

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No. 283 of 2012

Against the judgment of conviction dated 14.03.2012 and order of sentence dated 16.03.2012 passed in S.T. No. 162 of 2011 by Shri Surendra Prasad Pandey, the learned Additional Sessions Judge, Fast Track Court No. 1, Katihar arising out of Kadwa P.S. Case No. 178 of 2010, G.R. No. 1914 of 2010

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1. Bijay Sharma, S/O Bhuneshwar Sharma
 2. Bhuneshwar Sharma, S/O Late Bharmu Sharma
 3. Chanri Devi, W/O Bhuneshar Sharma, All three residents of village - Nungara, Police Station - Kadwa, District - Katihar

.... Appellants

Versus

1. The State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Bidhanesh Mishra, Advocate
Mr. Tanuja Mishra, Advocate

For the Respondent : Ms. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 10-02-2016

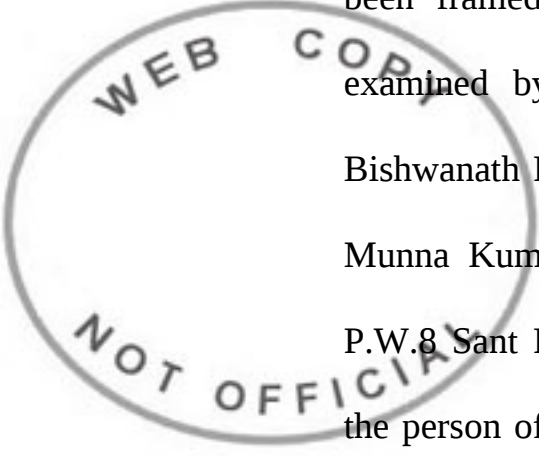
Heard learned counsel for the appellants and the State.

2. The appellants have been convicted under Section 304B of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and a fine of Rs.2,000/- each and in default of payment of fine, they shall further undergo simple imprisonment for six months.

3. The prosecution case, as alleged in the First Information Report instituted on the basis of the fardbeyan of Manju Devi, the mother of the victim, is that the marriage of her daughter Kanchan Devi was performed as per the Hindu rituals about three years back with Vijay Sharma. After the marriage, the daughter of the informant was subjected to cruelty by the Sasural people and in this regard the

daughter of the informant used to inform her by some neighbour. The further case of the informant is that on 05.09.2010 at about 4:00 P.M. she received information that her daughter Kanchan Devi had died. On this information, the informant along with his family members came to village Noongarha where she found that her daughter Kanchan Devi lying dead on the Varandah of the Sasural. She also found that the Sasural people of her daughter were absconding and when she saw the dead body of her daughter then she found black mark of rope around her neck and so she believed that the death has been done by putting the rope around her neck. She claimed that victim Kanchan Devi has been done to death by strangulation by her husband Bijay Sharma, father-in-law Bhuneshwar Sharma and mother-in-law, Chanri Devi.

4. The fardbeyan of Maju Devi was recorded on 05.09.2010 at about 5:45 P.M. in village Noongarha in the courtyard of son-in-law. After lodging of the First Information Report, investigation proceeded. During investigation, the police found the dead body of the victim on the Varandah of the house of the appellants. The inquest report of the dead body was prepared which has been marked as Ext.4. Thereafter the dead body of the victim was sent for post-mortem examination, the Investigating Officer inspected the place of occurrence, recorded the further statement of the informant and the other witnesses and thereafter submitted charge-sheet. After submission of the charge-sheet, case was



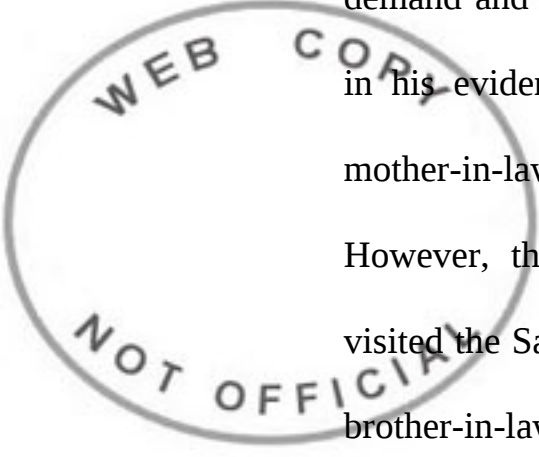
committed to the Court of Sessions and after commitment charge has been framed and trial proceeded. During trial ten witnesses were examined by the prosecution. P.W.1 Dhaneshwar Paswan, P.W.2 Bishwanath Paswan, P.W.3 Debu Mahto, P.W.4 Biren Sharma, P.W.5 Munna Kumar Sharma, P.W.6 Dhiren Sharma, P.W.7 Manju Devi, P.W.8 Sant Prasad Saha, C.M.O. who conducted the post-mortem on the person of the deceased and found that the cause of death is due to asphyxia due to hanging, P.W.9 Anil Kumar Yadav is the witness of the inquest, and P.W.10 Hussain Imam Khan is the Investigating Officer of the case. The defence has also adduced two witnesses as D.W.1 Rajendra Sharma and D.W.2 Narayan Paswan.

5. The defence of the accused persons is that the victim died due to snake bite as also she was mentally retarded and took poison. The further case of the defence is that the deceased herself consumed poison at her parental home and committed suicide by hanging and the deceased was insane. The further defence is that accused persons have alternatively charged under Section 302 of the Indian Penal Code, but there is no injury found on the person of the deceased and the symptom of death found by the doctor indicates hanging. So alternatively, charge is framed against the accused persons committing murder of the deceased is not proved.

6. The trial Court taking into consideration the evidence of

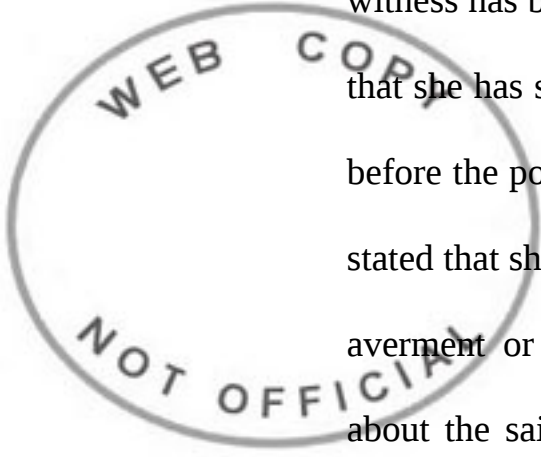
P.W.5 claiming to be the eye-witness of the occurrence disbelieved him as his evidence is not consistent with his earlier testimony to be a reliable eye-witness to have seen the occurrence causing the death of the victim. However, convicted the appellants under Section 304B of the Indian Penal Code for dowry death taking into consideration the evidence of P.W.5 and P.W.7 that the accused persons used to harass the deceased for bicycle and further in view of the fact that no cross-examination of the witnesses on the point of demand of dowry and there is sufficient evidence that marriage solemnized within seven years of the occurrence and the death is in suspicious circumstance.

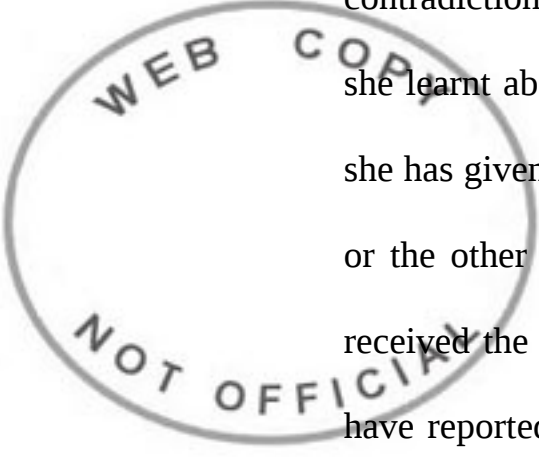
7. Learned counsel for the appellants has challenged the judgment of conviction and order of sentence recorded by the trial Court on the ground that P.Ws.1, 2, 3 have been declared hostile as they have not supported the prosecution case. P.W.4 Biren Sharma is only a hearsay witness as he has stated that he heard about the death of the victim caused for bicycle. Death of the victim Kanchan Devi has been done for the non-fulfilment of demand of bicycle by her husband, father-in-law and mother-in-law, hence, the evidence of this witness regarding demand of bicycle is only a hearsay. P.W. 6 Dhiren Sharma has stated in his evidence regarding demand of bicycle by appellant no. 1 Bijay Sharma, but neither stated date, day of demanding bicycle nor stated anything about subjecting cruelty by the appellants to the victim



Kanchan Devi. However, the only witness remains on the question of demand and subjecting cruelty is evidence of P.W.5. However, P.W.5 in his evidence has only stated to the effect that the father-in-law, mother-in-law and husband used to vex his sister for the bicycle. However, this witness has stated in his cross-examination that he visited the Sasural of his sister 4-5 times. He has further stated that his brother-in-law had gone out of the house to earn his livelihood and returned after three years and even after return he did not come to meet him. He has further stated that he had no talk with his sister. However, in view of his evidence in cross-examination the possibility of knowing about the demand and subjecting cruelty from the sister is ruled out. Moreover, his evidence regarding the subjecting cruelty by the father-in-law, mother-in-law and husband is vague and omnibus. He has only stated that they used to vex her, but there is no manner of evidence that what was the mode of vexing and hence, evidence regarding subjecting cruelty or demand suffers from various infirmities. There is no mention about the source of information. So far P.W.7 is concerned, she is the informant and she has stated in her evidence that Bijay Sharma, Bhuneshwar Sharma and Chanri Devi used to assault and vexed the victim for bicycle. She has further stated in her evidence that his daughter was assaulted or subjected to cruelty by the Sasural people for bicycle and her daughter informed her on telephone to immediately

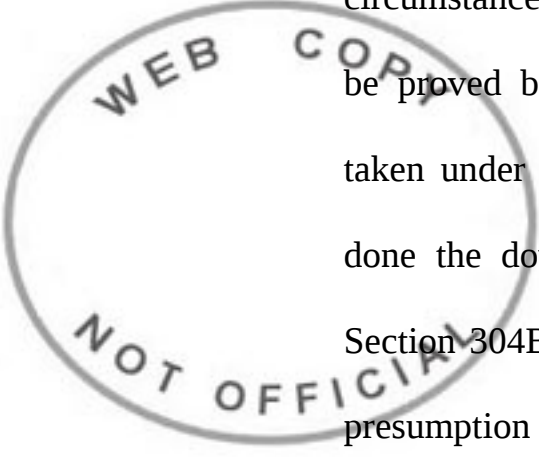
give her bicycle else she will be killed. However, attention of the witness has been drawn regarding his earlier statement before the police that she has stated about the demand of watch. However, she has stated before the police that a demand of watch was made as a dowry and has stated that she has not stated about the watch. However, there is no such averment or statement and no question has been asked from P.W.7 about the said demand of watch made by these appellants before the Investigating Officer. However, a prayer has been made to look into the case diary and from perusal of the case diary the statement of the victim stated that a watch was demanded. However, it does not proper to go into the case diary to record a conviction. However, going into the fardbeyan of the informant which is on record and has been marked as Ext.1, there is specific mention that after the marriage the victim was subjected to cruelty and in this regard the daughter used to give information by someone or the other. However, there is no whisper in the First Information Report that the information was given by daughter of the informant that is victim by telephone. There is specific mention that the information was given to the informant by the victim by some person or the other. However, there is no evidence that from whom the said information was given to the informant. The informant in her evidence has also not stated that from whom she received the information rather has taken a different plea that she used to get





information from the telephone. However, this is apparently a contradiction as the stand taken in the deposition made in the Court that she learnt about the occurrence on telephone whereas in the fardbeyan she has given statement that her daughter gave information by someone or the other without naming the name of the person from whom she received the information nor any person has come to depose that they have reported about the cruelty to the informant and hence, so far the evidence regarding demand and subjecting cruelty is concerned, the only two witnesses have deposed or come to support the prosecution case regarding demand and subjecting cruelty and hence, evidence of demand and subjecting cruelty does not inspire confidence. The trial Court did not go into the question about the contradictory statement and changing the version of the prosecution from stage to stage of these evidences and taken the evidence of P.Ws.4, 5 without any contradiction as well as in the First Information Report.

8. However, it is well settled that to record a conviction under Section 304B of the Indian Penal Code is required to be proved that the marriage was solemnized within seven years. There was demand and subjecting cruelty for non-fulfilment of the same and further it has to be proved that soon before the death victim was subjected to cruelty for non-fulfilment of the demand of dowry and further it has to be established by legal, reasonable, cogent and



unimpeachable evidence that the death of the victim is in suspicious circumstance. When these ingredients are fulfilled and are required to be proved beyond reasonable doubt other than presumption can be taken under Section 113B of the Evidence Act that the accused had done the dowry death. However, the ingredients for offence under Section 304B of the Indian Penal Code having not been established a presumption under Section 113B of the Evidence Act is not required to be recorded for conviction of the appellants regarding the dowry death. Moreover, even if it is proved that the victim was subjected to cruelty and death is by hanging a conviction under Section 306 of the Indian Penal Code may be recorded. However, having regard to the fact that even though there is mention that the victim was subjected to cruelty, but there is no clear, cogent, reliable and unimpeachable evidence that the victim was subjected to cruelty. However, going into the post-mortem examination though there is mention that cause of death of the victim is by asphyxia due to hanging, but no other injury has been found on her person on other part of the body, except the sign of hanging.

9. Hence, going into the entire evidence, I find that the ingredients of the offence under Section 304B of the Indian Penal Code has not been established beyond reasonable doubts and it is not safe to record a conviction taking presumption under Section 113B of the

Evidence Act for dowry death. Therefore, I give the appellants benefit of doubt and hold that the prosecution has not been able to prove the charges beyond all reasonable doubts and hence, I acquit the appellants of the charges leveled against them. The judgment of conviction and order of sentence recorded by the trial Court is hereby set aside and the appeal is allowed. Appellant No. 1, who is in custody, is directed to be released forthwith, if not wanted in any other case. The appellant nos. 2 and 3 are on bail. They are discharged from the liabilities of their respective bail bonds.

(Gopal Prasad, J)

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