

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.350 of 2014

Against the judgment of conviction 05.05.2014 and order of sentence dated 09.05.2014 passed by Shri Vidyadhar Prasad Pandey, learned Additional District & Sessions Judge, I Katihar, in Sessions Trial No. 325 of 2012.

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Chandan Kumar Yadav Son of Mahesh Yadav Resident of Village-Satbehri Chandpur, P.S.- Falka (Pothia) District - Katihar

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Yogesh Chandra Verma, Senior Advocate.
Ms. Priyenlea Singh, Advocate.
For the State : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 09-11-2015

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

2. This appeal arises out of the judgment of conviction 05.05.2014 and order of sentence dated 09.05.2014 passed by Shri Vidyadhar Prasad Pandey, learned Additional District & Sessions Judge, I Katihar, in Sessions Trial No. 325 of 2012 by which the appellant had been convicted for offence under Section 304 (B) of Indian 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 Madhav Prasad Yadav that his daughter Sadhna Devi aged about 25 years married with the appellant Chandan Kumar about two years back. She had no issue but at the time of occurrence she was pregnant. It is further alleged that soon after the marriage of the daughter of the informant, her husband Chandan Kumar Yadav, father-in-law Mahesh Yadav and mother-in-law Soni Devi used to demand of Rs. 1.5 lakhs and a buffalo. They used to subject to have started her to mental and physical cruelty for non-fulfillment of demand. Since economic status of the informant was not well he showed his inability to fulfill the demand and anyhow managed for making her daughter stands to remain at sasural. It is further alleged that on 09.09.2011, the son-in-law Karelal Yadav who is resident of Village-Pothiya informed that his daughter Sadhna Devi had been murdered by her husband, father-in-law and mother-in-law by assault her. However, having regard to the fact that information of murder received in the late night he reached the sasural of his daughter on the next day and found his daughter lying dead in Verandah of her sausral. The informant makes out search of the husband, father-in-law and mother-in-law of the victim daughter then he found they were absconding from the house. Further case is that he enquired from his elder son-in-law Karelal Yadav and his daughter Rekha Devi and others about the cause of death of the victim Sadhna

Devi then they disclosed that on the last night behind the back of the house of informant at about 7.00 P.M. in the field of Mantu Yadav, the husband, father-in-law and mother-in-law of the victim brutally assaulted her and murdered her. At the place of occurrence haldi plant was found trampled and a torn sari of his daughter was lying there. Then he informed the police station where his statement was recorded. Further case is that it is clear that his daughter Sadhna Devi having been murdered by her husband Chandan Kumar Yadav, Mahesh Yadav father-in-law and Soni Devi mother-in-law in furtherance of their common intention by assaulting her.

4. The Fardbeyan of informant Madhav Prasad Yadav was recorded by S.I. Pratap Singh, Incharge, Pothia O.P. on 10.09.2011 and forwarded to S.H.O. Falka P.S. for institution of the case for offence under Section 304(B) of Indian Penal Code on the basis of the Fardbeyan, F.I.R. lodged and investigation proceeded.

5. During investigation I.O. recorded further statement inspected the P.O. of Haldi field of Mantu Yadav behind the back of the house of the victim. The description of the P.O. has been mentioned. The Inquest report was prepared and dead body was sent for post mortem examination. The post mortem report was obtained and as per, post mortem report cause of death is due to injuries in chest, fracture ribs and lacerated wound of left side of chest and time

elapsed since death is 24 hours. The police after investigation submitted charge sheet. Cognizance taken and case was committed to the Court of Sessions. After commitment charge was framed for offence under Section 304(B) of Indian Penal Code

6. During trial, 13 witnesses were examined by the prosecution as P.W. 1, Shankar Sharma, P.W. 2 Birendra Kumar Yadav @ Bansu Yadav, P.W. Mahgu Yadav, P.W. 4 Madan Yadav, P.W. 5 Mantu Yadav, P.W. 6 Pramod Yadav, P.W.7 Pankaj Yadav. However, P.Ws. 1 to 6 have deposed to the effect that victim died due to illness and victim was married with Chandan about two years prior to her death and in cross-examination they have deposed that while they were returning from the house of his sister they saw victim in unconscious state at Machan. P.W. 7 Pankaj Yadav however deposed to the effect that his sister was murdered by Chandan Yadav, Mahesh Yadav and Soni in furtherance of their common intention as Sadhna Devi was married about two years prior to the occurrence and he found dead body of the victim was lying in Verandah of her sasural and she died due to assault by lathi. The motive of the occurrence that the victim was done to death for non-fulfillment of demand of dowry. P.W. 8 Karelal Yadav had deposed to the effect that Sadhna Devi was murdered by Chandan Yadav, Mahesh Yadav and Soni Devi and murdered has been committed for non-fulfillment of demand of worry.

P.W. 9 is Rekha Devi. She has deposed that victim was done to death by assault my Chandan Yadav, Mahesh Yadav and Soni Devi in the Haladi field of Mantu Yadav and dead body was lying in verandah. Though, she claims to be the eye witness to the occurrence of assault of the person of the deceased, but in her cross-examination she has stated that she did not inform the quarrel between the victim and her husband to the police station or in the Panchayat, though, she had intervened at the time of assault, but she did not inform either to the police or to the Panchayat rather informed her father who reached the P.O. on the next day. She has further stated in her cross-examination that she had not intimated on telephone regarding assault upon Sadhana as per his evidence in paragraph 6. P.W. 10 Sachitanand Yadav is uncle of the victim and stated about demand and subjecting cruelty for non-fulfillment of demand. P.W. 11 is Madhav Prasad Yadav the informant who had deposed that marriage of his daughter Sadhna Devi was solemnised about 2-3 years prior to the occurrence. After marriage, there was demand of Rs. 1.5 lakhs and a buffalo and his daughter even disclosed this fact then he went to the sasural of the victim and making them understand and thereafter the victim was done to death by assault. P.W. 12 is doctor who conducted the post mortem examination at 3.00 P.M. and injuries on her person found the following injuries:-

i) *Redness of face, blood in said cavity, abrasion 1/2" .long x 1/2" breadth, left side of amlicus 1/2" round abrasion below the amlicus, swelling right elbow region, abrasion 1/2" x 1/4" over middle of the chest between both breast, swelling on neck, swelling, redness left size back of the chest- 5" breadthand 3" long.*

Dissection of chest"- Blood in cervical region over tracia, fracture right size fourth rib, blood in chest cavity right size, lacerated wound in right lung, patchy echmosis in right burial area lung congested, heart blood in right size of chamber, right size empty.

7. P.W. 13 is the I.O. who investigated the case.

8. The trial court taking into entire evidence convicted the appellant as mentioned above holding that from the evidence of P.Ws. 7 to 11, Sadhana Devi got marriage with accused Chandan Kumar Yadav about two years prior to the occurrence and there was evidence of demand of dowry of Rs.1.5 lakhs and victim was subjecting cruelty and was killed by them. Further taking into consideration the evidence of P.W.9 Rekha Devi who is sister of the victim had deposed that victim was assaulted before her by them the victim died and doctor opined that injuries caused by lathi assaulted by her in-laws and hence convicted the appellant.

9. Learned counsel for the appellant however challenged the order of conviction and sentence recorded by the trial court on the ground that there was delay in recording the Fardbeyan by the informant. It has further been contended that there is delay in sending the F.I.R. to the learned Magistrate and hence there is violation of 157 of Cr. Procedure Code. It has further been contended that prosecution had adduced evidence and there are two versions or almost two theories have been developed by the prosecution and hence contended that two different versions or theories are conflicting to each other then appellant is entitled for benefit of doubt and prosecution has not been able to prove the charges. It has further been contended that I.O. had corroborated in his evidence the evidence of P.Ws. 1 to 6 and had stated in paragraphs 24, 25, 26, 27, 36 and 56 of the case diary and witnesses have deposed that victim sat on the Machan and fell down and said Machan was at the height of about 4-5 feet and has submitted that since I.O. has stated that witnesses have deposed that victim had died by falling down from Machan and this evidence be treated as corroboration by P.Ws. 1 to 6. It has further been contended that evidence regarding P.W.9 being eye witness to the occurrence is not acceptable in view of the fact that no witnesses have supported the prosecution case recording by the I.O. and evidence of P.W.9 and there is no corroboration in the evidence of I.O. It is



further submitted that the husband of the victim has not stated regarding assault in the Haldi field. Further P.W. 9 in her evidence has stated that she neither informed the police nor the Panchayat regarding death of the victim by assault in the Haldi field nor even she disclosed this fact on telephone regarding assault of victim in the Haldi field. Hence her evidence being an eye witness to the occurrence is not accepted. It has further been contended that prosecution has not been able to establish one most important ingredient for offence under Section 304(B) of Indian Penal Code that “soon before the death the victim was subjected to cruelty for non-fulfilment of demand of dowry and hence offence under Section 304 (B) is not established.

10. Learned counsel for the State however contends that there is evidence that marriage solemnised within two years of the occurrence as per evidence of the the doctor victim died by assault causing fracture on rib and assault and other part of the body. Further fact that victim had been done to death by assault leading to evidence of P.W.9 that victim was assaulted and Trial Court convicted the appellant that victim had been done to death for non-fulfilment of demand of dowry and victim was assaulted soon before the death to prove the ingredient for offence under Section 304(B) of Indian Penal Code.

11. However, taking into consideration the respective

submissions, I proceed to consider the evidence in the light of submission made by the both parties.

12. However, the prosecution is that informant father of the victim has reported time of occurrence as marriage of the victim solemnised with Chandan Yadav about two years back and there was allegation of demand of dowry of Rs.1.5 lakhs and a buffalo and she was subjected mentally and physically cruelty. On 09.09.2011 he learnt from his son-in-law Karelal Yadav P.W.8 that victim was done to death by assault. Further out of 13 witnesses as discussed above P.Ws.1 to 6 have not been come to support the prosecution case regarding demand and subjecting cruelty, though, they had stated marriage of the victim solemnised within two years prior to the occurrence and victim died due to illness so from the evidence of P.W.1 to 6, it is apparent that marriage solemnised within two years of the death of victim and their evidence neither support the prosecution case regarding demand and subjecting cruelty nor support the ingredient for offence under Section 304 (B) of Indian Penal Code that “ soon before the death the victim was subjected to cruelty for non-fulfillment of demand of dowry. However, P.W.7, though, has stated that victim had been done to death by the appellant, though, they had supported the prosecution case regarding marriage solemnised within two years or death of the victim, though, victim

was lying in verandah of the appellant. Further there is evidence soon before the death the victim was subjected to cruelty. P.W. 8 is Karalal Yadav who had stated that he informed the informant regarding murder of the victim as apparent from the Fardbeyan of the informant. P.W. 9 is Rekha Devi, though, she claims to eye witness to the occurrence that appellant assaulted the victim in the Haldi field, though, she had stated that there was demand and subjecting to cruelty and victim had been done to death for non-fulfillment of demand. However, except last occurrence of assault in which she claims to be eye witness to the occurrence by which the victim died, but there is no other evidence regarding subjected cruelty for non-fulfillment of demand prior to the death of the occurrence. However, with regard to the occurrence of alleged assault she has stated that she did not given information either to the police or Panchayat with regard to the occurrence, though, she had tried to intervene to save the victim, though, she had stated that she informed her father about the quarrel, but has not informed on telephone about the fact of assault. The evidence of P.Ws. 10 and 11 are also to the same effect as per evidence of P.W.9. P.W. 10, though had stated about demand and subjecting to cruelty, but there is no specific evidence that soon before the death the victim was subjected to cruelty. P.W. 11 is the informant. He had deposed in his evidence regarding demand of

dowry of Rs.1.5 lakhs and a buffalo and victim was done to death for non-fulfillment of demand. However, the evidence of P.W.11 having regard to the fact that soon before the death, the victim was subjected to cruelty is missing. P.W. 12 is the doctor and P.W.13 is the I.O.

13. Taking into consideration the entire evidence, though, there is evidence that marriage solemnised within two years on the date of occurrence and victim died in suspicious circumstance and there is allegation of demand of dowry, but except P.W. 9 who had claimed to be eye witness to the occurrence regarding assault on the person of the victim by which she died, there is no other evidence regarding assault of the victim soon before the death the victim was subjected to cruelty. However, evidence of P.W. 9 is solitary evidence regarding assault in which P.W.9 claims to be the eye witness to the occurrence. However, P.W.9 in her evidence claims to be eye witness to the occurrence, but in her cross-examination neither she informed the police nor Panchayat, nor reported to any one except that she disclosed to her father about the death but not regarding assault of the victim in the Haldi field. Hence the solitary evidence of P.W.9 regarding assault has not been corroborated by the husband of P.W.9. The husband of P.W.9 though stated about demand but there is no whisper by the husband of P.W.9 regarding assault or subjecting cruelty and his evidence regarding subjecting to cruelty for non-

fulfillment of demand also missing and has not whisper about victim having been subjected to cruelty soon before the death.

14. Learned counsel for the appellant however contends that there is delay in lodging the F.I.R. Delay has been explained by the informant in the First Information Report itself that he got information about death of the victim in the late night and due to night he could not proceed and on the next day when he went to sasural of his daughter then after seeking dead body of his daughter he enquired from the person who present there then he went to lodge the F.I.R. Hence, explanation has been given for cause of delay in lodging the F.I.R. It has further been contended that there is delay in sending the F.I.R. to the C.J.M. as the occurrence dated 09.09.2011, F.I.R. lodged on 10.09.2011 and F.I.R. received in the court of C.J.M. on 12.09.2011, though, there is one day delay in lodging the F.I.R. Further contention that there are two versions. One version of P.Ws. 1 to 6 who have deposed that in their cross-examination that victim died due to illness and they have deposed to the effect that while the victim came from her house to Machan and thereafter, she became unconscious. So far evidence of P.W.11 has not corroborated by the evidence of the P.W. 12 doctor who conducted the post mortem examination and as per evidence of the doctor, the victim was assaulted and death by assault causing injury on her chest and



fractured of fourth ribcage and evidence of P.W. 11 does not corroborate with the evidence of the doctor and so evidence P.W. 11 is not acceptable. However, second version or theory for which F.I.R. lodged and investigation proceeded that marriage of the victim was solemnised within two years and death of the victim is in suspicious circumstance and there is allegation of demand and subjecting cruelty to make out an offence for offence under Section 304(B) of Indian Penal Code in which F.I.R. lodged. However, evidence of P.Ws. 7 to 11, though, adduced regarding marriage solemnised within two years and death in suspicious circumstance as alleged by assault which is corroborated by the evidence of the doctor and hence as per evidence of P.W. 11 and P.W. 11 of assault on the person of the victim it can well be inferred as death of the victim is in suspicious circumstance. So far, regarding demand and subjected to cruelty, however, ingredient for offence under Section 304(B) of Penal Code in relation to soon before the death the victim was subjected to cruelty for non-fulfillment of demand is required to be established for proving for offence under Section 304 (B) of Indian Penal Code.

15. However, going to Section 304(B) of Indian Penal Code read with Section 113(B) of Evidence Act to prove the offence under Section 304(B) of Indian Penal Code the prosecution has to establish

that marriage solemnised within seven years of death. Further death in suspicious circumstance followed with there must be demand and subjecting cruelty for non-fulfillment of demand and then demand and subjecting cruelty for non-fulfillment of demand must be soon before the death of the occurrence.

16. P.Ws. 1 to 6 have not whisper about any demand and subjecting to cruelty. P.W. 7 and 8 though, have whisper about demand, but they have not whisper regarding subjecting to cruelty of the victim. P.Ws. 10 and 11 also have not stated that soon before the death the victim was subjected to cruelty for non-fulfillment of demand. P.W. 9 claimed to be eye witness to the occurrence of assault before the death of the victim on the date of occurrence by which the victim died and if her evidence is believed then it makes out an offence under Section 302 of Indian Penal Code, but neither charged framed under Section 302 of Indian Penal Code nor there is any corroboration to her evidence on assault on the person of the victim even her husband neither supported nor corroborated nor she whisper about the assault to any body in the village nor even to her father to whom she communicated about her death. Except the evidence of P.W.9 that the victim was subjected to cruelty for non-fulfillment of demand, there is no evidence to suggest that soon before the death, the victim was subjected to cruelty for non-fulfillment of demand and her

evidence regarding assault causing death as eye witness is solitary evidence to this witness without any corroboration and her evidence is suffer from various infirmities to accept the evidence of this witness as eye witness to the occurrence. Hence her evidence to the effect is not accepted to establish that soon before the death of the victim she was subjected to cruelty for non-fulfillment of demand.

17. Hence, having regard to the fact that prosecution has not been able to establish the most vital ingredient for offence under Section 304(B) of Indian Penal Code “that soon before the death the victim was subjected to cruelty for non-fulfillment of demand”. Hence the evidence on this fact is neither proved nor accepted. Hence, presumption of assault for offence under Section 113(B) of Evidence Act cannot be drawn and it is well settled to try inference for offence under Section 113(B) of Evidence Act it is required to be established with most vital ingredient for offence under Section 304 (B) of Indian Penal Code to establish that “soon before the death the victim was subjected to cruelty for non-fulfillment of demand.

18. Regard being had to the fact that this ingredient for offence under Section 304 (B) of Indian Penal Code has not been established and presumption of dowry death under Section 304(B) of Indian Penal Code as well as Section 113 (B) of Evidence Act cannot be recorded conviction for offence under Section 304 (B) of Indian Penal Code.

19. Hence, I find and hold that prosecution has not been able to prove the charge for offence under Section 304(B) of Indian Penal Code and learned Trial Court had not gone into the question regarding most vital ingredient for offence under Section 304 (B) of Indian Penal Code that “soon before the death the victim was subjected to cruelty for non-fulfillment of demand of dowry and to the presumption under Section 113 B of Evidence Act is not permissible. Hence prosecution has not been able to prove the charge for offence under Section 304(B) of Indian Penal Code. Hence order of conviction and sentence recorded by the Trial Court is hereby set aside. The appeal is allowed. The appellant who is in custody be set at liberty forthwith if not required in any other cases.

(Gopal Prasad, J)

m.p.
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