

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 1113 of 2010

Against the judgment of conviction dated 17.07.2010 and order of sentence dated 21.07.2010 passed by Sri R.P. Thakur, the learned Additional District & Sessions Judge-II, Madhubani in Sessions Trial No. 248 of 2009 arising out of Rajnagar P.S. Case No. 39 of 2009 bearing G.R. No. 359 of 2009

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Jitendra Kumar Singh @ Jitendra Singh, Son of Guneshwar Singh, R/O - Vill. – Rahi-uttar, P.S. - Rajnagar, Dist. - Madhubani

.... Appellant

Versus

The State of Bihar

.... Respondent

With

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Criminal Appeal (SJ) No. 833 of 2010

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1. Gunesar Singh @ Guneshwar Singh, S/o Late Anant Singh

2. Niru Devi, wife of Gunesar Singh

Both residents of village – Rahi-uttar, P.S. – Rajnagar,
District – Madhubani

.... Appellants

Versus

The State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.1113 of 2010)

For the Appellant : Shri Krishna Prasad Singh, Sr. Advocate
Mrs. Meena Singh, Advocate

For the Respondent : Mr. S. N. Prasad, A.P.P. with
Mr. S. A. Ahamad, A.P.P.

(In CR. APP (SJ) No.833 of 2010)

For the Appellants : Shri Krishna Prasad Singh, Sr. Advocate
Mr. Vijay Kumar, Advocate
Mrs. Meena Singh, Advocate

For the Respondent : Mr. S. N. Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 11-05-2016

Heard learned counsel for the appellants and learned
Additional Public Prosecutor for the State.

2. These two appeals have been heard together and are being
disposed of by this common judgment as both the appeals arise out of
against the same judgment of conviction and order of sentence dated

17.07.2010 and 21.07.2010 respectively passed in Sessions Trial No. 248 of 2009 arising out of Rajnagar P.S. Case No. 39 of 2009 bearing G.R. No. 359 of 2009 by which the appellant Jitendra Kumar Singh @ Jitendra Singh (appellant of Cr. Appeal (SJ) No. 1113 of 2010) has been convicted under Section-304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and further the appellants Gunesar Singh @ Guneshwar Singh and Niru Devi (appellants of Criminal Appeal (SJ) No. 833 of 2010) have also been convicted under Section-304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case, as alleged in the fardbeyan of the informant, namely, Anil Kumar Rai (P.W.4, brother of the deceased) recorded by S.I., K. Chaudhary of Rajnagar Police Station on 23.02.2009 at about 09:30 a.m. at Rahi village is that Ranjana Devi, the deceased, sister of informant was married with Jitendra Kumar Singh (appellant of Cr. Appeal (SJ) No. 1113 of 2010) of village Rahi-Utter three years ago. Thereafter she continued conjugal life peacefully with her husband. It has further been alleged that appellant (Jitendra Kumar Singh) began to demand motorcycle and money then informant assured for his demand later on and for this appellant (Jitendra Kumar Singh) used to torture the deceased for dowry. The deceased who is the sister of informant, had informed about alleged demand of dowry and torture to her on which informant with some villagers went to the house of accused-appellant

(Jitendra Kumar Singh) on 20.02.2009 and met with him and his parents, namely, Gunesar Singh @ Guneshwar Singh and Niru Devi. Informant with his villagers pacified the matter by mutual talk and on the same day informant returned home. On 23.02.2009 informant was informed on telephone by Jamuna Singh, the co-villager of accused Jitendra Kumar Singh, that sister of informant has been killed by throttling. On this information, informant went to the house of Gunesar Singh @ Guneshwar Singh in village, Rahi and saw his sister Ranjana Devi lying dead on the plang (cot) in the room. Informant in his fardbeyan, claimed before the police that his sister Ranjana Devi aged about 25 years has been killed by throttling by appellants-Jitendra Kumar Singh @ Jitendra Singh (husband of the deceased), Gunesar Singh @ Guneshwar Singh (father-in-law of the deceased) and Niru Devi (mother-in-law of the deceased) on 22/23.02.2009.

4. The fardbeyan was recorded on 23.02.2009 on which the endorsement was made to register Rajnagar P.S. Case No. 39 of 2009 under Sections-304B/34 of the Indian Penal Code. However, on 23.02.2009 First Information Report was lodged, on the basis of the fardbeyan of the informant and investigation proceeded. During investigation, the Investigating Officer recorded the further statement of the informant and inspected the place of occurrence. The place of occurrence is the cemented house of appellant (Jitendra Kumar Singh) with asbestos roof and in front of the house there is a brick soling road

which goes to the south of Rajnagar, in the east the house of Satya Narayan Singh and to its north there is Dalan of accused persons and in the south there is house of Ram Babu Singh with asbestos roof. The inquest report of the deceased was prepared and the same was sent for post-mortem. He recorded the statement of the witnesses, Yogendra Prasad Rai, Ram Babu Rai, Mahendra Prasad Rai, Jamun Singh, Jai Narayan Singh. Ranjana Devi is the sister of the informant and the dead body was sent for post-mortem. The post-mortem of the deceased was conducted by the Doctor Binod Kumar (P.W.6) on 23.02.2009 at 3:00 p.m. and found the following ante-mortem injuries on the person of the deceased.

- (i) Ligature mark transverse continuous round the neck below down in the neck below the thyroid cavity
- (ii) Abrasion and echomosis round the edges of the ligature mark.

On dissection

- (i) Found subcutaneous tissues under the mark echomosis.
- (ii) Fracture of the larynx and thoracic.

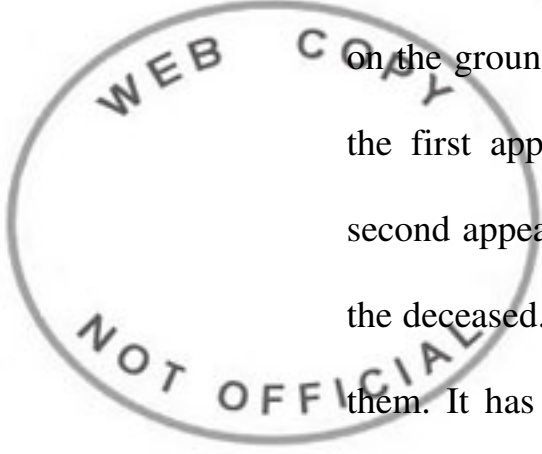
Time since death within 24 hours and the cause of death is said to be asphyxia caused by strangulation.

5. The police after statement of the witnesses submitted charge-sheet for the offence under Section-304B of the Indian Penal Code and consequently cognizance was taken and the case was committed to the Court of Sessions. During trial, after framing of charge, six witnesses were examined on behalf of the prosecution. They are

P.W.1 Ram Babu Rai, the cousin of the deceased, P.W.2 Yogendra Prasad Roy (the uncle of the deceased), P.W.3 Mahendra Prasad Rai, the uncle of the deceased, P.W.4 Anil Kumar Rai, the brother of the deceased and the informant, P.W.5 Kailash Chaudhary, the Investigating Officer of this case, P.W.6 Dr. Binod Kumar. The defence has also adduced two witnesses who are D.W.1 Jamun Singh and D.W.2 Jai Narayan Singh. The documentary evidence adduced are Ext.1 signature of Anil Kumar Rai on fardbeyan, Ext.1/1 signature of Yogendra Prasad Rai on fardbeyan, Ext.2 endorsement on fardbeyan, Ext.3 inquest report, Ext.4 formal First Information Report and Ext.5 post-mortem report.

6. The trial Court taking into consideration the evidence of the witnesses, convicted and sentenced the appellant as mentioned above on the ground that since the victim has been killed otherwise than in normal circumstances and was subjected to torture and harassment by the husband of the deceased and in-laws in connection with the demand of dowry and even two days before the occurrence she was subjected to cruelty for demand of dowry so there is evidence that since before the death the victim has been subjected to cruelty and hence, the ingredients under Section-304B of the Indian Penal Code has been touched and the presumption under Section 113B of the Indian Evidence Act attracted and hence, hold that the prosecution has been able to prove the charges levelled against the appellant beyond all reasonable doubts.

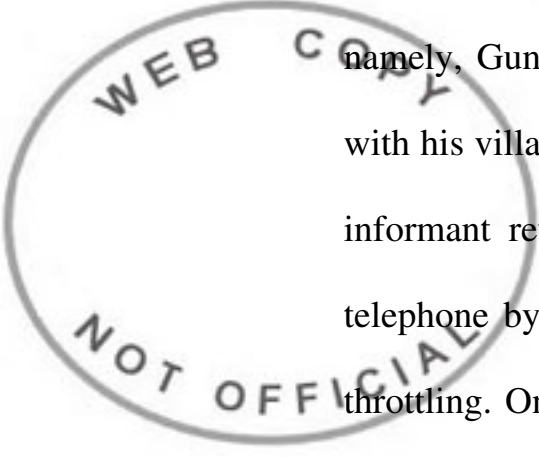
7. Learned counsel for the appellants has challenged the judgment of conviction and order of sentence recorded by the trial Court on the ground that though there are three appellants in these appeals. In the first appeal the appellant is husband of the deceased and in the second appeal, the appellants are the father-in-law and mother-in-law of the deceased. There is no specific allegation of demand of dowry against them. It has specifically been asserted in the First Information Report itself that there is specific allegation of demand of dowry and torture by the husband of the deceased with regard to the motorcycle and money. It has been asserted that there is no specific allegation against the other two appellants i.e. the father-in-law and mother-in-law. It has further been contended that the death was not in suspicious circumstance as the Doctor in his cross-examination has stated that it cannot be said that as to whether the death was homicidal and suicidal. It has further been contended that P.W.4 the informant has come to support the prosecution case but it has come in evidence that at the time of occurrence he was studying at Jamshedpur, ITI and during that period the mother of the deceased used to remain at house. P.W.2 in his evidence has specifically stated that the dowry demand was made from widow the mother of the deceased which he came to know from the said widow, Lalo Devi, but said Lalo Devi, the mother of the deceased has not been examined as a witness though she is the most important witness and so the adverse interference is required to be taken. It has further been contended that the



ingredients under Section-304B of the Indian Penal Code has not been established. The presumption under Section 113 of the Evidence Act cannot be attracted.

8. Leaned counsel for the State, however, contended that the prosecution has been able to prove the ingredients levelled against the appellants for the offence under Section-304B of the Indian Penal Code and the witnesses have supported the prosecution case regarding the demand of dowry and subjecting cruelty and the death may have been either suicidal or homicidal, but it can well be said that the death is in suspicious circumstance and hence, the conviction under Section-304B of the Indian Penal Code can well be maintained.

9. On the respective submission of the parties, I proceed to consider the evidence of the witnesses in the light of the prosecution case and the evidence adduced. However, the prosecution case as alleged in the fardbeyan is that Ranjana Devi, the deceased, sister of informant was married with Jitendra Kumar Singh (appellant of Cr. Appeal (SJ) No. 1113 of 2010) of village Rahi-Utter three years ago. Thereafter she continued conjugal life peacefully with her husband, Jitendra Kumar Singh. It has further been alleged that appellant (Jitendra Kumar Singh) began to demand motorcycle and money then informant assured to fulfil his demand later on and for this appellant (Jitendra Kumar Singh) used to torture deceased for dowry. The deceased, sister of informant had informed about alleged demand of dowry and torture to her on which



informant with some villagers went to the house of accused-appellant (Jitendra Kumar Singh) on 20.02.2009 and met with him and his parents, namely, Gunesar Singh @ Guneshwar Singh and Niru Devi. Informant with his villagers pacified the matter by mutual talk and on the same day informant returned home. On 23.02.2009 informant was informed on telephone by Jamuna Singh that sister of informant has been killed by throttling. On this information, informant went to the house of Gunesar Singh @ Guneshwar Singh in village, Rahi and saw his sister Ranjana Devi lying dead on the plang (cot) in the room and she was aged about 25 years. Informant in his fardbeyan, claimed before the police that his sister Ranjana Devi aged about 25 years has been killed by throttling by appellant-Jitendra Kumar Singh @ Jitendra Singh, husband of the deceased, Gunesar Singh @ Guneshwar Singh and Niru Devi, parents of appellant-Jitendra Kumar Singh @ Jitendra Singh on 22/23.02.2009.

10. P.W.1 is the cousin of the deceased and has deposed that whenever his sister Ranjana Devi used to come to his house then she used to disclose about the torture or subjecting cruelty by way of assault and abuse and also used to disclose that she is being vexed. He has further deposed that on 20.02.2009 he along with his uncle and cousin went to the Sasural of his sister and there was demand of motorcycle and thereafter they got information regarding the killing of his sister on 22.02.2009. However, the criticism of the evidence suffers from contradiction. However, though an attempt has been made to take

contradiction but the contradiction has not been taken in pursuance of Section 145 of the Evidence Act as no attention has been drawn with regard to the statement made by this witness before the Police under Section 161 of the Cr.P.C. nor the statement under Section 161 of the Cr.P.C. has ever been proved by the Investigating Officer. This witness has specifically stated about the fact that he saw his sister dead at the Sasural and has deposed that she was done to death by strangulation and blood and frost oozing out from the mouth and nose.

11. P.W.2 is the uncle of the deceased, deposed that on receiving information on 23.02.2009 he along with his villager went to village Rahi-Uttar at the Darwaza of Gunesar Singh and found his niece Ranjana Devi dead. He further deposed that two days prior to the said occurrence he had visited the house of accused along with 3-4 persons and matter of demand of money and motorcycle towards dowry was pacified. He has further stated that the demand of dowry was made from mother of Ranjana Devi and he never saw Gunesar Singh talking with the mother of Ranjana Devi and further deposed that with regard to the demand of dowry Most. Lalo Devi had disclosed to him about two years back and hence, from the evidence of this witness, it is apparent that the demand was not made by the accused from this witness and this witness learnt that the demand was made by the accused persons to Most. Lalo Devi she has not been examined and hence, his evidence regarding the demand having learnt from Lalo Devi suffers from infirmity as the

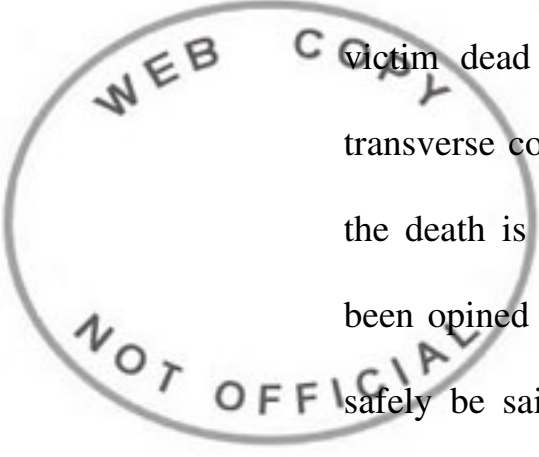
evidence is hit by hearsay. It has been stated that this witness has deposed that the victim used to come Naiher along with her husband and used to even live at Naiher as well as the house of this witness and it has been asserted that when the relationship between the husband and wife was pleasant then it may be presumed that there was no demand or subjecting cruelty. The further criticism of this witness is that Daroga Jee never made any inquiry from him and mother of Anil Kumar Rai for examination. However, from the case diary, it is apparent that the statement of this witness recorded by the police.

12. P.W. 3 Mahendra Prasad Ram deposed that on receiving information by telephone that his niece Ranjana Devi is sleeping and not getting up thereafter he along with P.W.1 Ram Babu Roy, P.W.2 Yogendra Prasad Roy and P.W.4 Anil Kumar Rai on 23.02.2009 went to Rahi-Uttar village and there they saw that the door was broken and victim was lying dead on the Plung (cot) and the blood and froth coming out from the mouth and nose and there he learnt from Jitendra Kumar Singh, Gunesar Singh and Niru Devi that they have done to death by strangulation. He has further stated that on 20.02.2009 he had come to the house of the accused along with Yogendra Ram, Anil, Ram Babu Rai and they assured for demand of money as dowry but in the night of 22.02.2009 they learnt that the accused persons have killed the victim who was married only about three years back.

13. P.W.4 is the informant and supported the prosecution case regarding the demand of dowry and subjecting cruelty. On 20.02.2009 he along with Ram Babu Rai, Yogendra Rai, Mahendra Prasad Rai went to the house of Jitendra Kumar Singh and there they made them understand not to subject her to cruelty for non-fulfilment of demand and it is alleged that the demand was continued.

14. The defence of the accused persons as apparent from the suggestion and the defence witness that Ranjana Devi used to flee away Naiher after having a quarrel as she was a quarrelsome lady and the Naiher people used to go to her at Sasural and further defence taken that on the date of the occurrence Ranjana Devi was not at his house and the victim asked her father-in-law to let her to go to Patna but the father-in-law did not adhere to her request so she committed suicide. The further defence is that after the death the intimation regarding the death was given by Gunesar Singh then the prosecution party demanded heavy amount and on non-payment of the heavy amount this case has been filed.

15. However, after going through the evidence of P.Ws. 1, 3 and 4, it is apparent that the prosecution has been able to prove that the marriage solemnized within three years, there was demand of dowry and subjecting cruelty for non-fulfilment of the demand and money. Further on 20.02.2009 about two days prior to the occurrence, the prosecution party went to the Sasural of the victim in consequence of the subjecting



cruelty to make them understand regarding the demand of dowry and they got information on 22.02.2009/23.02.2009 went and found the victim dead but the post-mortem itself indicated that ligature mark transverse continuous round of the neck and the doctor has opined that the death is due to asphyxia caused by strangulation. However, it has been opined that the death may be suicidal or homicidal. Hence, it can safely be said that the death is in suspicious circumstance. However, having regard to the finding that the death is by strangulation and not by hanging then the opinion that it may be suicidal is not sustainable as it is well known that a person cannot strangle himself to death hence, the opinion of the doctor that death may be suicidal or homicidal is contrary to law.

16. Hence, going into the evidence, it is apparent that the death is in suspicious circumstances. The marriage solemnized within three years of the occurrence and the evidence is that there was demand and subjecting cruelty and further two days prior to the occurrence the witnesses had been to the Sasural in connection with subjecting cruelty and hence, I find that the ingredients for the offence under Section 304B of the Indian Penal Code that the marriage solemnized within seven years, there is evidence of demand and subjecting cruelty and further soon before the death, the victim was subjected to cruelty for non-fulfilment of the demand to draw the presumption under Section 113B of the Evidence Act for the dowry death.

17. However, learned counsel for the appellants submits that from the evidence of these witnesses, it is apparent that the victim used to go to her Naiher along with husband at the interval of 2-3 months and hence, it can be interfered that the relationship between the husband and wife was peaceful. It has further been contended that the mother of the victim is a most important witness in the case but she has not come to depose hence, an adverse interference may be given in view of the fact that the mother of the victim has not been examined whereas the evidence is that P.W.4 the informant used to study at Jamshedpur at the time of occurrence and has little occasion to come to the village hence, his evidence may not be reliable and further the evidence that the death can both by suicidal and homicidal.

18. However, P.Ws.1, 3 and 4 have supported the prosecution case that the marriage solemnized within three years of the occurrence.

19. However, it is not in dispute that the marriage solemnized within three years of the occurrence and this fact has not been challenged by the defence itself. However, there is allegation of demand of dowry and for this P.Ws.1 and 4 have been examined and their evidence has been found to be reliable and trustworthy and hence, merely for the reason the evidence of P.Ws.1, 3 and 4 cannot be brushed aside on the sole ground that the mother of the victim has not been examined as the mother is a witness to the same point on which P.Ws.1, 3 and 4 have deposed regarding the demand and subjecting cruelty. They are also the

most important witnesses as on information they rushed to the Sasural of the victim on 22.02.2009 as well as 23.02.2009 when they learnt about the death of the victim.

20. The criticism advanced by the fact that the victim has been done to death by strangulation and the opinion of the Doctor that the death can both by homicidal and suicidal. However, even if going through the jurisprudence of Modi, it is apparent that in the case of death due to asphyxia caused by strangulation ruling out the hanging can not be suicidal as it is not possible for a man to press his own neck or to strangle to cause his death and hence, the theory of suicide when death is caused by asphyxia due to strangulation does not stand to reason and the moment the Doctor opined that the death is due to asphyxia caused by strangulation ruling out hanging then suicide is not substantiated and once the hanging is ruled out it is not possible to hold that the death is suicidal as no person can press his neck in such manner as to cause his death due to bleeding and froth was coming out from the mouth and nose. Hence, there is no reason to abide by the evidence of the Doctor. It cannot be said that the death was either homicidal or suicidal when he has deposed that death is due to asphyxia caused by strangulation and has ruled out the hanging. Further in case of hanging ligature mark is uphold upward and there is no such finding that such ligature mark was found on the person of the victim.

21. However, taking into consideration the allegation made in the First Information Report itself it is apparent that there is specific

allegation of demand of motorcycle and money against the husband Jitendra Kumar Singh and on non-fulfilment of the demand subjecting her to cruelty. However, in the entire evidence, though there is evidence against the parents the father-in-law and mother-in-law regarding the demand and subjecting cruelty, but the said evidence are general and omnibus and after going through the entire evidence there is no specific allegation regarding the demand and subjecting cruelty.

22. Having regard to the aforesaid facts that there is specific allegation of dowry demand and subjecting cruelty is against the husband of the deceased, i.e., the appellant Jitendra Kumar Singh @ Jitendra Singh of Criminal Appeal (SJ) No. 1113 of 2010, hence, I find and hold that the prosecution has been able to prove the charges levelled against him beyond all reasonable doubts and, accordingly, Criminal Appeal (SJ) No. 1113 of 2010, is dismissed.

23. So far the appellants Gunesar Singh @ Guneshwar Singh and Niru Devi are concerned, there is no specific allegation regarding the demand of dowry and subjecting cruelty against them and hence, they are entitled to get benefit of doubt and I give the appellants Gunesar Singh @ Guneshwar Singh and Niru Devi benefit of doubt and hold that the prosecution has not been able to prove the charges levelled against them hence, the judgment of conviction dated 17.07.2010 and order of sentence dated 21.07.2010 passed by Sri R.P. Thakur, the learned Additional District & Sessions Judge-II, Madhubani in Sessions Trial

No. 248 of 2009 arising out of Rajnagar P.S. Case No. 39 of 2009 bearing G.R. No. 359 of 2009 are hereby set aside. They are on bail. They are discharged from the liabilities of their respective bail bonds. Accordingly, Cr. Appeal (SJ) No. 833 of 2010 is, allowed.

(Gopal Prasad, J)

Kundan Sharma

AFR/NAFR	NAFR
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