

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.304 of 2011

[Against the Judgment of conviction dated 31st March, 2011, and order of sentence dated 1st April, 2011, passed by the Additional Sessions Judge (Fast Track Court No. 6), Purnea, in Sessions Trial No. 05 of 2009/Trial No. 187 of 2009 arising out of Banmankhi P.S. Case No. 26 of 2001, G.R. Case No. 219 of 2001]

- 1. Subansh Mandal, son of Sri Jagadish Mandal
 - 2. Haribansh Mandal, son of Sri Jagdish Mandal
 - 3. Prakash Mandal, son of Sri Jagadish Mandal
 - 4. Smt. Rupa Devi, wife of Sri Haribansh Mandal
- All resident of village Sukhiya, P.S. Banmankhi, Distt. Purnea.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 497 of 2011

[Against the Judgment of conviction dated 31st March, 2011, and order of sentence dated 1st April, 2011, passed by the Additional Sessions Judge (Fast Track Court No. 6), Purnea, in Sessions Trial No. 05 of 2009/Trial No. 187 of 2009 arising out of Banmankhi P.S. Case No. 26 of 2001, G.R. Case No. 219 of 2001]

Nityanand Mandal, s/o Jagdish Mandal, resident of village- Sukhia, Police Station- Banmankhi, District- Purnia

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No.304 of 2011)

- For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Anant Kumar, Adv.
Mr. Suresh Pd. Singh, Adv.
 - For the State : Mr. Abhimanyu Sharma, A.P.P.
- (In CR. APP (DB) No.497 of 2011)
- For the Appellant/s : Mr. N.K. Agrawal, Sr. Adv
Mr. Anant Kumar, Adv.
Mr. Suresh Pd. Singh, Adv.
 - For the State : Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and
HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA
ORAL JUDGMENT
(Per: **HONOURABLE JUSTICE SMT. ANJANA PRAKASH**)
Date: 19-04-2016

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

2. The Appellants Subhash Mandal, Haribansh Mandal, Prakash Mandal and Smt. Rupa Devi of Cr. Appeal (DB) No. 304 of 2011 have been convicted under Section 304-B Indian Penal Code and sentenced to undergo seven years rigorous imprisonment whereas Appellant Nitya Nand Mandal of Cr. Appeal (DB) No. 497 of 2011 has been convicted under Sections 304-B of the Indian Penal Code and sentenced to undergo imprisonment for life.

3. The case of the Prosecution according to the PW4 (Shambhu Kumar Singh) is that his sister Pinki Kumari was married to Appellant Nitya Nand Mandal in April, 2000 on which occasion, dowry was given to the in-laws. However, in-laws used to demand additional dowry by way of cash of Rs.50,000/- and a Motorcycle and the sale price of the land which was given in dowry. However, this demand could not be fulfilled. Sometime back, the deceased sent a letter informing them about the aforesaid demands. They tried to take her home but the accused did not allow them to do so. On 7.2.2001 at about 8:00 A.M. Mahendra Jha and Shambhu Jha

of village Sukhiya i.e. the village of the Appellants (not examined), came and informed them that the deceased was seriously ill. He then immediately went on a bicycle and saw his sister dead. No one could give a satisfactory explanation in regard to the death and, therefore, he instituted the present case on the same day.

4. During Trial, the Prosecution examined 23 witnesses but from the circumstances of the case, it does not appear to be one of Appellants causing death of the deceased for the ends of dowry which circumstances we shall discuss below:

5. PW-1 (Bibhutee Mandal) has stated that on 6.7.2001 when he was at home, he was informed that his sister-in-law had died on account of dysentery. So he went there and saw her lying dead in the courtyard. He learnt there that she had died on account of dysentery.

6. PW 2 (Bhuneshwar Prasad Singh) who happens to be the father of the Informant stated that on 7.2.2001 information was given by Mahendra Jha and Shambhu Jha at 8:00 A.M. that the deceased had died. He immediately rushed there and saw his daughter dead lying on the bed in the Courtyard covered with cloth. When they removed the cloth, they found marks all over the body and '*Alta*' were on it and froth was coming out of the mouth. He met the villagers but no one could tell them the exact reason for death. None of the family

members of the deceased was present there. He stated that his daughter had written a letter in regard to demands of dowry.

In cross-examination, he stated that the alleged letter was not handed over to the Police since he did not demand the same.

7. PW 3 (Rajeev Mandal) is cousin brother of the deceased who stated that on the date of occurrence, an information was received that Pinki was seriously ill so he along with his cousin brother (PW4) left for the matrimonial home where he found her dead covered with a shroud. He learned from the villagers that the deceased had died on account of dysentery.

8. PW 4 (Shambhu Kumar Singh) the Informant stated that his sister Pinki Kumari had been married to Appellant Nitya Nand Mandal on 23.4.2000 whereas the occurrence had taken place in July, 2000. On the date of occurrence at about 8:00 A.M. morning, Mahendra Jha and Shambhu Jha brought an information that his sister was seriously ill and, therefore, he along with her mother left for the matrimonial home of his sister, where they found her dead body lying in the courtyard. Everyone was saying that she died on account of dysentery but they did not fit a satisfactory explanation and so he went to the Police Station and instituted a Fard-beyan which is Exbt. 1. An inquest was also prepared. He further stated that before the occurrence, dowry was used to be demanded and the letter in this

regard was with his mother.

In cross-examination, he stated that his sister was pregnant with the twins and was very weak. He further stated that his brother-in-law was not there and rest of the family members were saying that the deceased had died on account of dysentery. He admitted that no complaint was lodged when they received the letter demanding dowry. It was suggested to him that the deceased had died on account of dysentery.

9. PW 5 (Uma Devi) is the mother of the deceased who stated that on the date of occurrence, she had given information that the deceased was seriously ill and they went to matrimonial home and found her dead. She learnt that the deceased had died on account of dysentery but since she found blood on her face they were not satisfied with this explanation. She also stated that '*Alta*' was smeared on her hands. She mentions the fact of a letter having been sent by the deceased in regard to the harassment for the reasons of dowry but she never gave the said letter to the Police. It was on account of the letter she suspected that the deceased had been murdered.

In cross-examination, she also said that the deceased was pregnant and her husband was taking due care of her. However, none of the family members were present when she reached the house. It was suggested to her that in fact, the Police on hearing that the

deceased had died on account of dysentery, had scolded her as to why she had reported falsely that it was murder.

10. PW 6 (Bijendra Jha) stated that on the date of occurrence, they were all present in the Bajrang Bali temple along with Appellant Nitya Nand Mandal. During course of the meeting a child came and informed that the deceased was suffering from dysentery and her condition had deteriorated. On hearing this, Nitya Nand Mandal went to his courtyard and saw the deceased unconscious. He also went to call the Doctor but he was not found, so, he came back, by which time the deceased had died. He confirmed that the deceased had died on account of dysentery but when the family members of the deceased came, they instituted a case in this regard. He also stated that the deceased was pregnant and was not keeping good health and in fact the Appellant Nitya Nand Mandal was taking good care of her. He confirmed that the relationship between the husband and wife was very good.

11. PW 7 (Subhash Chandra Jha), PW 8 (Bucho Mandal) and PW 9 (Daya Mandal) also confirmed the statement of PW 6. PW 10 (Chhotu Kumar Jha) also confirmed the statement of PW 6 in regard to Appellant Nitya Nand Mandal being present in the temple and information having been received with regard to the deteriorating condition of the deceased on account of dysentery and,

thereafter, they rushed there and found her serious.

12. PW 11 (Fagu Mandal) stated that the deceased died on account of diarrhoea.

13. PW 12 (Nago Mandal) also corroborated the statements of PW 6, PW 7, PW 8, PW 9, PW 10, PW 13, PW 14 and PW 15 in regard to the meeting in the temple when information was sent in regard to the deteriorating condition of the deceased.

14. PW-16 Sanjay Sah stated that he learnt that the wife of Nitya Nand Mandal was seriously ill so he rushed there and saw her suffering from dysentery and he declared that nothing could be done and slowly her condition deteriorated to such an extent that she lost her life.

15. PW 17 (Doman Mahto) and PW 18 Ahmad Khan did not support the case of the Prosecution and were declared hostile.

16. PW 19 (Siya Ram Mandal) and PW 20 (Shiv Mandal) also supported the factum of meeting in the temple when Appellant Nitya Nand Mandal was present in course of which an information was received in regard to illness of the deceased and, thereafter, she died on account of it.

17. PW 21 (Dr. Bipin Kumar Singh) performed the postmortem and found the condition of the dead body as follows:

“That there were no external injuries found on the person of the deceased”. He proves the postmortem as ext.3.

18. PW 22 (Arbind Kumar) is the Investigating Officer who stated that on 9.5.2002 he assumed investigation of the present case and received the FSL report. He appears to be a formal witness having proved ext. 4 the FSL report.

19. PW 23 (Tribhuwan Bhgat) is also an Investigating Officer stated that he received rumour on 7.2.2001 in regard to the death of the deceased at which he departed for the place of occurrence and met the Informant who gave a written report. He then investigated the place of occurrence as also the temple which was next to the house. He found the dead body having been properly laid out in the courtyard and examined the witnesses of the area.

All along in his cross-examination he has admitted that there were consistent statements that the deceased died on account of dysentery.

20. DW 1 (Shambhu Dev Jha) and DW 2 (Nageshwar Mandal) have also supported the fact of Appellant Nitya Nand Mandal being present in the Temple as also that after death, the Appellant had asked him to inform the family of the deceased in regard to the occurrence at which he had done.

21. From the evidence of the witnesses, we find



that there is no cogent proof in respect to demand of dowry as also causing death of the deceased which may have been unnatural. The sole evidence in regard to demand of dowry is the letter which has not been produced by the Prosecution. There is no direct allegation that the Appellants had ever demanded dowry from the Informant or his parents and his cousin brother. Also we find that no external injury was found on the person of the deceased and contrarily there are believable circumstances that the deceased had died on account of dysentery which could have been caused also if she had consumed poison, if at all the FSL report is to be believed.

We further find that the FSL report is dated 13.6.2007 i.e. more than six years after the occurrence. On scrutiny we find that even though the viscera had been preserved on 7.2.2001, it was sent to the FSL more than a year later i.e. on 24.5.2002. The report is dated 13.6.2007 i.e. a gap of five years. In such circumstances, it is highly unlikely that the organs had remained intact and not disintegrated and, hence, we are not inclined to place any reliance on the same.

23. In view of complete paucity of evidence as against the Appellants, we are inclined to allow the Appeals.

24. Accordingly, both the Appeals are allowed and the Judgment of conviction and order of sentence dated 31.3.2011/1.4.2011 passed by the Additional Sessions Judge, F.T.C.6,

Purnea, in connection with Sessions Trial No. 05 of 2009/Trial No. 187 of 2009 arising out of Banmankhi P.S. Case No. 26 of 2001, G.R. Case No. 219 of 2001, is hereby set aside. The Appellants of both the Appeals are acquitted of the charges.

25. The Appellant Nitya Nand Mandal of Cr. Appeal (DB) No. 497 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 Subansh Mandal, Haribansh Mandal, Prakash Mandal and Smt. Rupa Devi of Cr. Appeal (DB) No. 304 of 2011 is concerned, they are on bail and, hence, they are discharged from the liabilities of their bail bonds.

(Anjana Prakash, J)

(Rajendra Kumar Mishra, J)

S.Ali/-

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CAV DATE	
Uploading Date	
Transmission Date	