

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.832 of 2019

Arising Out of PS. Case No.-97 Year-1999 Thana- SULTANGANJ District- Bhagalpur

1. Urmila Devi, female, aged about 60 years, Wife of Kamleshwari Malakar;
2. Deepak Malakar, male, aged about 38 years, Son of Kamleshwari Malakar; Both resident of Village-Pain, Police Station-Sultanganj (Akbar Nagar), Bhagalpur.
3. Poonam Devi, female, aged about 35 years, Wife of Rajesh Malakar;
4. Rajesh Malakar, male, aged about 42 years, Son of Krishna Malakar; Both resident of Mohalla-Bari Patandevi, Gulzarbagh, Police Station-Alamganj, District-Patna.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Rajesh Kumar Singh, Sr. Advocate Mr. Ashok Kumar Singh, Advocate Mr. Amit Anand, Advocate
For the State	:	Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)
Date : 03-08-2023

We have heard Mr. Rajesh Kumar Singh, the learned Senior Advocate for the appellants and Mr. Abhimanyu Sharma for the State.

2. The appellants, who are the mother-in-law, husband, sister-in-law and brother-in-law of the deceased respectively, have been convicted under Sections 302/498(A) of Indian Penal Code and Section 4



of the Dowry Prohibition Act by judgment dated 03.07.2019, passed by the learned 2nd Addl. Sessions Judge, Bhagalpur and by order dated 08.07.2019, they have been sentenced to undergo R.I. for life and to pay a fine of Rs. 10,000/- each for the offence under Section 302 of Indian Penal Code; S.I. for one year and to pay a fine of Rs. 5,000/- each for the offence under Section 498(A) of the Indian Penal Code and S.I. for one year and to pay a fine of Rs. 5,000/- each for the offence under Section 4 of the Dowry Prohibition Act. In default of payment of fine, the appellants have further been sentenced to undergo S.I. for three months. All the sentences have been ordered to run concurrently.

3. The appellants claim innocence and have urged that merely because the deceased (Annu Devi) died in the house, the prosecution has jumped to the conclusion that she has been killed.

4. The learned counsel for the State, however, has urged that the deceased died in the house



of the appellants and none of them have come out with any explanation as to the cause of death or the reason why she received burn injuries leading to her death. Nobody has even cared to state before the Court as to any first aid having been administered to her when she received the burn injuries. Thus, in the absence of any explanation, whatsoever, regarding the circumstances and the cause of death of the deceased, all the appellants are liable for her murder.

5. The mother of the deceased, namely, Urmila Devi, (P.W. 11), had lodged the F.I.R. alleging that on 13.07.1999 at about 11:00 O'clock in the day, appellant No. 4 (Rajesh Malakar) came to her house and informed her that her daughter (Annu) is suffering from diarrhoea and vomiting and her medical condition is very serious. On learning this, she along with her son/Arvind Kumar Saini (P.W. 8) and her sister-in-law (Shanti Devi) came to the matrimonial home of the deceased. She met appellant No. 1 (mother-in-law) there. There the dead



body of the deceased was kept on a cot and it appeared to her that she had been burnt to death.

6. On the afore-noted *fardbeyan* statement of P.W. 11, Sultanganj (Akbar Nagar) P.S. Case No. 97 of 1999 was registered for investigation under Sections 302, 498(A) of the Indian Penal Code and Section 4 of the Dowry Prohibition Act. She has also stated in the *fardbeyan* that the deceased was married to appellant No.2 about eight years ago.

7. The police, after investigation, submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the Court of Sessions for trial.

8. The Trial Court, after having examined 13 witnesses, including the Doctor and the Investigating Officer, on behalf of the prosecution, convicted and sentenced the appellants as aforesaid.

9. Urmila Devi (P.W. 11) has supported the prosecution case that the deceased was done to death by



burning. She has also supported the initial version that appellant No. 4 had come to her house and had informed that the condition of her daughter had deteriorated. On that information, she along with Shanti Devi (P.W. 9) and her son/Arvind Kumar Saini (P.W. 8) had gone to the matrimonial home where she lodged her *fardbeyan* before the Officer-in-charge who had come there. During the trial, she has further alleged that the accused persons were demanding Rs.5000/- from her, which demand she could not fulfill and, therefore, the deceased was killed. She has denied that on her asking, the mother-in-law of the deceased told her that she died while cooking food. She had also not stated before the Officer-in-charge/investigator that such information of death while cooking food was given by the mother-in-law of the deceased. The demand of Rs.5000/- was made through the deceased who had written a letter to her. That letter was never produced by her before the investigator. She had also not spoken about any such



demand by the accused persons before the investigator. Thus, her information is only based on her presumption that the deceased might have been killed by the accused persons.

10. The investigator of this case, namely, Ajay Kumar Keshri (P.W. 12) has, in his cross-examination, stated that he had heard a rumour that in the village, some person had died because of burning in the house of Kamleshwari Malakar. Arvind Kumar Saini, the brother of the deceased (P.W. 8) had told him that the mother-in-law of the deceased had disclosed that the deceased died while cooking food. P.W. 12 has further stated that Arvind Kumar Saini was not told by anyone of the villagers also that the deceased had been killed. All the witnesses had only stated that the marriage of the deceased had taken place about eight years ago and that there was no bad relation between the spouses. Arvind Kumar Saini had also not stated before the Investigating Office that appellant No. 4 had come to his



house to inform about the deteriorating health condition of the deceased.

11. The Doctor (P.W. 13), however, found dermo-epidermal burns with redness and blackening in the superior extremities from the lower part of the arm to the wrist joint and hand, part of chest, lower part of the abdomen and also at some places from thigh to ankle joint. The time of death was fixed between 12 to 24 hours from the *post mortem* examination. The degree of burn was found to be more than 40%.

12. Mr. Singh, the learned Senior Advocate, has submitted that had the deceased been killed by putting her on fire, her body would have smelt of Kerosene which would have been detected by the Doctor conducting the *post mortem*. There were no other sign of aggression or injury on the person of the deceased. The Investigating Officer, it has further been argued, did not find any incriminating evidence in the house regarding the deceased having been deliberately put on fire.



However, he has expressed before the Trial Court that in the makeshift kitchen of the house, which was without a door, a stove with ashes was found. About 1 foot away from the stove, a burnt cloth also was found. From that place, smell of Kerosene was emanating.

13. Only Sanju Devi (P.W. 6) had stated before the Investigating Officer that appellant No. 1 did not treat the deceased well in her house. To the contrary, the other witnesses, who have been examined at the trial, namely, Kartik Prasad Singh (P.W. 1), Rajendra Sharma (P.W. 2), Raghunandan Mandal (P.W. 3) Bimal Kumar Sharma (P.W. 4), Amit Kumar (P.W. 5), Sanju Devi (P.W. 6) and Sadanand Singh (P.W.7) have expressed their ignorance about the cause of death of the deceased and that the deceased had good relations with everybody in her matrimonial home. The Investigating Officer, therefore, has not made a correct statement when he claimed that Sanju Devi (P.W. 6) spoke about ill-treatment being meted out to the



deceased by appellant No.1. The only two witnesses, namely, the brother and the mother of the deceased, have expressed their opinion that the deceased was done to death. The afore-noted opinion is only based on their own perception. Nobody appears to have told them that the deceased was killed by putting her on fire.

14. Though we find that in the statement under Section 313 Cr.P.C., no suggestion has been made as to how did the deceased catch fire leading to her death, but the circumstances indicate that she was not put to any physical force before her receiving burn injuries. The kitchen was operational in the house. The absence of any emetic smell at the time of *post mortem* further confirms that the deceased may have died while cooking food. The places where the burn injuries were found by the Doctor were mostly on the upper part of the body. There was no burn injury on the face or neck which, perhaps, is the worst hit parts in the body if somebody is deliberately burnt to death. We also do not



find any reason for subjecting the deceased to this treatment. One of the witnesses has only stated before the Trial Court that though the relationship between the deceased and her in-laws was good, but the deceased was suffering from some mental illness. The deceased had no child out of her wedlock for the last eight years.

15. Did the deceased commit suicide? We have no idea why wrong information was provided to the mother of the deceased that she had been suffering from Diarrhoea.

16. However, the visit of appellant No. 4 to her house has not been supported by other prosecution-witnesses. In fact, the Investigating Officer has categorically stated that the son of the informant did not state before him that he learnt from P.W. 4 about the deteriorating health condition of the deceased. There is no evidence also on record of any demand which remained unfulfilled.

17. It is then difficult for us to accept the



statement of the mother of the deceased that a letter was written by the deceased demanding Rs.5000/-, especially in the absence of production of such letter. Such epistolary demands are unheard of these days. The marriage had taken place eight years ago. Over a period of eight years, there was no complaint, whatsoever, about the deceased being ill-treated in her matrimonial home.

18. We are conscious of the fact that the appellants have not been convicted for the offence under Section 304B of the Indian Penal Code for applying the provisions contained in Section 113-B of the Evidence Act.

19. The charges though were framed under Section 304-B of the Indian Penal Code, but the conviction has been recorded under Section 302 of the Indian Penal Code.

20. There is no reverse burden on the appellants. The prosecution has not been able to



discharge its burden of proving to the hilt that the appellants had killed the deceased by burning her.

21. Under such circumstances, therefore, we are left with no option but to give benefit of doubt to the appellants for the reasons afore-noted.

22. We, accordingly, set aside the judgment of conviction dated 03.07.2019 and the consequent order of sentence dated 08.07.2019 passed by Mr. Vinod Kumar Tiwary, the learned 2nd Addl. Sessions Judge, Bhagalpur in Sessions Trial No. 95 of 2002, arising out of Sultanganj (Akbar Nagar) P.S. Case No. 97 of 1999, and acquit the appellants of the charges levelled against them.

23. The appeal stands allowed.

24. The appellant No. 2, viz., Deepak Malakar is in custody. He is directed to be set at liberty forthwith unless his detention is required in any other case.

25. The appellant Nos. 1, 3 and 4, viz.,



Urmila Devi, Poonam Devi and Rajesh Malakar are on bail. Their liabilities under the bail-bonds are cancelled.

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

27. The records of the appeal be returned to the Trial Court forthwith.

28. Interlocutory application/s, if any, also stands disposed off accordingly.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

K.C.Jha/Praveen

AFR/NAFR	NAFR
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