

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.99 of 2014

Against the judgment of conviction, dated 18.09.2014, and order of sentenced dated 23.02.2014, passed by Mr. Sanjay Kumar Singh, Ad Hoc Additional Sessions Judge, I, Banka, in Sessions Trial No. 68 of 2012/Trial No. 619 of 2014 arising out of Amarpur (Fullidumar) P.S. Case No. 300 of 1998

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1. Bijay Yadav @ Vijay Yadav Son Of Late Sahdeo Prasad Yadav Resident Of
Village- Jhajha, P.S.- Fullidumar, District – Banka Appellant

Versus

1. The State Of Bihar Respondent

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Appearance :

For the Appellant : M/S Sourendra Pandey & Nalin Vilochan Tiwary Advs.

For the Respondent : Mrs Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 02-11-2015

Heard the learned counsel for the petitioner and the State.

2. The sole appellant convicted under Section 304B of the Penal Code and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case as alleged in the first information report by the informant Ramswaroop Yadav that the deceased Renu Devi, his daughter was married with Vijay Prasad Yadav, the appellant, about 6-7 years back. The gauna was solemnized two years prior to the occurrence. After the gauna the deceased lived with the appellant for about a month and, thereafter, the appellant, Vijay Prasad Yadav, went to Gujrat to earn his livelihood and about one month prior to the occurrence his son-in-law came from Gujrat and wanted to took the victim-deceased to his house and at the time of vidai he demanded rupees ten thousand in cash, cycle and watch as dowry, then, he intimated his son-in-law that he can not give anything as he has already given sufficient articles at the time of marriage and gaona and, thereafter, his son-in-law took the victim-deceased, Renu Devi, after vidai. Further, case is that on 11.08.1998 at about 05.00 A.M. some persons came to his house and informed his father Baleshwar Yadav that his daughter, Renu Devi, is dead. His father informed the informant, then, he along with Satyanarain Yadav (not examined), P.W. 2 Brajesh Kumar Yadav, P.W. 4 Subodh

Yadav, P.W. 5 Ranjeet Yadav, P.W. 8 Ghanshyam Yadav and P.W. 10 Nawal Yadav, went to the house of Vijay Prasad Yadav, then, he saw the dead body of his daughter, Renu Devi, was lying on chabutra of the well and he found black sign on the left side of neck and the sign of lathi on the abdomen and it is alleged that Renu Devi has been done to death by his son-in-law, Vijay Prasad Yadav, and his brothers Jalandhar Yadav and Shridhar Yadav. On the fardbeyan the first information report lodged, the investigation proceeded and after the investigation the charge sheet submitted, case committed to the Court of sessions.

4. During the trial thirteen witnesses were examined by the prosecution. P.W. 1 is Ramswaroop Yadav, P.W. 2 is Brajesh Kumar Yadav, P.W. 3 is Parmanand Yadav, P.W. 4 is Subodh Yadav, P.W. 5 is Rajee Yadav, P.W. 6 is Chinta Devi, P.W. 7 is Dulo Devi, P.W. 8 is Ghanshyam Yadav, P.W. 9 is Adhola Devi, P.W. 10 is Nawal Yadav, P.W. 11 is Bhola Yadav, P.W. 12 is Kapildeo Yadav and P.W. 13 is Rajendra Yadav. P.Ws. 6, 7, 9, 11 and 12 have deposed to the effect that the victim-deceased was suffering from epilepsy and she fell down. However, the informant supported the prosecution case regarding the marriage having been solemnized within 6-7 years of the occurrence and the gaona solemnized two years before the occurrence and after gauna the victim-deceased lived for one month at her sasural and, thereafter, his son-in-law went to Gujrat leaving the victim-deceased to the house of the informant and, thereafter, one month before the occurrence he again returned back from Gujrat and then took her. However, it is alleged that at the time of taking her a demand was made for rupees ten thousand, cycle and watch and, thereafter, the informant showed his inability that he has already paid an amount when the son-in-law took away the victim-deceased and, thereafter, it was learnt that she has been burnt to death.

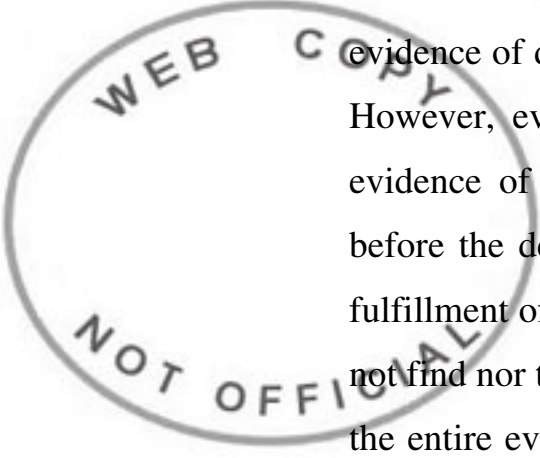
5. The trial Court convicted the appellant that the victim-deceased died within seven years of the marriage and there was injury found on her body and it was the duty of the accused to prove his innocence, but, he failed, hence, the presumption that Renu Devi was

killed by her husband for demand established, hence, convicted and sentenced accordingly.

6. The learned counsel for the appellant contended that there is contradiction in the statements of the witnesses regarding the years when the victim-deceased was married and it is stated that though at the outset there is allegation of marriage solemnized within 6-7 years, but, during the evidence the informant has stated that marriage solemnized within five years, hence, the evidence regarding the date of death is fluctuating. It is, further, contended that the dead body was found in the well and that was taken away and the witnesses stated that the victim-deceased was suffering from epilepsy.

7. Further, coming to the entire facts and circumstances of the case, it is apparent that though there is allegation that the marriage solemnized within seven years and after the marriage the gaona solemnized after two years prior to the occurrence and, then, the victim-deceased lived with her husband for one year and, thereafter, the husband went to Gujrat and when he returned back one month prior to the occurrence, then, he took the victim-deceased and it is alleged that at the time of taking the victim-deceased, he demand rupees ten thousand, a cycle and a watch and, thereafter, it was learnt that the victim-deceased died.

8. However, taking into consideration Section 304B of the Penal Code, it is pertinent that to prove the offence under Section 304B of the Penal Code the prosecution required to be proved that the victim-deceased died within seven years of married, the death has been caused by burnt or bodily injury or otherwise than normal circumstance, but, mere prove that victim died within seven years in suspicious circumstance is not enough but it further required to prove that “soon before the death the victim-deceased was subjected to cruelty by husband or any relative of the husband in connection with any demand of dowry”. However, going into the entire evidence though there is allegation and evidence that the marriage solemnized within seven years and so far the evidence regarding the bodily injury and subjecting cruelty



is concerned, though the Doctor has not been examined, but, the injury report has been proved and marked as Exhibit 4 which shows that there was injury on the neck and the death by strangulation. The submission has been made that since the Doctor has not been examined so the evidence of death in suspicious circumstance is not properly established. However, even if the death is in suspicious circumstance, as per the evidence of Exhibit 4, it is, further, required to be proved that soon before the death the victim-deceased was subjected to cruelty for non-fulfillment of the demand. However, going into the entire evidence, I do not find nor the learned counsel for the State could find or point out from the entire evidence regarding the fact to prove or evidence to the effect that soon before the death the victim-deceased was subjected to cruelty. There is no evidence at all in the entire evidence or there is no allegation even in the first information report that victim-deceased was ever subjected to cruelty. There is only evidence that there is demand, but, there is no evidence at all that the victim-deceased was subjected to cruelty non-the-less soon before her death she was subjected to cruelty much-less subjected to cruelty for non-fulfillment of demand. However, having regard to the fact that one of the most important ingredients for offence under Section 304B of the Penal Code that soon before death victim subjected to cruelty for non-fulfillment of demand having neither been proved nor any evidence to rely nor even allegation made offence under Section 304B of the Penal Code has not been established. The trial Court misdirected itself to hold the appellant guilty under Section 304B of the Penal Code without going into the question whether the ingredients for offence under Section 304B of the Penal Code has been established or not. There is no evidence that soon before the death the victim-deceased was subjected to cruelty, hence, unless the ingredients for offence under Section 304B of the Penal Code is established, no presumption can be taken under Section 113V of the Evidence Act regarding the guilt of the accused of dowry death.

9. Hence, having regard to the facts and circumstances of the case the order of conviction and sentence recorded by the trial Court is

hereby set aside and I find and hold that the prosecution has not been able to prove the charge under Section 304B of the Penal Code. Hence, I acquit the appellant and **allow the appeal.**

10. The appellant is directed to be released, from jail, forthwith, if not wanted in any other case. He is discharged from the liability of bail bond.

(Gopal Prasad, J)

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