

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.316 of 2014

Against the judgment of conviction, dated 17.05.2015, and order of sentence, dated 19.05.2015, passed by Mr. Vikram Singh, Additional Sessions Judge, (Ad Hoc), II, Nawadah, in Sessions Trial No. 113 of 2011/30 of 2014 arising out of Hisua P.S. Case No. 143 of 2010, G.R. No. 2010 of 2010

Manoranjan Thakur @ Ranjan Thakur, son of Shri Shyam Sunder Thakur, resident of village Maithila Tola, Hisua, P.S. Hisua, district Nawada Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Raj Kumar, Adv.

For the Respondent : Mr. Sujit Kumar Singh, APP,

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 12-02-2016

Heard the learned counsel for the petitioner and the State.

2. The appellant has been convicted under Section 304B/34 of the Penal Code and sentenced to undergo rigorous imprisonment for ten years. He has also been convicted under Section 201/34 of the Penal Code and sentenced to undergo rigorous imprisonment for three years. However, both the sentences are ordered to be run concurrently.

3. The prosecution case, as alleged in the fardbeyan of the informant, Vikram Kumar Jha, the brother of the victim-deceased, Suprita Devi, that marriage of his sister was solemnized with Manoranjan Thakur, the appellant, on 03.07.2005. During the marriage the gift and dowry was given, as per his ability and after the marriage, the victim, his sister, blessed with three children, two girls and one boy, with their age 3½ years, 2 years and 1 year respectively. The further case is that after the marriage there was demand of rupees one lakh cash and a motorcycle as dowry. The informant was unable to pay and the victim-deceased used to protest the demand of dowry. It is alleged that the husband, dewar and mother-in-law used to assault the victim-deceased and subject her to mental cruelty. The, further, case that on 20.10.2010, in the evening some unknown person informed on telephone that the sister of the informant has been done to death and they have concealed the dead body somewhere else. Thereafter, the informant

along with his mother, Indira Devi, P.W. 1, came to Hisua and went to the sasural of his sister and found the house locked, then, he learnt from the neighbours Manoranjan Thakur has went away somewhere after locking the door on 16.10.2010 along with two children, but, his sister and one child were not with him. It is alleged that Manoranjan Thakur, Ranjit Thakur and wife of Shyuam Sundar Thakur have done to death the victim and has concealed the dead body somewhere for non-fulfillment of the demand of dowry. On the fardbeyan of the informant, Vikram Kumar Jha, the first information report was ordered to be lodged and the investigating officer proceeded with the investigation.

4. During the investigation the dead body was found buried under earth at Hisua Kali Ashthan. The dead body was identified, inquest report prepared and the dead body was sent for post mortem examination. The doctor conducted the post mortem, found the death within five days and it has been opined that the death caused by hard and blunt substance. Three injuries were found on the person of the deceased. The police after investigation submitted charge sheet, cognizance taken, case committed to the Court of sessions.

5. The trial proceeded after framing of the charge for offence under Sections 304B/201/34 of the Penal Code. The police during the investigation also recorded the statements of the witnesses.

6. During the trial six witnesses were examined by the prosecution. The witnesses examined by the prosecution are P.W. 1, Indira Devi, wife of Gopi Nath Jha, the mother of the victim-deceased. She has supported the prosecution case that the marriage solemnized within seven years. There was demand of a motorcycle and rupees one lakh and the victim was subjected to cruelty for non-fulfillment. P.W. 2 is Vikram Kumar Jha, the informant, who happens to be the brother of the victim-deceased, and has also supported the prosecution case that marriage solemnized within 7 years on 03.07.2005 and there was demand and subjecting cruelty. He has stated that some day prior to the occurrence a threat was given on the telephone. P.W. 3 is Rajendra Kumar, the doctor, who conducted the post mortem examination on the person of the deceased. P.W. 4 is Shyam Kumar Thakur, the brother-in-

law (bahnoi of P.W. 5) of the victim-deceased. P.W. 5 is Rajiv Kumar Mishra, the brother-in-law (bahnoi) of the victim-deceased. He has been declared hostile by the prosecution. P.W. 6 is the investigating officer, Vindhyachal Prasad, who has conducted the investigation and submitted charge sheet.

7. The defence has also adduced two witnesses. D.W. 1, Putul Devi. Her evidence is that the marriage solemnized in 2002 and she has never heard the demand of rupees one lakh or motorcycle. D.W. 2 is Shambhoo Prasad Pandey, who has proved the lagan kundli of the victim and supported that the marriage solemnized on 19.03.2005.

8. The trial Court, taking into consideration the evidence of the witnesses, convicted the appellant under Sections 304B and 201/34 of the Penal Code in Sessions Trial No. 113 of 2011/93 of 2012 by it's order and judgment, dated 23rd August, 2012 and criminal appeal was preferred by the appellant in this Hon'ble Court, bearing Criminal Appeal (S.J.) No. 853 of 2012. The Hon'ble High Court setting aside the order of conviction and sentence recorded by the trial Court, remanded the case back to proceed afresh from the stage of recording of the statement under Section 313 of the Criminal Procedure Code and to pass a judgment in accordance with law. After remand of the case, the statement of the appellant recorded under Section 313 of the Criminal Procedure Code and the defence has also examined a witness as D.W. 3 Simran, the daughter of Manoranjan Thakur, aged 7 years, who has deposed to the effect that there was no quarrel between the mother and father and mummy went somewhere else and she lives with the uncle and aunt and the grandmother lives with them and she has stated that she is the elder daughter. Defence has also adduced one more witness as D.W. 4, Ashok Kumar. He has proved the prescription of Shyam Sundar Thakur.

9. The trial Court, after taking into consideration the evidence of the witnesses passed the order of conviction and sentence by it's judgment and order, dated 17.05.2014, which is the judgment and order under appeal.

10. The trial Court convicted the appellant in view of the fact that prosecution has been able to prove that the victim-deceased, Suprita Devi was found dead under the bed of Tilaiya river, which was dug out by Hisua police and the dead body has been identified by P.Ws. 1 and 2, the mother and brother of the victim-deceased and the accused has also accepted in his statement under Section 313 of the Criminal Procedure Code that the dead body of Suprita Devi recovered from the bed of Tilaiya river, but, failed to explain that how deceased went missing and why he did not inform the police and the death of the deceased was otherwise than normal circumstance within seven years of her marriage and, further hold that the demand of dowry and subjecting cruelty has already been established and also established that the deceased was subjected to cruelty soon before her death.

11. The learned counsel for the appellant has challenged the order of conviction and sentence recorded by the trial Court. It has been asserted that the evidence regarding the marriage of the victim though the prosecution laid evidence that marriage solemnized in 2005 whereas the defence has adduced that the marriage solemnized in 2002, beyond seven years and, further, the ingredients for offence the victim was subjected to cruelty soon before her death for demand of dowry under Section 304B of the Penal Code has not been established and the prosecution under Section 113 of the Evidence Act is only requires when the prosecution has been able to prove the ingredients of offence under Section 304B of the Penal Code as well as that soon before the death the victim was subjected to cruelty, which has not been established.

12. The learned counsel for the State, however, contends that there is no specific evidence about the victim having subjected to cruelty soon before death, as going to the evidence of the witnesses, it may be presumed that there was continuity of subjecting cruelty for non-fulfillment of the demand of dowry, hence, the order of conviction and sentence is sustainable.

13. Having regard to the fact and the respective submissions, I proceed to consider the evidence. However, out of five witnesses, examined in the case are P.W. 1, the mother, P.W. 2, the brother, P.W. 4

brother-in-law (sala) of P.W. 5 whereas P.W. 5 is brother-in-law (bahnoi) of the victim. However, P.W. 5 has turned hostile and has supported the prosecution to the effect that the marriage has been solemnized in 2005. P.W. 3 is the doctor.

14. However, to establish the offence under Section 304B of the Penal Code, the prosecution is required to prove that (a) marriage solemnized within seven years of the occurrence, (b) the victim-wife has been caused otherwise than normal circumstance, (c) the death was subject to cruelty or harassment her husband or any of his relatives, (d) such cruelty and harassment was in connection with demand of dowry and (e) the cruelty or harassment has been made soon before the death of the victim and if these five ingredients are fulfilled then the presumption arose under Section 113B of the Evidence Act to presume that husband of his relatives have committed dowry death. The principles are well settled. Further, coming to the evidence of the witnesses, it is apparent that P.Ws. 1, 2, 4 and 5 supported the prosecution case that the marriage solemnized in 2005. However, the defence has adduced evidence to the effect that the marriage solemnized in 2002.

15. D.W. 1, in his cross-examination stated that he is neighbour of Manoranjan Thakur. However, he is not a family member and D.W. 2 only proved lagan patrika and he has only proved formally proved the lagan patrika, hence, the evidences of D.Ws. 1 and 2 does not inspire confidence and there is nothing in the evidences of P.Ws. 1, 2, 4 and 5 to disbelieve their evidences, who are family members, hence, the prosecution has able to prove that the marriage solemnized in 2005. The dead body has been recovered from the river under the earth being buried and the doctor has found three injuries on her person and the cause of death has been stated to be the injury by hard and blunt substance, hence, the prosecution has also been able to prove the death in suspicious circumstance.

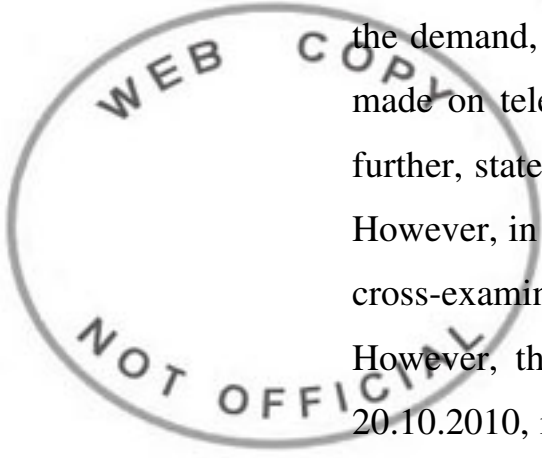
16. The prosecution case in the first information report, itself, that after the marriage there was demand of rupees one lakh cash and motorcycle. P.Ws. 1 and 2 have supported the prosecution case regarding demand and subjecting cruelty. However, P.W. 5 has been

declared hostile and his evidence is not relevant as has not supported the prosecution case regarding demand and subjecting cruelty. So far the evidence of P.W. 4 is concerned, though has supported the prosecution case regarding the demand in his evidence that the mother-in-law, dewar and father-in-law used to demand rupees one lakh and motorcycle. He has also deposed that for non-fulfillment of the demand the sasural people used to subject her to cruelty. However, the evidence that soon before the death the victim was subjected to cruelty is lacking in the evidence of P.Ws. 4 and 5.

17. Hence, the only evidence remains the evidence of P.Ws. 1 and 2. So far the evidence of P.W. 1 is concerned, she has supported the prosecution case about the marriage solemnized in 2005 and after the marriage there was demand of rupees one lakh and motorcycle and the victim was subjected to cruelty. However, she has stated that thereafter they got information on 16.10.2010, then, they started making out a search and thereafter received a telephone about recovery of dead body near Tilaiya River and, then, on 25.10.2010 he learnt that husband, dewar and mother-in-law has done to death, hence, her evidence about demand and subjecting cruelty though are there in her evidence, but, the evidence regarding that the victim was subjected to cruelty soon before death is missing. He reported about the missing of the victim on 16.10.2010, but, first information report lodged on 25.10.2010.

18. However, the evidence of P.W. 2 that the marriage solemnized on 03.07.2005 and he has stated that he received information on 20.10.2010, then, he went to the house of Manoranjan Thakur and learnt from the neighbours that for the demand of rupees one lakh and motorcycle, the victim has been done to death. He has, further deposed in his evidence that some day prior to the occurrence a threat was given that if the demand is not fulfilled and money is not arranged, then, his sister will be killed and then a talk was made with the sasural people. He has, further, stated that one day prior to the occurrence they were given a threat was given. However, this witness, in his cross-examination, has stated that he did not disclose this fact to any one and is saying for the first time about the demand and subjecting cruelty in the Court. He has,

further, stated, in his cross-examination, that he is one brother and seven sisters, five are married. He has, further stated that with regard to the demand and subjecting cruelty he did not inform to his father and sisters. He has, further, developed the prosecution case that the day and time of the demand, it was year 2005. He has, further, stated that demand was made on telephone in the presence of his mother and father. He has, further, stated that he did not ask daroga to take out the prints of phone. However, in view of the evidence of this witness, in his examination and cross-examination, he did not specify the date when demand made. However, the prosecution case in the first information report that on 20.10.2010, in the evening he learnt about the death of his sister from an unknown person and then he proceeded to the house of Manoranjan Thakur and then he learnt that Manoranjan Thakur has gone out from 16.10.2010 and the house is locked from then and it was learnt that Manoranjan Thakur has went away along with his children somewhere else. However, the fardbeyan was recorded on 25.10.2010, after long delay and there is no explanation for delay nor there is any mention about demand some day prior to occurrence on telephone and in view of these facts the fardbeyan of which the informant, P.W. 2, is the author and in these backgrounds of the evidence his statement that one day prior, the sister disclosed about the threat does not inspire confidence. This part of the evidence does not appear to be either reliable, trustworthy or worthy of confidence to be relied upon to record a conviction on this sole evidence regarding subjecting cruelty, soon before the death. Hence, it is part of the evidence that the threat was given some day prior to the occurrence and the evidence that one day prior the sister has disclosed about the threat whereas no date is specific and first information report lodged on 25.10.2010, whereas this witness learnt about the occurrence on 20.10.2010 and then he went to sasural of the victim and found them missing and the house locked and it was intimated that Manoranjan Thakur has went away with the children on 16.10.2010, but, he did not report about the threat, hence, in view of these facts and circumstances of the case of the evidence the evidence regarding the fact that the victim was threatened some day prior to the



occurrence or the victim disclosed subjecting cruelty or about the threat by the accused persons does not inspire confidence and this evidence is neither trustworthy or worthy of confidence.

19. Hence, I find and hold that the prosecution has not been able to prove that soon before the death the victim was subjected to cruelty for non-fulfillment of the demand and this ingredient in the offence is missing, hence, I find and hold that the presumption under Section 113B of the Evidence Act can not be recorded to record a conviction or hold that the prosecution has not been able to prove the ingredient for offence under Section 304B of the Penal Code to record a presumption of dowry death.

20. Hence, the order of conviction, recorded by the trial Court, is **set aside** and the appeal is **allowed**.

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

(Gopal Prasad, J)

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