

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No. 380 of 2015

Against the judgment of conviction and order of sentence dated 30.04.2015 passed in Session Trial No. 26 of 2012 arising out of Itadhi P.S. Case No. 166 of 2011 by the learned 6th Additional District and Sessions Judge, Buxar

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Chandan Kharwar, Son of Late Sitaram Kharwar, R/o Village - Orap, P.S. Itadhi,
Distt. - Buxar

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Yogendra Prasad Sinha, Advocate

For the Respondent : Mr. Abhay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 12-04-2016

Heard learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 304-B of the Indian Penal Code and sentenced to undergo simple imprisonment for seven years.

3. The prosecution case, as alleged in the First Information Report by the informant, Gyatari Devi (P.W.2), is that her younger daughter was married with the appellant and at that time sufficient gift was given. After few months of the marriage, her son-in-law i.e. the appellant and his mother Manju Devi used to demand motorcycle and on non-fulfilment of the same, they subjected her to cruelty. On 25.12.2011 at about 2:00 P.M. her son-in-law and his mother sprinkled kerosene oil on the body of her daughter and burnt her. The informant received information about the occurrence from her elder daughter Hiran Devi.

Both the daughters of the informant were living in the neighbourhood.

Hiran Devi told her that her younger daughter Annu Devi had died, whereupon she went to her daughter's Sasural and thereafter got her fardbeyan recorded. On the basis of the fardbeyan, First Information Report was lodged and investigation proceeded. During investigation, police recorded the statements of the witnesses, prepared the inquest report and sent the dead body for post-mortem and after completion of the investigation, charge-sheet submitted under Section 304-B of the Indian Penal Code. During trial, seven witnesses were examined on behalf of the prosecution.

4. P.W.1 Shivjee Kamkar is maternal uncle of the deceased Annu Devi, P.W.2 Gyatari Devi is the informant herself and is mother of the deceased, P.W.3 Hiran Devi, who is elder sister of the deceased, declared hostile, P.W.4 Dr. Ram Kumar Gupta, who had conducted the post-mortem examination over the dead body of the deceased Annu Devi, P.W.5 Jagnarain Ram and P.W.6 Santosh Kharwar were declared hostile and P.W.7 Investigating Officer of the case deposed that Hiran Devi had given information to the Police Station about the occurrence.

5. P.W.1 deposed in his evidence to the effect that he received information from Hiran Devi, the elder sister of Annu Devi that due to demand of motorcycle the victim had been done to death by sprinkling kerosene oil and when he went there he found Annu Devi dead.

6. P.W.2 has stated that in the Sasural, her daughter was subjected to cruelty for non-fulfilment of demand of motorcycle and both son-in-law and his mother have killed her by sprinkling kerosene oil and in this regard information was received from her elder daughter Hiran Devi.

7. P.W. 3 Kiran Devi has been declared hostile by the prosecution.

8. P.W.4 is the Doctor who conducted the post-mortem on the person of the deceased (Annu Devi). However, he opined that there was no smell of kerosene oil or other flammable object and the cause of death has been said to be hypoblastic shock due to dry flame burn and in cross-examination he has stated that the death of the victim has been caused by dry flame and such type of burn injury can be caused by dry flame of woods.

9. P.Ws.5 and 6 have also been declared hostile. P.W.7 is the Investigating Officer who conducted the investigation.

10. Hence, from the evidence, it appears that none of the witnesses has supported the prosecution case, except P.W.2 the informant. In her evidence she has only stated to the effect that the Sasural people used to vex her daughter for motorcycle. However, there is only evidence regarding the demand and subjecting cruelty. P.W.2 stated that she learnt about the occurrence from her elder daughter Hiran

Devi. However, Hiran Devi has turned hostile and has not supported the prosecution case.

11. However, to prove the case under Section 304-B of the Indian Penal Code, what is required to prove is as to whether the death of a woman is caused by any burn or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is to be 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 for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death. However, the evidence of P.W.1 is hit by hearsay as he has stated that he learnt from Hiran Devi that the victim has been done to death. However, said Hiran Devi has not supported the prosecution case and has been declared hostile by the prosecution. P.Ws. 3, 5 and 6 are the non-official witnesses and have been declared hostile by the prosecution and hence, the only witness left is P.W.2. Her evidence is to the effect that the marriage solemnized two years prior from the date of her deposition and she had gifted Rs.20,000/- cash and gold at the time of marriage and she went to Sasural. The appellant and her mother used to vex her. However, the evidence of P.W.2 is quite vague and omnibus and hence, the evidence regarding the demand and subjecting cruelty is missing and the evidence of P.W.2 regarding the demand and subjecting

cruelty apparently appears to be vague and hence, the ingredients for the offence under Section 304-B of the Indian Penal Code regarding the demand and subjecting cruelty is missing and further there is no evidence that soon before the death the victim was subjected to cruelty so as to record a conviction under Section 304-B of the Indian Penal Code or a presumption under Section 113 of the Indian Evidence Act cannot be drawn and, hence, I find and hold that the prosecution has not been able to prove the charges levelled against the appellant beyond all reasonable doubts. The judgment of conviction and order of sentence dated 30.04.2015, passed in Sessions Trial No. 26 of 2012, arising out of Itadhi P.S. Case No. 166 of 2011 by the learned 6th Additional District and Sessions Judge, Buxar are hereby set aside and the appeal is allowed. Appellant, namely, Chandan Kharwar, who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

Kundan Sharma

AFR/NAFR	NAFR
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