

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No 700 of 2012

Arising Out of PS.Case No. -296 Year- 2009 Thana -null District- BUXAR

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Jitendra Pandey @ Bangur Pandey S/O Sheodas Pandey @ Budhan Pandey
Resident Of Village- Chhatanwar, P.S.- Krishna Brahm, District- Buxar

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr Bachan Jee Ojha, Advocate

For the S t a t e : Mr S A Ahmad, APP

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CORAM: HONOURABLE MR JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 18-12-2015

Heard.

2 The appellant has been convicted under section 304 (B) of the Indian Penal Code (for brevity “*I.P.C.*”) and sentenced to undergo rigorous imprisonment for 10 years.

3 Prosecution case, as alleged in the F.I.R. by the informant (P.W.1) Sailendra Tiwary, is that the marriage of his sister Nitu Devi @ Bimla Devi was solemnized on 25.05.2009 with Jitenrda Pandey @ Bangur Pandey, S/o Sheodas Pandey @ Budhan Pandey of village Chhatanwar. He has further stated that his sister was living in her sasural

after marriage. It is further alleged that since the time of marriage when she came to sasural, her husband, father-in-law and mother-in-law used to demand motorcycle and golden chain and they disclosed them that they are poor people and when they will get money, they will satisfy their demand. But the sasural people used to subject her to cruelty and used to threaten her to kill and to throw her out from matrimonial home. His father has come to Chahtanwar for about a month back and made them to understand. Further case is that on 26.09.2009, he got information on telephone that his sister is seriously ill. Thereafter, the informant proceeded from his house for Chhatanwar and found his sister Nitu Devi @ Bimla Devi dead. It is alleged that his sister has been murdered by her husband, father-in-law and mother-in-law for non-fulfilment of demand of dowry. The fardbayan was recorded on 26.09.2009 at village Chhatanwar under the Krishna Brahm Police Station. On the basis of fardbayan, the FIR was lodged. The investigation proceeded. The inquest report was prepared and body was sent for postmortem. In presence of the witnesses, the investigating

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officer investigated the place of occurrence. The place of occurrence is the house of Shivdas Pandey in village Chhatanwar. The dead body was found in the courtyard in the middle and it was found lying north to south. He has given boundary, in the east, the house of Shiv Shankar Shukla, in the west, the house of Ramdas Pandey, in the north, the house of Ganga Sagar, in the south, there is village road and thereafter the house of Satyanarayan Shukla. The dead body was sent for postmortem examination and the postmortem report was prepared and police, after investigation, submitted chargesheet. On submission of chargesheet, the cognizance was taken and case was committed to the Court of Session and after the commitment, the charges were framed for offence under section 304(B) of IPC and trial proceeded.

4 During the trial, eight witnesses were examined by the prosecution.

5 PW 1 Sailendra Kumar Tiwary is the informant who supported the prosecution case that the marriage of the victim was solemnized with the appellant on 25.05.2009.

There was demand of dowry. He has also deposed that he went twice to the sasural of the victim and remained there for whole night and has stated that he went to sasural of the victim after 4-5 days of marriage and, thereafter, at the time of Rakshabandhan and, thereafter, he got information about her death and when he reached there, he found the victim dead.

6 PW 2 Sri Ram Tiwary is the father of the victim and he has also supported the prosecution case regarding marriage being solemnized and the demand subjecting to cruelty. For non-fulfillment of the demand of motorcycle and golden chain, the victim was murdered. He has also stated that he went to sasural of his daughter twice after marriage.

7 PW 3 Gupteshwar Tiwary is the co-villager. He has also supported the prosecution case regarding the demand and subjecting cruelty.

8 PW 5 Gupteshwar Upadhyaya has stated in his evidence that victim died by strangulation. However his evidence is hit by hearsay.

9 PW 6 is the doctor who conducted the postmortem examination on the person of the victim Nitu Devi wife of Jitendra Pandey and he has found six injuries on her person which are as follows:

- (i) Abrasion below the right eye 1 ½ cm x 1 cm
- (ii) Bruise near left eye 1 ½ inch x ½ inch.
- (iii) Abrasion in front of the right ear 1 ½ cm x 1 cm with swelling 3" x 2" around it.
- (iv) Bruise ¾" x 1/8" below left eye
- (v) Blackish bruise in front of neck and both side of neck about 1 cm breadth present.
- (vi) Abrasion present in places of neck.

Brain and meninges congested and shows petechial haemorrhage.

Lungs congested showing haemorrhage patches and petechia and exuding dark fluid blood in section.

Bronchial tube contained frothy blood stained mucous.

Heart – right side full of dark blood and left empty.

Liver, spleen and kidney congested.

Stomach – undigested liquid material present in scanty.

Uterus – normal, urinary bladder – scanty urine present.

Cause of death – shock and asphyxia due to strangulation.

Time elapsed since death within 24 hours

The post mortem was conducted on 27.09.2009 at 10 am.

10 Shashi Bhushan (PW 7) is the IO who conducted the investigation. PW 8 is the ASI who got the investigation of the case on 06.12.2009 and submitted the chargesheet.

11 The defence has also examined two witnesses, DW 1 Kaushlendra Mishra and DW 2 Ganga Sagar Pandey. Kaushlendra Pandey (DW 1) is an Advocate of Civil Court, Buxar and Ganga Sagar Pandey is Homeguard and they have come to depose that on the date of occurrence, the appellant was attending wrestling and both have come to say that the appellant was present in the wrestling and he got information about some untoward happening and then went to his home. However, the defence taken is of alibi which is a weak defence and moreover DW 2, in cross-examination, has stated that he only had seen the appellant coming and

going occasionally and as per his evidence, it is not mentioned that he was all along present there. The further defence suggests in the cross-examination that the victim was mad and mentally retarded and she has committed suicide.

12 The trial Court, taking into consideration the evidence of the witnesses of both the prosecution and the defence and taking into consideration the defence set up by the appellant, held the appellant guilty for offence under Section 304B of IPC and sentenced, as mentioned above.

13 The learned counsel for the appellant, however, has challenged the order of conviction and sentence recorded by the trial Court and has placed reliance on the evidence of PW 1 in paragraphs 6 and 17 where he has stated that the police reached at the place of occurrence prior to his reaching and when he was asked to give the statement, he stated that he will give statement after his father will reach and then he gave his statement at the Police Station and has proved his statement marked as Exhibit 1. It is submitted that there is an element of false implication and exaggeration of the prosecution case and the FIR may have been drawn

with due deliberation. It has further been contended that both the parties are very poor and at the time of the marriage itself, it has come that a silver chain has been given and, hence, the prosecution story regarding the demand of golden chain and motorcycle does not appear to be probable and sustainable when the parties are so poor that they neither could imagine that the demand could be satisfied. The learned counsel for the appellant has further contented that the injuries found on the person of deceased does not confirm the death by strangulation. Relying upon a passage in Modi's jurisprudence, he contends that the order of conviction is not sustainable. It has further been contended that the appellant has already remained in jail for more than six years that is since 30.09.2009 and, hence, required to be released by considering the period already undergone.

14 The learned counsel for the State, however, opposed the prayer and it is submitted that the prosecution has proved all the ingredients for offence under Section 304B of IPC that the marriage was solemnized in 2009 itself in the month of May and the occurrence took place just after four

months in September, 2009 and there is allegation of demand and subjecting cruelty and there are cogent and reasonable evidence that soon before the death, the victim was subjected to cruelty for non-fulfilment of the demand and death apparently has been caused with assault on the face of the victim and the cause of death has been shown to be strangulation and not hanging and, hence, death of the victim was not suicidal but homicidal in most inhuman manner and, hence, apparently death is in suspicious circumstance and all the ingredients under Section 304B of IPC have been satisfied to record the conviction. Having regard to the respective submission, I proceed to consider evidence in the light of the submission made.

15 Prosecution case, at the outset, is that the marriage was solemnized on 25.05.2009 and after the occurrence, there is allegation of demand and subjecting cruelty and an intimation was received that victim is seriously ill and when he reached the place of occurrence, he found the victim dead. PW 1 is the informant and PW 2 is the father of the victim. They have supported the prosecution

case that the marriage was solemnized on 25.05.2009 which has not been challenged at all by the prosecution. There is evidence of PWs 1 and 2 that there was demand of motorcycle and golden chain by the husband, father-in-law and mother-in-law and she was subjected to cruelty for non-fulfilment of demand with a threat to kill or drive her out from her matrimonial house. In the cross-examination, the witness stated that he went to the house of the victim twice after the marriage. Though the attention has been drawn by the learned counsel for the appellant that this witness, in his cross-examination, stated that there was no demand till the marriage was solemnized and after marriage, the accused persons happily took the victim and there is evidence that in the Tilak, steel set utensils and silver chain were given. The criticism is that since the articles have been given at the time of marriage, the demand and subjecting cruelty will be false. There is nothing in the evidence of PW 1 to disbelieve the story of the demand of motorcycle and golden chain after the marriage having been solemnized. PWs 1 and 2 have specifically stated about the demand subjecting cruelty. PW

2 is the father of the victim and he stated in his cross-examination that after the marriage, he went twice to the sasural of the victim, once in Sawan and another in Bhado. He has further stated, in paragraph 12 of cross-examination, that when he went to the sasural of his daughter, the victim daughter had reported him about the demand and subjecting cruelty. The criticism that why no report had been made to the police or Sarparch of the village, it is a matter of common experience that in a case under Section 498A, IPC, at the first instance, a demand is not reported as the chance of settlement after reporting the matter is very less and the people do not report at the initial stage in anticipation that the matter may be settled and any reporting at the outset at first and second instance may lead to a tragedy and, hence, the evidence of subjecting cruelty for demand of dowry cannot be brushed aside on the ground that the informant or his father has not reported the matter to the police or Sarpanch. PW 3 is a co-villager who has also supported the prosecution case regarding the demand and subjecting cruelty. However, the evidence of PW 5 is hit by hearsay and is of no avail for the

prosecution.

16 Having regard to the fact that PWs 1, 2 and 3 supported the prosecution case regarding the demand and subjecting to cruelty and there is nothing in their evidence to disbelieve the prosecution evidence regarding the demand and subjecting cruelty. So far the evidence of doctor is concerned, the doctor has specifically opined that the death is due to strangulation and in his cross-examination, he has specifically stated that the report shows that it is a case of strangulation and not hanging. However, the learned counsel for the appellant placed reliance on a decision reported in the case of *Arun Kumar Sharma –Versus- State of Bihar, 2002 (3) PLJR 174* and he has tried to make a distinction as in that case, ante mortem injuries were found which included multiple bruises over front of neck varying in sizes and on dissection, the ecchymosis was found present. There was extravagation in the soft tissues of neck with fracture of hyoid bone and has tried to draw attention that in case of strangulation, there must have been a fracture of hyoid bone and has further relied on the Modi's Jurisprudence on a

passage. However, though the doctor has been examined who proved the post mortem report and had been cross-examined in detail but the attention of the doctor has not been drawn to the passage relied by the appellant from the Modi's Jurisprudence or any authority to give the opportunity to the doctor to explain about the possibilities. However, the fact mentioned in the decision rendered in the case of *Arun Kumar Sharma (supra)* which mentions that on dissection, there was extravagation in the soft tissues of neck with fracture of hyoid bone of the trachea and it is the sign of asphyxia. Having regard to the finding recorded by the doctor and having cross-examined him, he has specifically made a distinction between strangulation and hanging. Several injuries were found on the neck as well as on the eyes and ear that is on face. Hence, I find that death was shown to have been caused by strangulation and if the death is by strangulation, it cannot be suicidal. It is well settled that a person cannot kill himself by strangulating himself. He may attempt for hanging and may die due to hanging but he cannot commit suicide by strangulating himself and,

hence, the death is not suicidal but homicidal as per the doctor's report itself.

17 The defence set out by the appellant is two folds, one is about the alibi of the appellant and the other by suicide. Both the defence set up by the defence is not sustainable in the light of the evidence adduced. The death of the victim is apparently homicidal in nature and under the facts and circumstances, the death can be held to be in suspicious circumstance. Having regard to the fact that the marriage was solemnized in the month of May, 2009 and there is allegation of demand and subjecting cruelty and death caused in suspicious circumstance, all the ingredients under Section 304B of IPC have well been established. To record a presumption under Section 113B of the Evidence Act read with Section 304B of IPC, it required to establish that soon before the death, the victim was subjected to cruelty. However, "*soon before the death*" has not been defined either under Section 304B of IPC or under Section 113B of Evidence Act. In various decisions of this Court as well as the Apex Court, it has been held that there is no time

limit fixed whether it is an hour, whether it is a month or whether it is a year. However, there must be some nexus between the death and the demand. However, having regard to the fact that the marriage itself was solemnized in 2009 in the month of May and within 4-5 days of the occurrence, there is allegation of demand and subjecting cruelty and further, the father and the brother (PWs 1 and 2) visited the place just one month prior to the occurrence and there is allegation that whenever they went, they learnt regarding the demand and subjecting cruelty and final death by strangulating within 4-5 months and hence it is apparent that the condition that soon before the death, the victim was subjected to cruelty is well established.

18 Hence, I find and hold that the prosecution has been able to prove the ingredients for offence under Section 304B of IPC as well as it has been established that soon before the death, the victim was subjected to cruelty. So, the prosecution can well be inferred as per Section 113B of the Evidence Act to record conviction and hold that the appellant has committed the offence under Section 304B of

IPC that is dowry death.

19 Hence, the judgment and order of conviction and sentence recorded by the trial Court is upheld. In the result, the appeal is dismissed.

(Gopal Prasad, J)

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