

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.426 of 2010

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Against the Judgment/ Order dated 11.03.2010 / 16.03.2010 passed by the 1st Addl. Sessions Judge, Samastipur in Sessions Trial No.100/06 + S.Tr.No.905/06.

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Md. Amir Alam, son of Md. Honif, resident of village- Kaidrabad,
Police Station-Bachhwara, District- Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Jitendra Narain Sinha, Adv.
 Mr. Surya Narayan Roy, Adv.
 Mrs. Kumari Vandana, Rashmi Bharti

For the Respondent : Mr. A.K.Sinha (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
and
HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 16-10-2015

This appeal is directed against the Judgment/ Order dated 11.03.2010 / 16.03.2010 passed by the 1st Addl. Sessions Judge, Samastipur in Sessions Trial No.100/06 + S.Tr. No.905/06, whereunder the sole appellant/ accused no.1 has been convicted for the offences under Sections 304 B, 120B, 201, 498 A of the Penal Code and Sections 3/4 of the Dowry Prohibition Act and sentenced to suffer imprisonment for life, R.I. for 14 years, 3 years, 3 years, 5 years

and two years under different Sections respectively. The sentences have, however, been directed to run concurrently.

2. The prosecution case as stated in the complaint petition dated 22.07.2004 bearing Complaint Case no. 87/2004 filed in the court of Chief Judicial Magistrate, Samastipur is that sister of the complainant, namely, Salma Khatoon @ Guria was married to Md. Amir Alam (appellant) five years earlier as per Mohammedan customs. On the occasion of marriage, father of the complainant and others had given gift in the form of utensils, ornaments, clothes and other articles worth Rs.25,000/-. After the marriage, sister of the complainant went to her in-laws house in village-Kaidrabad, but the accused persons were not satisfied with the gift and used to ask her to arrange for further gift in the form of dowry of Rs.25,000/- but she told the accused persons about the difficulties faced by her parents. Accused persons, however, threatened her with dire consequences. In the meanwhile, sister of the complainant gave birth to a girl child through Md. Amir Alam, which was also not appreciated by them and the accused persons further tortured her asking to arrange dowry. The sister of the complainant informed her father and the witnesses about the torture for dowry whenever she came to her parents house. Accused persons at the time of taking her to their house from her parents house also used to torture her for payment of dowry, on which



father of the complainant used to pay Rs. 4-5 thousand every time to accused persons in order to make them happy and to take her sister to their house. In the meanwhile, the complainant began to live at Delhi where he received a telephone call that her sister has been done to death by the accused persons for non-payment of dowry and her dead body has been made to disappear. After receiving telephonic information, the complainant came to his village home and went to her in-laws village in search of his sister but the house of the accused persons was found locked and the accused persons not available. The complainant tried to search her sister and then learnt that accused persons took his sister to some other place and having killed her also concealed her dead body for failure of her parents to pay dowry. In the complaint, it is also stated that the complainant went to the Police Station, but the Officer Incharge advised him to file a complaint in the court and delay was caused in filing the complaint. In the complaint, it is also stated that besides the witnesses named in the complaint, others have also seen the occurrence. The Chief Judicial Magistrate, Samastipur having received the complaint forwarded the same to Mohiuddin Nagar Police Station, on the basis of which the Officer Incharge of Mohiuddin Nagar Police Station registered Mohiuddin Nagar P.S. Case No.55/04 dated 23.08.2004 under Sections 498 A, 304B, 201, 120B of the Penal Code and Sections 3/4 of the Dowry

Prohibition Act with further endorsement that S.I. Sri J.N.Pandey will investigate the case.

3. In the complaint, there are four witnesses, namely, (i) Nazmul Begam (ii) Md. Nayeem (iii) Md. Nasin and (iv) Md. Samsul. Amongst four witnesses named in the complaint, witness nos. 1 and 2 are parents of the deceased Salma Khatoon. Witness no.3 Md.Nasin is maternal uncle of the deceased. Witness no.4 Md. Samsul is co-villager of the complainant/informant. The Investigating Officer, J.N. Pandey, S.I. having examined the witnesses named in the complaint , as also after securing 164 Cr.P.C. statement of Neha, daughter of the deceased, submitted chargesheet no. 100/05 dated 09.10.2005 against accused no.2 Md. Shahid(brother-in-law of the deceased) keeping the investigation pending against other accused persons named in the complaint. It appears that after submitting first chargesheet dated 09.10.2005 S.I. J.N.Pandey was transferred. The further investigation thereafter was conducted by S.I. K.P.Singh, who submitted chargesheet no. 52/06 against accused no.1 Md. Amir Alam, husband of the deceased, while keeping investigation pending against rest of the accused. Before S.I. K.P.Singh could conclude the investigation he was also transferred and the subsequent investigation in the case was conducted by S.I. Hari Narain Singh, who submitted 3rd Chargesheet No.82/06 against accused nos. 3, 4 and 5, as also against

Md. Hanif, the father in law of the deceased, showing him absconder. In the light of chargesheet the court took cognizance after supply of police paper and the case was committed to the Court of Sessions. The trial court framed charge against accused persons under order dated 22.08. 2006 and 22.01.2007.

4. In support of charge, the prosecution examined as many as five witnesses. P.W.1 Nazbul Begam is mother of the deceased and has supported the occurrence by deposing that at the time of occurrence, she was at Delhi with her sons, where a telephonic information had been given by co-villager that her daughter after being taken away from her Sasural village Kaidrabad to some other place has been done to death and her dead body made to disappear. P.W.2 Md. Nayeem is father of the deceased. He has deposed that at the time of occurrence he was at his work place in Orissa, where he also telephonically learnt about the occurrence from his sons and thereafter came to village. P.W.3 Md. Mustaque is the complainant/informant and brother of the deceased. He has deposed that at the time of occurrence, he was also at Delhi , learnt about the occurrence telephonically came to his village and therefrom to the Sasural Village of his sister saw her house locked from outside inmates away from the village without disclosing the destination to other villagers. He searched for his sister, who could not be traced .



P.W.3 then came to Bachhwara Police Station, where the Officer Incharge asked him to file a complaint in the court. Thereafter he filed the present complaint. P.W.4 Md. Nasim is maternal uncle of the complainant and the deceased. His evidence is also on the same lines as that of other prosecution witnesses and he has also learnt about the deceased having been done to death and her dead body made to disappear by the accused persons. P.W.5 S.I. Kailashpati Singh is the second Investigating Officer of the case, who submitted chargesheet no.52/06 against the husband of the deceased (appellant).

5. Besides the prosecution, the defence has also examined five witnesses. D.W.1 Wasi Alam is the neighbour of the appellant no.1 in his parental village Kaidrabad. He has deposed that the deceased suffered from ailment and at the time of her death, she was residing at Ludhiana, where her husband was working in a factory. He has further stated that the appellant was working at Ludhiana at the time of occurrence. He has also stated that at Ludhiana Salma Khatoon died because of liver ailment. D.W.2 Md. Mosif Sheikh is also resident of village Kaidrabad. He was working in Ludhiana and was residing in the same house, in which the appellant and his wife resided. He has stated that at the relevant time, the appellant was working in a factory at Ludhiana and his wife suffered stomach ailment and died because of illness in Ludhiana. He has also stated



that she was buried at Ludhiana. D.W.3 Ram Naresh Singh is the neighbour of the complainant/informant. He has stated that the appellant was working in Ludhiana and Salma Khatoon was residing with her husband and that she died because of stomach ailment at Ludhiana and also her burial was performed at Ludhiana. D.W.4 Hasrat Ansari is uncle of the appellant. He has also supported the defence version that Salma Khatoon was residing along with her husband at Ludhiana and that she died at Ludhiana because of stomach ailment and her dead body was buried there. D.W.5 is a formal witness, who has proved the letter written by P.W.3 on behalf of P.W.1 asking the appellant to pay Rs.50,000/- to her. On the record, there is 164 Cr.P.C statement of Neha, daughter of the deceased, but the same has not been formally proved.

6. Learned counsel for the appellant assailed the Judgment of conviction and order of sentence and submitted that on the same evidence, accused nos. 2 to 5, the in-laws of the deceased, having been acquitted of the charge levelled against them there is nothing in the evidence to distinguish their case with that of the appellant husband save and except 164 Cr.P.C. statement of Neha the daughter of the deceased which has not been proved. It is submitted that for failure of the prosecution to get 164 Cr.P.C. statement of Neha proved, the same cannot be used in evidence against the appellant as



he had neither opportunity to cross-examine her or the learned Judicial Magistrate who recorded her statement. It is further submitted that the evidence of other prosecution witnesses i.e. P.Ws.1,2,3 and 4 only raises a suspicion against the appellant as they have learnt about the occurrence from the co-villager Md. Kayamuddin who has also not been examined to establish that he actually telephonically informed the complainant (P.W.3) about the occurrence, whereafter he along with his mother came from Delhi and his father came from Orissa and then proceeded to search Salma Khatoon and learnt that she has been taken away from her Sasural village Kaidrabad and done to death her dead body also made to disappear. It is submitted that further examination of the evidence of the prosecution witnesses would indicate that they are only hearsay witnesses, as they never received any concrete information about killing of Salma Khatoon. It is further submitted that the Investigating Officer in the light of the 164 Cr.P.C. statement of Neha should have gone to village Kaidrabad and Ludhiana in order to recover the dead body of the deceased but from the evidence of the prosecution witnesses, it does not appear that any such effort was ever made. In 164 Cr.P.C. statement Neha categorically stated that her mother was killed by her father and buried near the house. Aforesaid statement was recorded by the Investigating Officer in the case diary and it was his duty to have



visited the residence of Salma at Kaidrabad as also at Ludhiana residence to trace out the dead body, but no such effort was ever made. On the basis of aforesaid evidence and conduct of Investigating Officer, learned counsel for the appellant submits that the appellant deserves grant of benefit of doubt as there is nothing concrete in evidence to suggest that she was done to death and did not die because of ailment. It is also submitted by learned counsel for the appellant that defence witnesses have also indicated the manner, in which the deceased suffered death and there is nothing to doubt their version.

7. Learned counsel for the State has supported the Judgment. He submits that it is a case, in which the first and the 3rd Investigating Officer have not been examined to explain as to why they did not visit the residence of the appellant to ascertain as to whether she died natural death because of ailment or she was done to death . He submits that for such lapse on the part of the Investigating Officer, the appellant should not be allowed the benefit of doubt.

8. Having considered the rival submission as also the evidence on record, We are of the view that Neha, daughter of the deceased having not been examined as a witness during trial and her 164 Cr.P.C. statement not formally proved the same cannot be taken into account for concluding that her mother was done to death by her

father (appellant), especially in view of the fact that her 164 Cr.P.C. statement is not formally proved.

9. Save and except 164 Cr.P.C statement of Neha , there is hardly any material on record, by which we can conclude that the deceased was done to death and did not die because of stomach ailment, in these circumstances, We have no option but to grant benefit of doubt to the appellant. The impugned Judgment dated 11.3.2010 and order of sentence dated 16.03.2010 passed by learned 1st Addl. Sessions Judge, Samastipur in Sessions Trial no.100/06 + 905/06 is, accordingly, set aside and the appeal is allowed. During pendency of the appeal, the appellant is in jail custody, as such, he is required to be released forthwith if he is not wanted in any other case.

(V.N. Sinha, J)

Rakesh Kumar, J)

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