

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.36 of 2015

Arising Out of PS.Case No. -33 Year- 2011 Thana -HARLAKHI District- MADHUBANI

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1. Satya Narayan Mandal Son of Late Ram Khelawan Mandal
 2. Dilip Kumar Mandal Son of Shri Satya Narayan Mandal

Both are Resident of Village - Kanherpatti, P.S- Harlakhi, District - Madhubani.

.... Appellants

Versus

The State of Bihar

.... Respondents

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate

Mr. Imteyaz Ahmad, Advocate

For the Respondent/s : Mrs. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-03-2015

This appeal is directed against the judgment of conviction and order of sentence dated 09.12.2014 and 11.12.2014 respectively passed by the learned Additional Sessions Judge-2nd, Madhubani in Sessions Trial No. 270 of 2012/Tr. No. 75 of 2012, whereby and whereunder the appellants have been held guilty of the charge under Section 304-B read with 34 of the Indian Penal Code and sentenced to undergo R.I. for ten years each.

2. One Mithilesh Prasad Mandal (P.W. 5) lodged a fardbeyan on 31.05.2011 at about 4.00 P.M. before the Officer-in-charge of Harlakhi Police Station stating, inter alia, that on the same day i.e. 31.05.2011 at about 2.00 p.m., one Sogarath Mandal informed him on mobile that the condition of his daughter is critical



and asked him to come immediately and, accordingly, at about 2.30 p.m. he reached the marital house of his daughter and found her lying dead in the house. He noticed smell of poison emanating from her mouth. Her husband Dilip Kumar Mandal (Appellant No. 2) and father-in-law, Satya Narayan Mandal (Appellant No. 1) were found absconding. He has stated that he had married his daughter in the month of March, 2000 with the appellant Dilip Kumar Mandal and a baby aged about six months was born out of the said wedlock. At the time of marriage, he had given gifts as per his capacity but, in spite of that, after some days of marriage, her husband and father-in-law used to assault and torture her for non-fulfilment of demand of a motorcycle and Rs. 10,000/- as dowry. His daughter had made complaint in this regard to him as well as to his wife, as a result of which he visited her marital house several times and tried to persuade the accused persons that he has already given the gifts as per his capacity at the time of marriage and it would be extremely difficult for him to meet their further demand of dowry. He suspected that due to non-fulfilment of demand of dowry, the accused persons poisoned his daughter to death.

3. On the basis of the aforesaid fardbeyan Harlakhi Police drew up a formal first information report vide Harlakhi P.S. Case No. 33 of 2011 and took up investigation. On conclusion of investigation, the police submitted charge sheet against the appellants and after complying with the mandatory provisions of Section 207 of the Code of Criminal Procedure (hereinafter referred to as "Cr. P.C."), the case was committed to the Court of Sessions for trial. The trial Court framed charges under Sections 304-B read with 34, and in the alternative 302 read with 34 and 498A read with 34 of the Indian Penal Code against the appellants to which they

pleaded not guilty and claimed to be tried.

4. In course of investigation altogether eight witnesses were examined on behalf of the prosecution. Out of them, P.W. 1 Mithilesh Mandal, P.W. 2 Sudhir Kumar Mandal, P.W. 3 Mantor Devi and P.W. 4 Jajvir Mandal did not support the case of the prosecution. The prosecution has cross-examined them but nothing relevant could be taken out from them in cross-examination.

5. P.W. 8 Raj Kumar Mandal is a formal witness who had put his signature over the inquest report. In cross-examination, he has admitted that he has no knowledge about the contents of the inquest report.

6. P.W. 6 Dr. Pashupati Mishra has conducted postmortem examination over the dead body of the deceased. In his report, he has not given any definite opinion regarding cause of death of the deceased. He has found the following antemortem injuries on the dead body:-

- (i) Abrasion over both wrists $\frac{1}{2}$ " x $\frac{1}{4}$ " and $\frac{1}{4}$ " x $\frac{1}{6}$ "; and
- (ii) Abrasion over lower lip $\frac{1}{2}$ " x $\frac{1}{4}$ "

He has proved the post mortem report which has been marked as Ext. 2. He has stated that since no definite opinion could be given as to the cause of death and, as such, necessary viscera were preserved for chemical analysis. In cross-examination, he has admitted that both the injuries found on the person of the deceased were on non-vital part of the body and were of superficial nature.

7. P.W. 5 Mithilesh Prasad Mandal is informant of the case. In his deposition, he has stated that his daughter was married to the appellant no. 2 Dilip Kumar Mandal in the year 2009. After marriage, she was residing in her marital house. On receipt of information that his daughter is not well, he had gone to her marital



house. He has stated that he does not know as to whether the husband of his daughter and/or his relatives used to demand motorcycle or cash from her as dowry. He has proved his signature on the fardbeyan which has been marked as Ext. 1. In cross-examination, he has admitted that he had received information regarding illness of his daughter from the appellants. He further admits that he came to know that his daughter had sustained snakebite. He admitted that no demand for motorcycle or cash was ever made from him and his wife also had never told him that any demand of dowry was being made by the appellants from the deceased. He has stated that out of utter confusion, he had instituted the case.

8. P.W. 7 Rameshwar Tiwary is the second investigating officer of the case. He had taken over investigation of the case on 26th August, 2011. In his examination-in-chief, he has stated that on conclusion of investigation, he had submitted charge sheet against the appellants. In cross-examination, he has admitted that on 30th January, 2012 he sent the viscera of the deceased to the Forensic Science Laboratory at Patna for chemical test through one Rajendra Uraon.

9. It is relevant to note here that the investigating officer, who had initially inspected the place of occurrence and recorded statements of witnesses under Section 161(3) Cr. P.C., has not been examined. Even Rajendra Uraon through whom the viscera were sent for chemical analysis has not been examined. The second investigating officer who has been examined as P.W. 7 had neither inspected the place of occurrence nor recorded the statement of witnesses examined in course of trial.

10. On conclusion of evidence led by the prosecution,

the appellants were examined under Section 313 of the Cr. P.C. The question put to the appellants by the court below under Section 313 of the Cr. P.C. is as under:-

“It has come in evidence that you along with other accused persons subjected the daughter of the informant Mithilesh Prasad Mandal, namely, Sita Devi to cruelty for demand of Rs. 10,000/- and a motorcycle as dowry and ultimately due to non-fulfilment of the said demand killed her on 31.05.2011 by administering some poisonous substance”. The appellants answered the question in negative.

11. Learned counsel for the appellants has submitted that it is a case of no evidence. None of the witnesses has alleged that there was any demand of dowry or that the deceased was ever subjected to cruelty for non-fulfilment of demand of dowry. The informant of the case has expressed complete ignorance of any knowledge regarding any demand of dowry and, thus, the essential ingredient for constituting an offence punishable under Section 304-B of the Indian Penal Code is completely wanting in the present case. He has submitted that trial Court has relied upon the first information report for disbelieving the statement of the informant given in the Court ignoring the fact that the FIR can only be used for the purpose of corroboration or for contradiction. He has submitted that the trial Court has relied on the chemical analysis report which was neither formally proved in the Court nor was ever brought to the notice of the appellants. Even in the police report/charge sheet, there is no reference of chemical analysis report.

12. On the other hand, learned A.P.P. for the State has submitted that there is ample evidence on record to show that the deceased died an unnatural death in her marital house within seven

years of her marriage and, hence, there is no illegality in the impugned judgment passed by the Court below whereby the appellants have been convicted and sentenced for the offence under Section 304-B of the I.P.C.

13. As noticed, the appellants have been convicted under Section 304-B of the Indian Penal Code. The said section reads as under:-

“304-B. Dowry death.- (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

14. Section 113-B which deals with presumption as to dowry death reads as under:-

“Section 113-B. Presumption as to dowry death.- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in

connection with, any demand for dowry; the court shall presume that such person had caused the dowry death.”

15. From a bare reading of the aforesaid two provisions i.e. Section 304-B IPC and Section 113-B of the Evidence Act, it would be evident that before Section 304-B IPC may apply, the following essentials must be satisfied: (i) The death of woman must have been caused by burns or bodily or otherwise than under normal circumstance; (ii) such death must have occurred within seven years of marriage; (iii) soon before her death, the woman must have been subjected to cruelty or harassment by husband or by relatives of her husband; and (iv) such cruelty or harassment must be for or in connection with demand of dowry. Once the prosecution is able to establish the aforesaid ingredients, the presumptions against the accused starts as enjoined under Section 113-B of the Evidence Act.

16. I have heard the respective counsel for the parties and with their assistance perused the record. I find substance in the arguments advanced on behalf of the appellants. As noted above, P.W. 1 to 4 have not supported the case of the prosecution in any manner. Similarly, P.W. 5 Mithilesh Prasad Mandal (informant) has not supported the allegation of demand of dowry or cruelty being meted out to his deceased daughter in the marital house. He has not been declared hostile by the prosecution. Hence, the prosecution would be bound by the evidence led by him. He has categorically admitted in cross-examination that in utter confusion he had instituted the FIR. The wife of the informant has not been examined in the case. The doctor who conducted the postmortem examination on the dead body of the deceased could not assign the cause of death of the deceased. The Court below has taken into consideration chemical analysis report for convicting the appellants. Apparently,



the aforesaid report was not proved by any witness in course of trial. From the lower court records, it would appear that the police had submitted charge sheet in the case on 31st January, 2012 and the report of the Director, Forensic Science Laboratory, Bihar, Patna is dated 13th July, 2012. Of course, the result of examination of viscera shows that aluminum phosphate, a highly poisonous substance, was detected in the contents of viscera sent for chemical examination. The Court below has considered the report under Section 293 of the Code of Criminal Procedure as evidence but the said report was never brought to the notice of the appellants in course of trial. Even while examining the appellants under Section 313 of the Cr. P.C., no question was put by the trial Court in respect of the chemical analysis report on the basis of which the trial Court has held the appellants guilty.

17. It is well settled that under Section 313 of the Cr.P.C., the examination of the accused is held for the purpose of enabling him to explain any circumstance appearing in evidence against him. It is mandatory for the trial Court to put to the accused facing trial every such piece of evidence which appears incriminating against the accused. The accused may or may not avail of the opportunity for offering his explanation. In the instant case, the chemical analysis report was not brought to the notice of the appellants while they were examined under Section 313 Cr.P.C. Under such circumstance, the trial Court ought not to have used the same against the appellants.

18. Further, in the present case, I find that though there is evidence that the victim died within seven years of her marriage but there is no evidence that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her

husband in connection with demand of dowry. As a matter of fact there is no evidence on record to show that the victim died otherwise than under normal circumstance.

19. Considering the evidence referred to hereinbefore, I find that the prosecution has miserably failed to prove its case. The judgment of the trial Court is not sustainable in the eye of law.

20. Accordingly, the appeal is allowed. The conviction of the appellants Satya Narayan Mandal and Dilip Kumar Mandal for the charge under Section 304-B read with Section 34 of the Indian Penal Code and the sentences of 10 years' rigorous imprisonment each imposed on them by the learned Additional Sessions Judge-2nd, Madhubani in Sessions Trial No. 270 of 2012/Tr. No. 75 of 2012 are set aside. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Ashwani Kumar Singh, J.)

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