

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.268 of 2012

Arising Out of P.S.Case No. -52 Year- 2009 Thana –Laukariya (Path) District-
WESTCHAMPARAN(BETTIAH)

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Suman Ram @ Sujan Ram S/O Sri Nawal Kishore Ram R/O Vill-Rampur Bagicha
Tola, P.S.Lavkaria, Distt-West Champaran Appellant
with

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Criminal Appeal (DB) No. 126 of 2012

Arising Out of P.S.Case No. -52 Year- 2009 Thana –Laukariya (Path) District-
WESTCHAMPARAN(BETTIAH)

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1. Nawal Kishore Ram S/O Late Sudarshan Ram Resident Of Village- Rampur
Bagicha Tola, P.S.- Lavkaira, District- West Champaran
2. Arbind Ram S/O Nawal Kishore Ram Resident Of Village- Rampur Bagicha
Tola, P.S.- Lavkaira, District- West Champaran
3. Lallan Ram S/O Nawal Kishore Ram Resident Of Village- Rampur Bagicha
Tola, P.S.- Lavkaira, District- West Champaran Appellants
Versus
The State Of Bihar Respondent in both appeals.

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Appearance :

(In CR. APP (DB) No.268 of 2012)

For the Appellant : Mr. Bamdeo Pandey and
Mr. Prithivi Nath Mishra, Advocates
For the Respondent : Mr. Ashwani Kumar Sinha, APP and
Mr. S.C.Mishra, APP

(In CR. APP (DB) No.126 of 2012)

For the Appellants : Mr. Bamdeo Pandey and
Mr. Prithivi Nath Mishra, Advocates
For the Respondent : Mr. Ashwani Kumar Sinha, APP
Mr. S.C.Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE SANJAY KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 14-12-2016

Cr.Appeal (DB) No.268 of 2012 has been preferred by

Suman Ram @ Sujan Ram, husband of the victim Radhika Devi,

Cr.Appeal (DB) No.126 of 2012 has been filed by Nawal Kishore

Ram, Arbind Ram and Lallan Ram, whereas Nawal Kishore Ram is



the father-in-law of the victim Radhika Devi, Arbind Ram and Lallan Ram are her brother-in-laws are her brother-in-laws. All the appellants have been convicted under Section 304B vide judgment of conviction dated 9th day of January, 2012 passed in Sessions Trial No.485 of 2010. Whereas the sole appellant Suman Ram @ Suman Ram of Cr.Appeal (DB)No.268 of 2012) has been sentenced to life imprisonment for conviction under section 304B of the IPC; all the three appellants of Cr.Appeal (DB) No.126 of 2012 have been sentenced to seven years for the said offence vide order dated 16.01.2012.

2. The prosecution case in short as set out in the fardbeyan of P.W.7 Parshuram Ram, resident of village-Bankarwa, P.S.-Bagaha, district-West Champaran recorded by Sub-Inspector Vishwanath Prasad of Pathkuli O.P. on 08.05.2009 at 9 P.M. at Rampur Bagichha Tola in short is as follows:-

3. The informant is a Choukidar and uncle of the victim. As his brother had died, he got married his niece Radhika Devi to Suman Ram @ Suman Ram, son of Nawal Kishore Ram of village-Rampur Bagicha Tola, P.S. Lakhisarai, District-West Champaran five to six years ago. Soon after marriage, her husband Suman Ram @ Suman Ram, father-in-law Nawal Kishore Ram and brother-in-laws Arbind Ram and Lallan Ram began to torture her for a sum of



Rs.20,000/- and motorcycle as dowry.

4. The informant's niece used to explain that her parents are poor and not in a position to fulfill the demand of dowry. As the deceased Radhika Devi could not meet their dowry demand, the accused persons continued to torture her. The deceased Radhika Devi disclosed all these facts and the undoing of her in-laws, when she visited her parents' house. The informant's niece also had a two year son from her wedlock.

5. On 08.05.2009, the informant received an information on his mobile that the accused persons have killed her daughter and are absconding. They have left the dead body on a cot in their house. On receipt of the information, the informant along with villagers reached the in-laws house of Radhika Devi, where he found her dead body, with strangulation marks around her neck by rope. The accused persons were also not seen and had fled away. On the basis of the fardbeyan, Laukariya P.S. Case No.52 of 2009, dated 09.05.2009 under Section 498A/34 and 364/34 of the IPC was registered against all the accused persons. On completion of the investigation, the police also submitted chargesheet under Sections 498A and 304B/34 of the IPC. Thereafter, cognizance of offence was taken and the case was committed to the Court of Sessions for trial. The charges were also framed against the accused persons under Sections 304B and 498A of



the IPC, to which they pleaded not guilty and claimed to be tried.

6. The prosecution in support of its case examined as many as eleven witnesses, i.e., P.W.1 Ganesh Ram, P.W.2 Bajrangi Ram, P.W.3 Ramchandra Ram, P.W.4 Kailash Ram, P.W.5 Sukhal Ram, P.W.6 Sagar Ram, P.W.7 Parshuram Ram, P.W.8 Ashok Ram, P.W.9 Devendra Prasad, P.W.10 Ramchandra Ram and P.W.11 Ramakant Ram. Apart from the oral evidence, the prosecution also exhibited formal FIR as Ext-3, Postmortem report as Ext-2 and the signature of the informant on the FIR marked as Ext-1.

7. The defence did not examine any witness in support of its case nor produced any document. However, defence of the accused in the statement under Section 313 Cr.P.C. was complete denial of the occurrence. On a consideration of the materials on record, the trial Court convicted all the appellants under section 304B of the IPC. The husband Suman Ram @ Sujan Ram was sentenced to rigorous imprisonment for life, whereas the father-in-law (Nawal Kishore Ram, the brother-in-law Arbind Ram) were sentenced to seven years imprisonment. Being aggrieved the appellants have filed the instant appeal.

8. Assailing the impugned judgment of conviction, Mr. Bamdeo Pandey, learned counsel appearing for the appellants submits that out of eleven witnesses examined by the prosecution, all except



P.W.7 the informant and P.W.9 (a formal witness,) have turned hostile and have not supported the prosecution case. He submits that even the informant in his evidence, no where stated that the deceased was tortured for dowry in the last six months prior to her death or she was done to death for non-fulfilment of demand of dowry of dowry. On these premises, learned counsel submits that the basic ingredients which are necessary for constituting an offence under Section 304B of the IPC is not made out. Even the cause of death is also not established as the doctor who conducted the postmortem examination has not been examined nor the investigating officer has been examined. There has been delay in forwarding the FIR to this Court. The FIR was instituted on 09.05.2009, but the same was received in the Court on 11.05.2009, whereas as per Section 157 of the Cr.P.C. the same should have been received within 24 hours including the time taken in its dispatching. He also contended that even no villager of the informant has supported the prosecution case. According to learned counsel, P.W.6 in his evidence has stated that though he had occasion to meet the victim, she never spoke about any torture or any demand of dowry made by her in-laws.

9. On the other hand, learned APP appearing for the State has supported the judgment of conviction and sentence. He submits that the informant in his fardbeyan stated that the deceased



Radhika Devi used to tell him that the accused persons used to torture her for non-fulfilment of demand of dowry and even used to stop her food. He further submits that the informant in his fardbeyan stated that four to five days prior to death of the deceased, the accused persons tortured her for non-fulfilment of dowry, whereafter she was killed on 08.05.2009. He further submits that there was strangulation marks on the neck of the deceased from which it could be inferred that the deceased was done to death by strangulation.

10. We have heard the submissions of the learned counsel for the parties and also perused the materials on record as noticed in the earlier paragraphs. The prosecution examined as many as eleven witnesses in support of its case. Out of these, eleven witnesses, P.W.1 Ganesh Ram, P.W.2 Bajrangi Ram, P.W.3 Ramchandra Ram, P.W.4 Kailash Ram belonged to the same village of the accused, whereas P.W.5 Sukhal Ram is of different village. P.W.6 Sagar Ram, P.W.7 Parshuram Ram, P.W.8 Ashok Ram, P.W.10 Ramchandra Ram and P.W.11 Ramakant Ram are of informant's village. We find that no one, save and except, the informant has supported the prosecution case. The other material witnesses on point of torture or demand of dowry have been declared hostile. The submission of the defence that the informant has not stated in his evidence that the victim tortured his niece in the last six



months prior to her death, has not been challenged. In view of the aforesaid submissions, it would be necessary to notice the evidence of the informant in some details.

11. The informant stated that he is uncle of the deceased Radhika Devi and his elder brother who is the father of Radhika Devi died one year prior to the marriage. The informant stated that he got the marriage of his niece Radhika Devi performed with appellant Suman Ram @ Suman Ram, eight years prior to the occurrence. He stated in his evidence that on hearing the news of the death of his niece, he went to her Sasural along with his villagers. He saw strangulation marks on her neck and the accused persons were nowhere to be seen.

12. From the evidence of the informant, the following facts come to the fore. The deceased Radhika Devi died within seven years of her marriage. The death was not natural as there was no ligature mark on her neck. As the deceased died in the house of the accused persons, they were under an obligation in terms of Section 106 of the Evidence Act to explain the death. However, none were present to explain the same, which suggest their guilty mind. Still, the issue remains whether the evidence and materials on record establish the charge under Section 304B of the IPC under which the appellants have been convicted. In order to make out a charge under Section



304B, the following conditions required to be satisfied.

(a) The death of a women is caused by burn or bodily injury otherwise then under normal circumstances,

(b) Such death should occur within seven years of her marriage,

(c) It should be shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for demand of dowry.

13. However, the necessary ingredients which would constitute a case under Section 304B are missing. Though the prosecution has been able to satisfy that the death occurred within seven years and not under normal circumstances, there is no evidence on record to establish that soon before her death, the victim was subjected to cruelty or harassment for demand of dowry. The informant in para-10 and 11 stated that he did not hear of any demand of dowry made by the accused from his niece in the last six months. The informant stated in para-11 that the deceased did not complain of demand of dowry but only of Marpit. Thus, the prosecution has failed to establish the factual ingredients, whereafter only, the burden would have fallen on the accused to rebut the presumption of guilt under Section 304B of the IPC.

14. In the result, the appeal succeeds. The impugned judgment of the trial Court convicting the appellant under Section 304B of the IPC are set aside and the accused is set at liberty, if not



wanted in any other case.

(Samarendra Pratap Singh, J)

Brajesh Kr./-

(Sanjay Kumar, J)

AFR/NAFR	AFR
CAV DATE	N/A
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