

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.368 of 2011

Arising Out of PS.Case No. -0 Year- null Thana -null District- BANKA

ANIRUDH SAH S/O LATE BISHNU SAH RESIDENT OF VILLAGE-
UPRAMA, POLICE STATION- RAJOUN, DISTRICT- BANKA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S.

Appearance:

For the Appellant/s : Mr. Ajay Mukherjee, Adv.
Mr. Sunil Prasad, Adv.
Mr. Ganesh Sharma, Adv.
For the State : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 11-08-2015

Sole appellant Anirudh Sah who has been found guilty for an offence punishable under Section 304B IPC, 201 IPC vide judgment of conviction dated 28.02.2011 and sentenced to undergo R.I. for ten years as well as fined Rs.5000/- in default thereof, to undergo S.I. for six month, additionally under Section 304B IPC, R.I. for six month as well as fine of Rs.1000/- (having no default clause) under Section 201 of the IPC with a direction to run the sentences concurrently vide order of sentence dated 04.03.2011 passed by Additional Sessions Judge, IInd, Banka in Sessions Trial No.415 of 2003 has preferred instant appeal in order to challenge the same.

2. Bhagwan Sah (PW.6) gave his fardbeyan on 07.10.2001 at about 09:00 A.M. alleging inter alia that his youngest daughter Geeta Devi has been married to Kailash Sao,



son of Anirudh Sao about five years ago and at the time of marriage, he had gifted according to his means. At an earliest his daughter was living at her Sasural in cordial atmosphere but for the last one year, his son-in-law Kailash as well as Samdhi Anirudh Sao (appellant) began to demand Rs.10,000/- and for that, his son-in-law used to say that in case of non-payment of Rs.10,000/- his daughter will be eliminated. On 06.10.2001 at about 02:00 PM his another daughter Meena Devi who is also married in the same village, came and inquired about Geeta as, Geeta was not present at her Sasural. On account thereof, he along with his sons and others reached at the house of Geeta where found Kailash and Anirudh absconding. From the neighbours he came to know that Kailash, Anirudh, Kutto Sao and Muni Lal caused murder of Geeta and then dead body has been thrown in a well of Chunchun Chaudhary. They rushed towards the well. He found dead body of Geeta outside well. Her hands and legs were tied. It has also been disclosed that Meena Devi had said that Geeta had told her that 4-5 days ago Kailash had attempted to do way with her life, however due to timely intervention of villagers, she was rescued.

3. On the basis of the aforesaid fardbeyan, Rajaun P.S. Case No.138 of 2001 was registered under Sections 304B, 201, 34 of the IPC and investigation was taken up. After concluding the same, charge sheet was submitted whereupon cognizance was taken and the offences being exclusively triable by the court

of Sessions, accordingly case was committed to the court of Sessions whereafter concluding trial other co-accused were acquitted by the judgment impugned while appellant has been convicted and sentenced for, the subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as statement of the accused recorded under Section 313 of the Cr.P.C. is that of complete denial as well as of false implication. However, neither any DW nor any kind of document has been exhibited on behalf of appellant.

5. In order to substantiate its case, prosecution had examined altogether eight PWs out of whom PW.1 is Mahendra Sao, PW.2 is Upendra Sah, PW.3 is Rajesh Sao, PW.4 is Meena Devi, PW.5 is Bhairo Paswan, PW.6 is Bhagwan Sao, PW.7 is Mantu Prasad and PW.8 is Dr. Sushil Mandal. Side by side also exhibited postmortem report as Ext.1.

6. From the evidence of PW.8, it is apparent that deceased had died on account of asphyxia due to strangulation. Furthermore, time elapsed since death was within 24 hours. Postmortem was conducted on 07.10.2001 and on account thereof, it covers the stipulated period having so alleged by the prosecution regarding murder of deceased. During cross-examination nothing has been traced out which could discredit the finding recorded by the PW.8. That being so, death otherwise than normal circumstance is finally surfaced from the evidence of PW.8.



7. Now coming to the remaining ingredients, from the evidence of the witnesses it is apparent that death within seven years of marriage is also not found encloded. Now one has to see the evidence of the witnesses whether the same supports with the remaining ingredients, more particularly dragging the appellant within its periphery. From the fardbeyan, it is evident that informant had alleged that Kailash Sao and Samdhi Anirudh Sao were demanding Rs.10,000/- and for that, it has been further disclosed that it was Kailash Saw who was insisting upon as well as had threatened that in case of non-payment, his daughter will be eliminated. PW.1 had said nothing. PW.2 in parra-4 had stated that members of the prosecution party have disclosed that Kailash was asking for Rs.10,000-15000/- from Geeta and was further insisting upon to procure the same from her parents otherwise she will be eliminated. Apart from non-identifying the appellant, he had not said anything with regard to activities of appellant Anirudh Singh.

8. PW-3 is the brother of deceased. He in para-4 had stated that there was cordial relationship with the members of the Sasuralwala. Kailash was demanding Rs.10,000/- from them otherwise he had threatened to kill the deceased. As having not paid a single farthing towards Rs.10,000/- on account thereof, this occurrence has been committed. In para-5 again he had stated that Kailash came to his house and had given threatening on that very score. Then at para-9 had said he came to know

from the villagers that his sister has been murdered by Anirudh, Kutto Sao, Munilal and Kailash Sao. So from his evidence also, it is apparent that he had not encircled appellant Anirudh Sah joining hands with his son during course of demand as well as inflicting torture cruelty.

9. PW.4 is Meena Devi, sister of deceased who was married in the same village. In para-5 she had stated that accused Kailash was insisting upon her sister to bring Rs.10,000/- from her father failing which she will be murdered. This event was disclosed by Geeta to her about 8-10 days ago. The aforesaid demand was demanded by Kailash for construction of the house. Therefore, this witness is also silent, so far appellant is concerned.

10. PW.5, Bhairo Paswan he had said nothing adverse to the appellant. PW.6 is the informant who as per fardbeyan had stated in paragraph 3 that the deceased had not complained against her Sasuralwala, rather she said that she was being kept in cordial atmosphere however, she had also disclosed that his son-in-law and Samdhi were demanding money. From his evidence, it is apparent that there happens to be total lacking of torture having meted out on that very score. PW.7 is the Mantu Prasad Chaudhary, a witness who had already been declared hostile.

11. After having analytical and critical analysis of the evidence as referred above, it is apparent that prosecution had

not succeeded in proving its case against the appellant more particularly regarding demand of dowry and if so, even taking into account the uncorroborated evidence of PW.6 that too omnibus in nature, there was torture at the end of appellant on that very score.

12. That being so, the conviction and sentence recorded by the learned lower court could not found justified and being so, the same is set aside. Appeal is allowed. Appellant is under custody hence is directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 11th day of Aug., 2015
Prakash Narayan

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