

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.556 of 2013

Arising Out of PS.Case No. -24 Year- 2011 Thana -SATHI District-
WESTCHAMPARAN(BETTIAH)

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Niraj Tiwari S/O Dhruv Tiwari Resident Of Village- Tiwari Tola, Lachhanawata,
Police Station- Sathi, District- West Champaran.

The State Of Bihar

Versus

.... Appellant/s

.... Respondent/s

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Appearance :

For the Appellant/s : Mr.Mithilesh Kumar
Mr. Harsh Anuj
Mr. Lallan Kumar Verma, Advocates
For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 12-10-2015

The appellant has been convicted under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years. He has further been convicted under Section 201 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three years and fine of Rs. 5,000/-. However, it has been ordered that both the sentences shall run concurrently.

2. The prosecution case, as alleged in the first information report by the informant, Dhurandhar Pandey, is that he got his daughter married with one Niraj Tiwary on 27.4.2009. On



20.3.2011 he learnt that the in-laws of his daughter, Rinki Devi has done her to death and has disposed of the dead body by burning it, on which the informant reached the house of Dhrub Tiwary, father of Niraj Tiwary, resident of village Lachhanawata, Tiwari Tola and then he found that Rinki Devi and her in-laws are missing then from the neighbours he learnt that his daughter has been done to death by Niraj Tiwari, Dhrub Tiwary, Dhiraj Tiwary, Sandhya Devi, Ranju Devi, Pappu Pandey and Dinanath Patel along with 5-6 unknown persons and for causing disappearance of the evidence of the offence to screen the offence, have burnt the dead body of his daughter and disposed of the same by burning. The further case is that after the marriage there was demand of motorcycle and golden chain as dowry and when he shown his inability to satisfy the demand then the accused subjected her to cruelty and this fact was used to be disclosed by the victim to him and her mother. The further case is that on 19.3.2011 in the morning his son-in-law, Niraj Tiwari, the appellant and his brother Dhiraj Tiwari came with the child of his daughter and kept the child of the victim and under a conspiracy in the same night done her to death in the greed of dowry and burnt the dead body to screen the evidence.

3. On the written report of the informant an endorsement was made for registering the case and the investigation



was handed over to ASI, R.N.Singh. During the investigation the police recorded the statement of the witnesses, inspected the P.O. house which contains four rooms and it was disclosed that the victim used to live in a room facing west, i.e., the door of her room was facing west. The boundary of the P.O. is stated to be in the East- Kashi Sah and Srikant Sah, in the West- Nirpendra Tiwary, in the North- Village Road and in South a tiled roof house. During the investigation the police got information that the victim has been burnt to the north of village Choubepur, east of the Noniatola on the bank of Sikrahna river. To the west of the river he found the burnt remains of the dead body which is a flesh of 1 ½ kg which was seized and seizure list prepared (Ext. 7). The said remains was sent to FSL but there was no such facility to examine the same, it was sent to PMCH and ultimately examined by the SKMCH and after investigation charge sheet was submitted. On the charge sheet cognizance was taken and the case was committed to the Court of Sessions.

4. During the trial 9 witnesses were examined by the prosecution who are, P.W. 1 Anup Pandey, son of the informant, P.W. 2 Vinod Kumar Pandey, P.W.3 Sanjay Kumar Pandey, P.W.4 Babu Saheb Pandey, P.W. 5 Madhusudan Chaturvedi, P.W.6 Dhurandhar Pandey, the informant, who is also the father of the



victim, P.W. 7 Punam Devi, the mother of the victim, P.W.8 Bisheshwar Nath Tiwary, however, he has been declared hostile by the prosecution and P.W.9 Ram Narayan Singh, the Investigation Officer. P.W.1 supported the prosecution regarding demand of dowry and subjecting cruelty. P.W.2 has also stated that Rinki Devi had come to the house of her father and she was telling her father regarding the demand and subjecting to cruelty. P.W. 3 has also supported the prosecution case regarding her marriage solemnized on 27.4.2009 and there was demand and subjecting cruelty as the victim used to say on telephone regarding the demand and subjecting cruelty. P.W. 4 has also supported the prosecution case regarding marriage and subjecting cruelty. However, P.W. 5, the maternal uncle of the victim has come to support the prosecution case but from his evidence it appears that he is a hear say witness and he learnt about the same from others. P.W. 6, the informant, has also supported the prosecution case regarding the marriage, demand and subjecting cruelty and he learnt about the victim being done to death and then he went to the house of the informant and found the accused persons missing from the house and on inquiry he learnt that the victim has been done to death and the dead body was disposed of by burning it on 20.3.2011, whereas, the occurrence is alleged to have taken place on 19.3.2011. P.W. 7 is the mother of the victim and has



supported the prosecution case stating that the victim used to disclose on telephone regarding the demand and subjecting to cruelty. P.W. 8 is Bisheshwar Nath Tiwary. He has come to depose that he had given Rs. 5,000/- to Niraj Tiwari for treatment of his wife and the Doctor of Bettiah has referred the victim and it appears that he has come to support the defence version and thus this witness has been declared hostile by the prosecution and he was cross-examined and hence this witness has discredited by the prosecution. P.W.9 is the I.O. who conducted the investigation and recorded the statements. P.W. 10, Chhote Choudhary has also been declared hostile by the prosecution.

5. The defence has also examined five witnesses, D.W. 1 Chhathu Paswan, D.W.2 Lalan Tiwari, D.W.3 Jagmohan Tiwari, D.W.4 Dr. Sanjay Kumar Trigunapat and D.W.5 Vikrant Kumar Choubey. However, defence of the accused persons is that the wife of Niraj Tiwari had developed pain in her abdomen and then she was taken to Chanpatia by Tanga and thereafter from Chanpatia to Bettiah by Jeep and from Bettiah she was referred to PMCH but while taking her to PMCH she died in the way. D.W.4 is the Doctor who has stated that the victim had developed loose motion and vomiting. He gave her injection and referred the victim to PMCH and he has proved his report, marked Ext. 8. The further case of the defence is that after the death of the victim, the father of the victim

participated in the funeral and the last rites performed in his presence and thereafter lodged the case. The further defence of the accused persons is that after the death of the victim the informant pressurized the appellant to marry with the eldest daughter of the informant else they will falsely implicate him and since the appellant refused so the case.

6. The trial Court taking into consideration the evidence of the witnesses convicted the appellant and sentenced him as mentioned above in view of the evidence that the victim has been done to death and the dead body was disposed of as the death was in suspicious circumstance and there is allegation of demand and subjecting to cruelty within seven years of the marriage.

7. Learned counsel for the appellant has challenged the order of conviction and sentence. He contended that the prosecution has not been able to prove the demand of dowry and subjecting the victim to cruelty and there is contradiction in the evidence of P.W.6 in regard to demand and subjecting to cruelty. It has further been contended that the marriage, as per the evidence of the witness, was settled without any dowry. There was no tilak in the marriage and even the formalities of Tilak was not observed and till Vidai of the victim there was nothing untoward incidence and the marriage was performed after well enquiry about the family of the

appellant. It has further been contended that the death was not in suspicious circumstance rather it was natural death and hence the conviction and sentence recorded by the trial Court is fit to be set aside.

8. Learned counsel for the State, however, contended that the prosecution has well established the fact that the marriage was solemnized about two years prior to the occurrence, i.e., well within seven years of the marriage and further there is specific evidence regarding the demand and subjecting to cruelty and further the victim has been done to death and even the death has been accepted by the appellant. The prosecution has also proved that the Doctor has found that the victim was vomiting prior to the death and she was referred to PMCH and though it is alleged that she died in the way but neither the police was informed nor the post mortem was conducted and the dead body was disposed of in a heavy haste and even the I.O. has found the remains of the dead body at the place where her dead body was burnt or cremated and hence the prosecution has been able to prove the offence under Section 304B.

9. Having regard to the respective submissions, I proceed to consider the evidence of the witnesses in the light of the submissions made by the parties. However, before proceeding to consider the evidence of the witnesses, in the light of the submissions



of the State, it is proper to refer to Sections 304B of the Indian Penal Code and Section 113 of the Evidence Act. Section 304B provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, such death shall be called “dowry death” and such husband or relative shall be deemed to have caused her death.

10. Section 113B of the evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry, the Court shall presume that such person had caused the dowry death.

11. As per Section 304B, to prove the dowry death, the prosecution is required to prove (a) that the marriage has been solemnized within seven years of the occurrence (b) that the victim has died of any burn or bodily injury or otherwise than under normal circumstances, (c) that there is demand and subjecting to cruelty, (d) that soon before her death she was subjected to cruelty or harassment in connection with demand of dowry. For taking the presumption



under Section 113B of dowry death is on proving the abovementioned ingredient as well as it is required to prove that soon before the death the woman was subjected by such person to cruelty. Hence the words “soon before the death’ in Sections 304B & 113B has got special significance to prove a Dowry Death under Section 304B.

12. Hence, taking into consideration the ingredients for offence under Section 304B and requirement of presumptions, I proceed to consider whether the prosecution has been able to establish the ingredient to prove presumption under Section 113 B to prove the charge. However, there is evidence of P.Ws. 1,2,3 and 6 that the marriage was solemnized on 27.4.2009 and this evidence has not been challenged. The occurrence is alleged to have taken place on 19.3.2011 and the victim dies. It is not in dispute that the victim did not die. Even the case of the defence is that the victim died but not in suspicious circumstance but a natural death out of illness. However, explanation has been given and even brought in evidence that the victim died on account of her illness as she got loose motion and vomiting as per the evidence of P.W.5. However having regard to the circumstance that victim was taken to PHC, Bettiah from there the victim was referred to PMCH but it is alleged that victim died in way to PMCH but there is no evidence that victim after her death



examined by any doctor. However, after death neither the public authority were intimated nor the police informed nor the doctor examined to declare dead nor the post mortem conducted and the dead body was disposed off in heavy haste cast a serious doubt and establish that death is in suspicious circumstance. However, to the contrary the prosecution on receipt of the information immediately rushed to the village of the deceased and found the deceased and her in-laws missing from the house and then on enquiry learnt that the victim has been done to death and the dead body was disposed of without reporting the matter to the police. The Police came and investigation proceeded and the police also found the dead body having been disposed of and even burnt flesh had been found at the place where the dead body had been disposed of. However, the criticism has been made that it has not been established that the burnt flesh was the flesh of the victim. However, it is not in dispute that the victim has not died. The case of the defence itself is that the victim died and her dead body was disposed of. However, they have come with an explanation that she got illness and she was taken to the Doctor at Primary Health Centre, Bettiah and then she was referred to the PMCH and while taking her to PMCH she died. However, after the death of the victim while in transit she was not taken to the Doctor nor any certificate was taken regarding her death nor even the



matter was reported to the police or the public authority and though the plea has been taken that the father of the victim was informed and he participated in the funeral at the time of last rites but that has been refuted and a case has immediately been lodged on 20.3.2011, the next day of the occurrence and hence there is no merit in the submission of the defence that the death was not in suspicious circumstance and the informant was informed or participated, rather from the evidence adduced by both sides, it is apparent that the victim died and her dead body was disposed of in heavy haste and the death was in suspicious circumstance.

13. The prosecution has led evidence that there was demand and subjecting to cruelty. P.W.1 has supported the prosecution case regarding the demand and subjecting to cruelty. He has stated that on receiving information he went along with the father and mother of the victim. P.W.1 supported the case of prosecution regarding demand and subjecting cruelty. P.W. 2 has deposed that the victim was telling her father regarding demand and subjecting cruelty. P.W. 3 has also supported the prosecution case that victim used to tell her about subjecting cruelty as well as demand by the in-laws and husband on telephone. P.W. 6 the informant also supported the prosecution case regarding demand and subjecting cruelty. However, a criticism has been made that there is contradiction in the



evidence of P.W. 1 and P.W. 6 as the P.W. 1 stated that he along with others went to the house of the accused and requested them not to do the occurrence or assault her sister. However, it has not been stated so by the P.W.6, the father of the victim. As per the evidence of the father no any Panchayati took place and hence it is submitted that Panchati happens for making them understand. However, there is difference between making the accused persons to understand in Panchayati. In Panchayati the member of the society or some elder person of the village are taken whereas making them understand is amongst themselves and it cannot be said that the Panchayati happens to make the accused no. 2 and victim understand and there is no merit in the submission that the evidence of P.W. 1 and P.W. 6 are contradictory. Not only the evidence of P.W. 1 regarding demand and subjecting cruelty, P.W. 2 and P.W. 3 have also stated that the victim has come and then she disclosed about the fact to her father. The victim was disclosing the demand and subjecting to cruelty to her father and then she knew about the subjecting to cruelty as the victim disclosed to her father in her presence. P.W.6 and P.W.7 are father and mother of the victim and they have also supported the prosecution case regarding demand and subjecting cruelty. Hence, there are ample evidence regarding demand and subjecting cruelty to the victim. The marriage was solemnized in 2009 and the evidence of



P.W.1 regarding the demand and subjecting cruelty by the accused persons upon the victim and has stated that on receiving such information he along with his father and elder brother of his father went to the house of Niraj Tiwari and saw the accused person. However, with regard to this part of the evidence in the cross-examination specific question has been put by the defence regarding the date month year and he has stated in his evidence that he cannot say the date month and year of that occurrence but has further stated that it was 2011. However at the same time he has stated that he did not see any mark of injury on the person of her sister nor he got her treated. However, P.Ws. 1,2,3,4,5, 6 and 7 have supported the prosecution case regarding demand of dowry and subjecting cruelty for non-fulfillment of demand of dowry but no time or date has been mentioned regarding subjecting cruelty for non-fulfillment of demand. The prosecution case itself, that one day prior to the occurrence the appellant came along with his brother and gave the child of the victim to the Informant to keep the child on some pretext but there is no evidence regarding the subjecting to cruelty on that day.

14. Hence, taking into consideration the entire evidence there is no mention of any time or date when the victim was subjected to cruelty.



15. So far as the words “soon before the death” in Section 304B are concerned, there is no time limit mentioned that what is the meaning of the words “soon before the death”, whether it is within hours, within days within months or within year. However, it has come in judicial pronouncements of many decisions of this Court as well as the Apex Court that there is no hard and fast rule and there is no mention of time regarding the words “soon before the death” but there must be a nexus between the subjecting cruelty for non-fulfillment of the demand, and the death of the victim. However, going into the entire evidence though there is allegation of subjecting cruelty for non-fulfillment of the demand but no time specified or date has been mentioned regarding subjecting cruelty. However the nexus between subjecting cruelty and death has not been established and it has also not been established that soon before the death of the victim, the victim was subjected to cruelty in connection with or in relation to demand of dowry and hence this ingredient for offence under Section 304B IPC has not been established. It is true that the death is within two years of the marriage and the victim has been blessed with a child but having regard to the fact that the ingredient soon before the death the victim was subjected to cruelty has not been established. I have gone through the evidence and going into the entire evidence it is apparent that the nexus between the cause of

death and subjecting cruelty has not been established.

16. Thus, I find and hold that the prosecution has not been able to prove the charge for offence under Section 304B and the appellant is entitled to the benefit of doubt as the ingredient, for offence soon before death victim was subjected to cruelty has not been established. The trial Court did not consider the said ingredient that “soon before the death” the victim was subjected to cruelty having been established and hence, the judgment of conviction and order of sentence recorded by the learned trial Court is not sustainable and hence is hereby set aside and the appeal is allowed. The appellant who is in jail, is directed to be released forthwith, if not required in any other case.

(Gopal Prasad, J)

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