

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.178 of 2015

[Against the judgment of conviction dated 03.09.2013 and order of sentence dated 05.09.2013 passed by the *Ad hoc* Additional Sessions Judge, IV, Gaya, in Sessions Trial No.154 of 2010/ 116 of 2010 arising out of Guraru P.S. Case No.03 of 2009]

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1. Mahesh Sao, son of Bigan Sao @ Vigan Sao, resident of village - Wara, P.S.-
Guraru, District - Gaya.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. A. K. Mouar, Advocate
Mr. Harish Kumar, Advocate
Mr. Raj Krishna Jha, Advocate

For the Respondent/s : Mr. A. K. Sinha, APP

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 04-05-2016

1. The sole Appellant has been convicted under Section 304-B Indian Penal Code and sentenced to undergo rigorous imprisonment for life by judgment of conviction dated 03.09.2013 and order of sentence dated 05.09.2013 passed by the *Ad hoc* Additional Sessions Judge, IV, Gaya, in Sessions Trial No.154 of 2010/ 116 of 2010 arising out of Guraru P.S. Case No.03 of 2009.

2. The case of the Informant according to Dilip Kumar (PW 5), brother of he deceased, is that about two years back

he had married his sister Sita Devi with the Appellant, but all the time he used to demand of dowry and assault her on account of non-fulfillment of the same. On the previous day i.e. 07.01.2009 at about 6.00 PM, his brother-in-law called him up and said that the deceased had caught a cold and soon thereafter the mother of the Appellant informed him that his sister is dead. They left for the house of the Appellant where he saw his sister dead lying dead on a cot having black marks on her neck on account of which this written report was given.

3. During trial, the prosecution examined eight witnesses.

4. PW 7 (Dr. Rajiv Ranjan Das) is the Doctor, who performed Post Mortem Examination found following injuries on the person of the deceased.

Abrasions:

- (i) $\frac{1}{2}$ " x $\frac{1}{4}$ " in midline on front of neck at the level of thyroid cartilage.
- (ii) Semi-lunar in shape, $\frac{1}{2}$ " x $\frac{1}{4}$ " on left side of neck above thyroid cartilage $\frac{1}{2}$ " above it and lateral to midline.
- (iii) $\frac{1}{2}$ " x $\frac{1}{4}$ " and $\frac{1}{4}$ " x $\frac{1}{4}$ " on right side of front of neck at the level of thyroid cartilage.

Patterned bruises:

- (i) 2" x 2" bluish black on front of abdomen in left side above umbilicus, simulating stick mark.

Internally neck muscles and tissues were ecchymosed with inward compression fracture of right hyoid bone, compression and congestion of trachea.

The above noted abrasion and bruises were caused by hard and blunt substance. Neck injuries were due to manual strangulation (throttling).

Time since death within 12 to 36 hours from the time of PM examination. Death was due to sock, asphyxia and comma as a result of manual strangulation.

He proved the Post Mortem Examination Report as Ext.2.

5. PW 1 (Prabha Devi) is the Bhabhi of the deceased, who stated that her sister-in-law, the deceased, had been married to the Appellant in December, 2006, but all the time she used to be assaulted and tortured for ends of dowry and on the date of occurrence they were informed by the Appellant that the deceased had suffered a cold and soon thereafter they received a message that she is dead so, they left for the house of the deceased. They found her dead in the courtyard and there were some black marks on her neck. She explained the details of the articles that used to be demanded by the Appellant.

In cross-examination, she conceded that no case had been instituted earlier with regard to assault by the Appellant and she had not seen the occurrence herself. However, signs were found on the dead body of the deceased which did not indicate the deceased had died of cold.

6. PW 2 (Dharmendra Kumar) is the brother of PW

1, who supports the prosecution case as to how the sister-in-law was married to the Appellant and thereafter about information having been received about the death of the deceased whereafter they left for her matrimonial home. He stated that they found injuries on the neck of the deceased. They went to the Police Station and gave a written report.

He gave particulars of mobile number of his brother-in-law and that there were broken bangles in the courtyard where the deceased was lying. He further said that the police came next morning on their information and arrested the Appellant from his house.

7. PW 3 (Laxman Prasad) is the co-brother-in-law of the Informant, who also supports the case of the prosecution as narrated by PW 1 and PW 2. He stated that he had heard about the demand of dowry by the Appellant and torture of the deceased on account of non-fulfillment of the same. He further stated that some demands were fulfilled and that the police had come to the house on their information. He also stated about injuries found on the person of the deceased which were not indicative of her having died on account of cold.

8. PW 4 (Rajendra Prasad) is also co-brother-in-law of the Informant and he supports the factum of the occurrence as

also that the entire family had gone to the matrimonial home of the deceased and found her dead under suspicious circumstances. No one cross-examined him.

9. PW 5 (Dilip Kumar) is the Informant, who corroborated the *fard-e-bayan* and stated that his sister was married in December, 2006, with the Appellant, but she used to be always assaulted and for that reason some money and mobile had been given to him despite which he was not satisfied and demanded more money. On the date of occurrence, he received information from the Appellant firstly that the deceased was severely ill and soon thereafter that she had died. When they reached his house, they found the dead body in the courtyard covered with the cloth. When he uncovered the face, he found injuries on the neck which appears to be suspicious and, so, he gave written report which he proved as Ext.1

In cross-examination, he describes as to how he had departed from Patna to the village of the Appellant and there is nothing else which is of note. He has given the details of demand of dowry and the transaction between the two.

10. PW 6 (Dhananjay Kumar Singh) is a witness of the Inquest Report.

11. PW 8 (Shankar Prasad) is the brother of the

Appellant, who is also the witness to the Inquest Report, and has been declared hostile.

His attention was drawn to the earlier statement that, in fact, his brother used to assault the deceased repeatedly and that he used to live alone with his wife.

12. On going through the evidence of the family members of the deceased, namely, PW 1, PW 2, PW 3, PW 4, PW 5, we find that there is consistency on the fact that the Appellant used to demand dowry from the Informant and also used to torture the deceased for non-fulfillment of the same soon before her death which was within seven years of marriage. The doctor confirmed that the deceased died an unnatural death which was on account of throttling.

13. In view of such, finding no merit in the appeal, the same is dismissed.

(Anjana Prakash, J)

J.Alam/-

(Rajendra Kumar Mishra, J)

AFR/NAFR	
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