

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 412 of 2014

Against the judgment of conviction and order of sentence dated 30.05.2014 passed in Sessions Trial No. 66 of 2012 arising out of Pothiya (Paharkatta) P.S. Case No. 80 of 2011 by Shri Ambrish Kumar Tiwari, Ad hoc Additional Sessions Judge-IV, Kishanganj

Om Narayan Mahto, Son of Laxmi Narayan Mahto, R/o Dhobania, P.S. - Paharkatta, District - Kishanganj

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

For the Appellant : Mr. Raj Kumar, Advocate

For the Respondent : Mr. Z. Hoda, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 12-01-2016

Heard learned counsel for the appellant and the State.

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

3. The prosecution case, as alleged in the First Information Report drawn on the basis of fardbeyan of Dhaneshwari Devi the mother of the victim, is that she solemnized marriage of her daughter Sajani Devi with Om Narayan Mahto the appellant and at the time of her marriage she gave 30 Bhar Silver, ½ Bhar gold, utensils, cycle, one animal and cash worth Rs.5,000/- to the appellant. The further case is that family members of the in-laws of the victim sold the entire articles given by her and thereafter the appellant used to demand motorcycle.

The further case is that the informant, anyhow, managed to give him Rs.5,000/- about a month ago whereas there was demand of Rs.25,000/.

In this connection, the daughter of the informant disclosed to the in-laws that her mother being poor would not be able to give any money.

On 18.07.2011 at 4:00 P.M. the appellant, Anil Kumar Mahto, Sagar Kumar Mahto, Jyoti Kumari, all sons/daughter of Laxmi Narayan Mahto, Sonawati Devi and Laxmi Narayan Mahto assaulted the victim and ousted her from the matrimonial house. Thereafter the daughter of the informant remained standing on the road out side the house for coming to her Naiher at village Pothimari. In the meantime, the appellant came and dragged her by force to his house and assaulted her indiscriminately with lathi, danda, fists and slaps as well as by the chain of bicycle, as a result of which she died. The information regarding the occurrence was given to the informant by one Hira Lal Mahto the son-in-law of the sister of the informant on telephone (mobile) and then the informant rushed to the Sasural and found her daughter lying dead in her Sasural. Hence, it has been claimed that the appellant/accused persons committed murder of the daughter of the informant for non-fulfilment of the demand of dowry by subjecting her cruelty and assault.

4. The fardbeyan of the informant was recorded by S.I. Mahendra Paswan at the police camp Chattargachi at village Dhowaniya on 19.07.2011 at 2:00 P.M. (14 hours). The fardbeyan was

forwarded to the Station House Officer, Pothiya for lodging a First Information Report under Section 304B/34 of the Indian Penal Code with endorsement that Mahendra Paswan will investigate the case and thereafter on the endorsement of the Station House Officer, Dhowaniya a case was registered bearing Pothiya (Paharkatta) P.S. Case No. 80 of 2011 and investigation proceeded.

5. During investigation, the Investigating Officer recorded the further statement of the informant, prepared the inquest report, inspected the place of occurrence which is a residential house of the deceased at village Dhowaniya which is a house situated west to Kishanganj Thakurganj road. The dead body was found in the Varandah of the tiled house and to the north of the said house there is residential house of Rameshwar Mahto and to the south is the residential house of Jamun Mahto. Thereafter the Investigating Officer recorded the statement of the witnesses Deepak Kumar, Haldhar Mahto, Hira Lal Mahto and arrested the accused-appellant and Sonawati Devi and the police after investigation submitted charge-sheet against the appellant and Sonawati Devi for offences under Sections 304B/34 and 302/34 of the Indian Penal Code. After submission of the charge-sheet, cognizance taken, case committed to the Court of Session and the trial proceeded after framing of charge for offences under Sections 304B/34 and 302/34 of the Indian Penal Code. During trial seven witnesses were examined by the prosecution.

6. P.W.1 Haldhar Mahto has deposed that he saw the dead body of the victim lying on the Varandah in her house and there was sign of injury on the entire body.

7. P.W.2 Dhaneshwari Devi, the informant has come to depose that she had married her daughter with the accused-appellant about two years prior to the occurrence. She has further stated that the matter remained quite well for a year, but thereafter there was quarrel taking place. She has further stated that the victim has come to Naiher about four months prior to the occurrence and at that time both the husband and wife i.e. the victim and her husband, also came and disclosed about the demand of dowry and this fact was stated before the son-in-law regarding the demand of Rs.25,000/-. The victim disclosed that her parents were poor. She has further deposed that she got information about the death of the victim from one Hira Lal Mahto, the son-in-law of her sister and then saw the dead body of the victim lying and there was sign of injury on the whole body. In her cross-examination, she has further stated that regarding the assault her daughter had disclosed and so the victim herself had disclosed about the subjecting of cruelty and demand to this witness P.W.2 who happens to be the mother of the victim.

8. P.W.3 S. N. Singh has stated that he reached the place of occurrence after next day of the occurrence and has deposed in cross-examination that he does not have personal knowledge about the

occurrence and hence, the evidence is not relevant.

9. P.W.4 Mahendra Paswan the Investigating Officer of this case who recorded the statement of the victim and proved the fardbeyan in his writing. He prepared the inquest report of the deceased, inspected the place of occurrence and after recording the statements of the other witnesses submitted charge-sheet for offences under Sections 304B/34 and 302/34 of the Indian Penal Code, received the post-mortem report and then submitted the charge-sheet.

10. P.W.5 Hira Lal Mahto has not supported the prosecution case and has been declared hostile by the prosecution.

11. P.W.6 Deepak Kumar Mahto is the brother of the victim who has stated that he received a telephone from Hira Lal Mahto who disclosed that his sister has brought for treatment before the Doctor. He has supported the prosecution case that the marriage of the victim was solemnized with the appellant about a year prior to the occurrence and his sister was blessed with a son from the wedlock with her husband. He has stated that the marriage was solemnized and at the time of marriage Rs.5,051/-, two cows, utensils, silver and golden jewelleryes were given. He has further stated that the in-laws of the victim used to assault her for non-fulfilment of the demand of dowry and there was also demand of motorcycle and his sister used to disclose this fact and the disclosure was also to the effect of subjecting cruelty for non-fulfilment of demand of dowry. He has further stated that after

receiving information regarding the fact that his sister had been hospitalized, he immediately rushed to the Sasural of his sister and then found and saw his sister lying dead at the Varandah and there was sign of assault on whole body and froth was coming out of her mouth and regarding this fact he had intimated the police. He had not seen the occurrence from his naked eye and had deposed whatever he learnt.

12. P.W.7 Dr. Manjar Alam, who conducted the post-mortem examination of the deceased, found the following ante-mortem injuries present on the body of the deceased:-

- i Bruise 2"x½" out right shoulder region
- ii Bruise 3'x½" over right side of chest externally
- iii Bruise 2'x1/3" out back of chest on right side
- iv Bruise 2½" x1/3" over left side of back
- v Bruise 4"x¼" over left scapular region
- vi Abrasion 1"x2/3" over left shoulder region.

On dissection of neck no internal injury was found. On further dissection, trachea was found congested. On dissection of chest, no internal injury was found, but viscera were congested. On dissection of stomach, mucosa of stomach was found lightly congested and about 100 ml. yellowish liquid was found. Viscera were preserved in two separate clean glass jars, containing supt saturated solution of common salt as preservative. The cause of injury was found to be assault by some hard blunt substance. Time passed since death was within 24

hours. However, it has been opined that no definite cause of death could be ascertained and the above mentioned viscera has been preserved for chemical analysis. However, nothing was on record to suggest that any report of the chemical examination has ever been proved or brought on record.

13. The trial Court, taking into consideration the evidence of the witnesses, though collected for the offence under Sections 302/34 of the Indian Penal Code, held that the case does not come within the purview of Section 302/34 of the Indian Penal Code, but convicted the appellant under Section 304B/34 of the Indian Penal Code.

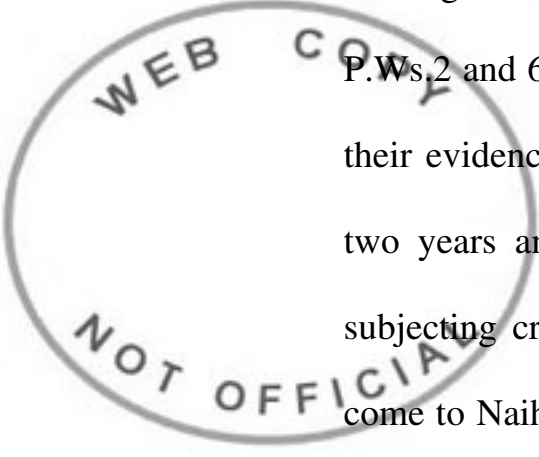
14. The trial Court while convicting the accused for offence under Section 304B of the Indian Penal Code held that the defence has not given satisfactory reply regarding the fact as to how the victim was found dead in the matrimonial house in unnatural circumstance and held that the injury on the person of the deceased indicated or confirmed the fact that the victim was subjected to cruelty and was assaulted before her death as the injuries were found an examination by the Doctor and as per his opinion, the time elapsed since death was within 24 hours. However, the injury has been mentioned by the Doctor P.W.7 but the age of the injury has not been given.

15. Learned counsel for the appellant, however, challenged the judgment of conviction and order of sentence recorded by the trial Court stating that the prosecution has not been able to prove the charges

as the ingredients for offence under Section 304B of the Indian Penal Code have not been established. It has been submitted that the evidence regarding the demand and subjecting cruelty has not been fully established and it has further been contended that there is no material to suggest that the death of the victim is in suspicious circumstance as the cause of death has not been ascertained by the Doctor to suggest that the death is in suspicious circumstance and hence, the judgment of conviction and order of sentence recorded under Section 304B of the Indian Penal Code by the trial Court are not sustainable and fit to be set aside.

16. Hence, I proceed to consider the submissions made by the parties.

17. The prosecution case, apparently as alleged in the First Information Report is that the marriage was solemnized within two years prior to the occurrence and there is allegation of demand of motorcycle just two years of the marriage and further allegation is of subjecting cruelty for non-fulfilment of the demand and the victim died at the Sasural in the matrimonial house as a result of assault and the victim was found dead with injuries of assault on her person. However, the evidence of P.Ws. 1, 3 and 5 are not relevant as they in their evidences have not supported the prosecution case in material particular. P.W.5 has been declared hostile and has not at all supported the prosecution case and P.W.3 has also mentioned that he has no



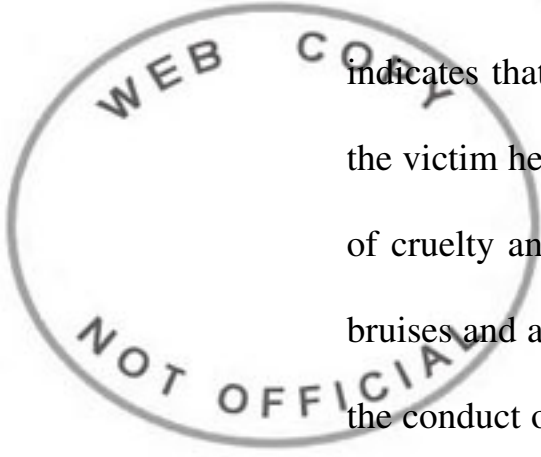
personal knowledge but his evidence is regarding the fact that there was marriage of the victim and the appellant. However, the evidence of P.Ws.2 and 6 the mother and brother of the victim are relevant as from their evidence, it is apparent that the marriage was solemnized within two years and so far as their deposition regarding the demand and subjecting cruelty is concerned, P.W.2 has stated that the victim had come to Naiher and had disclosed regarding the demand of motorcycle and subjecting cruelty in his evidence in examination-in-chief as well as in cross-examination in paragraph 2. P.W.6 has also supported the prosecution case regarding the marriage solemnized about two years back and the fact that his sister disclosed about the demand and subjecting cruelty as well as demand of motorcycle. However, there is no evidence regarding subjecting cruelty on the person of the victim. There is no evidence at all as to who inflicted the injury on the person of the victim and hence, the evidence regarding the fact that who assaulted the victim is found missing in the entire evidence and hence, on the face when there is no evidence as to who assaulted or who gave fatal blow to the victim as a result of which she died is found missing in the evidence and hence, the only circumstance remained is that the victim died at the matrimonial house and her dead body was found with mark of assault on her person. However, there being no material and evidence to suggest as to who assaulted the victim, apparently the charge under Section 302 of the Indian Penal Code is not proved.

However, taking into consideration the offence under Section 304B of the Indian Penal Code the prosecution is required to prove (i) that the marriage solemnized within seven years of the marriage, (ii) that there is demand of dowry, (iii) that the victim was subjected to cruelty with regard to the demand, (iv) that soon before the death she was subjected to cruelty for non-fulfilment of the demand of dowry, (v) that the death of the victim is in suspicious circumstance. However, when the ingredients for the offence under Section 304 of the Indian Penal Code are fulfilled and established then only a presumption arises under Section 113B of the Evidence Act that the in-laws or husband has committed the dowry death of the victim.

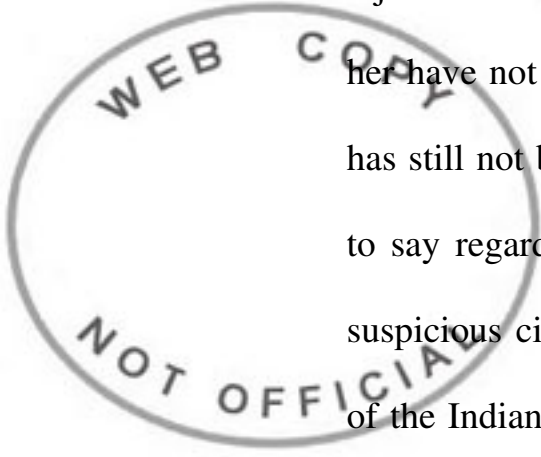
18. Now, the question for consideration is whether the ingredients for offence under Section 304B of the Indian Penal Code have been established to take presumption under Section 113B of the Indian Penal Code regarding the dowry death by the appellant.

19. However, having regard to the evidence, it is apparent that P.Ws.2 and 6 have deposed that the marriage was solemnized about two years back and there is no controversy and this evidence has not been challenged. The further evidence is that there was demand of motorcycle and cash and the victim was subjected to cruelty and assault, which the victim herself used to disclose. P.Ws.2 and 4 have specifically stated that the victim had come to her Naiher prior to the occurrence about 1 or 2 months back and she disclosed that there was

demand of Rs.25,000/- cash and she was subjected to cruelty and assault and further there is evidence that the post-mortem report indicates that the victim was assaulted or was subjected to cruelty and the victim herself used to disclose to P.Ws.2 and 6 regarding subjecting of cruelty and further the injuries on the person of the deceased show bruises and abrasion, which were opined to be of only 24 hours prior to the conduct of the post-mortem examination and hence, the prosecution has been able to prove that soon before the death she was subjected to cruelty. However, the last ingredients require to be proved is whether the victim was done to death in suspicious circumstance. However, there is evidence that the victim was subjected to cruelty and the injury was found on the person of the victim and those injuries were assessed by the Doctor to have been caused within 24 hours of the death of the victim. However, it is not in dispute that the victim has not died. However, the post-mortem examination suggests that the cause of death is not known. There is no evidence whether the death has been caused because of those injuries having been found on the person of the deceased and so it has been inferred that the cause of death has not been ascertained and hence, in that circumstance it is difficult to say that the death has been caused in suspicious circumstance. The injuries as discussed are only bruises and abrasion. However, the allegation in the First Information Report is to the effect that the victim was assaulted by fists and slaps and even by the chain of bicycle, but the injuries are not



such to have been inflicted by lathi, danda, fists and slaps or chain. The injuries do not suggest so and at the same time the injuries inflicted on her have not been said to be the cause of death and the cause of death has still not been proved and hence, in that circumstance, it is difficult to say regarding the cause of death that the death of the victim is in suspicious circumstance and if all the ingredients under Section 304B of the Indian Penal Code are not established then a presumption under Section 113B of the Evidence Act cannot be recorded to hold the appellant guilty for dowry death. It is true that the death is not in dispute and death has been proved but the cause of death has not been established and it is difficult to say whether the death of the victim was in suspicious circumstance which is one of the important ingredients. However, in a case under Section 302 of the Indian Penal Code what is required to be proved is the person who inflicted the injury by which the victim died. However, in a case under Section 304B of the Indian Penal Code what is required to be proved is whether the death is in suspicious circumstances. It is true that it is not required as to who has done death, but what is required to be proved is the death of the victim in suspicious circumstance. However, when the cause of death could not be ascertained by the Doctor who gave his finding that the cause of death has not been ascertained, in that circumstance, it is difficult to hold whether the death of the victim is in suspicious circumstances. Hence, having regard to the fact that the ingredients for the offence



under Section 304B of the Indian Penal Code have not been established, it is not appropriate to draw an inference under Section 113B of the Evidence Act for dowry death and hence, in the facts and circumstances of the case, the appellant is entitled to get benefit of doubt and hence I give the appellant benefit of doubt. Hence, I find and hold that the prosecution has not been able to prove the charges against the appellant beyond all reasonable doubts and the judgment of conviction and order of sentence dated 30.05.2014 passed in Sessions Trial No. 66 of 2012 arising out of Pothiya (Paharkatta) P.S. Case No. 80 of 2011 by Shri Ambrish Kumar Tiwari, learned Ad hoc Additional Sessions Judge-IV, Kishanganj are hereby set aside and the appeal is allowed. Let appellant, namely, Om Narayan Mahto who is in custody, be released forthwith if not wanted in any other case.

(Gopal Prasad, J)

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