

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.622 of 2013

Against the judgment of conviction, dated 06.06.2013, and order of sentence, dated 10.06.2013, passed by Mr. Nand Kishore Tiwary, Ad Hoc Additional Sessions Judge, I, Sitamarhi, in Sessions Trial No. 152 of 2010/104 of 2010 arising out of Sitamarhi P.S. Case No. 360 of 2009 (G.R. No. 1594 of 2009)

1. Laxman Sahni @ Lachuman Sahni, Son of Late Shivadhari Sahni, Resident of Village-Bhale, P.S. Runnisaidpur, District-Sitamarhi Appellant

Versus

1. The State Of Bihar

.... Respondent

Appearance :

For the Appellant : M/S Raju Kumar Goswami & Pancham Lal Jaiswal, Advs.

For the Respondent : Mr. Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 18-03-2016

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 304B of the Penal Code and sentenced to undergo rigorous imprisonment for ten years. He has, further, been convicted under Section 201 of the Penal Code and sentenced to undergo rigorous imprisonment for two years and a fine of Rs.1,000/- and in case of default of payment of fine to undergo simple imprisonment for six months. However, it has been ordered that all the sentences shall run concurrently.

3. The prosecution case as alleged in the first information report by the informant, Newa Lal Sahni, that he has married his daughter, Ritu Devi @ Rita Devi, aged 27 years, about six years prior to the occurrence with appellant, Laxman Sahni. At the time of marriage, he as per his ability, given bicycle, Rs.5,000/- cash, clothes and jewelleryes. The, further, case is that after the marriage the sister-in-law, Laxman Sahni, used to demand a buffalo. The informant always assured the appellant that after arranging the money, he will purchase the buffalo. The, further, case is that for non-fulfillment of the demand of buffalo, his brother-in-law, Laxman Sahni, used to assault the daughter of the informant and, in this regard, the daughter of the informant used to inform or complain against her husband to the informant and her brother. He has, further, stated that they used to call

sister-in-law and make him understand. In the meantime, the daughter of the informant got pregnant. The informant, one year prior to the occurrence, took the victim to his house. The, further, case is that about eight months prior to the occurrence she gave birth to a male child. The victim gave birth to a child at the house of the informant. The, further, case is that after one month of giving birth of the child, the brother-in-law of the informant, Laxman Sahni, took the victim, the daughter of the informant to his village home. However, about one month prior to the occurrence his brother-in-law took the daughter of the informant and his maternal grandson and went to live at Sitamarhi Court Bazar and took the house of Narayan Mahto on rent and began to live there and started plying rickshaw at Sitamarhi. The, further, case is that after fifteen days prior to the occurrence, the informant went to meet her at the said rented house of Narayan Mahto, then, his daughter disclosed that Laxman Sahni used to come late in night under the influence of liquor and demand buffalo and assert for non-fulfillment of the demand. On the said night the informant stayed there and makes his brother-in-law understand. The, further, case is that Laxman Sahni, on the last Saturday prior to the lodging of the first information report, went to the village Lagma to the house of his sister and sister-in-law and kept the maternal grandson of the informant in the house of his sister and there was discussion in the village that the lady, Ritu Devi, is not there, but, the son is only there, then, the informant went for search of his daughter and on 12.06.2009 he met with Laxman Sahni and he was caught and on enquiry Laxman Sahni disclosed that after killing the victim put her in gunny bag to put the dead body under the water at Medua under a jalkumbhi and, thereafter, flee away. The, further, case is that when the informant along with others went to the place where Laxman Sahni disclosed, found the dead body in gunny bag and it was identified as the daughter of the informant. He has, further, stated that he informed about the occurrence at the Police Station. The fardbeyan of the informant was lodged at Sitamarhi Court Bazar Campus Nagar ward no. 14 at the bank of Marni River to the north of Muraliya Chak burial ground. On the fardbeyan recorded by Sub Inspector of Police,

Vishwanath Thakur of Sitamarhi Police Station, Camp Court Bazar Champa Nagar war no. 14. On the fardbeyan, Sitamarhi P.S. Case No. 360 of 2009, dated 12.06.2009, was lodged and after lodging the case, investigation proceeded.

4. During the investigation, the investigating officer recorded the further statement of the informant, inspected the place of occurrence, recorded the statement of the witnesses, got the post mortem of the victim conducted and after completing the investigation submitted the charge sheet.

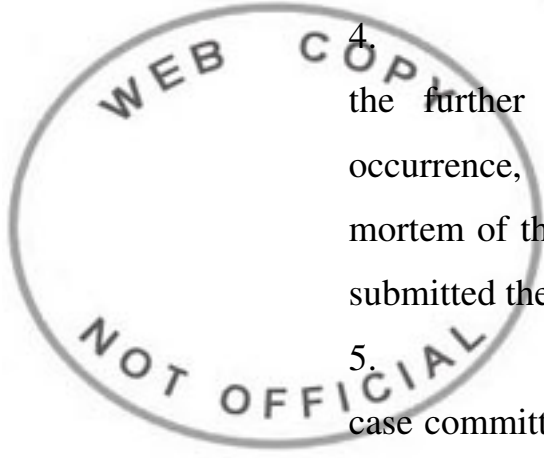
5. After submission of the charge sheet, cognizance taken, case committed to the Court of sessions and, thereafter, the charge was framed for offence under Sections 304B and 201 of the Penal Code against the sole appellant, Laxman Sahni.

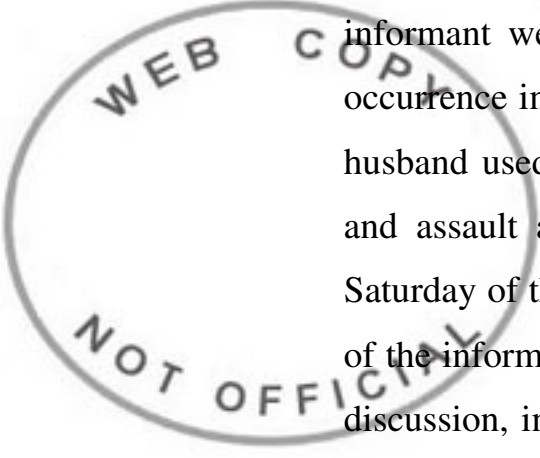
6. During the trial seven witnesses were examined by the prosecution. They are P.W. 1 Kailash Sahni, P.W. 2 Lalwati Devi, P.W. 3 Maino Devi, P.W. 4 Newa Lal Sahni, P.W. 5 Parvati Devi, P.W.6 Dr. Shakil Anjum and P.W. 7 Harendra Kumar Singh, the investigating officer.

7. The trial Court, taking into consideration the evidence that the prosecution has proved the basic ingredients that the deceased Ritu Devi died in her sasural within seven years of her marriage and she was murdered for non-fulfillment of demand of dowry, as she buffalo has not been given, and she was subjected to cruelty, soon before her death.

8. The learned counsel for the appellant has challenged the order of conviction and submits that the prosecution has not been able to prove the charge as the ingredients under Section 304B of the Penal Code has not been proved to take presumption under Section 113 of the Evidence Act.

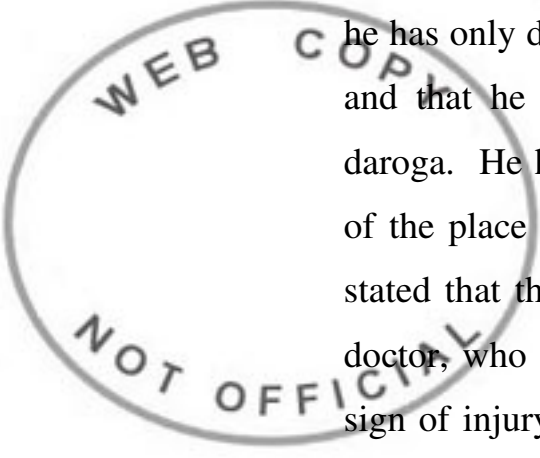
9. The prosecution case as alleged in the first information report in great detail that after the marriage a demand of a buffalo was made and for non-fulfillment of the demand, the victim was subjected to cruelty and, thereafter, one year prior to the occurrence, the victim became pregnant and she was taken to naiher that is the house of the informant and about eight months prior to the occurrence she gave birth





to a child and, further, about one month prior to the occurrence the husband took the victim and about fifteen days prior to the occurrence he took the victim to Sitamarhi Court Bazar and kept the victim in the house of Narayan Mahto on rent and, further, case is that when the informant went to meet his daughter about fifteen days prior to the occurrence in the house of Narayan Mahto, then, she disclosed that her husband used to come under the influence of liquor, demands buffalo and assault and, thereafter, the case of the prosecution that on last Saturday of the occurrence the appellant brought the maternal grandson of the informant and kept him in the house of his sister, then, there was discussion, in this regard, and, thereafter, search was made of Laxman Sahni and he confessed that he has killed the victim and kept her in a gunny bag in jalkumbhi. However, P.W. 4 is the informant. He has stated in his evidence that after the marriage his daughter went to sasural and then blessed with a son. He has, further, stated that Laxman Sahni used to demand buffalo and on non-fulfillment of the demand, the husband used to assault his daughter and his daughter used to inform him. He has, further, stated that he has called his daughter from sasural and, thereafter, after two months Laxman Sahni took the victim to a house on rent in Sitamarhi Court Bazar and, thereafter, he kept his grandson aged three months in the house of his sister and the sister of the appellant told that the victim has flee away and then it was learnt that Laxman Sahni has come and he caught hold of Laxmi Sahni and, then, Laxmi Sahni disclosed that some one might have killed and on pressure he confessed that he has kept the dead body in a gunny bag under the jalkunbhi. However, evidence adduced by the informant in examination-in-chief has not fully stated the story. The only evidence that Laxman Sahni used to demand buffalo as dowry and on non-fulfillment of the demand he used to assault. He has, further, stated that he called his daughter to his village from sasural and has stated that after two months Laxman Sahni took his daughter. However, there is no reference to any time mentioned. In the first information report also though it has been mentioned that the victim became pregnant about one year back and about eight months prior to the occurrence she gave

birth to a child and after giving birth to a child Laxman Sahni took the victim and then went to live in the Sitamarhi Court Bazar, but, in the evidence before the Court he has not stated that about fifteen days prior to the occurrence he went to meet the victim. P.Ws. 1 and 2 though have supported the prosecution case regarding the marriage having been solemnized and though there is allegation about subjecting cruelty for non-fulfillment of the demand, but, without any reference to time. P.W. 2 also though have stated and deposed regarding the demand of buffalo and assault for non-fulfillment of demand, but, without any reference to time. However, the evidence of P.W. 3 there is no mention about any demand of subjecting cruelty. P.W. 5 has also stated regarding the demand and subjecting cruelty. However, in the entire evidence though it is alleged that the victim was subjected to cruelty for non-fulfillment of the demand of buffalo by assault, but, the evidence regarding the demand and assault has not been fully mentioned and the demand and subjecting cruelty are general and omni bus and vague without any reference of time. However, the dead body of the victim was found in a gunny bag and the post mortem report suggests that there was no injury on the person of the deceased and the opinion of cause of death was reserved in post mortem report and the doctor has found that no internal or external injury found at the time of post mortem. The Forensic Science Laboratory's report though on record, but, has not been marked as Exhibit. However, P.W. 4 though have stated that the dead body was recovered, neither the inquest report has been prepared nor investigating officer whispered about place where dead body was kept. However, to prove the offence under Section 304B of the Penal Code the ingredients required to be proved is that the marriage solemnized within seven years of the occurrence, there is demand and subjecting cruelty for non-fulfillment of the demand and, further, soon before the death the victim was subjected to cruelty for non-fulfillment of demand of dowry. However, when the three ingredients are proved, then, the prosecution under Section 113B of the Indian Evidence Act is required to draw an inference of dowry death. It is apparent that there is no eye witness to the occurrence. Most material witness is P.W. 4 who has



deposed that there was demand and subjecting cruelty for non-fulfillment of the demand and victim was subjected to cruelty by the sister-in-law. However, in his cross-examination in paragraph 14 he stated that Laxman Sahni did not used to demand dowry from him and he has only deposed that his daughter used to tell regarding the demand and that he has stated that the dead body recovered and seized by daroga. He has, further, stated that he can not say about the boundary of the place from where the dead body was recovered though P.W. 4 stated that there was sign of strangulation of the neck. However, the doctor, who conducted the post mortem examination did not find any sign of injury either external or internal on the person of the deceased and though the viscera was sent, but, the Forensic Science Laboratory report has not been proved, but, on record shows that no metallic, alkaloidal, glycosidal, pesticidal or volatile poison could be detected. However, it is not proper to take into consideration the report of the Forensic Science Laboratory when the same has not been exhibited, but, the evidence adduced taken out consideration it can not be inferred that death in suspicious circumstances.

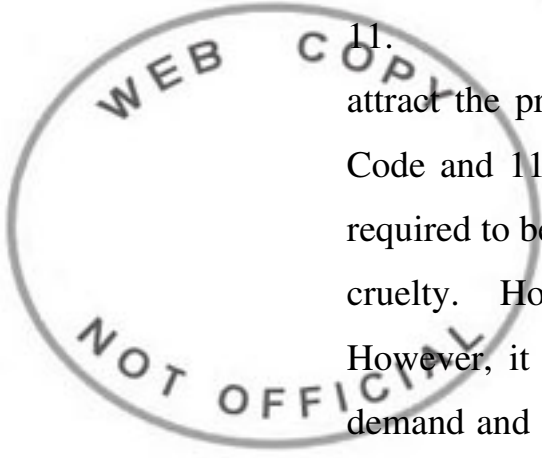
10. Hence, taking into consideration the entire evidence though there are evidence that the marriage solemnized within seven years and the victim blessed with a son though the informant and the witnesses stated that the victim was subjected to cruelty for non-fulfillment of the demand and the marriage solemnized as per the informant, who is the father of the victim, about six years back though in his evidence he has stated that only quarter to four years back. However, the informant made out a case in the first information report that the victim came to his house about one year back when she became pregnant and about eight months prior to the occurrence she went to sasural and fifteen days prior to the occurrence the informant went to the place where she was living in a rented house, but, he has not supported the prosecution case in fardbeyan in his evidence, hence, going to the evidence of P.Ws. 1, 2, 4 and 5 though there is allegation and evidence that the victim was subjected to cruelty, but, without any reference of time and particularly the case of the informant in the first

information report that she went after delivery of son of the victim she went about eight months prior to the occurrence, however, in his evidence that there is no specific allegation that during that period the victim was subjected to cruelty.

11. Hence, having regard to the fact that the ingredient to attract the presumption for offence under Sections 304B of the Penal Code and 113B of the Indian Evidence Act is not established as it is required to be proved that soon before death the victim was subjected to cruelty. However, there is no definition given soon before death. However, it has been asserted that there must be nexus between the demand and subjecting cruelty and death. However, there is allegation that at the outset there is demand of buffalo and subjecting cruelty, there is no evidence in the deposition of the witnesses that soon before death the victim was subjected to cruelty, hence, presumption under Sections 304B of the Penal Code and 113B of the Evidence Act is not attracted. It has come in evidence that being vexed with the family members and the demand by the family members and subjecting cruelty the victim was taken to naiher and, thereafter, Laxman Sahni took the victim and kept her in Sitamarhi Court Bazar and he used to work as rickshaw puller. However, subsequent thereto there is no allegation or evidence that during the period the victim was kept at Sitamarhi Court Bazar or after taking her from sasural, after giving birth to a child the victim was subjected to cruelty.

12. Having regard to the fact that there is no evidence that soon before death the victim was subjected to cruelty. The doctor has not found any injury on the person of the deceased though the dead body found on the bank of a river, hence, under the facts and circumstances the ingredients for offence under Section 304B of the Penal Code has not been established to draw a conclusion under Section 113B of the Evidence Act regarding dowry death.

13. Hence, having regard to the fact I find and hold that the appellant is entitled to benefit of doubt as the prosecution has not been able to prove the charge. The trial Court not specifically gone into the question whether there is evidence that soon before death the victim



was subjected to cruelty. Hence, the order of conviction and sentence, recorded by the trial Court, is not sustainable and is **set aside**.

14. The appeal is **allowed**.

15. Since, the appellant is in jai, he is directed to be released forthwith, if not wanted in any other case.

(Gopal Prasad, J)

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