

[Against the judgment and order of conviction and sentence dated 12.08.1998 passed by Shri S.H. Kazmi, learned 3rd Additional Sessions Judge, East Singhbhum, Jamshedpur in Sessions Trial No. 368/1997]

Cr. Appeal (D.B.) No. 246 of 1998 (R)

Asish Ranjah Shaw @ Ashish Ranjan Sahu, S/o Bishnu Pada Shaw, R/o Devnagar, New Baraduwari, P.S. Sitaramdera, Jamshedpur, District- Singhbhum East **Appellant**

Versus

The State of Bihar (Now Jharkhand) **Respondent**

With

Cr. Appeal (D.B.) No. 231 of 1998 (R)

1. Tarit Prabha Sahu, W/o Bisnu Pado Shaw, R/o Devnagar, New Baraduhri, P.S.- Sitaramdera, Jamshedpur, District- East Singhbhum

2. Sipra Sahu @ Shipra Shaw, W/o Biswanath Shaw, R/o A/51 Bagun Hatu, P.S.- Sidhgora, Jamshedpur, District- East Singhbhum **Appellants**

Versus

The State of Bihar (Now Jharkhand) **Respondent**

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For the Appellants : Mr. Chandan Kumar, Adv.
[In Cr. A (D.B.) No. 246 of 1998 (R)]
Mr. Dilip Kr. Chakraverty, Adv.
[In Cr. A (D.B.) No. 231 of 1998 (R)]
For the State : Mr. Shiv Shankar Kumar, A.P.P.

P R E S E N T

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY
HON'BLE MR. JUSTICE ARUN KUMAR RAI

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JUDGMENT

Order No. 13/Dated, the 27th November, 2024
Per Rongon Mukhopadhyay, J.

Heard Mr. Chandan Kumar, learned counsel appearing for the appellant in Cr. A (D.B.) No. 246 of 1998 (R), Mr. Dilip Kr. Chakraverty, learned counsel for the appellant in Cr. A (D.B.) No. 231 of 1998 (R) and opposed by Mr. Shiv Shankar Kumar, learned A.P.P. for the State.

2. Since both these appeals arise out of a common judgment they are being disposed of by this common order.

3. These appeals are directed against the judgment and order of conviction and sentence dated 12.08.1998 passed by Shri S.H. Kazmi, learned 3rd Additional

Sessions Judge, East Singhbhum, Jamshedpur in Sessions Trial No. 368/1997, whereby and whereunder, the appellants have been convicted for the offences punishable u/s 304-B/34, 498A/34 of the IPC and Section 4 of the Dowry Prohibition Act and the appellant in Cr. A (D.B.) No. 246 of 1998 (R) has been sentenced to undergo R.I. for life u/s 304-B/34 of the IPC, while the appellants in Cr. A (D.B.) No. 231 of 1998 (R) have been sentenced to undergo R.I. for eight years each, u/s 304-B/34 of the IPC. No separate sentence has been passed for the conviction u/s 498A/34 of the IPC and Section 4 of the Dowry Prohibition Act.

4. The prosecution case arises out of the fardbeyan of Sangeeta Sahu (deceased) recorded on 27.05.1997 at 5:15 P.M., in which, it has been alleged that on the same day at 10:45 A.M. her husband had asked her to bring the balance dowry amount from her house and when she expressed her inability to meet such demand due to the poor financial condition of her father and in course of quarrel the husband of the informant poured kerosene oil upon her from a stove and set her ablaze. It has been alleged that when the informant raised an alarm her husband managed to douse the fire which had engulfed her. The informant was thereafter taken to a Hospital for treatment. It has also been alleged that the mother-in-law and sister-in-law of the informant used to demand dowry and instigate the husband of the informant to torture her.

Based on the aforesaid allegations Sitaramdera P.S. Case No. 23/1997 was instituted for the offences punishable u/s 341/498A/324/326/307/34 of the IPC and Section 3/4 of the Dowry Prohibition Act. On completion of investigation charge-sheet was submitted u/s 498A/304-B/34 of the IPC and u/s 3/4 of the Dowry Prohibition Act and after cognizance was taken the case was committed to the Court of

Sessions where it was registered as Sessions Trial No. 368/1997. Charge was framed u/s 304-B/34 of the IPC, Section 498A/34 of the IPC and Section 4 of the Dowry Prohibition Act which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

5. The prosecution has examined as many as ten witnesses in support of its case.

6. P.W.1 (Bani Hazra) has stated that on the date of the occurrence he was in his house when he heard a cry of alarm and when he came out he saw Sangeeta in a burnt condition and her husband was sitting beside her.

In cross-examination, he has deposed that he had not witnessed the incident. He has also deposed that the relationship between Sangeeta and Ashish was cordial. The family members of Ashish did not use to come to his residence.

7. P.W.2 (Lata Devi) did not support the case of the prosecution and was declared hostile by the prosecution.

8. P.W.3 (Haripado Chakroborty) also did not support the case of the prosecution and was accordingly declared hostile by the prosecution.

9. P.W.4 (Prasanta Raut) has stated that when he returned from his duty in the evening at night he came to know that Sangeeta had suffered burn injuries from the stove.

In cross-examination, he has deposed that Ashish had a cordial relationship with his wife. The family members of Ashish never visited his house. He has deposed that his statement was not recorded by the Police.

10. P.W.5 (Dr. Lakhan Choudhary) was posted as an Assistant Professor in the Department of Forensic Medicine, MGM, Medical College, Jamshedpur and on 21.06.1997 he had conducted autopsy on the dead body of Sangeeta Sah and had

found the following:

“Ante mortem dermo epidermal burn with red linings present all over the body except scalp, feet, waist and portion of buttock. Wound was infected at places.

Abrasion of size 3 cm x 2 cm present over left side forehead.

On dissection – Contusion of size 3 cm x 1.5 cm over right leg lower part. Outer aspect and 4 cm x 3 cm over left leg upper part outer aspect.

Chest and abdomen – All visensus congested. On section of right lung frothy blood comes out. Right side of heart contains blood, bladder full. Stomach contains yellowish fluid 50 ml.

Neck- Trachea mucosa congested.

Skull- Scalp under wound contused.

Brain surface congested.”

The cause of death was opined to be on account of Septicemia and toxicimia. He has proved the postmortem report which has been marked as Exhibit- 1.

In cross-examination, he has deposed that he did not find any odor of kerosene oil or petrol or any inflammable substance coming out of the body. He has deposed on suggestion that abrasions and contusions may be possible while falling down from auto-rickshaw or from bed.

11. P.W.6 (Girish Chandra Ray) has stated that when he had returned home after visiting his brother he found a crowd and Sangeeta Sahu lying in a burnt condition. He had called a Tempo and took Ashish and Sangeeta to TMH for admitting them as Ashish had also suffered burn injuries on his hand. He had left the Hospital after admitting them. He has stated that a cordial relationship existed between Sangeeta and Ashish.

In cross-examination, he has deposed that Ashish and Sangeeta were staying in his house for a year as tenants. The family members of Ashish never came to visit him but the mother of Sangeeta used to come sometimes. Sangeeta

was not in a position to speak when she was being taken to the Hospital.

12. P.W.7 (Anjana Choudhary) is the mother of the deceased who has stated that about three years back her daughter had fled away from the house and had married Ashish Sahu. Her daughter was kept well for a few days after marriage. Before this marriage her daughter had solemnized another marriage but she was ousted due to non-fulfillment of the demand of dowry and later on after divorce she had solemnized marriage with Ashish Sahu. After the birth of a child the relationship between her daughter and son-in-law nosedived and her daughter was subjected to torture due to non-fulfillment of the dowry demands. She has stated that on 27.05.1997 when she returned home after teaching she came to know that her daughter is in a Hospital in a burnt condition. In the Hospital, she learnt that her son-in-law had tortured and burnt her daughter due to demand of dowry. Her daughter had disclosed that her husband had set her ablaze.

In cross-examination, she has deposed that she had not attended the marriage of her daughter with Ashish Sahu. Prior to May, 1997 she had not met the family members of Ashish Sahu. Her daughter had come to her for the last time on 25.04.1997 and she had taken some articles with her.

13. P.W.8 (Dr. R. Bharat) has stated that on 27.05.1997, Sangeeta was admitted at the Burn Centre of TMH through casualty by Dr. A.N. Prasad. He has proved the admission slip which has been marked as Exhibit-2. The patient was drowsy and also in shock with weak pulse and was also restless. He had examined the patient at 11:25 A.M. on 27.05.1997 and she was in a Semi-comatose state with hurried breathing. The patient condition continued to deteriorate and she expired on 31.05.1997. He has proved the death certificate which has been marked as Exhibit-3. He has proved the case

record prepared by the concerned Doctors and report of the treatment of the deceased at Burn Centre which has been marked as Exhibit-4.

In cross-examination, he has deposed that no statement of Sangeeta was recorded in his presence according to the history sheet. Otherwise also he does not remember whether Sangeeta had given any statement or not. On 29.05.1997 between 8:00 A.M. and 11:25 A.M. the general condition of the patient was very poor.

14. P.W.9 (Jai Govind Prasad Gupta) was posted as a Probationer ASI in Sitaramdera P.S. and on 28.05.1997 he had received the fardbeyan from ASI Mansingh Ram on the basis of which a case was registered and he took over the investigation of the case. On the basis of the fardbeyan a formal FIR was drawn up which has been marked as Exhibit-5. On 29.05.1997, he had reached the Burn Centre at TMH where the informant was admitted and with the assistance of Sister Geeta Ambika he had recorded the restatement of the informant. She had supported the allegation in her fardbeyan and had further stated that her husband used to bring foreign breed of dogs from Kolkata and sell them at Jamshedpur and this was their source of sustenance. She had stated that her marriage with Ashish Ranjan Sahu was a love marriage which was solemnized 3½ years back and after marriage they started residing in C.H. Area, Kadma where she had given birth to a female child. For the last 1½ years she was residing at Deonagar in a rented house. She had also stated that on the instigation of her parents-in-law her husband used to make demand of dowry and threaten to leave her if such demand was not fulfilled. On 27.05.1997, her husband had sprayed her with kerosene oil and set her ablaze and later on her husband doused the fire by pouring water over her and got her admitted to the Hospital. He had recorded the statement of Dr. R.

Bharat who had accepted that the signature in the fardbeyan was his. He had thereafter inspected the place of occurrence which is at Deonagar in the rented premises of Girish Chandra Ray. A stove without oil with its cap open and a heater were found in the corner of the room where the incident had taken place. He had recorded the statements of Haripado Chakroborty and Girish Chandra Ray who have supported the case of the prosecution. He had also recorded the statements of Prashant Ray, Bani Hazara and Lata Devi. On 30.05.1997, he had given an application to the Court seeking permission to record the dying declaration of the informant but the dying declaration could not be recorded as the informant went in a semi-coma state. He has stated that on 01.06.1997 on the basis of a secret information the accused Ashish Ranjan Sahu was found getting treatment in a private clinic.

In cross-examination, he has deposed that he had not seized any article from the place of occurrence. When he had seen Ashish Ranjan Sahu in the clinic there were injuries on his neck, cheek, hand and palm. He had not taken any advice from the Doctor as to whether Sangeeta was in a fit state to give her statement.

15. P.W.10 (Barun Kumar) had taken over the charge of investigation from the Officer-in-Charge Sukhdeo Kumar Bhagat after which he obtained the postmortem report and since the investigation was completed in all respects he had submitted charge-sheets against the accused persons.

In cross-examination, he has deposed that he had not investigated as to whether marriage was solemnized between Ashish Ranjan Sahu and Sangeeta.

16. The statements of the accused were recorded u/s 313 Cr.P.C., in which, they had denied their complicity in the murder.

17. The defense has examined two witnesses.

18. D.W.1 (Sushanto Lahri) has proved the legal notice issued by Shri D.N. Upadhyay, Advocate which has been marked as Exhibit-A.

19. D.W.2 (Ashish Ranjan Sahu) is the accused who has stated that the reply to the legal notice sent by Shri C.S. Jaiswal, Advocate was prepared and sent on his instruction by Shri D.N. Upadhyay, Advocate.

20. It has been submitted by Mr. Chandan Kumar, learned counsel for the appellant in Cr. A (D.B.) No. 246 of 1998 (R) that the only basis for conviction of the appellant is the dying declaration of the deceased but the evidence of P.W.8 clearly reveals that the same was not recorded in his presence and even otherwise since the deceased was in a semi-comatose state it was not possible for her to have given such statement. Drawing the attention of the Court to the evidence of P.W.9, it has been submitted that the appellant while trying to save the deceased himself suffered extensive burn injuries and this fact had come to light when the appellant was getting himself treated in a private clinic. It has been submitted that P.W.7 who is the mother of the deceased had not stated about demand of dowry immediately preceding the death of her daughter. The Doctor who had conducted the autopsy did not find any smell of kerosene oil in the body of the deceased. It has, therefore, been submitted that the deceased had suffered accidental burn injuries and the judgment of the learned trial court is perverse as vital aspects of the case has been overlooked.

21. Mr. Dilip Kr. Chakraverty, learned counsel for the appellants in Cr. A (D.B.) No. 231 of 1998 (R) has apart from adopting the argument advanced by Mr. Chandan Kumar has stressed on the fact that the appellants never visited the house of Ashish Ranjan Sahu as deposed by P.W.6, the landlord of Ashish Ranjan Sahu and in such circumstances

the question of demanding dowry and instigating Ashish Ranjan Sahu to demand dowry does not arise.

22. Mr. Shiv Shankar Kumar, learned A.P.P. for the State has submitted that the evidence of P.W.7 and the dying declaration of the informant/deceased leaves no room for doubt that the deceased was subjected to torture for non-fulfillment of the demand of dowry and was done to death by setting her ablaze.

23. We have heard the learned counsel for the respective sides and have also perused the trial court records.

24. The entire case of the prosecution revolves around the purported dying declaration of Sangeeta Sahu, in which, she has claimed that she was set ablaze by her husband after pouring kerosene oil over her person. It is the consistent case of the defense that the deceased had suffered accidental burn injuries and the appellant/husband in an attempt to douse the fire had himself suffered burn injuries. The evidence of P.W.6 who is the landlord reveals that Ashish Ranjan Sahu had also suffered burn injuries on his hands and both the deceased and Ashish Ranjan Sahu were admitted by him in TMH. This fact has further been cemented by the evidence of the Investigating Officer (P.W.9) who in search of Ashish Ranjan Sahu had located him in a private clinic getting himself treated for extensive burn injuries suffered by him on his neck, cheek, hands and palm.

25. The evidence of P.W.7 who is the mother of the deceased reveals that her daughter was earlier married but after obtaining a divorce she had eloped with Ashish Ranjan Sahu and solemnized marriage with him. Though P.W.7 has stated about demand of dowry made by Ashish Ranjan Sahu but the same appears to be an omnibus statement and it cannot be construed that immediately before her death she was subjected to torture or demand of dowry. At this juncture,

we may refer to the evidence of P.W.1 and P.W.4 who have stated that the relationship between Ashish Ranjan Sahu and Sangeeta Sahu was cordial. They have also stated that the family members of Ashish Ranjan Sahu never visited him and P.W.6 the landlord has also reiterated this fact. There are no other witnesses examined by the prosecution who would give a glimpse that Ashish Ranjan Sahu and Sangeeta Sahu shared an attritional relationship and demand of dowry was made at the behest of the mother and sister of Ashish Ranjan Sahu.

26. The dying declaration of Sangeeta Sahu is fraught with doubt when we dissect the evidence of P.W.8. As per the prosecution case the dying declaration was recorded in presence of P.W.8 who is also said to have signed on the document. P.W.8 has stated that he does not remember whether the deceased had given any statement or not. He has also stated that as per the history sheet no statement of Sangeeta Sahu was recorded in his presence. The history sheet of the patient has been exhibited and it is silent with respect to recording of the dying declaration of Sangeeta Sahu. The other aspect of the case is the condition of Sangeeta Sahu which has been stated by P.W.8 as semi-comatose which has further been explained by him as a condition in which she could only respond but not speak anything. P.W.8 has also stated that the condition of the patient had started deteriorating which ultimately led to her death. The scenario as depicted by P.W.8 would mean, therefore, that the deceased was not in a position to speak as she was in a semi-comatose state and the dying declaration in such circumstances comes under a cloud of suspicion. The falsity of such dying declaration seems to have been further enhanced when we visit the evidence of Investigating Officer (P.W.9) who had recorded the re-statement of the deceased and seems to have expanded the background facts and the allegation which in the backdrop of the evidence

of P.W.8 would be an impossibility. P.W.9 has also noted about presence of a stove at the place of occurrence but it was not seized and in fact no incriminating materials seem to have been seized by P.W.9. Even P.W.5 has stated that no smell of kerosene oil was found on the person of the deceased.

27. The learned trial court has overtly relied upon the purported dying declaration of the informant/deceased without exploring the other avenues which prominently feature in the entire conspectus of the case which we have taken note of and which points to the innocence of the appellants.

28. We, therefore, in view of the discussions made hereinabove set aside the judgment and order of conviction and sentence dated 12.08.1998 passed by Shri S.H. Kazmi, learned 3rd Additional Sessions Judge, East Singhbhum, Jamshedpur in Sessions Trial No. 368/1997.

29. Both these appeals are allowed.

30. Since the appellants are on bail they are discharged from the liability of their bail bonds.

31. Pending I.A., if any, stands closed.

(Rongon Mukhopadhyay, J.)

(Arun Kumar Rai, J.)

High Court of Jharkhand at Ranchi

Dated, the 27th day of November, 2024.

A. Sanga /-