

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.203 of 2011

[Against the judgment of conviction dated 10th February, 2011, and order of sentence dated 22nd February, 2011, passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in Sessions Trial No.440 of 2008 + 486 of 2008/475 of 2009]

1. Munna Sah, S/O Late Bhikhari Sah,
2. Lochani Devi, W/O Munna Sah,
Both resident of village- Shivnarayanpur, P.S- Kahalgaon, District- Bhagalpur.
.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

With

Criminal Appeal (DB) No. 281 of 2011

[Against the judgment of conviction dated 10th February, 2011, and order of sentence dated 22nd February, 2011, passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in Sessions Trial No.440 of 2008 + 486 of 2008/475 of 2009]

Binod Sah, S/O Munna Sah, resident of village- Shivnarayanpur, P.S. Kahalgaon, District Bhagalpur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 203 of 2011)

For the Appellant/s : Mr. Krishna Chandra, Adv.,
For the State : Smt. Shashi Bala Verma, A.P.P.

(In CR. APP (DB) No. 281 of 2011)

For the Appellant/s : Mr. Deepak Kumar Sinha, Adv.
For the State : Mr. S.N. Prasad, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

&

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 08-04-2016

Heard learned counsel for the Appellants and learned Additional Public Prosecutor.

2. All the three Appellants have been convicted under Section(s) 304-B/34 Indian Penal Code and sentenced to undergo rigorous imprisonment for life by judgment of conviction dated 10th February, 2011, and order of sentence dated 22nd February, 2011, passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in Sessions Trial No.440 of 2008 + 486 of 2008/475 of 2009.

3. The case of the prosecution according to PW 10 (Seema Devi), mother of the deceased is that she had married the deceased with Appellant Binod Sah on 30.04.2016 and had given gifts at the time of marriage. Six months' later she was sent to her matrimonial home where she stayed for about three months. When she returned to her paternal home, she complained of being assaulted on small issues by her husband Appellant Binod Sah. Then the matter was pacified and after having remained for about eight months in the maternal home, the Appellant Binod Sah came to take her back. She then told him that his mother-in-law used to always assault her and he assured that he would separate from them. On this assurance she sent her daughter to the matrimonial home about 1 ½ months back but she used to always call up and say that the Appellants were asking for money and articles and if not given she would be murdered. On

24.12.2007, once again Appellant, Munna Sah, had called up her husband asking for money but he got angry and disconnected the phone. Four days later on 28.12.2007 Appellant, Binod Sah, called her up and said that the deceased had died due to burn injuries. So, she immediately left and on suspecting that she had been burnt by her in-laws instituted the present case before the S.I. Rakesh Kumar Yadav, Officer-in-Charge of Shiv Narayanpur P.S. at 9.30 PM.

4. During trial, the prosecution examined ten witnesses, whereas, defence examined four witnesses.

5. The defence of the Appellants was that the deceased was a matriculate, whereas, husband Binod Sah had merely studied up to class V and was not good looking, whereas, she was very pretty and, therefore, she was dissatisfied and committed suicide on account of frustration.

6. PW 1 (Abhay Kumar Pandey), who is the resident of the same village, stated that on 28.12.2007 at 5.00 PM he learnt that the deceased had died on account of burn injuries. So, he went there and found the Officer-in-Charge of Shiv Narayanpur P.S. there and also the dead body on a cot. He could not know as to how she had died. The Inquest Report was prepared in his presence on which he had signed. He proved his signature as Ext.1.

In his cross-examination, he stated that document had been prepared sometime around 7.00 PM and when he reached the place of

occurrence he saw the Appellant, Binod Sah, standing there, who had already informed his in-laws but they had not reached.

7. PW 2 (Doman Mahaldar) is also on the same point that at about 4.00 PM he heard that the daughter-in-law of Munna Sah had died on account of burn injuries and so he went there and found the dead body on the cot. Later, he learnt that the mother of the deceased used to say that it was on account of dowry that she had been killed. He signed on the Inquest Report which he identified as Ext.1/2. He stated that when he reached there he had seen both the Appellant, Binod Sah and his mother there but not Appellant-Munna Sah. None of the in-laws of Appellant, Binod Sah, had arrived by then. It was only one day later that he had met the Informant. Till such time the in-laws of Appellant, Binod Sah, had arrived the dead body was kept at the place of occurrence. He did not know about any demand of dowry being made by the in-laws.

8. PW 3 (Ramdeo Sah) is the father of the deceased, who stated that on 28.12.2007 at about 1.00 PM, his wife, Seema Devi, PW 10, informed him on phone that his daughter, Ruby Devi, had been burnt, so, he immediately took leave from school and reached Shiv Narayanpur at around 2.00 AM in the night. Next day at 8'O clock he went to Shiv Narayanpur P.S. where he saw the dead body and a container of kerosene oil. He stated that father-in-law, Munna Sah, used to demand 50,000/- rupees and gold at the time of marriage which he

had given. However, even later on they always used to demand money from him and his daughter and on 24.07.2007 Appellant, Munna Sah, had called him up for money. It is for this reason that the occurrence had taken place.

9. He stated in his cross-examination that his son-in-law, Binod Sah, used to work in Pune, whereas, his daughter used to lived with her in-laws. His son-in-law had assured that he would separate from his parent at which he had let his daughter to go to the matrimonial home. Just ten days before the occurrence, his son, Rajesh, PW 4, had gone to the matrimonial home and saw that his daughter and son-in-law were living separately from his parents. She had complained that the in-laws always used to fight and her husband was going to Pune once again to work. He had never complained earlier in regard to attitude to the in-laws.

10. His attention was drawn to the earlier statement that he had not stated that his *Samdhi* Appellant, Munna Sah, had demanded money from him on 24.07.2007. He conceded that his daughter was a matriculate, whereas, his son-in-law had merely studied up to II or III class. He used to go outside to work leaving his daughter.

11. PW 4 (Rajesh Kumar), brother of the deceased, stated that on 28.12.2007 while he was at his home his brother-in-law Appellant, Binod Sah, informed him that his sister, Ruby Devi, had sustained burn injuries at which entire family left for Shiv Narayanpur,

where he saw his sister lying on a cot. On seeing her, he speculated that his sister had been burnt to death. There was a container of kerosene oil also lying there.

12. He generally stated that the reason for the occurrence was demand of dowry and threat having been meted out earlier. He stated that about ten days earlier he had gone to the house of his sister and found that his sister and brother-in-law were separate from the parent. He had eaten and thereafter left. He had also met Appellant, Binod Sah, there. After having returned home, he informed his parent that his sister and Appellant were separate. He contradicts the statement of his father that he had gone to the house and even though the deceased and his son-in-law was separate from their parents, they used to always fight with them and the husband had decided to leave soon for work. He also conceded that no complaint was ever made with regard to demand of dowry and nor any phone calls could be traced out in this regard. He confirmed that his sister was matriculate, whereas, his brother-in-law was merely 5-6th pass. It was suggested to him that his sister used to complain that even while she is matriculate, she has been married to an illiterate person.

13. PW 5 (Rakesh Kumar) is another brother of the deceased, who stated that on 28.12.2007 he received information that his sister, Ruby Devi, had been burnt at which they all went to her matrimonial home and saw the dead body lying on the bed and



container of kerosene oil under the bed. He stated that the Appellants used to demand 10-20 thousand rupees and a colour TV from his parents and it was on account of non-fulfillment of such demand this occurrence had taken place. He stated that he had reached the place of occurrence at about 8.30-9.00 PM. He also confirmed the presence of the Appellants and one Guriya in the house itself as also that the Appellant, Binod Sah, was merely 5-6 class pass, whereas, his sister was a matriculate. He stated that his sister and brother-in-law were not separate in mess. He also stated that inmates of the house had taken the dead body to the hospital and thereafter taken for last rites.

14. PW 6 (Rakesh Kumar Yadav) is the Investigating Officer, who stated that on 28.12.2007 he had recorded the *fard-e-bayan* of PW 10 and prepared the dead body challan for sending it for Post Mortem Examination. He had seized certain articles from the place of occurrence. He proved the Inquest Report as Ext.4. He thereafter examined rest of the witnesses and inspected the place of occurrence which was the house of the Appellants. He thereafter submitted charge-sheet under Section(s) 304-B Indian Penal Code.

15. In cross-examination, he stated that he had taken the statement of PW 3, father of the deceased, six days later. He had also examined the persons, who stayed close by and there was no complain of any assault at the hands of the Appellants. He also had not found any smell of kerosene oil at the place of occurrence nor did he find it



sprinkled anywhere around. The bed on which dead body was laid was not found burnt and when he had reached the place of occurrence Appellant, Binod Sah, was present there. He did not question any of the accused but immediately caught hold of the Appellant, Binod Sah. He had taken the defence statement of the Appellant, Binod Sah, who stated that he did not know as to how the occurrence had taken place. It was suggested to him that, in fact, Binod Sah had stated that at the time of occurrence he was at the *Haat*. He did not arrest the Appellant, Binod Sah, till 29.12.2007 i.e. next morning nor had the Appellant, Binod Sah, attempted to run away in this period. He also stated that deceased used to go to the shop of PW 9 and tell him that she had married a fool. He stated that the Informant had not stated before him that on 28.12.2007 at 3.30 PM she had informed on phone that the in-laws had burnt her daughter. In fact, she had stated that that it was Appellant, Binod Sah, who had informed that the deceased had been burnt. He also denied that the Informant had never stated about demand of 20,000/- rupees as dowry nor about colour Television for which reason she was burnt to death. He was asked as to who had been handed over the dead body after post mortem examination but he stated that there was no note in this regard. It was suggested to him that, in fact, dead body had been given to the in-laws.

16. PW 8 (Brahma Kumar Yadav) stated that he learnt that the deceased had committed suicide.

17. PW 9 (Ram Roop Uraon) stated that on the date of occurrence at about 12.00 noon three Appellants were selling jaggery at the Haat when there was sudden cry that the daughter-in-law of Appellant, Munna Sah, had sustained burn injury. He went there and found her burnt. Later, he learnt that Binod Sah had fought with his wife but he did not know the reason and, in fact, Appellant, Binod Sah, used to live separately from his parents. He stated that from 8'O clock in the morning the Appellants were selling jaggery in the market and they had also come home running on hearing about the deceased having sustained burn injuries.

18. PW 10 (Seema Devi) is the Informant who stated that on 28.2.2007 at about 7:00 P.M. she reached the house of the Appellants since on the same day at 3:30 P.M. she received information that her daughter has been killed by her husband and in-laws. When she reached there, she saw her daughter dead lying on the bed in a burnt condition. She stated that it was on account of non-fulfillment of demands of money, television and Scooter that her daughter had been killed. In cross-examination, she stated that when she reached the house of the Appellants, the Police told her that it was they who had called her. She had reached there at 8:00 P.M. at that time the Police Officials were present. She stated that it was on information by the neighbours that she assumed that her daughter had been killed by the accused persons. However, she did not disclose the name of any accused. She



explained the period of marriage of the deceased with the Appellant Binod Kumar Sah and she had tried to explain that a compromise had been entered into between them. She further stated that the dead-body was lifted by the mother-in-law and another villager as also the father-in-law had performed her last rites. She also conceded that her daughter was a matriculate whereas her husband was only fifth class pass. It was suggested to her that in fact, her daughter was frustrated on account of low education of her husband and denied knowing that the husband used to stay separate from his parents which is contrary to the statement of her own sons.

19. Defence has also examined four witnesses. DW-1 (Bahadur Mandal) stated that on the date of occurrence, he suddenly heard hulla that the deceased had been burnt at which they all including the Appellants rushed from the market to the house.

20. DW 2 (Rajendra Mandal) stated that he learnt that the daughter-in-law of Munna Sah had been burnt at which he went there and saw a huge crowd gathered. The dead-body had been kept on the bed and the Police had come immediately thereafter but did not arrest anyone. There was no complaint of any demand of dowry. He happens to be the Up-Sarpanch and, hence, he was a responsible person.

21. DW 3 (Md. Sharif Alam) was the Sarpanch who stated that suddenly they heard about the death of the deceased at which he went to their house. The Police had come but did not arrest anyone.

He also stated that the Appellant Binod was living separately from his parents.

22. DW 4 (Harendra Kumar) stated that he never heard about any complaints in regard to demand of dowry.

23. Having gone through the evidence of the witnesses, we find that the essential ingredients of Section 304B Indian Penal Code about demand of dowry soon before the death of the deceased is not true inasmuch as in the First Information Report, a different story has been given whereas the sons of the Informant have given another picture altogether. In such circumstances, when contradictory statements have been made in regard to the nature of dowry that was demanded, we are not inclined to accept the story. Moreover, there are circumstances to suggest that none of the Appellants were present at the place of occurrence when the deceased was burnt and appeared later and stayed there till the family of the deceased arrived. In fact, till the next day the Appellant Binod Sah was waited and all accused remained at the house itself and did not attempt to run away. This is not the normal conduct of a person who would commit murder. We further find that it was the father-in-law who conducted the last rites and independent Prosecution and Defence witnesses rule out the possibility of murder.

24. In view of such, giving benefit of doubts to the Appellants, we allow these appeals. The Judgment of conviction and

order of sentence dated 10/22.2.2011 passed by the Additional Sessions Judge, Fast Track Court No. III, Bhagalpur, in Sessions Trial No.440 of 2008 + 486 of 2008/475 of 2009, is hereby set aside. The Appellants of both the Appeals are acquitted of the charges.

25. The Appellant Binod Sah of Cr. Appeal (DB) No. 281 of 2011, who is in jail custody, is directed to be released forthwith, if not wanted in any other case.

26. So far as the Appellants Munna Sah and Lochani Devi of Cr. Appeal (DB) No. 203 of 2011 is concerned, they are on bail and, hence, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

NAFR

(Rajendra Kumar Mishra, J)

J.Alam/S.Ali

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