

(2018) 04 PAT CK 0059

In the Patna High Court

Case No : Criminal Appeal (DB) No. 450 of 2012

MD. MUBARAK @ KAILA

APPELLANT

Vs

THE STATE OF BIHAR?

RESPONDENT

Date of Decision : 27-04-2018

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304(B), 307, 326, 498(A)
Code of Criminal Procedure, 1973 — Section 313

Citation : (2018) 04 PAT CK 0059

Hon'ble Judges : Rakesh Kumar, Arvind Srivastava

Bench : Division Bench

Advocate : Jitendra Kr. Giri, Mayanand Jha

Final Decision : Dismissed

Judgement

1. The sole appellant was convicted on 28-03-2012 for commission of offence under Sections 302 and 498(A) of the Indian Penal Code, 1860

(hereinafter referred to as 'I.P.C.') and by order dated 02-04-2012, under Section 302 of the I.P.C. , he has been directed to undergo

imprisonment for life and to pay a fine of Rs. 10,000/ - (ten thousand). For offence under Section 498(A) of I.P.C., he has been directed to undergo

rigorous imprisonment for two years and to pay a fine of Rs. 3,000/(three thousand). In default of payment of fine of Rs. 10,000/and 3,000/-, he has

further been directed to undergo rigorous imprisonment for a period of one year and simple imprisonment for a period of three months respectively. All

the sentences have been directed to run concurrently. The appellant was convicted and sentenced in Sessions Trial No. 983 of 2009 (arising out of

Dhoraiya P.S. No. 85 of 2009) by Sri Nirmalendu Kumar Lall, learned Additional District & Sessions Judge-cum-Fast Track Court - IV, Banka

(hereinafter referred to as "Trial Judge").

2. Short fact of the case is that on 23-06-2009, the Sub-Divisional Officer, Sadar, Bhagalpur, vide letter No. 404 dated 23-06-2009, directed the Circle

Officer to record fardbeyan of Bibi Soni wife of Nizam Makbul resident of Baliyas P.S. Dhoraiya, District Banka, who was admitted in Jawaharlal

Nehru Medical College and Hospital, Bhagalpur on Bed No. 8 of emergency ward (surgical). In the fardbeyan, Bibi Soni disclosed that about 5 years

back from the date of her fardbeyan, her marriage was solemnized with Nizam of village Baliyas P.S. Dhoraiya, District Banka. From the said

wedlock, she was blessed with two children, one was baby girl aged about 2½ years and one son aged about 8 months. Day before yesterday, in the

night at about 8.30 PM, on some trivial issue, her eW>ys HkSalqj (second elder brother of her husband) i.e. appellant had abused her and told that she

had forcibly married with her brother and he asked her to bring money, otherwise she will be killed, which was refused by her. She stated that her

parental house was in the same village i.e. Baliyas, P.S. Dhoraiya and it was about 2 or 4 houses from the house of her in-laws. She explained that

since her father and mother both were dead, it was difficult for her to bring any money. Again, she was abused and in the meanwhile, her cM+s

HkSalqj (elder brother of her husband), namely, Shahid brought kerosene oil, which was taken by Mubarak (appellant) and he poured kerosene oil on

the whole body of Bibi Soni. Thereafter, Mubarak (appellant) brought a matchbox, however, she (injured) wanted to flee away, in the meanwhile near

the door, Mubarak (appellant) ignited the matchstick and threw over her. Her paizama and kurta got fire. In such condition, she ran towards her

parental house by raising alarm. Near her door, she noticed that her HkkHkh (wife of elder brother) was near a tube-well and she was filling water in

the bucket. After noticing the injured in such condition, she (HkkHkh) poured the bucket of water over her and extinguished the fire. In the

meanwhile, her most part of the body had already got injured from the fire. After hearing alarm of her Bhabhi, her brother Munir (PW-9) came and

laid her on a bed and thereafter, she was carried for treatment to Sanhaura. She clarified that in the said occurrence, there was no fault of her

husband Nizam. On the date of occurrence, her husband was in Mumbai where he was doing the work of mason and he was sending money after

earning the same from there. Till the time of recording her fardbeyan, her husband had not arrived and he was expected to arrive on the next date. All

those facts were explained by injured Bibi Soni, which was noted down by the Circle Officer. After recording fardbeyan, the said fardbeyan was read

over to the injured and after finding it correct, she put her R.T.I. (Right Thumb Impression). The fardbeyan was also got signed by Dr. Shailender

Kumar Singh, who was at the relevant time posted in Jawaharlal Nehru Medical College and Hospital. Subsequently, the fardbeyan was sent to the

police station and on the basis of said fardbeyan, a former F.I.R., vide Dhoraiya P.S. Case No. 85 of 2009, was registered on 29-06-2009 at 20:00

hours (8:00 PM) for offence under Sections 498(A), 326, 307, 34 of the I.P.C. Subsequently, after the death of the injured, Section 304(B) of the

I.P.C. was also added in the F.I.R. The F.I.R. was lodged against Kaila alias Mubarak (appellant) and his elder brother Shahid.

3. During investigation, accusation against the appellant was found true and as such, on 06-10-2009, chargesheet was submitted against the appellant,

keeping investigation pending against other. After submission of chargesheet, on 10-10-2009/12-10-2009, learned Chief Judicial Magistrate, Banka

took cognizance of the offence and on 21-10-2009, the case was committed to the court of sessions. After commitment, the case was numbered as

Sessions Trial No. 983 of 2009. In the case, on 21-11-2009, charge under Sections 302 and 498(A) of the I.P.C. was framed against the appellant. To

establish its case on behalf of the prosecution, altogether 11 witnesses were examined. Out of whom: P.W.1 Md. Firoz " cousin brother of the

deceased, P.W.2 Md. Mohsin - uncle of the deceased, P.W.3 Khalid " brother of the deceased, P.W.7 Biwi Fatima " Bhabhai of the deceased

were examined mainly on the point that they had seen the deceased in injured condition and before whom, the deceased had disclosed showing

involvement of the appellant (Mubarak) and his elder brother (Shahid).P.W.6 Md. Aslam Sah, who was brother-in-law of the brother of the deceased,

was primarily examined as hearsay witness, however, he has further stated that while he visited hospital, in injured condition, deceased weepingly had

explained about the occurrence giving entire description.

P.W.5 Dr. Yogesh Prasad Sah had conducted post-mortem examination on the dead body and he proved the post-mortem report, which was

marked as Ext. 2.

P.W.8 Dr. Shailendra Kumar Singh is a witness to the fardbeyan. In his presence, the Circle Officer, Kundan Kumar (P.W.4) had recorded

fardbeyan of the deceased. He clarified that whatever the deceased had stated was recorded by P.W.4. On the fardbeyan he had also signed as a

witness and he proved his signature, which was marked as Ext. 3.

P.W.11 Shivjee Singh was one of the police officers, who after the death of the injured, had recorded fardbeyan of the brother of the deceased, who is P.W.9.

He had also prepared an inquest report and he proved the inquest report, which was marked as Ext.7. He has also proved his signature on the fardbeyan

of the deceased, which was marked as Ext. 6.

P.W.10 Ganesh Prasad Thakur was an officer in charge of Dhoyariya Police Station and on 29-06-2009, he had taken charge of the investigation of the

present case. During investigation, he firstly inspected the place of occurrence. Obviously the place of occurrence was inspected much after the date of

occurrence, but he had noticed the place of occurrence, which was clean. He proved the formal F.I.R., which was marked as Ext. 4 and also

endorsement on the F.I.R., which was marked as Ext. 5.â??

4. After completion of evidence, on 21-03-2012, circumstances and evidences, brought on record during the trial, were explained to the appellant and

his statement under Section 313 of the Code of Criminal Procedure, 1973 was recorded, in which, he (appellant) simply claimed to be innocent.

5. After placing entire evidence, Sri Jitender Kumar Giri, learned counsel for the appellant has argued that of course, the case has proceeded as if the

fardbeyan was a "Dying Declaration" of the injured/ deceased, however, according to the learned counsel for the appellant, the said fardbeyan

may not be treated as a "Dying Declaration" in absence of any certification by the Doctor. He submits that on the fardbeyan, there is no

certificate of the doctor or the person, who had recorded fardbeyan that the injured was in a fit mental condition to make any statement. According to

the learned counsel for the appellant, such fardbeyan was not required to be treated as a "Dying Declaration", however, the learned Trial Judge

has proceeded, as if, it was a "Dying Declaration" and passed the judgment of conviction. He has further argued that the prosecution case

appears to be doubtful, in view of the fact that some of the witnesses during the

trial had tried to develop a case and this was the reason that prosecution had introduced Khalid (PW-3) as if he was a chance witness. By way of referring to evidence of PW-3, learned counsel for the appellant had tried to persuade the Court that this witness was introduced, as if, at the time of occurrence, he after purchasing mustard oil was returning and he had seen that accused persons were pouring kerosene oil and thereafter, the deceased was ignited by them. On aforesaid ground, it has been argued that the prosecution has miserably failed to establish its case beyond all reasonable doubt.

6. Sri Mayanand Jha, learned Addl. Public Prosecutorsubmits that it is a crystal-clear case for commission of offence by the appellant with the aid of

his elder brother. He submits that fardbeyan of the injured/deceased is â??Dying Declarationâ??, particularly; in view of fact that the Circle Officer

was authorized by the Sub-Divisional Officer, Banka to record statement of injured, who was lying on a bed in the hospital in injured condition.

Thereafter, P.W.4, who was Circle Officer, visited the hospital and on the bed, where the injured was lying, he recorded her fardbeyan in verbatim.

He submits that P.W.4 has categorically stated that he had recorded the fardbeyan in the manner, which it was disclosed by the injured/deceased. He

further submits that fardbeyan was also recorded in presence of P.W.8 (Dr. Shailendra Kumar Singh), who was posted in Jawaharlal Nehru Medical

College and Hospital. He submits that P.W.8 has also deposed that the P.W.4 had recorded fardbeyan in the same manner, in which, it was stated by

the injured, who subsequently died on 27-06-2009. Learned Addl. Public Prosecutor further submits that the case is not only based on the â??Dying

Declarationâ?? of the injured/deceased, but it has also been corroborated by evidence of other witnesses. He has specifically referred to evidence of

P.W.7 Bibi Fatima, who was Bhabhi of the deceased. He submits that P.W.7 in her evidence has stated that when she saw the injured in burning

condition, she had poured bucket of water on her (injured) to extinguish the fire. In paragraph â?" 7 of her evidence, she had clarified that the husband

of the deceased was working in Bombay and there was no strained relation of deceased with her husband. P.W.1 Md. Firoz (cousin brother of the

deceased), P.W.2 Md. Mohsin (uncle of the deceased), P.W.9 Md. Manir Sah, regarding whom, the injured had stated in her fardbeyan, all have

stated consistently as to how the deceased in burning condition runningly had arrived to her parents's house, where P.W.7 had extinguished the fire by pouring bucket of water. The witnesses have also categorically stated that some time after the marriage, the accused persons were demanding dowry and due to non- fulfillment of dowry, she (deceased) was repeatedly ousted from her in-laws house. Those facts have also been stated by the deceased in her fardbeyan. According to learned Addl. Public Prosecutor, in view of entire evidence on record, there is no reason to raise any doubt on the prosecution case.

7. Besides hearing, we have also minutely examined entire evidence on record. We have already discussed above regarding the fardbeyan of the deceased. Ofcourse, on the fardbeyan, there was no specific certification, but fact remains that her statement was recorded by the Circle Officer, as per direction of the Sub-Divisional Officer and that statement was also witnessed by the doctor, posted in the hospital. On perusal of the contents of the fardbeyan, there is no reason to doubt that any single word was added by the person, who had recorded her statement. The fardbeyan appears to be quite natural and after going through the same, only one conclusion can be drawn that the deceased was burnt to death by the appellant and it was also case of torturing for non-fulfillment of demand of dowry. All the other witnesses have consistently supported the prosecution case.

8. P.W.5 Dr. Yogesh Prasad Sah, who was posted in Jawaharlal Nehru Medical College and Hospital on 28-06-2009, after death of injured had conducted post-mortem examination and during post-mortem, he had noticed following facts:-

â??The whole body was found bandage below neck. After removal of bandage, dermoepidermal burn extending over left side of chest and neck, both lower limb, both upper limb, chest and abdomen perimium. The face of burnt area was filled with pus and granulation tissue the extent of burnt is about 80 %.

Opinion â?" The burnt was antemortum grenous and was caused by flame of fire.
Time since death: - Within 18 to 24 hours from the time of PM Exam.â??

The doctor has proved the post-mortem report, which was marked as Ext.2.

9. On examination of the post-mortem report as well as evidence of P.W.5, it is evident that death was caused due to burn injury, which has already

been elaborated in the fardbeyan as well as by the evidences, which we have already discussed hereinabove.

10. On examination of entire evidence, we are of the considered opinion that the learned Trial Judge, while passing judgment of conviction and

sentence, has committed no error. Accordingly, there is no need to interfere with the judgment of conviction and sentence.

11. The judgment of conviction dated 28-03-2012 and sentence dated 02-04-2012 passed in Sessions Trial No. 983 of

2009 (arising out of Dhoraiya P.S. No. 85 of 2009) by Shri Nirmalendu Kumar Lall, learned Additional District & Sessions Judge-cum Fast Track

Court - IV, Banka is, hereby, approved and appeal stands dismissed.