

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1426 of 2019**

Arising Out of PS. Case No.-190 Year-2017 Thana- GHOSI District- Jehanabad

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Gopal Kumar Sharma @ Gopal Sharma, Son of Nathun Singh, Resident of
Village- Kure, P.S.- Ghosi, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (DB) No. 1419 of 2019

Arising Out of PS. Case No.-190 Year-2017 Thana- GHOSI District- Jehanabad

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Nathun Singh, Son of Late Kedar Singh, Resident of Village- Kure, P.S.-
Ghosi, District- Jehanabad.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 1426 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mr. Purushottam Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CRIMINAL APPEAL (DB) No. 1419 of 2019)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Md. Imteyaz Ahmad, Advocate
Ms. Vaishnavi Singh, Advocate
Mr. Ritwik Thakur, Advocate
Mr. Purushottam Kumar, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE JITENDRA KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-09-2024

Priyanka Kumari @ Dimpi Kumari died of



100% burn injuries within seven years of her marriage. The FIR was lodged by her brother/Navin Kumar Sharma (P.W. 3). In support of the prosecution case, two other witnesses, viz., Dhananjay Kumar (P.W. 1) and Anandi Sharma (P.W. 2), both uncles of the deceased, came to the witness-stand to depose.

2. Dr. Binod Kumar Singh (P.W. 4), who had conducted the postmortem examination on the dead body on the date of death confirmed that the death was because of 100% burn injuries, dehydration and cardio-respiratory failure.

3. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the appellants and Mr. Abhimanyu sharma, the learned APP for the State.

4. The Trial Court has convicted the appellants, who are husband and father-in-law of the deceased respectively, under Sections 304B, 201 read with Section 34 of the IPC, *vide* judgment dated 25.09.2019 passed by the learned Additional Sessions



Judge-VI, Jehanabad in Sessions Trial No. 93 of 2018/98 of 2019 arising out of Ghosi P.S. Case No. 190 of 2017. By order dated 30.09.2019, they have been sentenced to undergo R.I. for fourteen years for the offence under Section 304B of the IPC; R.I. for two years, to pay a fine of Rs. 3,000/- each and in default of payment of fine, to further suffer R.I. for 2 months for the offence under Section 201 of the IPC. The sentences have been ordered to run concurrently.

5. The judgment was passed after examining five prosecution witnesses and two defence witnesses.

6. Navin Kumar Sharma (P.W. 3) had lodged a written report addressed to the Officer-in-Charge of Ghosi Police Station in the district of Jehanabad on 05.08.2017, alleging that his sister (deceased) was married to appellant/ Gopal Kumar Sharma @ Gopal Sharma about six years ago. Shortly, after the marriage, the in-laws of his sister started



pressurizing her for bringing three lakhs rupees from her parents and non-payment of the same led to her physical torture. On 30.07.2017, his sister (deceased) had telephonically informed him that her husband and other members of her matrimonial family were again pressing for three lakh rupees and were also subjecting her to continuous torture.

7. On such information, P.W. 3 along with his uncle/Ramesh Kumar, Santosh Kumar, Vikash Kumar and Vivek Kumar (none of whom have been examined at the Trial) went to the matrimonial home of his sister and tried to reason out with the appellants and other family members. P.W. 3 expressed inability on behalf of the family to meet such a demand. After about five to six days on 05.08.2017, one Dhananjay Kumar (P.W. 1)/, a co-villager, had gone to his sister's house located in the same village as that of the deceased and learnt that something had happened to the sister of P.W. 3. It was also informed that perhaps the sister of



P.W. 3 had been killed and her dead body was burnt by pouring kerosene oil on her.

8. On such information, P.W. 3 along with his brother/Vikash Kumar and other co-villagers went to the matrimonial home of his sister, only to find her dead. She was badly burnt. The appellants had run away from the house. P.W. 3 along with the police party went to a neighbouring orchard from where the dead body was recovered, which was later sent to Jehanabad for postmortem examination.

9. It was, thus, concluded by P.W. 3 that the appellants and others have killed the deceased on 05.08.2017 at about 8 O'clock in the day.

10. On the basis of the afore-noted written report, a case *vide* Ghosi P.S. Case No. 190 of 2017 dated 05.08.2017 was registered for investigation under Sections 304 (B), 201 and 34 of the IPC.

11. The Police after investigation submitted charge-sheet against the appellants, whereas the



investigation was kept pending against the others.

12. The appellants were put on Trial. Charges under Sections 302, 304(B), 201 and 34 of the IPC was framed against the appellants.

13. As noted above, the Trial Court after having examined five witnesses on behalf of the prosecution and two on behalf of the defence, convicted and sentenced the appellants as aforesaid.

14. Mr. Thakur, the learned Advocate for the appellants has argued that though a young person has died in her matrimonial home, but the evidence is not strong enough to justify the conviction of the appellants under Section 304(B) of the IPC. It has further been urged that the date of marriage of the deceased with appellant/Gopal Kumar Sharma could not be established; thus, not making out of a case of death within seven years of marriage.

15. The other contention of the appellants is that the nature of burn injuries suffered by the



deceased clearly reflected that it was an accidental fire. The hairs, head and face of the deceased was not at all brunt. There were no blisters. The entire injuries were on the other parts of the body. At the time of postmortem, the dead body presented a pugilistic look, indicating 100% burn injuries. The Doctor had also found the cause of death to be dehydration and respiratory failure, which was the outcome of 100% burn injuries.

16. In this connection, it has been argued that the major plank of the prosecution case is of the deceased having been killed and then set on fire, which could not be proved. The Doctor, who had conducted the post-mortem examination was very clear in his finding that there was no physical injury on the body of the deceased. It could not be ascertained by him, whether the burn injuries were post-mortem or ante-mortem in nature. The very fact that there were no burn injuries on the head, face and the hair was not found to



be singed, clearly reflected that it was an accidental fire which might have gone unnoticed and, therefore, the deceased could not be rescued.

17. Lastly, it has been submitted that the Trial court perhaps got swayed by the fact that the dead body was found in the orchard of one Bageshwar Sharma of the village. It was thus inferred that the appellants who were responsible for the well-being of the daughter-in-law of the family, acted truant and attempted to dispose off the dead body, attracting the offence under Section 201/34 of the IPC.

18. What the Trial Court missed out, it has been argued, is the location of the orchard from where the dead body was retrieved. An orchard does not necessarily mean a separate parcel of land. The I.O. during the course of investigation noted down that the house of the appellants was surrounded by the houses of the other villagers and in one of the corners of the houses of the appellants, the house of Bageshwar



Sharma was situated. In village household, every home has an orchard. Assuming but not admitting, it was argued, that the dead body was found in the orchard, there could have been, at best, two inferences, viz., the deceased was being taken to hospital and while on way, the police party arrived. The other inference could be that with the confirmation of death, the dead body was being taken to the burning ground. The possibility of an orchard being a burning place in some villages cannot be totally excluded from the consideration, especially in the absence of any objective finding by the Investigator that there could have been no possibility of that place being the burning ground or that the orchard fell in the way of the burning ghat.

19. Thus, it has been argued that benefit of doubt was required to be given to the appellants.

20. As opposed to the afore-noted contentions, Mr. Abhimanyu Sharma, the learned APP has drawn the attention of this Court to the inquest



report (Ext. 3), which clearly depicts that the dead body was found in the orchard of Bageshwar Sharma. There was no confusion about the cause of death, *viz.*, the deceased having been burnt to death. It is only the strong imagination of the appellants to suggest that the dead body was retrieved at the time when the deceased was being taken to hospital as a last effort to resuscitate her. The only inference which could be drawn from the dead body having been found in an orchard, away from the house of the appellants, is the desperate attempt of the appellants to dispose off the dead body before the arrival of the police.

21. This speaks volumes about the conduct of the appellants, which goes a long way in justifying the conviction and sentence of the appellants.

22. Mr. Sharma, has further urged that the Court ought not to lose sight of the fact that the deceased died within seven years of marriage, which fact has been proved by the deposition of P.Ws. 1, 2



and 3. No doubt the investigator did not care to investigate the same but in view of the categorical assertion of P.Ws. 1, 2 and 3 about the marriage having been solemnized in the year 2011, the appellants cannot claim that there would be no application of Section 304(B) of the IPC.

23. Additionally, it has been argued that all the three aforementioned witnesses have also spoken about the demand of rupees three lakhs as additional dowry and consequent physical torture on the deceased because of non-payment of that amount. The last of the telephonic contact which the deceased had with P.W. 3 was on 30.07.2017. The death took place on 05.08.2017. This time lag is to be considered as "*soon enough before the death*"; thus bringing the case within the mischief of Section 304(B) of the IPC.

24. In this context, the presumption under Section 113B of the Evidence Act would become operative and the Trial Court has done precisely that



while appreciating the evidence.

25. Hence, no interference is required with the Trial Court judgment.

26. After having gone through the entire records of the case, we have been able to find certain inconsistencies in the case, but not of such kind which would render the prosecution case doubtful. Right from the written report by P.W. 3 to the depositions of the witnesses before the Trial Court, there is a strong consistency regarding the number of years having elapsed since the marriage of the deceased with the appellant/Gopal Kumar Sharma @ Gopal Sharma. The marriage had taken place in the year 2011.

27. The suggestions to all the aforementioned witnesses that the marriage actually had been solemnized in the year 2010 was vehemently denied. Though the investigator did not take any trouble to find out from the neighbourhood as also from the village about the year in which the marriage had been



solemnized, but with the assertions of P.Ws. 1, 2 and 3, the issue stands completely established. That the deceased was pressurized for bringing additional dowry also stands proved but the demand was made by whom remains in doubt. Going by the version of P.W. 3 (informant), all the members of the matrimonial family including the husband of the deceased were pressing for dowry. Similar statements have been made by P.Ws. 1 and 2. However, at one point of time during cross-examination, P.W. 3 corrected himself and excluded the name of the husband *i.e.* appellant/Gopal from the names of the persons who were demanding dowry.

28. To us, it appears to be a mistaken recording of fact or a statement made by P.W. 3 conveying a different sense. That is the solitary instance where P.W. 3 has made a departure from the consistent prosecution story of the demand by all the matrimonial family members. How was that demand made and for what purpose, as noted above, remains unknown.



29. True it is, that if such demands cropped up shortly after the marriage, P.W. 3 or his father ought to have taken some correctional step. Perhaps such complaints by the deceased was addressed also.

30. However, we find that the persons who had accompanied P.W. 3 on an earlier occasion to the matrimonial home of the deceased, to reason out with the in-laws have not been examined at the Trial at all and that also without any reasonable explanation. This, itself, would not render the version of P.W. 3 regarding consistent demand of dowry unbelievable.

31. We have no information about whether the deceased gave birth to any child. It appears from the evidence of P.Ws. 1 and 2 that after the marriage, the deceased kept shuttling between maternal and matrimonial home and for most of the times, she was in her maternal home.

32. Was it because of bad treatment to



her? This would only be a guess-work as no evidence has been garnered on that score.

33. However, there is nothing on record which would make us disbelieve the evidence of P.Ws. 1, 2 and 3 regarding the marriage of the deceased with the appellant/Gopal within seven years of her death and of additional demand of dowry and consequent torture.

34. However, we are at a loss to pin-point as to the exact accusation against either of the appellants or of other accused persons who are yet to face trial.

35. In this connection, the idea that her husband is the sole protector of his wife in his home, needs to be underscored.

36. We have also taken note of the fact that when the police party had gone to the house of the appellants, appellant/Nathuni Singh, as if a sitting duck, was arrested from his house. Appellant/Gopal however had run away. He only later surrendered before the



court. This also, to some extent, signifies that perhaps the culprit was appellant/Gopal and not Nathuni, the father-in-law, who remained at home.

37. The argument of Mr. Thakur that the Trial Court was wrong in accepting only one inference regarding the dead body having been found in the orchard of a neighbour, viz. that the appellants had killed the deceased and were trying to conceal the offence, is unacceptable to us.

38. We say so for the reason that in no case the dead body would be found in the orchard. There is nothing on record to indicate that the orchard fell in the way of the hospital. We have no evidence of the orchard being near the river bank or a place close to the burning ghat. If at all the deceased had died of burning, assuming accidental fire, the least respect shown to the dead body would have been to put her on a cot in the house and prepare for final rites/rituals. A dead body having been abandoned in a village orchard



reflects only the guilty intention and act of the accused persons.

39. The nature of injuries suffered by the deceased does not reflect that it was an accidental fire. Though there was no smell of kerosene oil, but the pugilistic posture of the dead body without any burn injuries on the hair, head and face coupled with 100% burn injuries indicate deliberate burning of the person. Had it been accidental fire, attempt would have been made to rescue her. All the members of the family were present in the house. In that case, the burn injuries would not have been 100%. There does not also appear to be any reason of inferring that it was a self-inflicted harm. That it was a homicidal death is beyond dispute.

40. Nonetheless, before saddling the appellants with the accusation, conviction and sentence, we need to be doubly sure about each of the appellants.

41. The very fact that there is no clarity in the deposition of witnesses regarding the demand of



dowry by whom and the arrest of appellant/Nathuni immediately after the occurrence suggesting that he never ran away from the scene as also of his relationship viz. of he being the father-in-law and therefore an elderly person, we find the accusation of demand of dowry and consequent torture of the deceased against him to be lacking in strong evidence. Same would have been true for appellant/Gopal as well, but considering his position as the sole protector of the deceased as a husband, the same test cannot be applied on him. There are no further details on record about the actual assault leading to 100% burn injuries; but then the evidentiary principle under Section 113B of the Indian Evidence Act comes handy for the prosecution to fall back upon.

42. The prosecution has to prove the basic facts and only thereafter the principle governing 113B of the Evidence Act would be attracted.

43. In the present case, we find that the



evidence against appellant/Nathuni Singh [Cr. App (DB) No. 1419 of 2019] is not strong enough for us to confirm his conviction under Section 304B of the IPC.

44. He is thus acquitted of the charges.

45. He is on bail. He is thus discharged of his liabilities under the bail bonds.

46. So far as appellant/Gopal Kumar Sharma @ Gopal Sharma [in Cr. App (DB) No. 1426 of 2019] is concerned, he was solely responsible for the well being of his wife. Having failed in his duty and not being present in the house when the police had arrived, his case comes within the mischief of Section 304B and 201 of the IPC.

47. The conviction of appellant/Gopal Kumar Sharma @ Gopal Sharma is thus confirmed.

48. However, we have some reservations about the sentence imposed upon him. There does not appear to be any scientific rationale behind imposing fourteen years imprisonment on him. No effort was



made to know about the family condition; the education; his chances of reformation; his attempts at expiation of his guilt so on and so forth.

49. In the circumstances of the case and the evidence discussed, we are of the view that a sentence of ten years of R.I. for the offence under Section 304B of the IPC and sentence of two years for the offence under Section 201 of the IPC would meet the ends of justice.

50. We order accordingly.

51. The sentence of appellant/Gopal Kumar @ Gopal Sharma [Cr. App (DB) No. 1426 of 2019] is reduced to a sentence of ten years under Section 304B of the IPC and two years under Section 201 of the IPC.

52. The default clause incorporated in the sentence by the Trial Court is left uninterfered.

53. Both the sentences shall run concurrently.

54. Thus, Cr. App (DB) No. 1419 of 2019



is allowed.

55. Cr. App (DB) No. 1426 of 2019 is dismissed with partial modification in the sentence.

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

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

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

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

manoj/krishna-

AFR/NAFR	NAFR
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