

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.401 of 2008

(Against the judgment of conviction and order of sentence, dated 08.02.2008, passed by Prem Darshan Singh 'Diwakar', Additional Sessions Judge, Fast Track Court-III, Munger in Sessions Case No. 832 of 2004, arising out of Kotwali P.S. case No. 228 of 2004)

=====

Deepak Kumar @ Bhutto, Son of Late Chhedi Mistri, resident of Vilalge- Chhoti Mirjapur, P.S.- Kasim Bazar, District- Munger. Appellant

Versus

The State of Bihar Respondent.

=====

Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Amicus Curiae.

For the Respondent/s : Mr. Abhimanyu Sharma, Addl. P.P.

=====

CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 29-04-2015

The appeal has been filed against the judgment of conviction and order of sentence, dated 08.02.2008, passed by the Additional Sessions Judge, Fast Track Court-III, Munger in Sessions Case No. 832 of 2004, arising out of Kotwali P.S. case No. 228 of 2004, whereby the learned trial court convicted the appellant under Section 304-B of the Indian Penal Code and sentenced to suffer imprisonment for life.

2. The prosecution case in short as made out in the fardbeyan of Mostt. Aruna Devi @ Rupa Devi, wife of late Ram Prasad Tanti, resident of Delawarpur Bara, P.S.- Kotwali, District- Munger, recorded by S.I. P.R. Chouhan, officer-in-charge of Kasim Bazar police station, on 28.04.2004 at 07.50 A.M. in the house of

accused at Chhoti Mirjapur, is as follows:

3. According to the informant, her daughter Siku Devi was married to this appellant, namely, Deepak Kumar @ Bhutto, son of late Chhedi Mistri of Chhoti Mirjapur, about one year ago. In the marriage, she gave dowry as per her capacity. However, just after 3-4 months of marriage, her son-in-law began to torture her daughter for a sum of Rs.5,000/- by way of dowry. As the informant was unable to fulfill the same, her son-in-law used to assault her daughter and her daughter always used to inform her about the demand of dowry and assault made by her husband. The informant further alleged that because of the assault her daughter, who was carrying 7 months pregnancy got aborted. Thereafter, her daughter came and began to live with her. However, in the evening of 27.04.2004 at 7.00 P.M., her son-in-law came and made a request for Bidai of her daughter. The informant agreed and took her daughter back on the same day. On the following day, one Suresh Kumar, elder brother of her son-in-law, came to her house and informed her that her daughter has been done to death by her husband Deepak Kumar.

4. On receipt of the informant, the informant came to her daughter's Sasural and narrated the entire incident to the officer-in-charge of Kasim Bazar police station. The informant claimed that her son-in-law and Samdhin (mother of her son-in-law) killed her daughter for non-fulfillment of dowry.

5. On the basis of the fardbeyan of Mostt. Aruna Devi @ Rupa Devi, the police registered Kotwali (Kasim Bazar) P.S. case No. 228 of 2004 dated 28.04.2004 under Sections 304-B/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act.

6. The police after investigation submitted final form in favour of the mother-in-law of the deceased, namely, Mostt. Anar Devi, whereas submitted charge-sheet against the appellant under Section 304-B/34 of the Indian Penal Code and 3/4 of the Dowry Prohibition Act. Thereafter cognizance was taken and the case was committed to the Court of Sessions.

7. The learned trial judge framed charge under Section 304-B of the Indian Penal Code, to which the appellant pleaded not guilty.

8. The Prosecution in support of its case examined altogether 08 (eight) witnesses, namely, P.W. 1 is Gurudeo Mistry, P.W. 2 is Pancha Devi, P.W. 3 is Govind Prasad Tanti, P.W. 4 Chandu Prasad Tanti, P.W. 5 is Malti Devi, P.W. 6 is Shankar Kumar Gupta, P.W. 7 is Aruna Devi @ Rupa Devi (informant) and P.W. 8 is Rajiv Ranjan Verma. The prosecution also brought on record Fardbeyan, which has been marked as Ext.-4, Post-mortem report Ext. 2 as well as the inquest report, which was prepared in carbon process. However, the defence did not choose to examine any witness.

9. The Court examined Prem Raj Chouhan, who is a police officer and recorded the fardbeyan of the informant and also the

investigating office of the case.

10. The case of the appellant in his statement under Section 313 of the Cr.P.C. is complete denial of the accusation. The trial court on consideration of materials on record, convicted the sole appellant under Section 304-B of the Indian Penal Code and sentenced him to imprisonment for life. Being aggrieved, the appellant filed the instant appeal.

11. Out of eight witnesses produced by the prosecution, P.Ws. 1 to 5 have turned hostile. The prosecution in order to bring home the charge, largely relied upon the evidence of informant Aruna Devi (P.W. 7), who fully supported the prosecution case. She stated that her daughter was married about a year ago with Deepak Kumar, the sole appellant. Just after 3-4 months of marriage, the appellant began to torture her daughter for dowry. Being pained with the torture of her in-laws, her daughter returned to her parental house, 4-5 months prior to the occurrence. However, on 27.04.2004 the appellant came to informant's house and requested for Bidai of her daughter. The informant unwillingly relented. The appellant while taking back his wife, repeated the demand for a sum of Rs.5,000/- and also threatened her with dire consequences, in case of failure to make the payment.

12. P.W. 6 Shankar Kumar Gupta, whose sister is also married in the village of the appellant, too supported the prosecution

case. In his evidence, he stated that informant's sister, who lived in the same village at a distance of 2-3 K.Ms., often spoke tale of torture by the appellant.

13. The prosecution has examined the doctor P.W. 8, namely, Rajeev Ranjan Verma to prove that the victim Siku Devi did not die natural death. The doctor P.W. 8 (Sri Rajeev Ranjan Verma) stated that on 28.04.2004 he was posted as Medical Officer in Sadar Hospital, Munger. On that day at about 2.00 P.M., he conducted post-mortem on the dead body of Siku Devi and found the following ante-mortem injuries:

- (i) Bleeding from nostril and mouth.
- (ii) Lacerated wound over mandible (near angle) on lower cheek.
- (iii) Small swelling on upper forehead.

On dissection, the doctor found blood clots. In the opinion of the doctor, the death was caused due to asphyxia, as a result of suffocation by pressing of mouth and nostrils. Time elapsed since death was within 24 hours.

14. On the basis of the Medical evidence, Mr. Abhimanyu Sharma, learned Additional Public Prosecutor, submits that the post-mortem report established that the deceased was done to death by pestering her mouth and nostrils and the time elapsed since death mentioned in the post-mortem report also tallied with the time given in the prosecution case.

15. We find substance in the submission of the learned Additional Public Prosecutor that the deceased was done to death due to closing of her mouth and nostrils, and the time mentioned in the F.I.R. tallied with the time indicated in the evidence of the doctor.

16. The issue is whether the prosecution has been able to bring the home charge under Section 304-B of the Indian Penal Code against this appellant.

17. Counsel for the appellant submitted that there is no eye witness to the occurrence. He submits that in fact the police has suppressed the original version of the informant. Even the main copy of inquest report has not been brought on record. According to him, all these serious infirmities shake the credibility of the prosecution case. In support of his submissions, learned counsel has relied upon a decision in case of Sevi & Another Vs. State of Tamil Nadu & Another, reported in 1981 Supp. SCC 43 and in case of Satpal Vs. State of Haryana, reported in (1998) 5 SCC 687.

18. It is true that P.W. 7 in her examination-in –chief stated that on hearing information of her daughter's death, she went to the police station and made her statement. However, we find that attention of the investigating officer, who was examined as C.W.1 was not drawn to it. In our considered view, in absence of any such suggestion to the police with respect to alleged suppression of the earlier version of the informant would not go to the root of the

prosecution case. Besides this, in F.I.R. there is specific assertion that her statement was recorded at the village Choti Mirzapur at the house of the accused, which gave rise to the instant case.

19. The case of Sevi & Another (supra) would also not be of much help to the appellant, as in the aforesaid case in spite of repeated directions to the police, the latter could not produce the original F.I.R. in the Court, which is not the case in the instant case. The appellant had next placed reliance upon case of Satpal Vs. State of Haryana (supra) in support of his contention that if all ingredients of offence are not made out, no guilt under Section 304-B of the Indian Penal Code can be fastened. There cannot be any dispute to the said proposition. In the aforesaid case, the evidence of the brother of the deceased that her sister was subjected to humiliation and mental torture for non-fulfillment of demand of dowry, was the only evidence available on record. The Hon'ble Apex Court held that in absence of sufficient evidence to establish charge under Sections 306 and 304-B of the Indian Penal Code, no conviction can be fastened under the aforesaid provisions. The situation is different in this case. In the instant case, the informant stated that her daughter often used to complain to her about the demand of dowry and the torture meted to her. The said evidence is also corroborated by the evidence of P.W. 6 Shankar Kumar Gupta, whose sister is also married in the same village.

20. We do not find any material inconsistency in evidence of P.W. 4 and P.W. 7 to hold them unreliable. Furthermore, the investigating officer (CW-1), who inspected the place of occurrence also found the things scattered and disturbances in the room, which is a clear indication that all did not go well in the house.

21. In view of the forgoing discussions, we find that evidence of the mother of the deceased (P.W.7), the evidence of Shankar Kumar Gupta (P.W. 6), the medical report and the evidence of investigating officer, establish that accused tortured and killed her for non-fulfillment of demand of dowry, which the defence has not been able to rebut.

22. However, learned counsel for the appellant submits that prior to lodging of the case, no complaint was ever made against the appellant by the prosecution side. He further submits that the appellant has already put in 11 years of continuous incarceration, since he is in judicial custody since 01.05.2004.

23. The submission of the appellant is worth consideration. We too find that prior to lodging of the instant case, no complaint was made against the appellant. Furthermore, he is in continuous custody for about 11 years. In our view, it will meet the ends of justice, if the sentence of imprisonment of life is reduced to the period already undergone. The appellant is directed to be set at liberty forthwith, if not wanted in other case.

24. With the aforesaid modification in sentence, this appeal is dismissed.

25. Send back the lower court record with a copy of the judgment to the learned trial court.

(Samarendra Pratap Singh, J.)

(Amaresh Kumar Lal, J.)

Uday/-

U		T	
---	--	---	--