have been called impartial and independent, again assumes significance. PWs. 1, 2 and 3 were accompanied by approximately 16 to 17 co-villagers and several persons are said to have assembled at the P.O. when the police party had



arrived and some of whom had given their statement before the police. Under such circumstances, non-examination of anyone of the independent witnesses creates serious doubt about the prosecution version. It is also surprising that the Investigator did not arrest anyone of the accused persons including the appellants during the entire course of investigation.

19. Was he doubting the accusation since the beginning ?

20. If not, then why major part of the accusation was found to be false during investigation?. The main act of perpetrating torture was attributed, in the F.I.R., to the mother-in-law of the deceased, who has not been sent up for trial. Simultaneously, it is also curious that no evidence has been led to demonstrate that the two sisters-in-law of the deceased had visited the place of occurrence in the recent past or had been residing there on a permanent basis. Unless this was proved, their participation in the act of torture



immediately before the death of the deceased could not have been proved. The two sisters-in-law, who are the appellants before this Court were married long time ago.

21. Who all were present in the house when the occurrence took place is not known. The fire had still not been extinguished when PWs. 1, 2 and 3 had visited there. It was only after the fire was doused/ extinguished, PW 1 to 3 entered the house. At that time only, the police party had arrived. Who had taken the decision that there was no need to take the deceased to the hospital? Where was the certification that the deceased had actually died of burn injuries ? There was no time lost when the fire was doused with the help of villagers.

22. We have not found any attempt on the part of the police also to at least take the deceased to any nearby hospital, if not for treatment then for confirmation of death. The inquest report was



prepared and thereafter the dead body was taken to police station and then to mortuary for postmortem examination. There appears to be a great hurry in all the stakeholders accepting that that the deceased had already died.

23. The nature of burn injuries which was approximately 100% may have killed the deceased instantaneously. However, that decision required a determination that she was not surviving. If all the accused persons had run away and nobody was spotted in the house, it was the police officer, who could have taken a call whether the deceased was or not required to be taken to the hospital. All these aspects are missing in the deposition of the I.O. who had reached the P.O. almost simultaneously with PWs. 1 to 3.

24. In this context, we find that the use of Section 106 of the Indian Evidence Act, 1872 by the Trial Court to convict the appellants to be



unwarranted. Section 106 of the Indian Evidence Act, 1872 reads as follows:-

"106. Burden of proving fact especially within knowledge.—When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

illustrations

(a) When a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.

(b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him".

25. When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The word "especially" connotes a pre-eminently or exceptionally such facts which would only be within the knowledge of the accused. In this



circumstance only, the ordinary rule which applies to the criminal trials that the onus lies on the prosecution to prove the guilt of the accused, is given a go-by and an exception to the rule provided under Section 106 of the Indian Evidence Act, 1872 comes into play.

26. Section 101 of the Indian Evidence Act lays down the general rule that the burden of proof is always on the prosecution. An exception in the Evidence Act cannot oust the main rule of Evidence. Section 106 is only an exception to Section 101 of the Indian Evidence Act, which is not designed or intended to relieve the prosecution of its original burden of proving the case beyond all reasonable doubts.

27. Even at the cost of repetition, we say that the Section 106 of the Indian Evidence Act, 1872 will only apply to those cases where the prosecution has succeeded in establishing the fact from which a



reasonable inference can be drawn regarding the existence of certain other facts, which are within the special knowledge of the accused.

28. In this case, if the accused failed to offer proper explanation about the existence of other facts then only the court would have had the justification of drawing any appropriate inference (also refer to **Shambu Nath Mehra vs The State Of Ajmer; AIR 1956 SC404; Nagendra Sah vs. the State of Bihar, (2021) 10 SCC 725; Tulshiram Sahadu Suryawanshi & Anr. vs State Of Maharashtra, (2012) 10 SCC 373; State Of West Bengal vs Mir Mohammad Omar & Ors, 2008 SCC 382, Trimukh Maroti Kirkan vs State Of Maharashtra, (2006) 10 SCC 681 and Balvir Singh vs State Of Uttarakhand, 2023 SCC Online SC 1261.**

29. After having said that, it is also necessary to outline another facet, namely, that where any offence like murder is committed in secrecy inside the



four-walls of the house, the initial burden to establish the case would be on the prosecution but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character.

30. In view of Section 106 of the Indian Evidence Act, 1872, there would be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed.

31. After all, the Trial Court ought not to be only interested in ensuring that no innocent man is punished but he is also under an obligation to see that no person guilty of an offence escapes. Both form the judicial duty of a judge.

32. In the present set of facts, the witnesses who are the relatives of the deceased arrived at the place of occurrence when the fire was still burning. the last



of the rooms of the house on the ground floor had fire in it, which was seen by the witnesses. The witnesses also saw the efforts of dousing the fire. PW1 had seen plenty of water in and around the place which perhaps was only for extinguishing the fire. Only when the fire got extinguished, that the PWs 1 to 3 had entered the house. According to them, there was nobody around. This statement could be correct as the I.O. had not arrested anybody then in fact he did not arrest anybody during the entire course of investigation, which we have noted earlier.

33. There is no evidence of demand of dowry and consequent torture immediately preceding the death. Only vague statements have been made at the Trial that there was a demand by the husband of the deceased and that the deceased was not treated well. The fact that the deceased was carrying a pregnancy of two months, is a sufficient indication that the relationship between the couple was cordial or at least



not averse and they lived like man and wife. The deceased agreed to come to her matrimonial home on the assurance of being taken to Patna. Did she go to Patna from her parental home or she was never taken to Patna but was only brought and dumped in the matrimonial home is also not clear from the evidence on record. Was she in some distress ? if so, for what reason ?. We have seen the deposition of witnesses and its confirmation by the I.O. that the deceased did not want to stay in her matrimonial home. There is a vague reference of the husband of the deceased entertaining an idea of marrying with a girl of Manjhi village, which perhaps could have been the bone of contention between the couple.

34. There could be myriad reasons for the deceased to remain sad in her matrimonial home. These reasons may have prompted her to commit suicide. She may have thought that there was no light at the end of the tunnel.



35. For these reasons, we have not completely ruled out the theory of suicide in assessing and evaluating the evidence of witnesses.

36. That the relationship between the relatives of the deceased and her in-laws was very cordial is also reflected from the statement made by PW1 that whenever he visited the matrimonial home of the deceased, he was accorded a warm welcome. Things never looked so bad on surface.

37. Something must have been irking the deceased.

38. In **Tulshiram Sahadu Suryawanshi** (supra), the Supreme Court has clearly elucidated that it is a settled law that presumption of fact is a rule in the law of evidence that a fact, otherwise doubtful, may be inferred from certain other proved facts while inferring the existence of a fact from other set of proved facts, the court exercises a process of reasoning and reaches a logical conclusion as the



most probable position. The provisions contained in Section 114 of the Indian Evidence Act, 1872 further strengthens the afore-noted proposition. It empowers the courts to presume the existence of any facts which it thinks to be likely to have happened. In that process, the courts shall have regard to the common course of natural events, human conduct etc. in addition to the facts of the case.

39. In these circumstances, the principles embodied in 106 of the Evidence Act, 1872 can also be utilized.

40. However, in no case can the burden of the prosecution be relieved.

41. We have already noted the circumstances which have not been proved by the prosecution beyond all reasonable doubts and which circumstances have formed the basis for convicting the appellants. Those circumstances but have also led us to doubt the prosecution case, namely, not proving the demand



and torture immediately preceding the death, good relationship between the family members and somewhat reluctance of the deceased in spending the rest of her life in her matrimonial home, which is a village.

42. The use of Section 106 of the Indian Evidence Act, 1872 in such a frenzy by the Trial Court does not appear to be a warranted exercise of power.

43. The prosecution has thus, in our opinion, miserably failed to prove the ingredients of the offence and the circumstances which could have led any prudent person to believe that the appellants only and nobody else had killed the deceased.

44. The conviction of the appellants, therefore, is set aside.

45. Appellants/ Usha Devi and Meenu Kumari in Cr. Appeal (DB) No. 944/2017 are on bail. Their liabilities under the bail bonds are cancelled.



46. The appellant/Sanjeet Kumar Singh in Cr. Appeal (DB) No. 942/2017 is in jail. He is directed to be released forthwith unless his detention is required in any other case.

47. The appeals stand allowed.

48. Let a copy of this judgment be sent to the Superintendent of concerned jail for record and compliance.

49. Let the records of these cases be also returned to the concerned court below forthwith.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

sunilkumar/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	19.10.2023
Transmission Date	19.10.2023

