

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.91 of 2015

Against the judgment of conviction dated 17.01.2015 and order of sentence dated 19.01.2015 passed by Sri Anil Kumar Jha, Additional Sessions Judge, IV, Aurangabad, in Sessions Trial No. 356 of 2012/248 of 2012.

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Ataul Haq @ Md. Attaullah, Son of Late Sadique Mian Resident of Village-Parasia, P.S. Nabi Nagar, District Aurangabad.

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant : Mr. Bachan Jee Ojha, Advocate.
Mr. Binod Kumar Pandey, Advocate.
Mr. Akhilesh Kumar Pandey, Advocate.
For the State : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 13-01-2016

Heard learned counsel for the appellant and learned counsel for the State.

2. This appeal arises out of judgment of conviction dated 17.01.2015 and order of sentence dated 19.01.2015 passed by Sri Anil Kumar Jha, Additional Sessions Judge, IV, Aurangabad, in Sessions Trial No. 356 of 2012/248 of 2012 by which the appellant had been convicted for offence under Section 304B of Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years.

3. The prosecution case as alleged in the First Information Report instituted on basis of written report of informant Akbar



Hussain alleging therein that he had married his sister Ishrat Jahan with Ataul Haq @ Md. Attaullah, son of Late Sadique Mian, resident of Village- Parasia, P.S. Nabi Nagar, District-Aurangabad, about one year before. Further case is that after marriage, Attaullah used to demand of Rs. 1,00,000/- for running his medical shop. Further case is that Attaullah used to assault and vex the victim Ishrat Jahan for non-fulfillment of demand. Further case is that even two months prior to the occurrence while Ishrat Jahan was in family way, she was assaulted causing termination of her pregnancy. Further case is that informant and villagers collected there and made them understand. Further case is that Attaullah used to threat her that if money is not given then she will be killed. Further case is that on 10.05.2012 at 10.00 P.M. the informant learnt that victim Ishrat Jahan died by administering poison, then Attaullah inform but subsequently it was learnt that Taufiq Mian, Hassan Mian, Attaullah and Rehana Khatoon in collusion and conspiracy had murdered his sister Ishrat Jahan.

4. On the basis of written report of informant Akbar Hussain, F.I.R. lodged on 11.05.2012 at 8.30 A.M.

5. During investigation, the I.O. recorded statement of witnesses and inspected the P.O. which is single storey building of accused Attaullah facing south, prepared inquest report and sent the dead body for postmortem examination. Collected postmortem report

and after completing investigation submitted charge sheet. After submission of the charge sheet, cognizance taken and case was committed to the Court of Sessions. After commitment, charge framed for offence under Section 304B of Indian Penal Code and during trial 12 witnesses were examined by the prosecution.

6. P.W. 1 Jalil Ahmad, is father of the victim Ishrat Jahan. He had supported the prosecution case regarding demand of Rs.1,00,000/- by Attaullah and his family members and demand alleged to have been made for investment in existing the medical shop. However, money was not paid and he has supported that Ishrat Jahan was subjecting to cruelty. Further in his cross-examination he has stated that victim Ishrat Jahan disclosed that her husband Attaullah had illicit relation with his Bhabhi Rehana. Further he has stated he found injury on the dead body of the victim on her neck, finger broken and right side of dead body was damaged and injury near the ear of the victim. P.W. 2 Ali Karim Ansari has deposed that Akbar Hussain informed him that Ishrat Jahan died and he had knowledge about demand of Rs. 1,00,000/- and subjecting to cruelty. P.W. 3 has stated that he does not how Ishrat Jahan, the victim died nor he had knowledge about demand made by husband of Ishrat Jahan and evidence of P.W.4 the mother of the victim declared hostile as not supported the prosecution case and stated that what occurrence took



place with Ishrat Jahan she did not know and her statement not recorded by the police. P.W.5 is informant, though, he had supported the prosecution to the effect that his sister Ishrat Jahan disclosed him that her husband used to demand of Rs. 1,00,000/- for running a medical shop and had deposed that his brother-in-law Attaullah informed him on mobile that he had taken Ishrat Jahan to Ranchi for her treatment. Thereafter, after 10-15 minutes lapses, he informed that Ishrat Jahan was died. However, he has not whisper in his examination-in-chief regarding demand or subjecting cruelty for non-fulfillment of demand by the appellant or in-laws of the victim. Further, in his cross-examination, he has stated that on receiving information he doubted the act of his brother-in-law then on mere suspicion he lodged the case. Further he has stated Ishrat Jahan had never reported against her husband or her in-laws regarding any assault or subjecting cruelty and had deposed that relation between Ishrat Jahan and her husband was good. Hence, from his evidence, it is apparent that he had not supported the prosecution as alleged in the First Information Report regarding any demand or subjecting to cruelty for non-fulfillment of demand of dowry. P.W. 6 is Ravindra Nath who has deposed to the effect that he learnt about illness of wife of Attaullah then after one hour he learnt that Ishrat Jahan died. However, there is no whisper regarding any demand or subjecting to



cruelty. P.W. 7 is Gulam Hussain has deposed to the effect that Ishrat Jahan was willing to go to her Naihar and was pursuing for it, but her naihar people forbade her to come to her naihar and there is no evidence regarding demand or subjecting to cruelty. P.W. 8 is Md. Wakil driver of the vehicle in which the victim was taken to Ranchi for her treatment and has only deposed that Ishrat Jahan died during taking her to Ranchi. P.W.9 is Faiz Ansari. However, his evidence only to the effect that Attaullah informing him regarding seriousness of his wife and he was taken to Ranchi and he participated in funeral of the victim. P.W.10 is I.O. who investigated the case and submitted charge sheet and prepared inquest report. P.W.11 is doctor who had conducted the post mortem examination of the victim which has been marked as Exhibit- 1 and 2 and had deposed that he has not found any internal or external injury on the person of the deceased and he was not able to find out regarding cause of death. P.W. 12 is Ashok Kumar Singh a formal witness and Advocate Clerk, who has proved formal F.I.R. Exhibit-4, written report Exhibit-1, post mortem report, Exhibit-2 and Viscera report- Exhibit-3.

7. The trial court taking into consideration the evidence of witnesses that victim was done to death by consuming poisonous substance and convicted the appellant as mentioned above.

8. Learned counsel for the appellant however contends that



prosecution has not been able to prove the charges beyond reasonable doubt as ingredient for offence under Section 304B of Penal Code has not been established. It is further contended that, though, there is allegation of demand of Rs. 1,00,000/- for running a medical shop, but this demand cannot be treated as dowry. However, it has been contended that if the demand has established then it has to be proved that victim was subjecting to cruelty for demand of dowry. Moreover, one of the ingredient for offence under Section 304B of Penal Code that “soon before the death the victim was subjecting to cruelty” for non-fulfillment of demand of dowry has yet to be established to take presumption for dowry death under Section 113B of Evidence Act.

9. Learned counsel for the State however, contends that prosecution has been proved the case beyond reasonable doubt as ingredient for offence under Section 304B of Penal Code has been established as there is allegation of demand and subjecting to cruelty.

10. Hence taking into consideration the respective submissions question for consideration whether prosecution has been able to prove the charges beyond reasonable doubt. However, to prove the charge for offence under Section 304B of Penal Code it is required to prove the ingredients for offence under Section 304B of Penal Code. It is well settled ingredients for offence under Section 304B of Penal Code are (1) that marriage must have been solemnised



within seven years, (2) there is allegation of demand, (3) that demand alleged is with regard to dowry and (4) death of a woman caused by bodily injury or otherwise than in normal circumstance and death have been occurred within seven years and deceased was subjected to cruelty or harassment by husband or in-laws and such cruelty or harassment should be in connection with demand of dowry soon before the death of the victim and when ingredient for offence under Section 304B of Penal Code is established only then presumption can be drawn for offence under Section 113B of Evidence Act that victim died out of dowry death.

11. Having regard to the fact that there is allegation in the First Information Report that marriage solemnised within a year of the occurrence and there was demand of Rs. 1,00,000/- for running a medical shop and there is allegation of assault for non-fulfillment of demand. Further there is allegation that prior to the occurrence she was beaten causing termination of her pregnancy and has to threat if money is not paid then victim will be killed. However, going to the evidence of P.W.1, though, have alleged in the written report, but during his cross-examination he has neither whisper regarding any demand and dowry and his evidence only to the effect that his sister was telling him that her husband was demanding Rs. 1,00,000/- for running a medical shop. There is no evidence at all that victim was



subjecting to cruelty for non-fulfillment of demand rather evidence of P.W.5 in his cross-examination in paragraph 6 that after marriage and till her death Ishrat Jahan the victim did not make any complaint against her husband and her in-laws and relation between Ishrat and her husband was good. Hence P.W. 5 the informant had neither supported the prosecution case regarding demand of dowry nor subjecting cruelty for non-fulfillment of demand. P.W. 2, 3 and 4 are grand-maternal uncle as well as mother and uncle of the victim, but they have also not supported the prosecution regarding demand and subjecting cruelty for non-fulfillment of demand. However, other witnesses like as P.Ws. 6,7,8 and 9 have also not whisper about demand or subjecting cruelty for non-fulfillment of demand. P.W. 10 is the I.O. and P.W.11 is the doctor who had conducted post mortem examination and had deposed that he has not found any internal or external injury on the dead body of the deceased and he has also not found cause of death of the victim.

12. However, only evidence remained is evidence of P.W. 1 who is father of the victim, though, he had deposed that he found injury on the victim on her neck, fingers and near the ear of the victim, but his evidence regarding injury found on the body of the deceased stands contradictory to the evidence of the doctor, who conducted post mortem examination and he has not found any injury

on the person of the deceased. However, evidence of P.W. 1 that there was demand of Rs. 1,00,000/- as dowry and his evidence to the effect that accused persons started subjecting to cruelty to Ishrat Jahan. However, demand of Rs. 1,00,000/- for running a medical shop but not corroborated the other evidence of witnesses. However, there is evidence that victim was subjecting cruelty, the allegations are omnibus but there is no mentioned that what was mode of subjecting cruelty in reference of act done and time and place and when victim was subjected to cruelty and this evidence of cruelty stands contradictory with evidence of P.W. 5 and P.W. 4 who is none else mother and brother of the victim. Further there is allegation that Ishrat Jahan was subjected to cruelty is only omnibus without any reference who subjected the cruelty and what was mode of cruelty permeated except evidence of P.W. 1, but there is no other evidence regarding demand and subjecting cruelty for non-fulfillment of demand. There is only evidence regarding demand and subjecting to cruelty as per evidence of P.W. 1 is general and omnibus. Hence it is neither proper nor prudent to rely upon the evidence of P.W. 1 and held that ingredient for offence under Section 304B of Penal Code that victim was subjected to cruelty for non-fulfillment of demand has not been established and once ingredients for offence under Section 304B of Penal Code has not been established, presumption for offence

under Section 113B of Evidence Act cannot be recorded to record conviction on the basis of evidence.

13. Regard being had to the fact, I find that prosecution has not been able to prove the charge beyond reasonable doubt and hence order of conviction and sentence recorded by the trial court is hereby set aside. **The appeal is allowed.**

m.p.
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(Gopal Prasad, J)

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