

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1028 of 2017**

Arising Out of PS. Case No.-145 Year-2013 Thana- SINGHWARA District- Darbhanga

1. Ranjit Thakur @ Ranjeet Thakur and Ors Son of Ram Niranjana Thakur, R/o village - Pipra ,P.S.- Singhwara, District- Darbhanga.
2. Rani Devi W/o Shyam Nandan Singh, R/o Village- Jogiara, P.S.- Bahadurpur, District- Darbhanga.
3. Shyam Nandan Singh Son of Banwari Singh, R/o Village- Jogiara, P.S.- Bahadurpur, District- Darbhanga.
4. Mukund Thakur Son of Nagendra Thakur , R/o Village- Pipra, P.S.- Singhwara, District- Darbhanga.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellants	:	Mr. Vishwanath Prasad Sinha, Senior Advocate Mr. Sanjay Kumar Singh, Advocate
For the State	:	Mr. Bipin Kumar, APP

**CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI)**

Date : 25-06-2024

This appeal is filed under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as ‘the Code’) against the judgment of conviction dated 11.07.2017 and order of sentence dated 17.07.2017, passed by learned 1st Additional Sessions Judge, Darbhanga in Sessions Trial No.492 of 2013, arising out of Singhwara P.S. Case No.145/13 whereby the court has convicted the appellants for the offences punishable under Sections 342/149 and 302/149 of the Indian



Penal Code and they have been sentenced to undergo rigorous imprisonment for one year and a fine of Rs.1000/- each under Sections 342/149 of the Indian Penal Code and in default of payment of fine, they are further sentenced to undergo rigorous imprisonment for one month each. The appellants have further been sentenced to undergo imprisonment for life and a fine of Rs.20,000/- each for the offences punishable under Sections 302/149 of the Indian Penal Code and in default of payment of fine, they are further sentenced to undergo rigorous imprisonment for six months. The sentences have been directed to run concurrently.

2. The factual matrix of the present case is as under:-

2.1 *Fardbeyan* of Rupa Devi (informant/deceased) came to be recorded on 12.06.2013 at 13:22 hours at Emergency Ward, DMCH, Darbhanga wherein the informant/deceased has stated that on 12.06.2013 at about 08:00 a.m. while she was brooming her house, due to previous dispute, her *Nanad* (sister-in-law) Rani Devi, Shyam Nandan Singh, Ranjeet Thakur, wife of Ranjeet Thakur, namely, Priyanka Devi and Mukund Thakur entered into her house. It is further alleged that Shyam Nandan Singh and the aforesaid



accused caught her and her *Nanad* Rani Devi after pouring kerosene oil on her set her on fire due to which she was badly burnt. At that time, her husband had gone to bring flour in the village. When the neighbours came into the house of the informant/deceased after hearing her cry, the accused persons fled away. In the meantime, the husband of the informant/deceased came to the house and brought her to Singhwara Hospital from where she was referred to DMCH, Darbhanga. It is also alleged that on instigation of Mukund Thakur, her *Nanad* Rani Devi set her on fire.

2.2 After registration of the formal FIR on the basis of the aforesaid *fardbeyan*, the Investigating Agency started investigation. During course of investigation, the Investigating Officer recorded the statement of the witnesses, collected the documentary evidence and thereafter filed charge-sheet against the appellants.

2.3 The case was exclusively triable by court of sessions and, therefore, the learned Magistrate committed the same to the concerned sessions court where the same was registered as Sessions Trial No.492 of 2013.

2.4 During course of trial, the prosecution had examined 7 witnesses, namely, PW-1 Chandra Shekhar Singh,



PW-2 Raju Thakur, PW-3 Indrajeet Singh, PW-4 Vijay Pratap Singh, PW-5 Amrendra Thakur, PW-6 Md. Khusbuddin and PW-7 Ramdeo Sah. The defence had also examined two witnesses, namely, DW-1 Akhilesh Thakur and DW-2 Behari Baitha. Thereafter further statement of the accused under Section 313 of the Code came to be recorded. After conclusion of the trial, the Trial Court convicted the appellants for the aforesaid offences as stated hereinabove.

2.5 Against the judgment of conviction and order of sentence passed by the learned Trial Court, the appellants have filed the instant appeal.

3. Heard Mr. Vishwanath Prasad Sinha, learned Senior Counsel assisted by Mr. Sanjay Kumar Singh for the appellants and Mr. Bipin Kumar, learned APP for the State.

4. Learned Senior Counsel appearing for the appellants submits that case of the prosecution rests on the so called *fardbeyan* given by the deceased herself before the police and also on the basis of the deposition given by PW-1 who is grandfather of the deceased. PW-1 was projected as eye witness by the prosecution to the incident in question. However, learned Senior Counsel submits that from the evidence led by the prosecution, it is revealed that PW-1 is not the eye witness and



in fact he is residing 60 kms. away from the place of incident and presence of the said witness at the place of incident in the early morning at 07:30 a.m. was doubtful. It is also contended that there are major contradictions in the deposition of the said witness. It is submitted by learned Senior Counsel that from the deposition given by PW-6, the Investigating Officer, it is revealed that PW-1 has stated new story for the first time before the Court. Learned Senior Counsel, therefore, urged that PW-1 is not the eye witness and, therefore, his deposition be discarded.

4.1. It is further submitted that as per the case of the prosecution, the incident took place in the morning at 07:30 a.m. to 08:00 a.m. for which so called *fardbeyan* of the informant was recorded at 13:22 hours at DMCH, Darbhanga. However, there is no endorsement of the doctor that the informant/patient was conscious and was in a fit state of mind to give her statement. The *fardbeyan* was recorded by the police officer and thereafter dying declaration of the informant/deceased was not recorded by the Executive Magistrate. It is pointed out from the record that it is surprising that though the informant sustained severe burn injuries, she has signed the *fardbeyan* with date under her signature. At this



stage, learned Senior Counsel has referred the postmortem report as well as deposition given by PW-4, the doctor who had conducted the postmortem on the dead body of the deceased. It is submitted that the deceased sustained burn injuries over her face, neck, chest, abdomen, back and both upper and lower limbs. Thus, looking to the burn injuries sustained by the deceased, it was not possible for her to give dying declaration in the form of *fardbeyan* before the police hence, the said document is a concocted document and, therefore, this Court may not place reliance on the same in absence of any corroboration. It is further submitted that other three witnesses examined by the prosecution are near relatives of the deceased and no independent witnesses, like, neighbours were examined by the prosecution. Even the husband (PW-5) of the informant/deceased is also not an eye witness to the incident.

4.2. It is also contended that as per the case of the prosecution, the accused poured kerosene oil on the deceased and thereafter set her on fire. However, there is no evidence led by the prosecution from which it can be said that stain of kerosene oil was found at the place of occurrence nor there is any reference that kerosene oil was present in the clothes of the deceased which were seized from the place of occurrence. Thus,



the story put forward by the prosecution is doubtful and though the prosecution has failed to prove the case against the accused beyond reasonable doubt, they have been convicted.

5. It is also contended that the appellants have falsely been implicated as father of PW-5 has lodged FIR under Section 302 of the Indian Penal Code for the death of mother of PW-5 against PW-5 as well as PW-1. Learned Senior Counsel, therefore, urged that this appeal be allowed and the impugned judgment of conviction and order of sentence be quashed and set aside. The prosecution has failed to produce any material, i.e., the medical papers pointing out that which type of treatment was given to the informant/deceased when she was admitted in DMCH, Darbhanga.

6. On the other hand, the learned APP for the State has vehemently opposed this appeal. It is submitted that PW-1 is the eye witness to the incident in question and he has specifically named all the accused and also narrated the role played by each of the accused. Further the deceased herself has given the *fardbeyan* before the police while she was admitted in DMCH, Darbhanga, therefore, once there is a dying declaration in the form of *fardbeyan* given by the informant/deceased, conviction can be recorded only on that basis without any



corroboration. Thus, the Trial Court has not committed any error while passing the impugned judgment of conviction and order of sentence and, therefore, this appeal may not be entertained.

7. We have considered the submissions canvassed by learned counsel appearing for the parties, we have also perused the materials placed on record, the evidence led by the prosecution and the defence before the Trial Court. From the materials placed on record, it transpires that the prosecution has examined seven witnesses. It is pertinent to note that PW-1, PW-2 and PW-3 are close relatives of the deceased. PW-5 is the husband of the deceased. PW-4 and PW-6 are the doctor and Investigating Officer respectively and PW-7 is a formal witness. The defence has also examined two witnesses.

8. PW-1 Chandra Shekhar Singh, who is grandfather of the deceased, has deposed in his examination-in-chief that deceased Rupa Devi was his granddaughter. She was solemnized marriage with Amrendra Thakur. On 12.06.2013, the in-laws of Rupa Devi killed her by setting her on fire. On the day of the incident, he came from his house to the house of Nagendra Thakur at the call of his daughter-in-law. He was sitting at the door of Nagendra Thakur and saw that Rani Devi,



Shyam Nandan Singh, Mukund Thakur, Ranjeet Thakur, Priyanka Devi, Ragini Devi and Nagendra Thakur went towards the house of Rupa bringing kerosene oil in different utensils. A woman stumbled and fell, and kerosene oil spilled on his body from which he came to know that it was kerosene oil. Mukund Thakur was pressing a stick around her neck to prevent her from getting up. Rupa was shouting for help. This witness further deposed that the deceased was telling the names of all the accused and she was saying that she will not survive. Meanwhile, Amrendra Thakur, husband of the deceased, who had gone to bring flour, returned and brought Rupa to Singhwara Hospital from where the doctor referred her to DMCH, Darbhanga. It is further deposed that he and Amrendra Thakur signed as witnesses. Rupa died that night after giving the statement. After the death of Rupa, he got a written complaint written by Rajiv Thakur which has his signature. After the death of Rupa, *Daroga Ji* prepared inquest report on which his signature is there. *Daroga Ji* prepared seizure list of burnt clothes on which his signature is there. Raju Thakur, Roshan Thakur and the husband of Rupa were also with him while proceeding to DMCH. After reaching DMCH, Anupma Kumari also reached there and statement of Rupa was taken



before them.

8.1 During cross-examination, the said witness has stated that his village is situated 60 kms. away from Benipur Pipra village. His statement was recorded before the police on the date of occurrence at 04:00 p.m. His re-statement was taken by the Investigating Officer on 13.06.2013. He came at the place of occurrence by motorcycle. He proceeded from his village at 5 O'clock. He was sitting at the door of Nagendra Thakur alongwith Nagendra Thakur and his daughter-in-law. The house of his son-in-law is situated at a distance of 50 yards. No house is situated around the house of Nagendra. There is house in the southern side. He does not know whose house is this. Nagendra Thakur is not his relative. He went to Nagendra Thakur's place twice. Nagendra Thakur and his son had gone to call me. Nagendra had called him to discuss about money. He was not called for land related talks. There was no conversation regarding land between his granddaughter Rupa Devi and her husband. Ranjeet Thakur, who is an accused in this case, is own brother of Amrendra. He does not know that both the brothers are residing separately from before. He did not state before the police that both the brothers are separate. This witness further stated in his cross-examination that Amrendra Thakur came at



the place of occurrence 5-7 minutes after the incident. He did not try to save because he was not in a position to save her. Before arrival of Amrendra, no one else had tried to save her. No one from the neighbourhood went with him. When he reached, the accused were pouring kerosene oil and fire was burning. It is further stated that when Amrendra Thakur came, his wife was conscious. He did not give information. He said that bring her to the hospital. He was pushed by Nagendra Thakur and Ragini Devi. He stated that this fact to the police. He put his signature on the written complaint and he did not read the same before putting his signature. Amrendra brought his wife to the hospital at about 7.30 in the morning on his shoulder. He brought her to P.H.C., Singhwara. He also went to P.H.C. A person gave lift on his motorcycle. The P.H.C. is situated 2-2½ k.m. away from the house of his son-in-law. He reached P.H.C. before his granddaughter and she was conscious. She was not treated in P.H.C. She was referred from there to DMCH. DMCH is situated 4-5 k.m. away from the P.H.C. He went to DMCH in a hired ambulance. He reached DMCH at about 11 O'clock. They stayed 3 hours in DMCH. After staying 3 hours in hospital, he went to place of occurrence with *Daroga Ji*. This witness further stated in his cross-examination that she



died at 8 O'clock in the night at DMCH. This witness has denied the suggestion that during the course of cooking food Rupa Devi caught fire and died.

9. PW-2, Raju Thakur has deposed in his examination-in-chief that the incident took place on 12.06.2013 at 08:00 a.m. He was at his home. He received information through telephone at 09:00 a.m. that in-laws of Rupa Kumari set her on fire and she was brought to Singhwara P.H.C. When this witness was going towards P.H.C., his maternal uncle Chandra Shekhar Singh was bringing Rupa to DMCH by ambulance. He reached DMCH at 11:00 a.m. He talked to Rupa and she was conscious. Rupa informed him that Ranjeet Thakur, Priyanka Devi, Rani Devi, Shyam Nandan Singh, Mukund Thakur, Nagendra Thakur and Ragini Devi poured kerosene oil on her and set her on fire. At that time, Chandra Shekhar Singh, Anupma Kumari and Raushan Thakur were present. Thereafter police came and took her statement on which she put her signature. Rupa died on that day at 08:00 p.m. Inquest report was prepared on which he put his signature.

9.1 During cross-examination, this witness has stated that he received information through telephone and he was in his village Brahmpur at that time. Pipra village is



situated 6-7 k.m. away from Brahmpur under the jurisdiction of Singhwara police station. His village is situated under the jurisdiction of Kamtaul police station. He cannot recall the number of telephone and the person who gave information. After getting information, he did not inform his maternal uncle. The name of village of his maternal uncle is Benipur which is situated in Muzaffarpur district. He lives in Muzaffarpur. The person who gave information belonged to Pipra. It is further stated that the person who had given information also informed that treatment of Rupa was going on in DMCH, Darbhanga. His maternal uncle was in DMCH with Rupa. He firstly seen his maternal uncle in front of P.H.C. P.H.C. is situated 11-12 k.m. away from his village. He came from a motorcycle. He went to DMCH by motorcycle. He did not go inside the P.H.C. His maternal uncle did not show any paper referring her from P.H.C. to DMCH. Rupa did not give any statement in Singhwara police station. He had no conversation with Rupa near P.H.C. It is further stated by this witness in his cross-examination that they reached DMCH at 11:00 a.m. The police came 1-1½ hour thereafter. In the meantime, he was talking to Rupa. He gave his statement on the basis of what Rupa informed him. He did not see the occurrence. When he left



DMCH, his maternal uncle Raushan, Anupma Kumari and Indrajeet Singh were present there. Rupa was his niece. Rupa gave her statement before them. He did not put signature on the statement of Rupa. He cannot say at what time the statement of Rupa was recorded. When he returned from DMCH, he left his maternal uncle there. He cannot remember that the doctor had started treating Rupa before they reached there. The doctor started treatment after recording the statement of Rupa by the police. He returned his home from DMCH at 5 O'clock in the evening. He received information about death of Rupa at 08:00 p.m. The dead body of Rupa was brought next day. *Daroga Ji* recorded his statement after the statement of Rupa. He put his signature on the statement. He stated before the police that she was injured but she was conscious. He stated before the police the names of Nagendra Thakur and his daughter Ragini Devi. He stated before the police that Mukund Thakur ordered to kill her. He has also stated before the police that police reached and took statement of Rupa on which she put her signature and Rupa died on the same day at 08:00 p.m. This witness has denied the suggestion that during the course of cooking food she caught fire. It is not true that husband of Rupa Devi brought her to DMCH where she died during the course of treatment.



He and his maternal uncle did not go to the hospital before the statement of Rupa. It is not true that Rupa Devi did not give any statement before him. He has denied the suggestion that his maternal uncle has falsely implicated the accused due to previous animosity. This witness has also denied the suggestion that Rupa and her husband was separate and he deposed falsely and no such occurrence took place.

10. PW-3 Indrajeet Singh is the father of the deceased, who has deposed in his examination-in-chief that Rupa was his elder daughter. The occurrence took place on 12.06.2013. He was in Delhi at that time. His father has informed him through phone that Rani Devi, Shyam Nandan Singh, Ranjeet Thakur, Priyanka Devi, Mukund Thakur, Nagendra Thakur and Ragini Devi poured kerosene oil on the body of his daughter and set her on fire. His daughter was brought to DMCH where during the course of treatment she died at 8 O'clock. His son-in-law started residing separately. When his son-in-law demanded his share from the property, his family members became angry.

10.1 During cross-examination, PW-3 stated that on 12.06.2013 at 09:00 a.m. he received information about the incident. His father had informed him that after pouring



kerosene oil, she was set on fire and he is bringing her to the hospital. After receiving information, he proceeded to Darbhanga by train. He cannot say that after how many hours he boarded the train. He reached Darbhanga and went to DMCH where he found his daughter dead in burnt condition. He did not see the occurrence. Whatever people informed him, he stated before the police. After how many days his statement was recorded by the police, he could not remember. His statement was taken in Singhwara police station before the police after the last rituals of the deceased. Thereafter he went to Delhi after three months. He has denied the suggestion that his statement was not recorded before the police after *Shradh* ceremony. He has also denied the suggestion that his statement was recorded on 29.10.2013. It is further stated by this witness that it is not true that he had not taken the names of Nagendra Thakur and Ragini Devi before the police. This witness has also denied the suggestion that he did not state before the police that on the same day the deceased died at 8 O'clock. It is not true that during the course of cooking food, his daughter caught fire and died, the information of which was given by the accused persons to his family members. This witness has also denied the suggestion that he did not come immediately rather he came



after four months. PW-3 has further denied the suggestion that his son-in-law and his daughter resided separately. This witness has lastly denied the suggestion that he is giving wrong statement and no such occurrence took place.

11. PW-4 Vijay Pratap Singh is the doctor who had conducted postmortem examination on the body of the deceased. This witness had found following injuries on the dead body of the deceased:

Dermo epidermal burn present over face, neck, chest, abdomen, back both upper and lower limbs. Burnt area were red and inflammened.

On dissection:- soots in the trachea were found. Both the lungs were found congested. Right side of heart was full and left was found empty. All abdominal viscera were found congested. Bladder was empty, uterus was normal. Stomach contained about 250 ml. of liquid matter. Brain and meninges were found congested.

All the above noted injuries were antemortem caused by flame of fire. Cause of death- Asphyxia, shock, time since death 16-24 hrs. since the time of P.M. examination.

11.1 During cross-examination, this witness has stated that the percentage of burn is not written in my P.M.



examination report. Length & breadth or dimension of back burn is not mentioned. It is further stated by this witness in his cross-examination that asphyxia can be caused by inhaling large amount of smoke. The dead body of the deceased was not identified by any family member of the deceased.

12. PW-5 Amrendra Thakur is the husband of the deceased who has deposed in his examination-in-chief that his wife was killed by setting her on fire. The occurrence took place on 12.06.2013 at about 8 O'clock in the morning. Ranjeet Thakur, Priyanka Devi, Mukund Thakur, Nagendra Thakur, Ragini Devi, Rani Devi and Shyam Nandan Singh killed Rupa Devi by pouring kerosene oil on her body and setting her on fire. He had gone to bring flour at the time of occurrence. The village people told him that his wife is being burnt then he came back and saw his wife in burnt condition and her body was covered with a bed sheet. Chandra Shekhar Prasad, who is grandfather of Rupa, sat on the step. Rupa took the names of aforesaid persons who set her on fire. She was brought to Singhwara P.H.C. and from where she was referred to DMCH, Darbhanga. The police came at DMCH. *Fardbeyan* of Rupa was recorded. Rupa put her signature on *fardbeyan* after reading it and he also put his signature on the same.



12.1 During cross-examination the said witness stated that his mother died 20-25 days before the death of his wife. His father has lodged a case under Section 302 of the Indian Penal Code against him and Chandra Shekhar Singh. His father did not give *Sanha* against them in the police station on 10.06.2013. It is further stated by this witness in his cross-examination that his marriage was solemnized seven years before and after six years of his marriage, he started living separately from his family members. Accused Ranjeet Thakur is his own brother. Priyan Devi is his *Bhavo* (wife of younger brother). Accused Rani Devi is his own sister. Shyam Nandan Singh is his brother-in-law. Other accused persons are his agnates. Marriage of Rani Devi was solemnized in 1993 in Dudhiyara village. Rani has two sons. His wife had told him that she was set on fire by them. Village people told me on way then he came back to home. He could not remember his name. Chandra Shekhar Singh is his guardian after his separation. The house of Chandra Shekhar is situated in Benipur Aurai. He is his grand father-in-law. This witness further stated in his cross-examination that his relatives came in the last rituals of his mother. After *Shradh* ceremony, his sister and brother-in-law stayed at his house. His sister and brother-in-law stayed at his



house with other family members and not with him. His relation with them was cordial. It is further stated that when he came he saw that his wife was sitting covering her body with bed sheet and Chandra Shekhar was sitting at step. Chandra Shekhar came 1-2 hours before the incident. His wife had called him. His wife took the names of the persons and he proceeded for her treatment after putting her on his shoulder. His two daughters and Chandra Shekhar proceeded with him. Singhwara Hospital is at a distance of about 8 k.m. from his village. He reached Singhwara Hospital at 9' O clock in the morning. He stayed in the hospital for ten minutes where two injections were given and referred to DMCH, Darbhanga. He arrived DMCH by ambulance at 11:00 a.m. On the same day, his wife died at 08:00 p.m. Indradeep Singh and Chandra Shekhar Prasad Singh informed the police. Indradeep Singh is his father-in-law. Daroga had took his statement. His statement was taken before the death of his wife. He gave his statement thereafter also. His re-statement was taken after 3-4 days in the village. He had told the names of Nagendra Thakur and Ragini Devi to the police. He has denied the suggestion that Rupa had not given her statement to the police before him and he did not put his signature on it. It is further stated by this witness in his cross-



examination that he did not see the occurrence. It is not true that Rupa caught fire during the course of cooking food. It is not true that Rupa died on way to hospital and his grand father-in-law after hatching a conspiracy prepared a forged *fardbeyan*. This witness has denied the suggestion that no such occurrence took place.

13. PW-6 Md. Khusbudin is the Investigating Officer of the case who has deposed in his examination-in-chief that he was posted as S.I. in Singhwara police station on 12.06.2013. It is further deposed that he had recorded *fardbeyan* of Rupa Devi, the informant/deceased which is in my handwriting and signature. The *fardbeyan* was read out. Rupa Devi put her signature on *fardbeyan*. He had found burnt Saree, blouse and piece of bed sheet at the place of occurrence which were accordingly seized by him and seizure list was also prepared. There is Nazri-Naksa of the place of occurrence with the seizure list. The CDR of mobile of Mukund Thakur was obtained.

13.1. This witness stated in his cross-examination that He took charge of investigation of this case on 12.06.2013 at 16:00 hours. He went DMCH before 16:00 hours. He firstly recorded the statement of the informant/deceased after reaching



DMCH, the time of which is not mentioned. He proceeded from DMCH to the place of incident with Chandra Shekhar Singh, Amrendra Thakur and Raju Thakur at 18:05 hours. He started inspection of the place of occurrence at 19:00 hours. This witness has further stated that prior to institution of case and after taking investigation para 1 to 16 are written in the case diary. It is further stated by this witness in his cross-examination that prior to recording of the *fardbeyan*, he was at Singhwara police station. Prior to proceeding for DMCH from police station, it was not mentioned in station diary. This witness has further stated that he did not obtain certificate of the patient. When he reached, the doctor was not present and patient was speaking. He had not given requisition for calling the Magistrate. He himself had not given any certificate with regard to consciousness or unconsciousness of the patient. Rupa had stated her name as Rupa Devi in her statement and she had put her signature as Rupa Devi. It is not so that she has written only Rupa. This witness has further stated that Rupa with her signature had also put the date by her pen. It is not true that signature is horizontal from upward to downward. Amrendra Thakur, the husband of Rupa, also put his signature on the *fardbeyan* with date. It is not true that under both the signatures,



both dates are written by one person rather both dates are written by two persons. He did not obtain any paper with regard to admission and treatment of any patient. He also did not obtain injury report. He did not record the statement of Raushan Thakur and Anupma Kumari. It is further stated by this witness that he had taken the statement of Chandra Shekhar in which he did not state that he was present at the house of Nagendra Thakur and he went there on the call of daughter-in-law and Mukund Thakur, Ragini Devi and Nagendra Thakur received Rs.4,00,000/- before his granddaughter in lieu of purchasing land which was to be purchased in the name of Rupa. The land was not purchased in the name of Rupa but Mukund Thakur purchased it in his own name. This witness further stated that witness Raju Thakur had said that all the accused persons together had burnt Rupa Devi by pouring kerosene oil. It was also not told that she was in a burnt condition, but was conscious. He did not even say that the police arrived, took statement of Rupa and he had signed it. Amrendra Thakur had not taken the names of Nagendra Thakur and Ragini Devi in his statement. He did not state that Chandra Shekhar Prasad had sat on step. He did not state in his statement that Rupa Devi gave statement to the police and he put his signature on it.



14. PW-7 Ramdeo Sah, who is an Advocate Clerk, is a formal witness who has identified the handwriting and signature of Rakesh Kumar Singh, the then S.H.O. of Singhwara.

15. DW-1 Akhilesh Thakur has deposed in his examination-in-chief that the occurrence took place four years ago. It was 8-9 O'clock and he was at his home. He went to the house of Amrendra Thakur after hearing hulla and saw that Rupa Devi was unconscious and was in burnt condition. Amrendra was going to hospital with Rupa on his shoulder. People were saying that she caught fire while cooking.

15.1. DW-1 has stated in his cross-examination that he had given statement in this case. Seizure list was not prepared before him. Saree, red coloured blouse and brown coloured bed sheet were recovered by the police on 12.06.2013 at 18:30 hours on which he signed but seizure list was not prepared before him. He has stated before the police that on *hulla*, he went there but it is not true that people were saying that Ranjeet Thakur, Priyanka Devi, Shyam Nandan Singh and Rani Devi together after pouring kerosene oil on the body of the deceased set her on fire. It is also stated by this witness in his cross-examination that he was summoned by the prosecution to



adduce his evidence in the Court. He came to the Court. Ranjeet Thakur etc. are his relatives. It is not true that he has given false statement as he is their relative.

16. DW-2 Behari Baitha has stated in his examination-in-chief that the occurrence took place on 12.06.2013 at 08:30 a.m. He was present at his home and after hearing *hulla*, he went to the house of Arvind Thakur and Niranjana Thakur and saw that many people were assembled there and Amrendra Thakur and Niranjana Thakur said that Rupa caught fire during the course of cooking food and she became unconscious. Amrendra Thakur brought her to Singhwara.

16.1. DW-2 has stated in his cross-examination that case was lodged against Mukund Thakur, Ranjeet Thakur, Priyanka Devi and daughter and son-in-law of Niranjana Thakur in which he has come to give his testimony. He does not know that who has lodged the case. Name of father of Amrendra Thakur is Niranjana Thakur and Amrendra Thakur is the brother of Ranjeet Thakur and they all reside in same house. His house is situated 500 yards away from the house of Amrendra in south direction. 20-25 houses are situated in between. He came alone after hearing *hulla*. He reached there 30 minutes after *hulla*. The aforesaid persons were not present there. They had fled away.



The husband of Rupa and Niranjana Thakur were present there. Amrendra shouted that his wife caught fire. This witness further stated in his cross-examination that she caught fire during the course of cooking food. This witness lastly stated that he could not state that how Rupa Devi caught fire. It is noted so that he has falsely deposed as he is neighbour of the accused.

17. We have re-appreciated the entire evidence led by the prosecution before the Trial Court. We have also considered the submissions canvassed by learned counsel appearing for the parties. It would emerge from the record that as per the case of the prosecution, the incident took place at about 08:00 a.m. in the house of the informant/deceased. The informant/deceased has given the name of the accused and also attributed the role played by the accused by alleging that kerosene oil was poured on her and thereafter she was set on fire. After that her husband Amrendra Thakur came and she was initially taken to Singhwara hospital. Thereafter she was referred to DMCH, Darbhanga. It is relevant to note that the said *fardbeyan* was recorded at about 13:00 hours. There is no endorsement of the doctor that the informant was conscious or she was in a sound state of mind to give the *fardbeyan*. It is surprising that as per the case of the prosecution, the informant



sustained severe burn injuries but she had put her signature with date. It is further relevant to note that the informant has specifically stated that her husband came after the incident took place. However, there is no reference of PW-1 Chandra Shekhar Singh, who is her grandfather, in her *fardbeyan*. At this stage, we may refer the deposition given by PW-1. It is specific case of the prosecution through PW-1 that the grandfather of the deceased, i.e., PW-1, who is eye witness to the incident, was present in the house when the incident took place. It is further revealed from the deposition given by PW-1 read with deposition given by PW-6, the Investigating Officer that the story put forward by PW-1 before the Court in his examination-in-chief was narrated by him for the first time before the Court. There are major contradictions and improvement in the deposition given by PW-1. It is also admitted by PW-1 during cross-examination that his house is situated 60 k.m. away from the place of incident. However, it is his case that he came on the motorcycle and he left his house at 05:00 a.m. in the morning and came to the place of incident in the house of Nagendra Thakur on motorcycle. The presence of PW-1 at the place of incident in the early morning was not natural. Thus, looking to the evidence led by the prosecution, it can safely be said that



PW-1 is not an eye witness but he was projected as eye witness by the prosecution.

18. Admittedly, there is no other eye witness to the incident in question and the other prosecution witnesses are near relatives of the deceased. It is relevant to note that the prosecution has failed to examine any independent witness, like, neighbours whose presence at the place of occurrence can be said to be natural. Thus, adverse inference can be drawn.

19. It is further revealed from the record that the prosecution has also failed to produce any evidence either in the form of oral or documentary pointing out the treatment which was given to the deceased in DMCH, Darbhanga. What was the condition of the informant after she was admitted in DMCH, Darbhanga is not known. As per the case of the prosecution, *fardbeyan* of the informant was recorded at 13:22 hours and thereafter she died at 08:00 p.m. (i.e. 20:00 hours). At this stage, we may refer to the deposition given by PW-4, the doctor who had conducted postmortem on the dead body of the deceased. It would reveal from her deposition that the deceased sustained burn injuries over face, neck, chest, abdomen, back both upper and lower limbs. It would further reveal that the clothes and other articles were handed over to *Chowkidar* by



the said doctor. However, there is no reference with regard to the smell of kerosene oil on the said clothes. It is also pertinent to observe that from the deposition given by PW-6, the Investigating Officer, it is not revealed that the said Investigating Office found any stain of kerosene oil at the place of incident. Even the piece of clothes of the deceased as well as bed sheet were seized from the place of incident by the Investigating Officer and seizure list was prepared but there is no mention with regard to smell of kerosene oil on the seized clothes. At this stage, it is required to be recalled that it is specific case of the prosecution that the accused poured kerosene oil and thereafter the informant was set on fire. However, as observed hereinabove, there is no material on record to suggest that kerosene oil was found at the place of incident or on the clothes of the deceased.

20. Thus, the only piece of evidence, which is relied upon by the prosecution is the *fardbeyan* in the form of dying declaration given by the informant/deceased. It is true that relying upon the dying declaration only, conviction can be recorded, if it is found that the same is trustworthy and not a tutored one and is found genuine, therefore, the said *fardbeyan* is required to be scrutinized closely. As observed hereinabove,



the *fardbeyan* was given before the police officer and it is the case of the prosecution that it was signed by the informant and she put the date of giving *fardbeyan*. However, it is surprising that a person who has sustained severe burn injuries all over the body can sign and further write the date. Further, there is no endorsement of the doctor that the patient was conscious and she was in a sound state of mind to give the statement before the police. The Investigating Officer, PW-6 has specifically admitted during cross-examination that the doctor was not present in the ward and his signature was not obtained. He has also not certified that patient was conscious. It is further required to be observed that even the Executive Magistrate was also not called for recording the dying declaration of the informant. It further transpires that PW-5, who was husband of the informant has also signed the *fardbeyan* and PW-1, who is grandfather of the informant/deceased has also signed the said *fardbeyan* at 13:30 hours. Thus, it appears that when the informant was admitted in the hospital, both the aforesaid witnesses were present and, therefore, even assuming that the informant was in a condition to give her *fardbeyan*, chances of tutoring by the aforesaid two witnesses could not be ruled out more particularly when father of PW-5 had lodged FIR under



Section 302 of the Indian Penal Code for the death of mother of PW-5 against PW-5 and PW-1. Further, as discussed hereinabove, from the deposition given by PW-4, the doctor, it is clear that the deceased sustained burn injuries all over her body and more particularly in absence of the medical papers with regard to treatment given to the deceased after she was admitted in DMCH, Darbhanga till her death, simply relying upon the *fardbeyan* in form of dying declaration of the deceased, conviction cannot be recorded. Thus, we are of the view that the prosecution has failed to prove the case against the appellants beyond reasonable doubt and, therefore, the Trial Court has committed error while passing the impugned judgment of conviction and order of sentence hence, the same is required to be quashed and set aside.

21. Accordingly, the appeal stands allowed. The impugned judgment of conviction dated 11.07.2017 and order of sentence dated 17.07.2017 passed by learned 1st Additional Sessions Judge, Darbhanga in connection with Sessions Trial No.492 of 2013, arising out of Singhwara P.S. Case No. 145 of 2013 are quashed and set aside and the appellants are acquitted of the charges levelled against them by the learned Trial Court.

21.1. Appellants, namely, Ranjit Thakur @ Ranjeet



Thakur, Shyam Nandan Singh and Mukund Thakur are on bail, they are discharged from the liabilities of their respective bail bonds.

21.2. Since appellant, namely, Rani Devi is in jail, she is directed to be released from custody forthwith, if her presence is not required in any other case.

(Vipul M. Pancholi, J.)

(Ramesh Chand Malviya, J.)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2024
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