

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.383 of 1993

(AGAINST THE JUDGMENT OF CONVICTION AND ORDER OF SENTENCE DATED 5<sup>TH</sup> AUGUST, 1993 PASSED BY SHRI MISHRI LAL CHOUDHARY, IST ADDITIONAL DISTRICT AND SESSIONS JUDGE, MUZAFFARPUR IN SESSIONS TRIAL NO. 67 OF 1992/10 OF 1992 ARISING OUT OF SAKRA P.S. CASE NO. 52 OF 1990)

1. Amriti Devi, wife of Late Ram Gyan Rai,  
2. Bina Devi, wife of Ram Nandan Rai,  
Both residents of village Minapur, P.S.Sakra, District Muzaffarpur  
.... .... Appellants

Versus

The State of Bihar  
.... .... Respondent

**Appearance:**  
For the Appellants : None  
For the Respondent/s : Mr. Ajay Mishra, APP  
**Mrs. Soni Shrivastava, Amicus Curiae**

**CORAM: HONOURABLE MR. JUSTICE I. A. ANSARI**  
**And**  
**HONOURABLE MR. JUSTICE VIKASH JAIN**  
ORAL JUDGMENT  
**(Per: HONOURABLE MR. JUSTICE I. A. ANSARI)**

**Date: 01-07-2015**

Under the judgment and order, dated 05.08.1993, passed, in Sessions Trial No. 67 of 1992/10 of 1992, by learned 1<sup>st</sup> Additional Sessions Judge, Muzaffarpur, the accused-appellants, Amriti Devi and Bina Devi, stand convicted under Sections 302, 304B and 498A with the aid of Section 34 of the Indian Penal Code, and Section 3 of the Dowry Prohibition Act, 1961. Following their conviction under Section 302 read with Section 34 of the Indian Penal Code, the accused-appellants, under the order aforementioned, have been sentenced to suffer



imprisonment for life and, for their conviction under Section 304B read with Section 34 of the Indian Penal Code, the accused-appellants aforementioned have been sentenced to undergo rigorous imprisonment for a period of ten years. In consequence of their conviction under Section 498A read with Section 34 of the Indian Penal Code, the accused-appellants, Amriti Devi and Bina Devi, stand sentenced to undergo rigorous imprisonment for a period of one year and, for their conviction under Section 4 of the Dowry Prohibition Act, 1961, the accused-appellants aforementioned have been sentenced to undergo rigorous imprisonment for a period of six months. All the sentences have been ordered to run concurrently.

**2.** The case of the prosecution, as unfolded at the trial may, in brief, be described as under:

**(i)** Seema Devi (since deceased) was married to Ram Babu Rai (who is not an accused), in the year 1989. Accused Amriti Devi, mother-in-law of Seema Devi, accused Ramanand Rai, elder brother of Ram Babu Rai and husband of Seema Devi, and accused Veena Devi, wife of Ramanand Rai (since deceased), were unhappy with the articles, which Seema Devi had brought to her matrimonial house from her parental house. The three accused aforementioned used to express their grievances with regard to inadequacy of dowry and, on several occasions, demanded suitable dowry from her parents. This

apart, since Seema Devi was a woman with dark-complexion, the accused used to humiliate her.

**(ii)** On 11.05.1990, in the morning, Rama Shankar Rai (PW 6), brother-in-law of Seema Devi and informant of this case, heard from his co-villagers that the accused persons, along with one Pramod Choudhary, had killed Seema Devi by pressing her neck and concealed her dead body, whereupon Rama Shankar Rai (PW 6) went to the matrimonial house of Seema Devi and, having seen her dead body lying at her matrimonial house, proceeded to Sakra Police Station and informed the police, in writing, about the death of Seema Devi.

**(iii)** Treating the said information as First Information Report, Sakra Police Case No. 52 of 1990, under Section 302 read with Section 34 of the Indian Penal Code, was registered against the accused persons, namely, Ramanand Rai, Ram Pramod Coudhary @ Pramod Choudhary, Veena Devi and Amriti Devi.

**(iv)** During investigation, inquest was held over Seema Devi's dead body, which was also subjected to *post mortem* examination, and, on completion of investigation, a *charge sheet* was laid, under Sections 302/34/304B of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961, against the accused aforementioned.

**3.** At the trial, charges were framed under



Sections 302 read with Section 34 of the Indian Penal Code, Section 304B read with Section 34 of the Indian Penal Code, Section 498A read with Section 34 of the Indian Penal Code and Section 4 of the Dowry Prohibition Act, 1961, against all the accused aforementioned. To the charges so framed, all the accused pleaded not guilty.

**4.** In support of their case, prosecution examined altogether 11 (eleven) witnesses including the doctor (PW 11), who had, admittedly, conducted the *post mortem* examination. The accused were, then, examined under Section 313 (1) (b) of the Code of Criminal Procedure, wherein the accused denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. No evidence was adduced by the defence.

**5.** Having found the accused persons, namely, Ramanand Rai (since deceased), Veena Devi and Amriti Devi, guilty of the offences charged with, the learned trial Court convicted them accordingly and passed sentences against them as mentioned above. Having, however, found accused Ram Pramod Choudhary @ Pramod Choudhary not guilty of the offences charged with, the learned trial Court acquitted him accordingly.

**6.** Aggrieved by their conviction and the sentences, which have been passed against them, the three

accused, as convicts, have preferred appeals. Though accused Ramanand Rai had preferred Criminal Appeal No. 428 of 1993, the said appeal was disposed of on 23.09.2002 as the same abated on account of his death.

**7.** We have heard Ms. Soni Shrivastava, learned Counsel, appearing as *Amicus Curiae*, and Mr. Ajay Mishra, learned Additional Public Prosecutor, appearing on behalf of the State.

**8.** While considering the present appeal, it may be noted that according to the evidence of Dr. Manoranjan Kumar Srivastava (PW 11), on 12.05.1994, at 10:30 AM, he had conducted *post mortem* examination on the dead body of Seema Devi and found as follows:-

*"(i) Ligature mark ½" in width present around the neck continuous above the thyroid cartilage with deep furrow and groove. Face was swollen and highly congested. Both eyes were found highly congested. Blood froth was present in both nostril and mouth. Mouth was opened and tongue was underneath both upper and lower jaws.*

*On dissection of the neck, the neck muscles were found highly congested. Trachea ribs were also ruptured. Blood was present in*

*the trachea, both lungs were found highly congested with dark blood, and rest viscera were also highly congested”*

**9.** In the opinion of the doctor (PW 11), the cause of death was asphyxia due to strangulation.

**10.** Neither the finding of the doctor (PW 11) nor his opinion, with regard to the cause of death of the said deceased, were disputed by the prosecution or by the defence. This apart, we, too, do not notice anything inherently incorrect or improbable in the evidence given by the doctor (PW 11).

**11.** So situated, it becomes clear that Seema Devi's death was *homicidal* in nature.

**12.** The question, however, remains: whether the accused-appellants, or any of them, were the ones, who had caused the death of Seema Devi and, if so, whether the prosecution had succeeded in proving the charges brought against the accused-appellants?

**13.** While considering the questions posed above, it needs to be noted that though the prosecution has examined as many as 11 witnesses, the witnesses, who have supported the case of the prosecution, are, broadly speaking, , PW3 (sister of the deceased), PW 4 (co-villagers of the accused) and PW 6 (brother-in-law of the deceased and the informant of the case).

**14.** Let us, first, take note of the evidence of the



informant, Ram Shankar Rai (PW 6), whose evidence is that the deceased Seema Devi was married to one Ram Babu Rai, in the year 1989 since the said deceased was of dark-complexion, quarrel used to take place between the said deceased and her in-laws and, by raising demand for dowry, the said deceased was subjected to cruelty at the hands of the accused aforementioned. It is in the evidence of PW 6 that on 11.05.1990, at about 10:30 A.M., he (PW 6) got information that Seema Devi had been killed by accused Ramanand Rai, accused Amriti Devi and accused Veena Devi by pressing her neck and her dead body had been concealed in the house and, on receiving this information, he (PW 6) went to the matrimonial house of Seema Devi, but he did not find the dead body in the said house as the room was locked and, then, he returned back.

**15.** It is further in the evidence of PW 6 that his co-villagers, again, told him that the information with regard to killing of Seema Devi, is correct and, then, he (PW 6) went to the matrimonial house of Seema Devi and enquired about her and, then, he (PW 6) found the dead body of Seema Devi, kept inside the house, covered by a sheet of cloth and, then, he (PW 6) informed the police, in writing.

**16.** Close on the heels on the evidence of PW 6, Gita Prasad Choudhary (PW 3), brother of the deceased Seema Dev, has deposed that his sister, Seema Devi, was married with



Ram Babu Rai, on 10<sup>th</sup> June, 1989, and, in the house of Ram Babu, his mother, Amriti Devi, his elder brother, Ramanand Rai, and his brother's wife, Veena, were residing. It is in the evidence of PW 3 that the in-laws of his sister were not properly behaving with his sister, because they had, before marriage, demanded 15 *to/a* gold and Rs. 10,000/- in cash, but he had given only Rs. 10,000/- for expenses and 6 '*to/a*' gold and, the in-laws of his sister were insisting upon his sister to bring the remaining amount of gold or the equivalent price of the gold.

**17.** It is also in the evidence of PW 3 that on 11.05.1990, one person, namely, Vijay Kumar Rai, came and told him that his sister had been killed by pressing her neck and, on receiving the information, he went to Mirapur, where police recorded his statement.

**18.** It is further in the evidence of PW 3 that one month prior to the occurrence, when he was going to the matrimonial house of his second sister, accused Ram Prasad Choudhary told him to give Rs. 20,000/- in cash and a buffalo, or else, he would face the consequences.

**19.** Coming to the evidence of Ram Narayan Rai (PW 4), we notice that according to the evidence of PW 4, on 11.05.1990, at about 11:45 AM, when he returned from the school, he heard that wife of Ram Babu had been killed and her dead body had been kept concealed in the house and, on so



receiving the information, he went to the house of accused Ramanand Rai, where people, who were present there, told him (PW 4) that the wife of Ram Babu was killed by Ramanand Rai, his mother and wife and, then, he went inside the house of the accused and saw the dead body of the deceased kept inside the house. It is in the evidence of PW 4 that on the same day, i.e., on 11.05.1990, at about 6:00 A.M, when he was going to the school, he saw accused Ram Pramod Choudhary coming out of the house of the accused on a black-coloured Rajdoot motorcycle.

**20.** On a close reading of the evidence of PW 6, what transpires is that though he has given evidence that demand for dowry was raised by the accused, his evidence is completely silent as to how he had come to know that the accused had raised demand for dowry or that they used to quarrel with the deceased expressing their dissatisfaction with the dowry, which the deceased had carried to her matrimonial house. Similarly, though PW 6 has alleged that since Seema Devi was a woman of dark-complexion, the accused used to taunt and humiliate her, he (PW 6) has, here again, given no clue, in his evidence, as to how he had come to know that the accused used to taunt and humiliate Seema Devi on the ground of her being a woman of dark-complexion.

**21.** Stated thus, it becomes clear that the

evidence of PW 6 can, at best, be described as hearsay and his evidence cannot be said to be substantive evidence and could not have, therefore, been made basis for conviction of the accused-appellants.

**22.** Keeping in view the evidence of PW 6, when we come to the evidence of PW 3, brother of the deceased, we find that PW 3 has not deposed anywhere that his sister, Seema Devi, was tortured, humiliated or taunted as she was a woman of dark-complexion.

**23.** Thus, the evidence given by PW 6 to the effect that the accused used to taunt and humiliate Seema Devi on the ground of her being a woman of dark-complexion is not supported by PW 3. This apart, same as the evidence of PW 6, even PW 3 gives no clue, in his evidence, as to how he came to know that the accused were unhappy with the quantum of dowry carried by Seema Devi to her matrimonial house and/or that the accused used to quarrel with Seema Devi, because of inadequate dowry. Thus, no better is the quality of the evidence of PW 3 than PW 6 and, therefore, no reliance can be placed on the evidence of PW 3 either.

**24.** So far as the evidence of PW 4 is concerned, he is merely a witness to prove the articles, which were found at the place, where Seema Devi's dead body was found lying. His evidence, therefore, in no way, strengthens the

prosecution's case.

**25.** Coupled with the above, we find that the prosecution also examined PW5, PW 7, PW 9, as witnesses, in support of their case; but all these witnesses turned hostile and did not support the case of the prosecution at all.

**26.** Situated thus, it becomes clear that there is no admissible, reliable, cogent and safe evidence on record, which could have enabled the Court to hold that the accused appellants had ever raised demand for dowry or subjected Seema Devi to cruelty.

**27.** The impression that the prosecution case's is not true gets strengthened when we notice the fact that Seema Devi's parents, though alive, have not turned up to support the case of the prosecution and no explanation has been offered by the prosecution for not examining them. Thus, withholding of the parents of Seema Devi from the Court as witnesses is yet another serious weakness of the prosecution's case.

**28.** Further-more, we need to point out that contrary to the assertions of PW 3 that the accused-appellants used to behave badly with the deceased and had also raised demand for gold and Rs.10,000/- in cash, the Investigating Officer (PW 10) has confirmed that no such statement was made by PW 3, when his statement was recorded under Section 161 of the Code of Criminal Procedure.



**29.** Thus, it is abundantly clearly that PW 3 has made substantial improvement on his previous statement by leveling accusations that accused had been demanding gold and Rs.10,000/- and had also been pressurizing the deceased to obtain gold and money from her parental family and that the accused appellants used to behave badly with the said deceased.

**30.** Ms. Soni Shrivastava, learned *Amicus Curiae*, is correct, while pointing out that as far as PW 4 is concerned, the appellant, Amriti Devi, had filed a case against him (PW 4) and, hence, there is every possibility of PW 4 being hostile and inimical to the appellants. As a matter of fact, the evidence of PW 6, read with the evidence of PW 11 (the Investigating Officer), shows that PW 3 could not reveal the name of persons from whom he had received information that Seema Devi had been done to death by the accused aforementioned.

**31.** Interestingly enough, PW 6 submits that he never had a talk with regard to demand of dowry with the accused, on the other hand, PW 7 (a neighbour of the deceased) has deposed that the deceased and the accused had cordial relation and no demand for dowry was ever made by the in-laws of the deceased. The same is the evidence of PW 8 and PW 9 and, in fact, PW 5 has deposed that he had no knowledge of any dispute between the family of the deceased and the

family of the accused. Belying the evidence of PW 6, PWs 5, 7 and 8 have deposed that the deceased was very beautiful and smart.

**32.** It is also necessary to point out that according to the evidence of PW 8 (Ram Babu Rai, husband of the deceased), PW 6 (the informant) often went to the house of the deceased in his (PW 8) absence and used to tease the said deceased and the said deceased had made many complaints to him about the behaviour of the informant (PW 6) and that about 10 days before the occurrence, the sister-in-law and the mother-in-law of the said deceased had scolded PW 6 for his behaviour.

**33.** Because of what have been discussed and pointed out above, we find that the prosecution has not been able to adduce any convincing, reliable, cogent and credible evidence, which could have been made foundation for conviction of the accused-appellants. We are, therefore, clearly of the view that the case at hand was one, which ought to have been ended in acquittal of the accused-appellants.

**34.** In the result and for the foregoing reasons, we allow this appeal. The impugned conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside. The accused-appellants are held not guilty of the offences, which

they stood convicted of, and they are hereby acquitted of the same under benefit of doubt.

**35.** Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall stand discharged.

**36.** Let the *Amicus Curiae* be paid a fee of Rs. 5,000/-.

**37.** Registry shall, forthwith, send a copy of this judgment and order to the learned trial Court along with the Lower Court Records.

**(I.A. Ansari, J.)**

**(Vikash Jain, J.)**

Chandran/Md. Ibrarul

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