

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.446 of 2014

Against the judgment of conviction 15.07.2014 and order of sentence dated 19.07. 2014 passed by Shri Pradeep Kumar Sharma, learned Ad-hoc Additional Sessions Judge No. VIII, Purnea, in Sessions Trial No. 209 of 2012/Trial No. 9 of 2012(arising out of Baisi P.S. Case No. 180 of 2011 (G.R. No. 2293 of 2011))

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Megh Nath Roy, Son of Bhultan Roy, Resident of Village Harerampur, P.S. Baisi, District Purnea.

.... Appellant

Versus

1. The State of Bihar.
2. Arun Kumar Roy, Son of Charu Roy, Resident of Bakharia, P.S. Baisi, District Purnea.

.... Respondents.

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Appearance :

For the Appellant : Mr. Sanjeev Kumar Singh, Advocate
For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 26-11-2015

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of the judgment of conviction 15.07.2014 and order of sentence dated 19.07. 2014 passed by Shri Pradeep Kumar Sharma, learned Ad-hoc Additional Sessions Judge No. VIII, Purnea, in Sessions Trial No. 209 of 2012/Trial No. 9 of 2012(arising out of Baisi P.S. Case No. 180 of 2011 (G.R. No. 2293 of 2011)) by which the sole appellant had been convicted for offence under Section 304 (B) of Indian Penal Code and sentenced to undergo

rigorous imprisonment for ten years and payment of fine of Rs. 10,000/- and on non-payment of fine further undergo simple imprisonment for six months.

3. The prosecution case as alleged in the First Information Report by the informant Arun Kumar Roy alleging therein that his sister Rimiya Devi was married about six years back with Megh Nath Roy and was blessed with two daughters. Two-three months back Rimiya Devi had quarrel with her husband Megh Nath Roy. Further case is that his brother-in-law asked the victim that since she had not brought anything from her Naihar then why she goes to go to her Naihar. Further case is that earlier a case was lodged for demand of dowry which was subsequently compromised. Further case is that brother-in-law of the informant and husband of Rimiya Devi used to say to Rimiya Devi that he had been spent Rs. 50,000/- in the case lodged by her has to be returned to him by her parents, else she will be killed. Further case is that about one week prior to the occurrence Rimiya Devi had come to the house of the informant at Village-Bakharia, and had stayed there. About two days back to the occurrence, the appellant threatened Rimiya Devi telephonically on mobile of the informant that if Rimiya Devi would not come to his house on 27.08.2011 then she would be killed and so Rimiya Devi was sent on the same day to Hararampur. It is further alleged that the



informant received a telephone call on the night from Hararampur in which one Bijay Roy disclosed that dead body of his sister was lying in water and the appellant had informed at 1.00 P.M. that the sister of the informant is missing. The informant along with his father and other co-villagers reached at Hararampur at about 9.30 hours then saw the dead body of his sister lying about 100 yards south of the house of the appellant under the water and found his brother-in-law was absconding from the house. Then the informant informed the police on which police came along with the party and hence it is alleged that sister of the informant had been done to death for non-fulfillment of demand of dowry.

4. On the written report of Arun Kumar Roy F.I.R. was lodged and investigation proceeded. However, I.O. has not been examined in this case, though, police after investigation submitted charge sheet after getting report of the post mortem examination conducted by the doctor on the charge sheet filed by the police. Cognizance taken and case was committed to the Court of Sessions. After framing of the charge 11 witnesses were examined.

5. However, out of 11 witnesses, P.W. 1 father of the deceased, though, had supported the prosecution in examination-in-chief regarding demand and subjecting cruelty and marriage of the victim solemnised within seven years. However, in cross-

examination he had stated that Charu Roy never asked any dowry. He has further stated that Charu Roy and other family members never demanded dowry from him and his daughter was suffering from illness soon before the occurrence, he learnt from his neighbours that victim died due to drowning. However, this witness, the father of the victim. P.W. 2 Prakash Roy, the brother of the victim and had stated in his deposition that hat how the victim died, he cannot say. This witness had been declared hostile. P.W. 3 Sonatan Devi, is mother of the victim and had deposed that she did not know how the victim was died and had been declared hostile. P.W. 4 is Satani Devi had deposed that victim died in the river at her sasural. However, she has not supported the prosecution case regarding demand and subjecting to cruelty. In her cross-examination she has stated that relation between Megh Nath Roy and Rimiya Devi was cordial and good and there is no demand made by the husband of the deceased or his family members. P.W. 5 Lakhan Roy had also deposed that daughter of the informant was suffering from epilepsy and Rimiya Devi was died due to drowning when she went to take bath in the river. He has neither deposed regarding marriage nor about demand or subjecting cruelty. P.W. 6 Dinesh Kumar Roy had deposed that Rimiya Devi was suffering from epilepsy and died due to drowning. P.W. 7 Kutai Raiu had deposed to the same fact as deposed by P.W. 6.



P.W. 8 is the informant and he had stated Rimiya Devi was married with Megh Nath Roy about six years back and there was some dispute between Megh Nath Roy and Rimiya Devi prior to the occurrence, subsequently, the matter had been compromised. He had further stated that on the date of occurrence he received a telephone call about death of his sister then he went to Village-Harerampur and found the dead body was lying in the water and police came and enquired. He had further stated that his sister was suffering from epilepsy and she died due to illness. However, he has supported the prosecution case regarding marriage within six years and the victim was drowning. However, he has no whisper about demand and subjecting cruelty. P.W.9 Chhakhon Roy had also deposed that when the victim went to take bath she was drowning and died. P.W. 10 Dr. Chandra Mohan Singh who conducted post mortem examination on the person of the deceased and found that dead body was swollen, foul smelling, decon, posing with blebs and peeling of skin here and bleeding from nose and ears and opined that time elapsed since death 12 to 48 hours and cause of death was asphyxia follows after throttling or strangulation. P.W.11 is Medical Officer in whose presence the post mortem was conducted and has proved post mortem report marked as Exhibit-2.

6. The trial court taking into consideration the evidence of the witnesses convicted the appellant for offence under Section

304(B) of Indian Penal Code that ingredients for offence under Section 304(B) of Indian Penal Code has been established.

7. Learned counsel for the appellant however contends that the ingredients for offence under Section 304 (B) of Indian Penal Code has not been established and hence order of conviction and sentence recorded by the trial court is not sustainable.

8. Learned counsel for the State however contends that prosecution has been able to establish that date of occurrence within six years of marriage of the victim and dead body found in the water and doctor opined that cause of death was asphyxia due to strangulation and death of the deceased was in suspicious circumstance.

9. However, taking into consideration the respective submissions, I proceed to consider whether prosecution has been able to prove the charges beyond reasonable doubt to record conviction for offence under Section 304 (B) of Indian Penal Code.

10. Before going into the question of merit of the case, I proceed to consider the offence under Section 304 (B) of Indian Penal Code read with Section 113(B) of Evidence Act. Section 304(B) of Penal Code provides that in case of dowry death, the prosecution is obliged to prove that (a) death of a woman has been caused by such bodily injury otherwise than in normal circumstance; (b) such death is

occurred within seven years of marriage (c) deceased was subjected to cruelty or harassment by her husband or relatives of the husband; (d) such cruelty or harassment should be in connection with demand of dowry and (e) such cruelty or harassment of the deceased should have occurred soon before the death of occurrence. Section 113(B) of Evidence Act provides that presumption under Section 304(B) of Penal Code can only be recorded if it is established that soon before the death woman had been subjected to cruelty or harassment or in connection with demand of dowry. Now applying the principle and going into the merit of the case, it is apparent from the allegation that marriage of the victim had been solemnised within seven years. There is further allegation that the appellant used to ask the victim as to why she used to go to Naihar when she has not brought anything from her Naihar. Earlier prior to institution of this case a case was instituted for demand of dowry later on, the matter has been compromised. However, the husband used to ask the victim to bring Rs. 50,000/- from her parents which he had spent by him in the case and threatened to kill if the said amount is not paid. Further case is that victim came to her Naihar on week prior to the occurrence, thereafter a telephone call was received from the informant to send the victim to her Sasural, otherwise she will be killed then informant sent victim to her Sasural then information was received that she was killed. However, 11



witnesses were examined in this case. P.W. 8 is the informant who had not supported the prosecution case as alleged, though, the prosecution case is that marriage solemnised within seven years, though, stated that victim died due to drowning. P.W. 10 is the doctor opined that death was in suspicious circumstance and cause of death by asphyxia caused due to throttling or strangulation. Hence, it is apparent that two ingredients for offence under Section 304 (B) of Penal code having been established that marriage solemnised within seven years and death of the deceased was in suspicious circumstance. However, P.W. 8 the informant had neither whisper about any demand nor regarding any quarrel between the victim and her husband. Hence, having regard to the fact it is established that death of victim within six years of marriage and death is in suspicious circumstance as per evidence of P.W. 8 and P.W. 10 the informant and the doctor, but other ingredients for offence under Section 304(B) of Penal Code that there was demand and victim was subjected to cruelty for non-fulfillment of demand or there is any evidence soon before the death, the victim was subjected to cruelty for non-fulfillment of demand have not been established.

11. Hence, having regard to the fact other ingredients as mentioned above regarding demand of dowry or subjected cruelty for non-fulfillment of demand of dowry soon before the death of the

victim is missing in the evidence of P.W.8, the informant. Furthermore, 11 witnesses examined in this case as mentioned above earlier, except P.W.1, none had supported the prosecution case regarding demand and subjected to cruelty for non-fulfillment of demand soon before the death of the victim. Further, P.W. 1 is father of the informant, though, in his examination-in-chief deposed that there was demand of Rs.40,000/- by Megh Nath Roy and he also used to assault and sent his daughter to her Naihar. However, in his cross-examination he had stated that the appellant had never demand any dowry and his daughter was suffering from illness as well the victim used to live comfortably in the sasural hence his evidence regarding subjecting to cruelty is suffer from inherent contradiction in examination-in-chief and in cross-examination and hence his evidence apparently neither reliable nor cogent or unimpeachable to be relied upon without any corroboration any independent evidence. Hence on the basis of his evidence the ingredient for offence under Section 304 (B) of Indian Penal Code that victim was subjected to cruelty for non-fulfillment of the demand soon before the death has not been established and P.W. 2 and 3 had been declared hostile. P.W. 4, 5, 6 and 7, though have not declared hostile, but they have not supported the prosecution case regarding demand and subjecting cruelty nor there is any evidence that soon before the death the victim was

subjected to cruelty for non-fulfillment of demand. P.W. 9 had also not deposed to the effect regarding demand and subjected to cruelty.

12. Hence, going into the entire evidence, it is apparent that there is no evidence at all regarding demand and subjected to cruelty except P.W. 1, but his evidence in his cross-examination suffers from contradiction and has not supported the prosecution case rather in his cross-examination he had stated that husband and wife were living together comfortably and his evidence suffers from contradiction as per his own evidence in cross-examination except stating there is no other evidence regarding demand and subjected to cruelty which is essential ingredient for offence under Section 304 (B) of Indian Penal Code to bring home conviction under Section 304(B) of Penal Code.

13. Regard being had to the fact ingredients for offence under Section 304 (B) has not been established. Moreover, ingredient for offence under Section 304 (B) of Penal Code that soon before the death the victim was subjected to cruelty for non-fulfillment of demand having not been established and hence presumption under Section 113(B) of Evidence Act cannot be drawn as to draw prosecution, the ingredient for offence under Section 304 (B) of Penal Code must be established and Section 113 B of Evidence Act also provides that unless the fact that "soon before the death the victim was subjected to cruelty" is established and prosecution under

Section 304 (B) of Indian Penal Code cannot be drawn.

14. The learned Trial Court misdirected itself in drawing the presumption without going into the question whether ingredients for offence under Section 304 (B) of Penal Code has been established to take presumption under Section 113 (B) of Evidence Act. Hence order of conviction and sentence recorded by the trial court is hereby set aside. **The appeal is allowed.** The appellant is in jail custody be set at liberty forthwith if not required in any other case.

m.p.
NAFR

(Gopal Prasad, J)

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