

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No. 587 of 2010

Arising out of P.S.Case No.-67 Year-2007 Thana Belsand District-Sitamarhi

Vinay Chaudhary, S/o Kameshwar Choudhary @ Kamesh Chaudhary, R/o Village-Bhandari, P.S. Belsand, District- Sitamarhi (Bihar).

.... Appellant

Versus

The State of Bihar through its Principal Secretary, Department of Home Affairs, Bihar, Patna.

.... Respondent

Appearance :

For the Appellant : Smt. Shashi Priya Pathak, Amicus Curiae
For the State : Susri Shashi Bala Verma, APP

CORAM: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA

and

HONOURABLE SHRI JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE SHRI JUSTICE DHARNIDHAR JHA)

Date: 01-07-2015

The solitary appellant Vinay Chaudhary, has preferred the present appeal to set up a challenge to the judgment of conviction dated 31st March, 2010 by which he was held guilty of committing offences under Sections 304B, 316 and 498A of the Indian Penal Code as also Section 4 of the Dowry Prohibition Act. The appellant was heard under Section 235 Cr.P.C. on sentence and was directed to suffer rigorous imprisonment for life, rigorous imprisonment for 10 years with fine of Rs. 5,000/- and rigorous imprisonment for three years and fine of Rs. 2,000/- for having committed the offences under Sections 304B, 316 and 498A of the Indian Penal Code respectively. So far as the conviction of the appellant under Section 4 of the Dowry Prohibition Act is



concerned, he was directed to suffer rigorous imprisonment for two years and to pay a fine of Rs. 2,000/-. The learned trial judge, i.e., the learned Presiding Officer of Fast Track Court No. 2, Sitamarhi who passed the judgment of conviction and order of sentence in Sessions Trial No. 07 of 2008 /10 of 2010, had consolidatedly directed that if the appellant had not paid the amount of fine imposed upon him, he should suffer rigorous imprisonment for a further period of one year with a direction that the substantive sentences of imprisonment were to run concurrently.

2. Undisputedly, the appellant was married to Rina Devi and the couple had begotten a girl child who was five years of age on the date of occurrence, i.e., 05.09.2007. There does not appear any challenge to this also that the lady on the date of occurrence, i.e., 05.09.2007 was bearing a girl child in her womb and the foetus was of 36 weeks. The lady was residing in her matrimonial house and she was killed on account of being stabbed as also being beaten up by some hard and blunt substance.

3. The informant Ram Babu Choudhary (P.W.4) who happened to be the father of the deceased Rina Devi gave his *fardbeyan* to P.W.5 S.I. Anand Kumar, who was the officer-in-charge of Belsand police station in the district of Sitamarhi stating that after being married to the present petitioner the deceased was



being pestered and harassed because the informant had failed to fulfill the demand of the appellant of giving a jeep to him as he and his two brothers were trained as drivers. It was stated that the accused persons used to tell the informant that if he had not fulfilled their demand, they would not allow the deceased to lead a peaceful life and one Sanjay Thakur who happened to be the *Bahnoi* of the appellant supported the above demand of the accused persons.

The informant stated that he pleaded with the accused persons that he was financially not in as sound a position as to give a vehicle in dowry, as a result of which the intensity of torturing the deceased had increased and lastly, they had committed the murder of the deceased on the date of occurrence. It was stated by the informant that in order to set up a defence plea the appellant had self inflicted an injury on to his throat.

4. As appears from the evidence of Anand Kumar (P.W.5) and also from the evidence of Shashi Kant Choudhary (P.W.7) the information regarding the killing of the deceased was given to the informant telephonically by P.W.7. The police had received the information from P.W. 4 the informant of the case and it appears from the evidence of P.W.4 the informant that it was flooded all around and he could reach village Bhandari, where the house of the accused persons was located, to find that P.W.5 S.I.

Anand Kumar was already there and he was in the process of breaking open the doors of the room from where the dead body of the deceased Rina Devi was brought out along with the present appellant who was also lying on the same bed with an injury on his person. Both P.Ws. 4 and 5 (the investigating officer) have testified to the above fact.

The investigating officer proceeded after breaking open the doors of the room to record Ext.2, the *fardbeyan* of the informant and then held the inquest upon the dead body by preparing the report in presence of Shashi Kant Choudhary (P.W.7) and Deo Kant Choudhary. The investigating officer found a blood-stained hammer and a knife under the bed over which the dead body of the deceased was lying and he seized the two articles by preparing seizure memo Ext.3. He had found copious blood under the *Chawki* over which there was a bed and a pillow which also soaked with blood. The room from which the dead body and the present appellant were brought out was in occupation of the present appellant and it has its door on the east and there was yet another room east to that room. The kitchen was made of thatch and that was situated by the east side of the room from where the dead body was recovered.

5. P.W.5 sent the dead body for post-mortem



examination to Sitamarhi hospital and after bringing out the present appellant from the same room and finding that he was also bearing an injury, he sent him to Belsand hospital for treatment. After dispatching the dead body, the investigating officer came to Belsand hospital to formally arrest the appellant and then recorded the statements of witnesses and after concluding the investigation, sent the present appellant up for trial, keeping the investigation pending against other accused persons.

6. The defence of the appellant was that he had never demanded a jeep or money in lieu there of, as dowry and as may appear from the suggestion given to the investigating officer (P.W.5) in paragraph-28 some unknown criminals had stabbed the deceased to death and had existed from the room after breaking the *tati* of the house. Thus, the appellant also challenged the evidence that the room was built of brick and thatch.

7. Fifteen witnesses were examined by the prosecution in support of the charges out of whom P.W.6 Arjun Sharma, P.W.7 Shashi Kant Choudhary and P.W.9 Ram Chandra Ojha were declared hostile. P.W.1 Arun Kumar Choudhary was the brother of the deceased and son of P.W.4 informant Ram Babu Choudhary. P.W.2 Binod Ojha was the maternal uncle of the deceased who stated that he was informed by the informant that the



deceased had been murdered on account of not fulfilling the demand of the appellant for additional dowry and he accompanied the informant up to village Bhandari where he heard from persons of the neighborhood that the deceased had been murdered. P.W.2 had further stated that a room was opened and Vinay Chaudhary was found there from where blood stained knife and a hammer were also recovered. P.W.3 Shanti Devi was the mother of the deceased. P.W.8 Dr. Fanindra Nath Verma had held post-mortem examination on the dead body while P.W.9 Ram Chandra Ojha, P.W.10 Shambhu Sharma, P.W.11 Gauri Shankar Sharma, P.W.12 Ram Padarath Choudhary and P.W.13 Ram Pati Choudhary were all co-villagers of the appellant and they stated that Rina Devi the wife of the appellant had died but they did not know as to how did she happen to die. The prosecutor has declared them hostile and had cross-examined to their previous statement. P.W.14 Alauddin Ansari was the Chowkidar who had produced the seized hammer and knife from the police station as per the orders of the officer-in-charge as the two articles were marked material exhibits in the case. P.W.15 Jitendra Jha was a witness of formal character who had proved the writings of the formal First Information Report which was marked Ext.5 in the case.

8. The appellant did not examine any witness.

9. Smt. Shashi Priya Pathak, the learned amicus curiae



appearing on behalf of the appellant took us through the evidence of witnesses especially P.Ws. 1,2,3,4 and 5 and submitted that no witness had stated that the deceased had been ill treated and tortured just before her death for or in connection with the demand for dowry. It was contended as such, that an offence under Section 304B of the Indian Penal Code was not made out. Submission also was that the injury report of the appellant was not produced by the prosecution nor the doctor who had examined him was produced. Thus, the most important evidence that the appellant was bearing an injury was withheld by the prosecution.

10. Susri Shashi Bala Verma, the learned Additional Public Prosecutor appearing on behalf of the State was pointing out that it is uncontroverted that the dead body was lying on the same bed over which the appellant was found by P.W.5 after he had broken open the doors of the room. Submission was that the lady was dead and the dead body was, bearing injuries which had caused her death as appears from the evidence of P.W.8 Dr. Fanindra Nath Verma. It remains to be explained by the appellant as to how the lady was attacked or stabbed to death and by whom as he was the only person who was found closed inside it. The appellant has not offered any explanation and has rather suggested to P.W.5 the investigating officer that some unknown criminal had stabbed the



lady and had run away from the room. If it was so then how the room was closed from inside and why not the appellant had come out himself to inform the whole world and the police as to how and by whom his wife and he himself had been attacked. Susri Verma submitted that the facts present a case of special knowledge of the appellant as regards the death of the wife, who was lawfully required to explain by offering satisfactory and valid explanation in that behalf which lacks and it is a strong circumstance on his culpability.

11. There is no dispute in the fact that Rina Devi the deceased was married to the appellant. The prosecution case is that the marriage had been solemnized in the year 2002 while during cross-examination of P.W.4 a suggestion was thrown to him that in fact the marriage had been solemnized in the year 1999. The informant during his cross-examination on the above fact was sticking to his guns that his daughter was married in the year 2002 and the same fact was stated by P.W.3 Shanti Devi the mother of the deceased and her brother P.W.1 Arun Kumar Choudhary. P.W.4 was put a question as to whether any invitation card was printed by him and he stated very categorically that none had been got printed by him as appears from paragraph-17 of his evidence and might be the appellant had done it. The weight of evidence which was produced by the prosecution in absence of any substantial evidence

produced by the defence, appears more convincing that the lady had been married in the year 2002 and this was the reason that she had a girl child of five years who was living on the day of occurrence and who was very much in custody of the accused persons. Thus, the death of the deceased Rina Devi appears within seven years of her marriage.

12. However, Smt. Pathak was very vehemently submitting before us that as regards the question of demand of dowry, the evidence was very shaky. Submission was that the mother Shanti Devi (P.W.3) was deposing that up to four years of the marriage, it was all calm and quite as regards the relationship between the deceased and her husband or his other family members, but as soon as the appellant had become a competent driver, the demand for either giving a jeep or Rs. 40-60 thousand in lieu thereof for purchasing a vehicle was placed by the accused persons. As regards the evidence of the informant (P.W.4) and the father of the deceased, he also appears stating in evidence that it was after two years of marriage that the accused persons started demanding a jeep and further stated that the non-fulfillment of the demand may not permit the accused to keep the lady in their house. The informant stated that his daughter was being beaten up and ill treated and she used telephonically to inform him about the ill-treatment she was



getting from the accused persons and after receiving this information he went to the village of the accused on the 30th of August, 2007 and convened some sort of *Panchayati* where a bond was obtained from the present appellant. That bond had been brought on record as Ext.1. P.W.7 Shashi Kant Choudhary was a witness to that bond but his evidence in court indicates as if he had not signed any document. Other parts of his evidence do indicate that the relationship between the present appellant and the deceased was not normal and it was he who had informed the father of the deceased about the incident telephonically. While deposing in court, P.W.7 was merely stating that he did not sign any paper or document. We did not find that the defence had shown Ext.1, the bond which was executed by the present appellant to the witness Shashi Kant Choudhary (P.W.7) had obtained a categorical denial from him that the signature which was on it was not of his. It was more important to be done as the bond or undertaking had been placed on record as part of evidence through the evidence of P.W.4 and much prior to the examination in trial of P.W.7. Mere statement that he had not signed any paper does not really convince us that he had not signed the document when we find that there was no such denial even by way of a suggestion which could have been given to the informant who was bringing that document on record.



13. In addition to the above evidence, P.W.1 the son of the informant was also supporting his father that a jeep was being demanded by the accused persons and while making that statement, P.W.1 was not giving any particular time from when the demand was being made. At any rate this appears consistently stated by the witnesses that a demand either for a jeep or money in lieu thereof, had been placed by the accused persons and as appears stated by the witnesses, the lady was not being treated well on account of the non-fulfillment of the demand and ill treatment was to such a degree that in a *Panchayati* convened in that connection, an undertaking was obtained to respect the lady and treat her well. Thus, we are convinced and satisfied that indeed the lady was ill treated in connection with the demand of additional dowry and she was ill treated.

14. Evidences of P.W.4 and P.W.5, i.e., the informant and the investigating officer of the case convince us further that on getting the information both the witnesses had come down to village Bhandari and when P.W.5, the investigating officer had reached there, he had found that no one was there in the house and a room situated in the eastern part of the house was locked from inside. He broke the doors and opened the room to find that Rina Devi was lying dead on account of having been stabbed and the present

appellant was also lying on the same bed with her dead body. The appellant was bearing an injury and P.W.5 brought him out of the room and sent him to Belsand hospital with the *Chowkidar* for treatment. While he was in the process of breaking the doors open, P.W.4 had arrived there and P.W.5 proceeded to record his *fardbeyan* (Ext.2) and thereafter seized the blood stained earth and *Chhura* and a hammer from under the bed by preparing the seizure memo. P.W.5 thereafter held inquest upon the dead body and sent it to hospital in Sitamarhi for post-mortem examination. These facts have been stated by P.W.4 Ram Babu Choudhary as well. While deposing in court, P.W.5 stated that the bed along with the pillow were also soaked in blood and blood had fallen under the bed and after preparing the inquest report he sent the dead body in the morning for post-mortem examination.

Dr. Fanindra Nath Verma (P.W.8) who held post-mortem examination on the dead body of the deceased had found the following ante-mortem injuries:

- (i) Sharp cut wound over right side of neck, extending from middle of the neck up to below the right ear measuring 6" x 2" x cavity deep.
- (ii) Sharp cut wound over left side just below the clavicle of the size 1½" x 1/2" x muscle deep.
- (iii) Sharp cut wound over middle side of right breast of size 2.5" x 1" x cavity deep through which a portion of lung had protruded.
- (iv) Echynosis below right ear.

P.W.8 had found that the mouth was partially open and the tongue had protruded out. Right eye was closed while the



left eye was open and protruded. On dissection, the muscles and vessels, both major and minor, on the right side of the neck were found sharply cut. Trachea and other structures were found normal. On opening the thorax, P.W.8 had found the third and fourth ribs on the right side sharply cut, the lungs ruptured and right thoracic cavity filled with blood and blood clots. However, the heart was intact to its chambers empty. Uterus was gravid of about 36 weeks and on opening the uterus a dead female foetus was found inside it.

In the opinion of P.W.8, death was caused on account of haemorrhage and shocking leading to respiratory failure resulting from the above noted injuries of which injuries no.1 and 2 were caused by sharp cutting weapon, while injury no.4 was caused by some hard and blunt substance. Dr. Fanindra Nath Verma (P.W.8) further opined that the death had resulted within 24 hours of holding the post-mortem examination.

The evidence of P.W.5 and that of P.W.4 definitely leads us to hold that on breaking open the doors of the house, it was found that the lady was already dead and the present appellant was very well lying on the same bed with the dead body.

15. The appellant had taken a defence that it was not he rather it was someone else who had intruded into the room or the house and had stabbed her wife to death and had inflicted injury to



him also. If we could give a thought to this defence of the appellant then what naturally comes to our mind is that how was it that while leaving the room, the unknown intruder who had inflicted fatal injury to the deceased had succeeded in closing the doors from inside and if at all he had succeeded by any means to close the doors from inside, then why not the present appellant had unbolted it to come out to inform the whole world including the police as to what had fallen to his wife and to himself. The appellant had rather chosen to live inside the room with the dead body so as to creating a circumstance of culpability against himself. He was there as per his own suggestion when the unknown criminal had intruded and committed the offence and while he was being examined under Section 313 Cr.P.C. he was not pointing out that fact as well to the court rather he was stating while attempting to explain the circumstances appearing against him that all allegations were false and fabricated.

16. The very presence of the appellant puts the case into the category of one which could be covered by Section 106 of the Evidence Act which requires that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. The initial onus of proving the charges lied upon the prosecution which has successfully discharged that onus thereby



shifting the special burden, which appears created by the facts of the case of proving his innocence by the appellant as per Section 106 of the Evidence Act, to us was definitely upon him. He was required to offer a substantial and acceptable explanation that he was not the culprit rather someone else had done it. The most serious of circumstances appearing against the appellant was that he in spite of having killed his wife remained closed with the dead body inside the room so as to bear the testimony of his culpability. A faint suggestion was given to P.W.4 in the form of a question as to whether the appellant was suffering from any form of insanity. This appears in paragraph-4 of P.W.4. But, again if he was really suffering from any insanity on the day of occurrence then he ought to have taken a plea at the earliest stage of the investigation of the trial and ought to have again discharged the burden which was lying upon him under Section 105 of the Evidence Act which excepts the availability of the plea of general exception to an accused and requires him to prove that plea by satisfactory evidence. The appellant again appears not rising up to the occasion to act as required by Section 105 of the Evidence Act as that particular provision requires the court to assume that no such plea was available to the appellant.

17. The lady might not have been ill treated and



tortured during the initial few years of her matrimonial life but the evidence of three witnesses and some part of the evidence of P.W.7 Shashi Kant Choudhary also leads us to believe that it was not an easy going for the deceased in her matrimonial house and she was so badly ill-treated that the father had to intervene to convene a *Panchayati* in which an undertaking in the form of Ext.1 was obtained from the appellant. The bond was obtained as per the evidence of P.W.2 on the 30th of August, 2007. The original of it also bears 30.08.2007 at the top of it. The occurrence had finally taken place somewhere either in the day or in the previous night, on 05.09.2007. Proximity of the incident of death to the ill treatment and torture of the lady for or in connection with the demand of dowry appears very-very thin. Thus, the submission of Smt. Pathak that the offence under Section 304B of the Indian Penal Code may not be constituted, to us, appears not meritorious. On facts and circumstances appearing from the evidence, we are satisfied that the charge under Section 304B of the Indian Penal Code was duly established and the appellant was rightly convicted of that offence.

18. Section 316 of the Indian Penal Code punished doing an act under such circumstances by a person that if he thereby had caused a death, he would be guilty of culpable homicide and by doing such an act, if he had caused the death of a quick unborn child



he would to be punished under Section 316 of the Indian Penal Code. The import and object of the section could be appreciated more clearly if one would have considered illustration appended to the section and considering the section along with the illustration we are fully convinced that by killing the deceased Rina Devi who was carrying a female foetus of 32 weeks in her womb, the appellant who was the husband and who had contributed in creating that foetus must be knowing that he was likely to commit the death of a quick unborn child. Thus also, we find the conviction of the appellant under Section 316 of the Indian Penal Code properly recorded. Facts of the case undoubtedly give a picture that the lady was ill treated and tortured by her husband, i.e., the appellant and as such, conviction under Section 498A also appears justified. Likewise, the conviction of the appellant under Section 4 of the Dowry Prohibition Act has also to be upheld in the light of the evidence which was produced by the prosecution.

19. Thus, on scrutiny of the evidence of the prosecution what we find is that the appeal lacks merit and the same is dismissed. Appellant Vinay Chaudhary is in custody. He shall serve out the sentence passed upon him.

20. We have been assisted by Smt. Shashi Priya Pathak, who was appointed Amicus Curiae to assist this Court. We

direct that Smt. Pathak be paid the prescribed fee of one hearing by the Patna High Court Legal Services Committee for assisting the Court. Let the copy of first and the last pages of the judgment be handed over to her.

(Dharnidhar Jha, J.)

(Ahsanuddin Amanullah, J.)

Anand Kr./Sanjay/ N.A.F.R.

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