

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.355 of 2013

Against the judgment of conviction and order of sentence dated 4th of April, 2013 and 5th of April, 2013 passed by Shri Bipin Bihari Mishra, Adhoc. Addl. District & Sessions Judge-IV, Gopalganj in Sessions Trial No. 131 of 2011/13 of 2011.

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1. Srinivas Manjhi,
 2. Shivdeo Manjhi

Both sons of Late Manbharan Manjhi, Resident of Village- Kabirpur, P.S- Mahamadpur, District- Gopalganj.

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Uday Pratap Singh, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 05-10-2015

Heard both the parties.

2. The appellants have been convicted under Section 304-B/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case as alleged in the written report of Sunil Kumar Paswan, the brother of the victim Suman Devi is that she was married on 18.06.2010 at village-Kabirpur with the appellant-Srinivas Manjhi. It is further alleged that at the time of marriage a cash of Rs. 20,000/- , two sets of utensils, clothes and eight sets of silver jewelleryes was given. The further case is that after marriage Bidai of the victim took place and she went to Sasural and remained



there for about ten days and after ten days her husband Srinivas Manjhi and his Bhaisur Shivdeo Manjhi started a demand of motorcycle and the victim was subjected to cruelty for non-fulfillment of demand of motorcycle. It is further alleged that wife of Shivdeo Manjhi used to call her with bad name and vexed her alleging that she belongs to a destitute family and her father did not give motorcycle till date. The further case is that the victim Suman Devi used to disclose to the informant and his father about the ill-treatment. The further case is that informant went to the Sasural of the victim and made an honest request to Srinivas Manjhi and his brother Shivdeo Manjhi that he will pay the amount whenever he will be able to arrange the money and he himself will come to pay the same. It is further alleged that even then the victim was being subjected to cruelty and assaulted and on 06.07.2010 at about 9 P.M. he received an information from his sister (the victim) on Mobile that in the night, her husband, Bhaisur and Gotini will not spare her and she has heard that they will kill her by poisoning. On the said information, the informant on 07.07.2010 proceeded to the Sasural of his sister at village-Kabirpur and reached there at about 8 A.M. and saw that his sister is lying in unconscious state. The inmates of the house have disclosed that she has become unconscious due to epilepsy, whereas the fact is that the victim was not suffering from epilepsy and they did

not take her to hospital. Thereafter, it is alleged that while he was taking the victim to hospital, she died in the way and hence it is claimed that all the three accused persons has killed the victim by poisoning her for non-fulfillment of the demand of dowry.

4. On the written report of the informant, a First Information Report was lodged bearing Mohammad Pur P.S. Case No. 68 of 2010 dated 07.07.2010. During investigation, the post mortem was conducted, statement of the witnesses was recorded and viscera were sent to the Forensic Science Laboratory for examination. A report has been received regarding the poisoning that the death has been caused by using thimate commonly used in agriculture for killing pests and is highly poisonous.

5. The Police after investigation submitted chargesheet, cognizance taken and the case was committed to the court of sessions. After commitment, charge was framed under Section 304B/34 of the Indian Penal Code and read over, to the accused persons, to which they pleaded not guilty and claimed to be tried.

6. During the trial, seven witnesses were examined by the prosecution. They are P.W.1, Lal Singh, who has deposed that he does not know about the occurrence and has been declared hostile.

7. Similarly P.W. 2, Manan Singh also disclosed that he does not know about the occurrence and also declared hostile and his

attention regarding his statement before the Police was drawn that he has stated before the Police that the accused persons murdered the victim for non-fulfillment of the dowry.

8. P.W.3, Ram Sagar Singh has stated that on 07.07.2010 he heard some sound of weeping and then went to the house of Srinivas Manjhi and saw that Suman Devi was lying unconscious and the blood was oozing out and thereafter while she was being taken to hospital, she died in the way. Though he has disclosed that the victim was living in Sasural and she was not subjected to cruelty.

9. P.W.4, Ram Nath Manjhi is the father of the victim and has stated that Suman Devi was his daughter and was married about one and half years back with Srinivas Manjhi and at the time of marriage jewellerys, clothes, utensils and Rs. 20,000/- in cash were given to the in-laws. He further deposed that in the marriage at the time of Bidai, there was a demand of motorcycle and he has assured that he will give the motorcycle. He has further deposed that after 10-12 days of marriage, the accused persons again subjected the victim to cruelty for non-fulfillment of the demand and even though used to assault as his daughter informed, and then he went to assure the in-laws of the victim. He has further stated that thereafter his daughter telephonically informed that if the motorcycle has not been given then she would be killed and thereafter after five days his daughter



informed that the accused persons will kill her and then informant along with others and his son Sunil Kumar Paswan went to the Sasural and find her in unconscious state and blood coming out of the mouth and then his son while taking her to Sidhwalia hospital, in the way itself she died. Then Police was informed at the Police Station, Police came, written report given by his son, the Police prepared Panchnama, then sent the body for post-mortem examination.

10. P.W. 5, Sunil Kumar Paswan has also supported the prosecution case regarding the death and subjecting cruelty and has specifically stated that one day prior to the occurrence, her sister has informed him that all are trying to kill her by poisoning and he reached there then he saw the victim. Blood was oozing out of her mouth. He has also denied that the victim is the patient of epilepsy.

11. P.W. 6, Sunil Kumar Ram is the Doctor who conducted the postmortem examination of the victim. However, he has stated that the victim has not got any external injury. Part of Viscera's preserved- Liver-Spleen-Kidney, Heart, lung, stomach & its contents. Small intestine & its contents. 2 Packed 2 sealed send to Forensic lab. Time elapsed since death within twenty four (24) hrs. Cause of Death- opinion reserved till forensic report come. The Doctor had preserved the Viscera and sent to Forensic Lab. Time elapsed since death is within 24 hours and with regard to cause of

death, he has mentioned that nothing can be firmly said till viscera report from Forensic Lab comes. He has proved the post mortem report (Ext.-4).

12. P.W.7, Ram Briksh Prasad, A.S.I. of Mohammad Pur Police Station has stated that on the said date of occurrence at 9.30 P.M., he heard a rumour that in Kabirpur some lady has died due to poisoning, the investigation of the case has been handed over to him and he proceeded to Kabir Pur at 10.15 A.M. and found Suman Devi found lying dead in the courtyard of the appellant Sunil Kumar Paswan gave the written report. He prepared the inquest report and sent the dead body for post mortem examination to the Sadar hospital thereafter he inspected the place of occurrence and recorded the statement of the witnesses. He procured the report of the Forensic Science Laboratory and presented the viscera report in a sealed cover. The said viscera report has been marked as Exhibit-4 and then he completed the investigation and submitted the chargesheet.

13. Taking into consideration of the evidence, the trial court convicted and sentenced the appellants as mentioned above.

14. Learned counsel for the appellants challenged the order of conviction and sentence and submits that the evidence of P.Ws. 1, 2 and 3 have not supported the prosecution case and so far the evidences of P.Ws. 4 and 5 are concerned, there is no evidence

that soon before her death, the victim was subjected to cruelty and, hence, the ingredients for offence under Section 304-B has not been established. It has further been contended that there is no assault on the person of the victim as per the evidence of the post mortem examination conducted by the Doctor and, hence, soon before death, the victim was subjected to cruelty has not been established.

15. Learned counsel for the State, however, contended that there is specific allegation against the appellant that the appellant at the time of marriage itself, demanded a motorcycle and there is ample evidence of P.Ws. 4 and 5 that there was demand and subjecting cruelty for non-fulfillment of demand of dowry and the victim always used to infer about the demand and further just before the time of occurrence, the victim has been informed about subjecting cruelty and reported that she will be done to death. It has further been contended that the date of marriage is 18.06.2010 and the date of death is 07.07.2010 as the death has been caused within 20 days of the marriage and hence, the victim was subjected to cruelty soon before her death. Having regard to the respective submissions, I proceed in the light of submission made by the parties.

16. Prosecution case as alleged in the First Information Report that the marriage solemnized on 18.06.2010 and at the time of marriage itself, the appellants make a demand of motorcycle and



further case is that after ten days of the marriage, a demand was made with subjecting cruelty for non-fulfillment of dowry and the victim disclosed about the fact and thereafter, the informant went to the Sasural of victim to defuse the demand and subjecting cruelty and he requested that he will pay the amount when he get the money, but one day prior to the occurrence, the victim informed about subjecting cruelty and planning of the in-laws and husband to poison her to death and on the very next date, when the informant along with his father reached to the Sasural of the victim then he found the victim is in unconscious state and the in-laws are absent and then they took the victim at Sadhwalia Hospital and in the way itself, the victim died and then dead body was brought, Police informed on the written report of informant the brother of victim. The First Information Report was lodged and during the investigation, the post mortem examination conducted and the viscera was sent for chemical examination. The witnesses though P.W. 1 turned hostile. P.W. 2 supported the prosecution case. However, the evidence of P.Ws. 4 and 5 are concerned, they have supported the prosecution case regarding the demand and subjecting cruelty and both of them stated that on getting information from the victim, they went to her Sasural and then met them under the assurance of giving the demand of dowry but they again received information from the victim that she has been



subjected cruelty and when they rushed on the very next day at village kabirpur and saw the victim in unconscious position and later on, the victim died and thereafter, the post mortem examination of the deceased was held and the Doctor opined that there was no injury and cause of death is not ascertained and as such, the viscera was preserved and sent to FSL. Further the report marked as Exhibit-6 specifically indicates that on examination of the decomposed tissues of the victim was detected in the dark brown fluid contained in the seven plastic jars as described above. Thimet was found to be cause of death is an organo Phosphorous pesticide which is commonly used in Agriculture for killing pests and is highly poisonous.

17. However, taking into consideration this fact and the offence under Section 304-B, the ingredients required to establish for offence under Section 304-B is that- (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances, (2) within seven years of her marriage and (3) 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 (4) 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.

18. However, taking into consideration the facts and



circumstances of the case, the fact established as per the evidence of P.Ws. 4 and 5 that the marriage was solemnized on 18.06.2010 and the death occurred on 07.07.2010 well within seven years rather it is well within 20 days there is allegation of demand of subjecting cruelty and the death has been established by poison hence proved that death in suspicious circumstances. However, the criticism by the learned counsel for the appellants that the prosecution case has not been able to establish that soon before the death, the victim was subjected to cruelty. However, the word soon before her death got special significance. However, it has not been defined the time fixed for “soon before the death” whether it is within an hour, a day, a week, a month or a year but it has been decided by various pronouncements that there must be correlation and nexus between the death and subjecting cruelty or harassment by husband in relation to or in connection with demand of dowry. However, having regard to the fact that the marriage solemnized on 18.06.2010 and there is allegation that after 07 days to 10 days of the occurrence, the victim was subjected to cruelty. It has come in the evidence that the demand was made at the time of marriage itself i.e. about 20 days i.e. at the time of Bidai of the appellants and after Bidai, the victim was kept well for ten days and thereafter the demand of money was started and the victim was subjected to cruelty. The victim informed about the



demand and subjecting cruelty to her father and brother as per the evidence of P.Ws. 4 and 5 and in pursuance of the demand, the matter was intimated to the father and the brother just one day before the occurrence of poison. The father and the brother rushed to make them understand and merely after five days again, the victim informed that she has again been subjected to cruelty and accused persons are planning to murder and the very next date when the father and the brother of the victim rushed, they suddenly saw the victim lying in unconscious state and died while taking to hospital and, hence, the nexus before the death and subjecting cruelty in connection with demand has been established and the nexus has been established to say that soon before the death victim was subjected to cruelty in relation to the demand of dowry. Hence, the ingredients for the offence under Section 304B have been established. Hence, the submission that the prosecution has not been able to establish that the victim has subjected to death soon before the death is without any basis rather the prosecution has been able to establish that victim was subjected to cruelty in connection with any demand of dowry. Soon before the death of victim as well as the death with seven years hence, the ingredients of offence has well been established by the prosecution case to record conviction. The trial court has rightly convicted and sentenced the convict and sentence recorded by trial

court is confirmed.

19. The appeal is dismissed.

(Gopal Prasad, J)

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