

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.756 of 2013

Against the judgment of conviction, dated 24.09.2013, and order of sentenced dated 30.09.2013, passed by Mr. Satish Chandra Rai, Ad Hoc Additional Sessions Judge, V, Saran at Chapra, in Sessions Trial No. 285 of 2012

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1. Inardeo Mahato @ Indradeo Mahto S/O Late Muneshwar Mahato R/O Village-
Rahar Diyara, P.S.- Sonapur, District- Saran.
2. Urmila Devi W/O Inardeo Mahato R/O Village- Rahar Diyara, P.S.- Sonapur,
District- Saran.
3. Baljugeshwar Mahato @ Balgogeshwar Mahto S/O Inardeo Mahato R/O Village-
Rahar Diyara, P.S.- Sonapur, District- Saran Appellants

Versus

1. The State Of Bihar Respondent

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Appearance :

For the Appellants : Mrs. Sujata Sinha, Adv.

For the Respondent : Mr. Z. Hoda, APP

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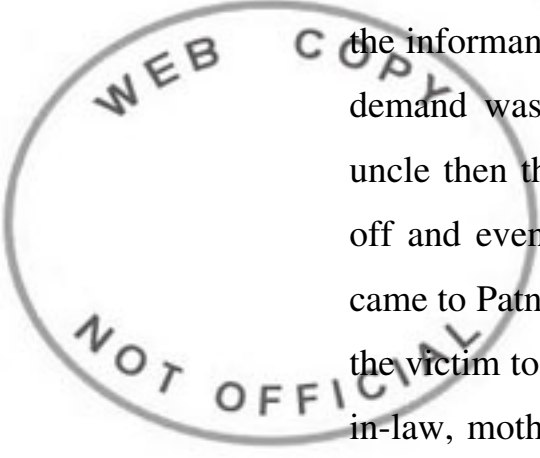
CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 27-10-2015

The appellants have been convicted under Sections 304-B and 201/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 304-B of the Indian Penal Code and have further been sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/- each for the offence under Sections 201/34 of the Indian Penal Code and on non-payment of fine to undergo simple imprisonment for one month. However, it has been ordered that both the sentences shall run concurrently.

2. The prosecution case, as alleged by the informant Ram Jee Mahato, is that the niece of the informant was married to Baljugeshwar Mahato, i.e., the appellant no. 3 on 17.05.2006 and after marriage the in-laws demanded repeatedly Rs.40,000/- to be brought from her father and uncle and on refusal the deceased was done to death on 03.10.2010 by



burning and the dead body was disposed of. The further case is that one day prior to the occurrence the victim disclosed at about 11:00 A.M. to the informant that in-laws were demanding money and saying that if the demand was not fulfilled and money was not paid by her father and uncle then they will kill her. In the meantime, the phone was switched off and even the informant tried to contact but in vain. The informant came to Patna to his ancestral home and thereafter came to the Sasural of the victim to meet her but he could not meet. It is alleged that the father-in-law, mother-in-law, Bhainsur, Gotani, husband and grand-mother-in-law were instrumental. On the written report of the informant Ram Jee Mahato on 06.10.2010, the First Information Report was lodged on the endorsement of Officer-in-Charge, Sonapur. After lodging the First Information Report the investigation proceeded. The further statement of the informant was recorded. The Investigation Officer recorded the statement of Lakhpatri Devi, the prosecution witness and perused Khata No. 99, the place of occurrence, the house and the room of the victim which was facing north with a roof. On the roof of the house he found an earthen Chulha and it was disclosed that the victim died there but the Investigating Officer did not find any burn material and it was disclosed that the same was washed with water. He has explained the boundary, recorded the statement of the witnesses and after investigation submitted charge-sheet. On submission of the charge-sheet, cognizance was taken, case was committed to the Court of Sessions and the charge was framed and during trial seven witnesses were examined by the prosecution.

3. P.W.1 Rakesh Kumar the cousin of the victim who has supported the prosecution case regarding the demand asserted that the appellants have killed the victim. He has further stated that the dead body of the victim was not recovered as the accused persons have concealed the same. However, he has stated that with regard to the demand the victim has disclosed to the uncle of this witness and his

uncle informed him on telephone then they came. He has specifically stated that the victim had not telephoned him. Hence, his evidence to the effect that he learnt about the victim but he was informed by his uncle, the father of the victim and then he went to her house. The evidence regarding the demand and subjecting cruelty is only hearsay.

P.W.2 Santra Devi is the step-mother of the victim. She has stated that after the marriage the victim went to her Sasural where she was subjected to cruelty for non-fulfillment of demand of Rs.40,000/- and the demand was made by Baljugheshwar Mahato, Urmila Devi, Tarkeshwar Mahato and Inardeo Mahato. She has further stated that the victim has disclosed her about the demand on telephone on which this witness replied that they have no money. She has further stated that the victim had telephoned her about five years after the marriage and learnt about the occurrence and on learning the demand of dowry they rushed to Patna from Mumbai by Superfast Express.

4. P.W. 3 is Sushila Devi, wife of Ramjee Prasad, the informant, who has deposed that Rekha Devi was her niece married on 17.05.2006 with Baljodeshwar Mahato and after the marriage there was demand of Rs.40,000/- as dowry and they used to subject her to cruelty for non-fulfillment of the demand and have killed her. She has, further, stated that the victim herself has informed, regarding the occurrence, one day prior to the occurrence. She has, further, stated that at the time of getting the information she was at home. She has, further, stated that on 03.10.2010 she got information at 06.00 P.M. There was none in the sasural the house was closed with lock and in the village they learnt that the victim has been done to death and the dead body has been disposed off. However, in her cross-examination she has stated that till Rekha Devi was alive they used to talk with Rekha Devi on telephone and she got information regarding the death from her nanad.

5. P.W. 4 is Kashi Mahato the father of the informant and has deposed that marriage solemnized in 2006 with Baljugeshwar Mahato. He has also deposed after marriage Rekha Devi went to sasural along with her husband, there was demand of Rs.40,000/- and the victim used to tell that the accused persons used to assault her for non-fulfillment of the demand and his daughter has also disclosed this fact to Ramjee Prasad and before the occurrence also his daughter has telephoned and informed about the assault for non-fulfillment of demand and has prayed to fulfill the demand. In his cross-examination he has also stated that before the marriage he paid Rs.25,000/- to Indradeo Mahato and he paid the amount before his brother. It was agreed to pay Rs.40,000/- after marriage and after one month of the marriage, the demand was made and the victim disclosed when he went on information from her daughter regarding the demand and subjecting cruelty, hence, has supported the prosecution case regarding the demand, subjecting to cruelty and marriage within seven years. P.W. 5 is Lakhpati Devi. She claimed that Rekha Devi is her daughter-in-law and is wife of grand son of her gotni. However, she has deposed that Rekha Devi died while cooking food when fire set in and she died. She has, further, stated that none of the deceased's family came in the last rites and the police reached after the dead body was disposed off. Hence, from her evidence it is apparent that victim died and the dead body was disposed of without intimating the public authority, like police or without conducting post mortem of victim by the Doctor.1

6. P.W. 6 is Ramjee Mahato, the informant, and has deposed that Rekha Devi was his niece was married on 17.05.2006 with Baljugeshwar Mahato and there was demand of Rs.40,000/- and the victim was subjecting to cruelty for non-fulfillment of demand and even they used to threat to kill for non-fulfillment of demand and with regard to the said fact the victim used to disclose and inform and even one day

prior to the occurrence information was given. Further, in his cross-examination he stated that Santara Devi is his bhabhi and step-mother of the victim. He has, further, stated that the intimation was given by his bua, Dulari Devi, regarding the death of victim, Rekha Devi, and his brother, his bhabhi and his wife came from Mumbai and went to the house of Dulari Devi and Dulari Devi disclosed that the victim died while cooking food since they learnt about the death so his brother did not file any case, but, subsequently, Santara Devi got drafted a petition and lodged the case with her signature and has stated the real fact that the victim is his niece died while cooking food when the fire set in her saree. However, this witness in her examination-in-chief, in paragraph 2, has stated that she gave a written intimation to police at the Police Station on which the first information report lodged and has proved her signature as well as the written report in her writing and signature which has been marked as Exhibit 1. However, he has given a U-turn in cross-examination when she deposed that Santra Devi got it written by some one else, hence, his evidence in cross-examination is quite contrary to examination-in-chief where he has proved his signature.

7. P.W. 7 is Sumary Prasad Mandal, who formally proved the first information report, marked as Exhibit 2 as well as the endorsement and writing on the first information report. He has given the description of the place of occurrence and submitted charge sheet after completing the investigation and regarding the statement of the witnesses.

8. The trial Court, taking into consideration the evidence of the witnesses and considering the facts and circumstances of the case as well as the submissions made by the parties, convicted the appellants, as mentioned above.

9. The learned counsel for the appellants has challenged the order of conviction and sentence on the ground that there is no eye witness to the occurrence. it has, further, been contended that it has

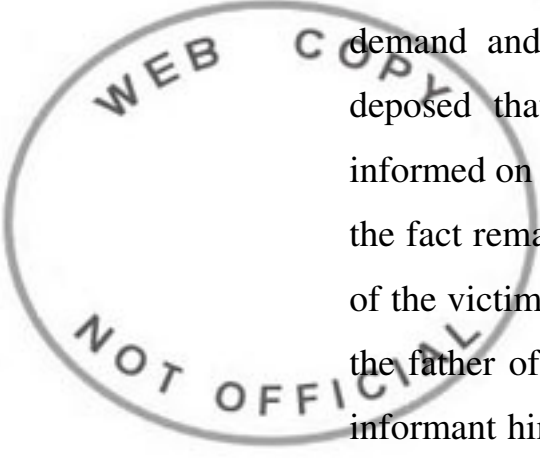
come in evidence that the informant learnt about the occurrence from his bua, Dulari Devi, but, Dulari Devi has not been examined. It has, further, been contended that the dead body of the victim has not been recovered nor any post mortem conducted to prove the death in such circumstance.

10. The learned counsel for the State, however, contended that the prosecution has been able to prove the ingredients for offence under Section 304B of the Penal Code as the marriage solemnized within seven years and there is evidence regarding the demand and subjecting cruelty and the death has taken place in the matrimonial home and the dead body has been disposed off without intimation to the public authority.

11. However, the prosecution case is that the marriage of the victim solemnized on 17.05.2006 with Baljugeshwar Mahato and there is allegation that there was demand of Rs.40,000/- and subjecting to cruelty for non-fulfillment of demand. The occurrence alleged to have taken place on 03.10.2010. Further, case of the prosecution is that the victim was done to death by burn injury and the dead body was disposed off without intimating the public authority.

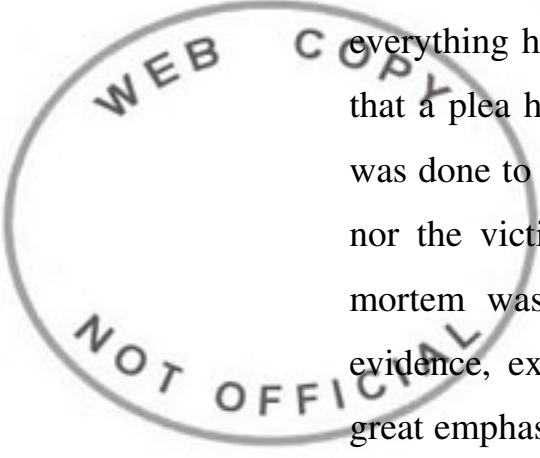
12. However, the defence of the accused persons as appears from the trend of cross-examination and the suggestion that the victim died out of burn injury as the fire set in while she was cooking food and the further case is that there was neither demand nor subjecting cruelty.

13. However, going into the evidence of the witnesses, P.W. 1 is the cousin brother of the victim and he has deposed about the marriage of the victim in 2006. However, in the evidence regarding the demand and subjecting cruelty, he has stated that his sister has telephoned her uncle and she has not telephoned him and his evidence regarding the District and Sessions Judge is not acceptable. However, P.W. 2 the step-mother, P.W. 3 the aunt of the victim and P.W. 6 the uncle of the victim have supported the prosecution case regarding the marriage having been



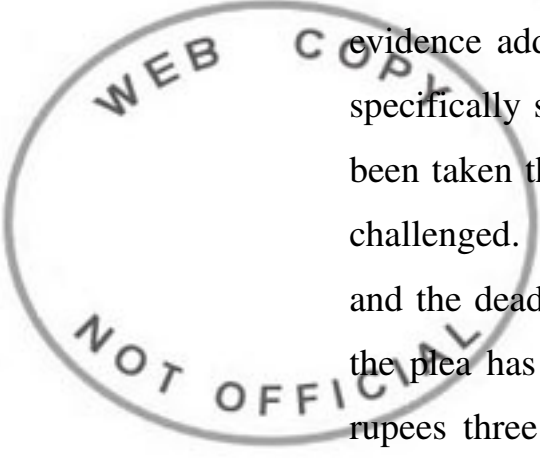
solemnized on 17.05.2006 and there is demand and subjecting cruelty for non-fulfillment of the demand and the victim used to disclose about the demand and subjecting cruelty by the in-laws. They have, further, deposed that just one day prior to the occurrence, the victim had informed on telephone about the demand and subjecting cruelty and even the fact remained that she was done to death. P.W. 1 is the step-mother of the victim, P.W. 2 is the aunt and the wife of the informant, P.W. 4 is the father of the victim and brother of the informant and P.W. 6 is the informant himself, supported the prosecution case regarding the demand and subjecting cruelty and they have deposed that the victim used to disclosed about subjecting cruelty for non-fulfillment of demand and even about the threat with regard to which the victim also used to intimate. However, P.W. 5 claims to be the grand-mother of the victim's husband. However, she has come to depose that the victim died while cooking food and she has deposed that none of the naiher people of the victim came to participate in the last rites, hence, there is evidence that the victim died due to burn injury, but, public authority, like police not informed and the post mortem not conducted. Hence, the death is in suspicious circumstance. However, even when the victim died by the burn injury while cooking food, no intimation was given either to the public authority, like police, or the victim was medically examined to certify that she died out of burn injury rather the dead body has been disposed off in heavy haste before coming of naiher people of the victim and there is evidence that naiher people live in Mumbai and immediately after getting information they rushed and came and then file a written report on 06.10.2010.

14. Having regard to the facts and circumstances of the case, and, further, the evidence of P.W. 7 has deposed that the investigating officer on 06.10.2010 at 04.00 P.M. on the same day visited the place of occurrence and has deposed that the place of occurrence is the house of



deceased Rekha Devi and on the roof of that house he found the earthen chulha, but, he did not find any remains and stated that it appears that everything has been washed away. However, having regard to the fact that a plea has been taken that the victim died while cooking food and was done to death. However, the intimation was not given to the police nor the victim was medically examined by any Doctor nor any post mortem was conducted and the dead body was disposed off. No evidence, except the suggestion that now the victim died. However, great emphasis has been given on the evidence of P.W. 5 Lakhpati Devi, who claimed to be the grand-mother of the victim's husband and has claimed that she rushed to the place of occurrence on seeing the fire. However, in her cross-examination she has stated that on hearing hulla she went to the house of Baljugeshwar Mahato and saw Rekha Devi have been set in fire and Baljugeshwar Mahato was setting off the fire and after fire was set off, Baljugeshwar Mahato and his family members took her for her treatment and she died during treatment. However, no evidence has been adduced regarding the treatment of the victim by a Doctor nor even death certificate obtained or post mortem conducted. The informant has also deposed in his examination-in-chief supporting the prosecution case regarding the marriage having been solemnized within seven years, the demand and subjecting cruelty and the victim done to death and has even proved his signature on the written report on the basis of which the first information report lodged, but, in his cross-examination, he has taken plea that the written report was drafted by some one else through Santara Devi with her signature on the same. However, he has accepted that Santara Devi got his signature on the written report and none signed except him. However, having regard to the fact that P.Ws. 2, 3 and 4 have supported the prosecution case who are non-else than the wife of the informant as well as his brother and bhabhi.

15. However, taking into consideration the ingredient of Section 304B of the Penal Code to prove the offence under Section 304B of the Penal Code what the prosecution is required to prove that the death of the victim has been caused by burn or bodily injury or occurs otherwise than normal circumstance, the said occurrence must have been occurred within seven years of the marriage and, further, that she was subjected to cruelty by her husband or relative in relation to or in connection with a demand of dowry and subjecting of such cruelty must have been soon before her death. However, when these ingredients have been established, then, only presumption of guilt is established. Hence, the presumption of innocence of accused stood replaced by the presumption of guilty and thereupon the onus shifts on defence to prove his innocence. However, having regard to the facts and circumstances of the case the prosecution by his evidence has proved that the marriage solemnized within seven years of the occurrence, the death of the victim is not suspicious circumstance as it has been established that the victim was burnt to death by burn injury at her matrimonial home and, further, there was demand and subjecting cruelty and soon before the death there is evidence that the victim informed about the demand and subjecting cruelty, hence, the ingredients for offence soon before her death, the victim was subjected to cruelty for non-fulfillment of demand have been established by prosecution. Hence, having established the ingredients for offence under Section 304B of the Penal Code the prosecution has succeeded in discharging it's initial onus by proving the ingredients and, hence, preponderance of probability of the ingredients for offence under Section 304B of the Penal Code is established to take presumption of guilt and in that view of the matter the presumption of innocence of the accused stood replaced by presumption of guilty and thereby onus shifts on the accused to prove his innocence beyond reasonable doubt. However, the case of the defence is that the intimation was given to the



informant by bua of the victim, Dulari Devi, who has not been examined. However, non-examination of Dulari Devi make the evidence adduced by the prosecution to be out right rejected. P.W. 5 specifically stated that the victim died by burn injury though a plea has been taken that she died while cooking food and the same has not been challenged. There is no evidence regarding her treatment by any Doctor and the dead body having been disposed off in heavy haste. However, the plea has been taken that a false case has been instituted to realize rupees three lakhs, after the death, but, except suggestion there is no evidence. However, the defence that bua has not been examined has no effect even on the evidence of the prosecution witnesses and there is no reason to disbelieve the evidence of P.Ws. 2, 3 and 4 for the reason that bua of the informant has not been examined. However, the fact or the argument that the victim died due to setting in fire while she was cooking food is not the case of the prosecution. However, P.W. 5 has come forward that the victim died out of burn injury by setting in fire while she was cooking food is shrouded by suspicion as though it is stated that she was examined by the Doctor, but, the defence has not come to adduce any evidence regarding the treatment or evidence of the Doctor who treated the victim. Having regard to the fact that the dead body was disposed off without intimation to public authority, the evidence of P.W. 5 regarding the death by in-laws is shrouded by suspicion and is not genuine.

16. However, taking into consideration the fact that there are three appellants, appellant no. 1 is the father-in-law, appellant no. 2 is the mother-in-law and appellant no. 3 is the husband of the victim and the allegation regarding demand and subjecting cruelty against the father-in-law and mother-in-law is general and omni bus and there is no specific allegation regarding the demand and subjecting cruelty against

father-in-law and mother-in-law. However, the case of the husband stands on different footing.

17. Having regard to the facts and circumstances of the case, appellant no. 1, Inardeo Mahato @ Indradeo Mahato, and appellant no. 2, Urmila Devi, entitled for the benefit of doubt, hence, I give them the benefit of doubt to appellants Inardeo Mahato @ Indradeo Mahato and Urmila Devi as the allegation against them regarding demand and subjecting cruelty are omni bus and general as that any specific role attributed to them and hold that the prosecution has not been able to prove the charge against them beyond reasonable doubt, hence, I acquit appellants 1 and 2. Since both are on bail, they are discharged from the liabilities of their bail bonds.

18. However, so far the case of appellant no. 3, Baljugeshwar Mahato, is concerned, I find and hold that the prosecution has proved the case, against him, beyond reasonable doubt, hence, his conviction and sentence is hereby **confirmed**.

19. The appeal is allowed in part.

(Gopal Prasad, J)

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