

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.594 of 2011

MURLIDHAR SINGH @ MUNNA @ KUMAR MURLIDHAR, SON OF
MAHENDRA NARAYAN SINGH, RESIDENT OF VILLAGE-DHABAULI,
POLICE STATION-SOUR BAZAR, DISTRICT-SAHARSA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

With

Criminal Appeal (SJ) No. 510 of 2011

- 1. MAHENDRA NARAYAN SINGH S/O LATE NUNU PRASAD SINGH.
- 2. ROHINI DEVI W/O MAHENDRA NARAYAN SINGH R/O VILL-DHABAULI, P.S.-SOUR BAZAR, DISTT-SAHARSA.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

Appearance:

(In CR. APP (SJ) No. 594 of 2011)

For the Appellant/s : Mr. Ajay Thakur, Adv.
Mr. Chandra Mohan, Adv.
Mr. Pawan Kumar Singh, Adv.

For the State : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No. 510 of 2011)

For the Appellant/s : Mr. Ajay Thakur, Adv.
Mr. Chandra Mohan, Adv.
Mr. Pawan Kumar Singh, Adv.

For the State : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 19-08-2015

As Criminal Appeal (SJ) No. 510 of 2011 as well as
Criminal Appeal (SJ) No.594 of 2011 arose out of common
judgment of conviction and sentence on account thereof, have
been heard analogously and are being disposed of by a common

judgment.

2. Appellant, Murlidhar Singh is the husband of deceased Kanchan while Mahendra Narain Singh and Rohini Devi are father-in-law and mother-in-law, have been found guilty for an offence punishable under Section 304(B)/34 IPC and each one has been directed to undergo R.I. for ten years, 201 IPC and each one has been directed to undergo R.I. for three years as well as each one has also been fined Rs.1000/- in default thereof, to undergo S.I. for three months, with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 23.04.2011 passed by Additional Sessions Judge, FTC-IIIrd, Saharsa in Sessions Trial No.57 of 1998.

3. Shankar Kumar Singh (PW.8) brother of deceased Kanchan filed written report on 17.11.1995 alleging inter alia that Kanchan was married with Murlidhar on 02.07.1995. At the time of negotiation of marriage they have demanded one Kawasaki Bajaj Motorcycle. At that very time, his father deferred the matter on account of poverty and had further disclosed that in case he will be in a position to provide the same, the same will be provided after marriage. After marriage deceased Kanchan had gone to her Sasural. At that very time they have gifted according to their means. He along with Pappu (not examined) had gone along with his sister. He had further disclosed that *Bidayi* was to be effected within sixteen days over which the father-in-law, the husband, the mother-in-law became enraged and in an authoritative manner said that *Bidayi* will not be effected till providing of motorcycle. After returning therefrom, he had



narrated the event to his family members. His father, along with Rambrat Singh (PW.7) had gone to place of his sister two days prior to *Dushara* where they faced similar kind of treatment. They stayed at night. On the following morning they approached the villagers whereupon they were assured to manage the thing and further directed to return. Accordingly, father and Rambrat Singh returned back. They have also communicated his co-villager Indiradeo Prasad Singh (PW.13), Dharnidhar Singh (not examined) and Ramnath singh (PW.3). It has further been disclosed that on the following day, all of them along with Upendra Narayan Singh (PW.2) had gone to the place of his sister where father-in-law Mahendra Narain Singh, husband Murlidhar Singh were sitting at their *Darwaja* who, seeing them began to harsh and further, declined to effect *Bidayi*. Mother-in-law as well as both Sister-in-laws of his sister also engaged in similar activity and said that in case motorcycle is not provided will not be good for the girl. Then thereafter they have contacted Muneshwar Singh (PW.12) and Upendra Narain Singh of village Dhawouli, Sasural of his sister and disclosed the events who have said that they will manage and accordingly, all of them returned. Then it has been disclosed that yesterday on 16.11.1995 he was informed that his sister died in the night of 14.11.1995 and her dead body has been disposed of without informing them. He along with Surendra Singh (PW.1) rushed to the Sasural of his sister where he came to know that in the night of 14.11.1995 his sister was brutally assaulted. Alarm raised by his sister was heard by Nawal Kishore Singh (PW.9) along with

others. It has also been acknowledged by them regarding disappearance of the accused persons from their house.

4. On the basis of the aforesaid written report, Sour Bazar P.S. Case No.223 of 1995 was registered followed with investigation as well as submission of charge sheet whereupon, the accused persons were put on trial and by the judgment impugned appellants have been convicted while others got acquitted. Hence this appeal.

5. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial of the occurrence. It has also been pleaded that deceased Kanchan was pregnant and she was under treatment of Dr. Moti Verma, Purnea since before. Unfortunately, deceased developed some sort of complication on account of which she was taken to doctor who examined her and further, referred her for specialized treatment and while was being taken she died. Then thereafter brother, father along with family members of deceased were informed and in whose presence funeral was effected. Subsequently thereof, dispute arose as the appellants did not oblige the prosecution to return back the ornaments, hence instant case has been filed intentionally, maliciously in revengeful manner. Defence has also examined DW as well as also exhibited series of documents.

6. In order to substantiate its case, prosecution had examined altogether thirteen PWs out of whom PW.1 Surendra Prasad Singh, PW.2 Upendra Narain Singh, PW.3 Ram Nath Singh, PW.4 Ram Bilash Mandal, PW.5 Onkar Singh, PW.6



Bishambhar Singh, PW.7 Rambrat Singh, PW.8 Shankar Kumar Singh, PW.9 Nawal Kishor Singh, PW.10 Shashi Nath Singh, PW.11 Arjun Singh, PW.12 Muneshwar Singh and PW.13 Indradeo Prasad Singh. Side by side had also exhibited Ext.1 – Written Report, Ext.2–Signature of witness Surendra Prasad Singh over statement recorded under Section 164 Cr.P.C., Ext.3 – Statement recorded under Section 164 Cr.P.C., Ext.4 – Signature of Rambrat Singh over 164 statement, Ext.5 – Signature of Shankar over written report, Ext.6 – signature of Nawal Kishore over statement under Section 164 Cr.P.C., Ext.7 – Signature of Muneshwar Singh over statement under Section 164 Cr.P.C., Ext.8 – Signature of Upendra Narain Singh over statement under Section 164 Cr.P.C., Ext.9 – Deposition of Bishambhar Singh, Ext.10 – Deposition of Nawal Kishor Singh under Section 174 Cr.P.C., Ext.11 – Deposition of Muneshwar Singh, Ext.12 – Deposition of Ramnath Singh under Section 164 Cr.P.C., Ext.13– Deposition of Surendra Prasad Singh under Section 164 Cr.P.C.

7. Defence had also examined altogether twelve DWs out of DW.1 is Dinesh Prasad Singh, DW.2 is Birendra Narayan Singh, DW.3 is Raghunath Singh, DW.4 is Jinasi Mandal, DW.5 is Lachmeshwar Narain Singh, DW.6 is Dr. Dasrath Jha, DW.7 is Amit Kumar Singh, DW.8 is Sanjay Jha, DW.9 is Rajesh Kumar Yadav, DW.10 is Madhusudan Singh, DW.11 is Kartik Prasad Singh, DW.12 is Chandra Bhushan Singh as well as had also exhibited Ext.A – Training letter issued by SDO-cum-Election Officer, Udakishunpur, relating to alibi of Mahendra Narain Singh, Ext.B – Prescription relating to Kanchan Devi,

Ext.C-Report issued by the Mukhiya of the Gram Panchayat, Ext.D-Prescription, Ext.E -Receipt, Ext.F -Pathological report, Ext.G - Pathological report.

8. While assailing the judgment of conviction and sentence, the learned counsel for the appellant submitted that none of the ingredients attracting Section 304(B) of the IPC is found proved from the evidences adduced on behalf of prosecution. Consequent thereupon, the finding recorded by the learned lower court happens to be out of the record. In order to substantiate such plea, it has been submitted that from the evidence of the witnesses, it is apparent that both the parties are interrelated since before. Marriage of the Kanchan was settled by her *Fua* who is married in the same family. That being so, there was no occasion for demand of dowry or advancement of any sort of condition more particularly asking for Bajaj Kawasaki motorcycle and on account thereof, the allegation that a condition was tendered at the end of the accused persons happens to be improbable as well as unacceptable.

9. Furthermore, it has also been argued that informant, brother of deceased had himself during course of trial resiled from his earlier statement and had supported the plea of defence that deceased died on account of ailment which she developed and during course thereof was properly cared by way of providing necessary medical facility which found supported with the other prosecution witnesses, as PW.2, PW.4, PW.5, PW.6, PW.9 and PW.10. Therefore, there was no occasion for the learned lower court to infer contrary to the evidence of the prosecution

witnesses, majority of whom had contradicted the initial prosecution version.

10. Then it has been submitted that evidence of remaining witnesses are of no consequence because of the fact that none are credential one on the point of deceased having been tortured for the demand of dowry and that being so, the conclusion arrived at by the learned lower court on that very score happens to be arbitrary as well as cryptic one.

11. Then it has been submitted that all the DWs have consistently supported the case of the defence that deceased had died of ailment and for that she was provided adequate medical facility by DW.6 a doctor and when she was being taken to Purnea for specialized treatment, she succumb. Furthermore, the treatment of deceased at Purnea by Dr. Moti Verma had also been admitted by the prosecution witnesses and in likewise manner presence of prosecution party during course of funeral. Accordingly, the judgment of conviction and sentence recorded by the learned trial court did not justify its prevalence and is fit to be set aside.

12. Per contra, it has been submitted on behalf of learned Additional Public Prosecutor that the learned lower court has minutely gone through the evidence adduced on behalf of prosecution as well as defence and after critical analysis thereof, came to the conclusion whereunder others have already been acquitted while appellants have been found guilty and accordingly sentenced for. Hence, there happens to be no scope for interference because of the fact that the judgment impugned

happens to be well reasoned as well as on proper appreciation the factual as well as legal aspect.

13. Before coming to the evidence having been adduced on behalf of respective parties, first of all legal obligation has to be perceived. For attracting application of Section 304(B) IPC, the following ingredients are to be fulfilled: -

- a)** The death of deceased should be otherwise than normal circumstance.
- b)** The aforesaid death must be within seven years of marriage
- c)** There should be demand of dowry
- d)** For procurement of such demand of dowry, deceased has been subjected to torture and cruelty
- e)** Which should also be soon before her death deceased was subjected to torture and cruelty on that very score.

14. Furthermore, in terms of section 113(B) of the Evidence Act, a privilege has been given to the court to accept the event as a dowry death wherever there happens to be satisfaction of all the ingredients as indicated above however, subject to rebuttal at the end of the accused.

15. Because of the fact that marriage of deceased Kanchan along with appellant, Murlidhar Singh has not been challenged on account thereof, solemnization of marriage on 02.07.1995 is found admitted one. In likewise manner, as there happens to be DW examined on this score coupled with the evidence having been adduced by the prosecution, deceased died

on 14.11.1995 that means to say about four months of marriage. It is also apparent, although on account of cremation of dead body of Kanchan no postmortem is available, it is own version of the defence that deceased died of some sort of ailment resulting profuse bleeding as she was pregnant at that very time and so, the death otherwise then normal circumstance is also found out of controversy.

16. Now, the evidences have to be scrutinized in order to find out whether the remaining ingredients are visible or not?

17. On this score, the evidences of family members have edge over others. As stated above, brother of deceased has supported the defence version. Now remains evidence of father of deceased, namely, Arjun singh (PW.11). He had deposed that deceased was married with Murlidhar Singh on 02.07.1995. At that very time he had gifted according to his means. His son-in-law Murlidhar had demanded a motorcycle whereupon he had said that the same will be provided later on. Accordingly, his daughter had gone to her Sasural where he had gone two days earlier to *Dushara* for *Bidayi* along with Rambrat. He met with his son-in-law as well as Samdhi at his *Darwaja* who enquired about motorcycle. They have further disclosed that they will not allow *Bidayi* till availability of the motorcycle. Mother of his son-in-law, sisters have also insisted. Though they stayed at night but neither they were supplied food nor shelter. On the following morning, they returned back and disclosed the event to Mukhiyajee, PW.13. Whereupon he including Surendra Singh, Ramakant Singh, Rambrat Singh, Indradeo Singh, Upendra



Singh have gone to place of his daughter. Again they have inquired about motorcycle as well as also shown disrespect. However, they stayed at night and then returned back on the following day. On 16.11.1995 he came to know regarding murder of his daughter which was done on 14.11.1995. He also alleged that all the family members of her Sasural had assaulted the deceased as motorcycle was not provided and disposed of her dead body, hurriedly. After coming to know about the same they have rushed to place of here daughter where Shankar, his son had instituted instant case. It has also been narrated that Shankar had accepted money from the accused persons and on account thereof, became hostile.

18. During his cross-examination, it is apparent from paras 7, 8, 9, 10 that cross-examination of this PW has encircled over inter se relationship. In para-11 he had stated that in their presence talk of negotiation had held. He had further disclosed that he had gone to place of his daughter along with Rambrat. He had further disclosed that he had not lodged Sanha etc. Subsequently thereof, there happens to be contradiction. This PW, being the father of the deceased is the most competent witness on the score of demand as well as torture if any, having at the end of accused for fulfillment of demand of dowry. Because of the fact that the remaining witnesses that means to say PW.1, PW.3, PW.7, PW.12 are not the family members save and except PW.13. So, from evidence of this PW, it is apparent that though there happens to be demand which, at an initial stage was by his son-in-law, appellant Murlidhar Singh but subsequently, as is

apparent all the family members have been involved in omnibus way however, is found lacking with a disclosure whether for fulfillment of aforesaid demand, deceased Kanchan was subjected to torture. That being so, the evidence on its face appears to be deficient one which, even taking into account, the assistance of evidence of others PWs would not improve the prosecution case on account of their status as indicated above.

19. That being so, the judgment of conviction and sentence is hereby set aside. Appeal is allowed. Appellant Murlidhar Singh is under custody, hence is directed to be released forthwith if not wanted in any other case while appellants Mahendra Narain Singh as well as Rohini Devi are on bail, hence are discharged from its liability.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 19th day of Aug., 2015
Prakash Narayan

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