

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1439 of 2018

Arising Out of PS. Case No.-11 Year-2011 Thana- KATIHAR NAGAR District- Katihar

Rajan Sah, Son of Late Ram Dev Sah, Resident of Mohalla- Teja Tola, P.S.
Katihar (Sahayak), District- Katihar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Adv. Ms. Vaishnavi Singh, 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 : 21-12-2023

We have heard Mr. Ajay Kumar Thakur,

Advocate for the appellant and Mr. Dilip Kumar Sinha,

APP for the State.

2. The appellant has been convicted for the offence punishable under Section 304-B of the Indian Penal Code *vide* judgment dated 23.07.2018 passed by the learned Addl. District and Sessions Judge (Fast Track Court-I), Katihar in Sessions Trial No. 471 of 2011 (G.R. No. 62 of 2011), arising out of Katihar Nagar (Sahayak) P.S. Case No. 11 of 2011. By order dated



26.07.2018, he has been sentenced to undergo imprisonment for life and to pay a fine of Rs. 10,000/- without any default clause.

3. It has been urged on behalf of the appellant that without there being any evidence of any demand of dowry and cruelty or the appellant having killed the deceased, he has been convicted for the offence under Section 304-B of the I.P.C. and sentenced so severely.

4. The police had submitted charge-sheet only against the appellant, whereupon the case was sent for Trial.

5. The Trial Court, after having examined fifteen witnesses on behalf of the prosecution and three on behalf of the defence, has convicted and sentenced the appellant as aforesaid.

6. The F.I.R. has been lodged by the father of the deceased, namely, Purushottam Sah (P.W. 12) on 07.01.2011, alleging that the deceased was married to



the appellant in the year 2007. Out of the wedlock, one girl child was born. At the time of the death, the deceased was pregnant. Initially, the relationship between the couple was very cordial. However, later, the appellant, as alleged, started demanding money as part of dowry; the non-fulfillment of which demand led to mental and physical torture of the deceased. On one occasion, the deceased had informed P.W. 12 on telephone that she was being subjected to cruel treatment. P.W. 12 wanted to know from his daughter (deceased) as to the course of action to be taken against the appellant. She had but left the decision on her father (P.W. 12). P.W. 12 had contacted the family members of the appellant, who had assured him that they will ensure that the appellant mends his ways. His daughter (deceased) had also called P.W. 12 on one occasion, asking him to let go of the matter as the appellant had reformed himself. However, in practicality, there was no change of heart and the



cruelty continued. Again, on many occasions, the deceased informed P.W. 12 that the relationship has not yet improved. On one occasion, the date of which has not been provided in the F.I.R., the deceased expressed before him that she would not be allowed to remain alive by the appellant and his family members. P.W. 12 was also informed by his daughter that after assaulting the deceased, she was thrown out of the house and was not even allowed to enter the house of her sister-in-law. Because of such cruel treatment, the deceased set herself on fire and while being treated for burn injuries, she died in hospital on 06.01.2011 at about 04:00 P.M.

7. P.W. 12 has further disclosed in the F.I.R. that he could learn about this after a day when she was put on fire. The deceased was first taken to Sadar Hospital, Katihar. On P.W. 12 knowing about it, he visited Sadar Hospital along with his cousin/Sunil Kumar Sah (P.W. 13) and, thereafter, brought the deceased in an injured condition to Katihar Medical College and



Hospital, Katihar (K.M.C.H), where during the course of treatment, the deceased died.

8. On the basis of the afore-noted statement of P.W. 12, a case *vide* Katihar Nagar (Sahayak) P.S. Case No. 11 of 2011, dated 10.01.2011, was registered for investigation for the offence under Section 304-B of the I.P.C.

9. At the Trial, Pramila Devi and Rekha Devi (P.Ws. 1 and 2 respectively), who are the sisters-in-law of the deceased, have stated that the deceased had caught fire while cooking and had died because of the burn injuries. Though they have not supported the prosecution case at all, but they have not been declared hostile.

10. Shankar Chouhan (P.W. 3), who is one of the neighbour of the appellant, disclosed before the Trial Court that the deceased had died because of her having caught fire. On the question put to him by the Court, he has replied that he was not aware of any dispute



between the couple. Om Prakash Chauhan (P.W. 4), another neighbour of the appellant, has been declared hostile.

11. The dead-body was subjected to *post-mortem* examination by Dr. Ram Rekha Suman (P.W. 5) on 07.01.2011.

12. The learned counsel for the appellant has submitted that there was no reason for delaying the *post-mortem* examination when the deceased had died in the evening of 06.01.2011. Nonetheless, P.W. 5 found that the deceased had suffered only 60% burn injuries on her body. He has not written anything about the area of the body which was worst affected. The internal vitals were not burnt. There is no finding with respect to any carbon-soots or any other disabling injury. He has also not made any specific statement about the deceased carrying any pregnancy. The cause of death as assessed by P.W. 5 was septic shock, which was the result of the burn injuries.



13. The complete absence of any mention of the body part which was burnt, leaves us in doubt whether for all the days that the victim was treated in the hospital, she was not in a position to speak. With 60% of burn injuries and the Doctor not having found any carbon-soot in the windpipe/trachea/esophagus, it would be expected that the victim would, before her death, be in a position to make statement about the cause of her death. There was no such statement on record, even though some of the witnesses including P.W. 12 (informant) have stated before the Trial Court that the deceased spoke while she was under treatment for her burn injuries.

14. Kumkum Kumari, Urmila Sarkar and Manju Mandal (P.Ws. 6, 7 and 8 respectively) are three of the para-medical staffs of the two hospitals where the deceased was treated and where she breathed her last. Kumkum Kumari (P.W. 6) has only stated before the Trial Court that on 31.12.2010, while she was posted in



Sadar Hospital, Katihar, the deceased had come in an injured condition. Urmila Sarkar (P.W. 7) had nursed the wounds of the deceased. Manju Mandal (P.W. 8) also had nothing else to offer to the Trial Court except that she had also, at some point of time, nursed the deceased.

15. One Sadhu Saran Rai (P.W. 9), a neighbour of the appellant and the deceased, has not supported the case of the prosecution and has been declared hostile.

16. One Anita Giri (P.W. 10), who is also a neighbour of the deceased, knew it very well that the relationship between the deceased and the appellant was very cordial.

17. This takes us to the deposition of the informant (P.W. 12), who though has tried to improve upon his version and has said many things which he had not stated in the F.I.R., but his deposition is required to be scrutinized in some detail.



18. He claims to have been told by the deceased herself that she was thrown out of the house and on one occasion, she had to stay out in the open because of the cruel behaviour of the appellant. He had to intercede in the matter which brought temporary truce. He, in his examination-in-chief, had alleged differently from what he had stated in his written report that on 31.12.2010, the deceased was put on fire and was closed in the kitchen room by her matrimonial family members. He was informed on 01st of January that the victim is undergoing treatment in Sadar Hospital, Katihar, whereupon he visited the hospital. He claims that he and his relatives brought the deceased to K.M.C.H., Katihar for better treatment. She had suffered 60% burn injuries. In his cross-examination, however, he makes a different statement, namely, that the deceased was brought to the hospital by her husband/appellant and his family members and that in Sadar Hospital, Katihar, the Katihar Town Police had



recorded the statement of the deceased while she was still alive. Thereafter, the deceased was brought to K.M.C.H., Katihar, when P.W. 12 was not present there. That is why, he has explained, he could not say whether the appellant was present with the deceased at that time. He has, therefore, completely contradicted himself on many aspects, but the change in his stance becomes stark with his admission that the deceased was brought to Sadar Hospital by the appellant and that her statement was recorded while she was still alive at Sadar Hospital by the Katihar Town Police.

19. The afore-noted statement of the deceased is not on record. Neither the person who recorded the First Information Report nor the Investigator of this case have been examined.

20. P.W. 12 claims to have spent money from his pocket for the treatment of the deceased. Though he has claimed before the Trial Court that after the death of his daughter, he had given an application



before the Superintendent of Police, Katihar, but had not filed any case with respect to ill-treatment to the deceased prior to her death.

21. On the question put to him by the Court, he has specifically answered that when he had gone to the hospital, he had a talk with his daughter and the case which he had filed was on the basis of what his daughter had told him.

22. Mr. Ajay Kumar Thakur, the learned Advocate for the appellant has submitted that this statement cannot be accepted to be correct. Even if it were, then it can be presumed that the victim was not always unconscious while under treatment. In that situation, her statement was necessarily to be recorded; especially when the burn injuries were not such that the deceased would not have been in a position to speak. If P.W. 12 is to be believed, Mr. Thakur argues, the Katihar Town Police had recorded her statement. With that statement not having been brought on record and



the father of the deceased (P.W. 12) lodging a case after the deceased died, makes the prosecution case highly suspicious.

23. The opinion of the Trial Court that no prejudice has been caused because of non-examination of the I.O., appears to us to be totally faulty.

24. The uncle of the deceased, namely, Sunil Kumar Sah, has been examined as P.W. 13. Though he has supported the prosecution story, but has given out some necessary information which can only be read in favour of the appellant. According to him, the daughter of the deceased was still residing with the appellant and that the instances of earlier ill-treatment was never informed to the police. The deceased, according to him, was taken for treatment to the hospital by the appellant only and that the deceased had given her statement to the police.

25. Under such circumstances, the F.I.R. and the deposition of P.Ws. 12 and 13 appear to be very



doubtful.

26. To further put a kibosh on the afore-noted contention on behalf of the appellant, Mr. Thakur has drawn our attention to the deposition of P.W. 15, a Doctor at K.M.C.H., Katihar. On 01.01.2011, while P.W. 15 was posted as Junior Resident in the Department of Surgery, he had the occasion to examine the deceased. He had found that the deceased at that time had suffered 57% burn injuries. The injured/patient was brought by the appellant and one Sajan Sah, who is the brother of the appellant.

27. Had it been a case of bride-burning, it would have been recorded in the hospital records. In this context, the evidence of the defence witnesses assume importance who have, in unison, stated before the Trial Court that when the deceased got burn injuries, she spoke out before the neighbours that she had caught fire while cooking. That the relationship between the appellant and the deceased was cordial gets reflected



from the fact that one child was born out of the wedlock and the deceased stayed all along with the appellant and no case was filed regarding any cruel treatment by the appellant.

28. In its entirety, the evidence adduced before the Trial Court do not prove the case against the appellant beyond all reasonable doubts. In fact, the reason for the deceased having caught fire whether self-propelled or at the instance of others, remains unknown. The non-examination of the I.O. leaves the appellant highly prejudiced.

29. For the afore-noted reasons, we do not find any justification to ratify the judgment of the Trial Court.

30. Per force, we set aside the judgment of conviction and order of sentence referred to above and acquit the appellant of the charge levelled against him.

31. The appellant, viz., Rajan Sah is stated to be in custody. He is directed to be set at liberty



forthwith unless his detention is required in any other case.

32. The appeal stands allowed.

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

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

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

(Ashutosh Kumar, J)

(Nani Tagia, J)

Praveen-II/Saurabh

AFR/NAFR	AFR
CAV DATE	N/A
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