

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.486 of 2015

Against the judgment of conviction and sentence, dated 21.07.2015, passed by Mr. Samay Nath Srivastava, Additional District and Sessions Judge, IV, Muzaffarpur, in Sessions Trial No. 794 of 2009 arising out of Mithanpur P.S. Case No. 198 of 2008

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1. DEEPAK KUMAR SAH @ DEEPAK SAH@DEEPAK KUMAR Son of shri Baijnath Sah@Baidyanath Sah Resident of Mohalla- Kanhauli Math, P.s Mithanpura, District Muzaffarpur Appellant

Versus

1. The State of Bihar Respondent

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Appearance :

For the Appellant : M/S Aaruni Singh & Sandip Kumar Gautam, Advs.

For the Respondent : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 06-04-2016

Heard the learned counsel for the appellant and the State.

2. The appellant has been convicted under Section 304B of the Penal Code and sentenced to undergo rigorous imprisonment for ten years.

3. The prosecution case, as alleged in the first information report drawn on the fardbeyan of the informant, Anandi Sah, recorded by Sub Inspector of Police, Ram Rajya Sharma, P.W. 7, at 13 hours on 29.09.2008, alleging therein that on 29.09.2008 he received a telephone call of his samdhi, Baijnath Sah, that his daughter, Anuradha Devi, is seriously ill on which the informant asked where is her daughter, then, his samdhi disclosed that she has been taken to clinic of a doctor by his son, the appellant, Deepak Kumar Sah @ Deepak Sah @ Deepak Kumar, and the co-villagers. However, due to mid night and being rainy day he could not get any vehicle so he could not go to see his daughter in the night. However, in the morning on 29.09.2008, the informant, P.W. 6, along with his son, Pravin Kumar, P.W. 5, Vikas Kumar @ Lalaji, P.W. 2, and his wife, Lila Devi, P.W. 1, went to see his daughter at the house of Baijnath Sah. He reached the sasural of the victim, i.e., the house of Baijnath Sah at about 09.30 A.M., then, he saw there that his daughter, Anuradha Devi, is lying

dead and they were arranging for performing her last rites. The, further, case in the fardbeyan that the marriage of Anuradha Devi was solemnized in April, 2002, with Deepak Sah, son of Baijnath Sah. After the marriage, Deepak Sah and his family members subjected her daughter to cruelty for non-fulfillment of the demand dowry and, in this regard, earlier a case was also filed against Baijnath Sah, Deepak Sah and wife of Baijnath Sah, which is still pending in which Baijnath Sah and others are on bail. The, further, case is that Baijnath Sah and they are on bail. The, further, case is that his daughter came to his (informant's) house on 24.09.2008 from Kanhaoli Mathh. On 28.09.2008 at about 05.00 P.M. the daughter of the informant went to the house of Baijnath Sah. The, further, is that his daughter was tortured, subjected to cruelty for non-fulfillment of the demand of dowry and she used to be assaulted. The, further, case is that it has also been learnt that on 28.09.2008, in the night, Baijnath Sah, his wife and sister-in-law of the informant assaulted the victim for non-fulfillment of the demand, by which she died and his daughter has been strangled by Baijnath Sah, his wife and the appellant, Deepak Sah. On the fardbeyan of informant the first information report lodged and investigation proceeded.

4. During the investigation, the inquest report prepared, the post mortem of the dead body was conducted, the investigating officer inspected the place of occurrence, recorded the statements of the witnesses, got the statement of Leela Devi recorded under Section 164 of the Criminal Procedure Code and after completing the investigation, submitted the charge sheet. Consequently, after filing of the charge sheet, cognizance taken, case committed to the Court of sessions and during the trial ten witnesses were examined by the prosecution, who were P.W. 1 Leela Devi, the wife of the informant and the mother of the victim, P.W. 2 Vikas Kumar @ Lalaji, P.W. 3 Dilip Kumar, who has turned hostile as not supported the prosecution case, P.W. 4 Kishore Paswan, he has also been declared hostile by the prosecution, P.W. 5 Pravin Kumar, the son of the informant, P.W. 6 is the informant himself, P.W. 7 is the investigating officer, Ram Raj

Sharma, P.W. 8 Dr. Sohan Prasad Choudhary, who conducted the post mortem examination, P.W. 9 is Mohan Pathak, Munshi, who have come only to prove the evidence of the witnesses and P.W. 10 is Pankaj Mishra. On considering the evidence of the witnesses the trial Court held that the death of the victim was in suspicious circumstance and, further, held that the marriage solemnized within seven years and the victim was subjected to cruelty for non-fulfillment of the demand and convicted and sentenced the appellant as mentioned above.

5. The learned counsel for the appellant, however, challenged the order of conviction and sentence, recorded by the trial Court. It has been submitted that the allegation against the appellant regarding the demand and subjecting cruelty is vague. The witnesses for the first time has stated in the Court that the victim disclosed about the demand when she came to the house of the informant on 24.09.2008 and left the house of 28.09.2008 and it has been contended that the death of the victim was an accidental death and it has been submitted that a suggestion has been given that the victim fallen at the hand pump and the doctor had stated in evidence that the injury might be possible by fall. It has, further, been submitted that the witnesses are not consistent regarding the time of marriage of the victim and submitted that at some place witnesses stated that occurrence took place after seven and half years of marriage, hence, submitted that ingredients for offence under Section 304B of the Penal Code has not been established by cogent, reliable and unimpeachable evidence, hence, submitted that the appellant is entitled to acquittal even the prosecution has not been able to prove the charges or the ingredients for offence under Section 304B of the Penal Code by cogent, reliable and unimpeachable evidence.

6. The learned counsel for the State, however, submitted that there is specific case of the prosecution that the marriage solemnized in 2002 and the occurrence took place well within seven years and there is consistent evidence also that the victim was subjected to cruelty for non-fulfillment of the demand as well as that soon before death the victim has been subjected to cruelty in

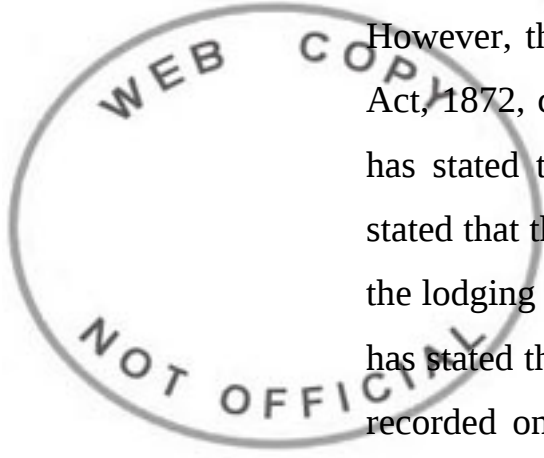
connection with non-fulfillment of the demand and the doctor has found the death of the victim by asphyxia, hence, it can not be said that death was accidental. It has, further, been submitted that the doctor has opined that the death of the victim has been caused by asphyxia, then, it can well be inferred that the victim died in suspicious circumstances.

7. Hence, having regard to the respective submissions, the question for consideration whether the prosecution has been able to prove the charges and the ingredients for offence under Section 304B of the Penal Code has been established as well as the condition precedent for drawing the inference under Section 113B of the Indian Evidence Act, 1872, to hold that the allegation, made, makes out the case of dowry death.

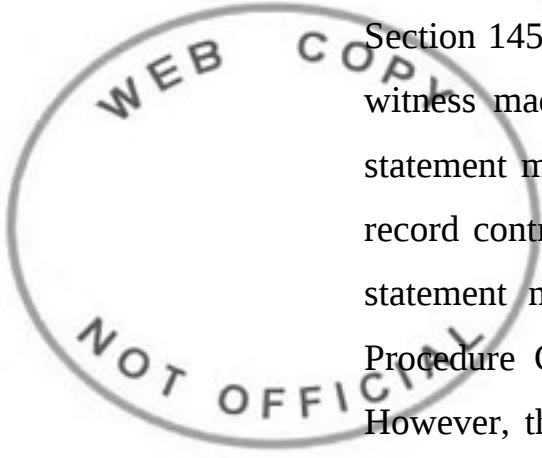
8. I proceed to consider the evidence in the light of the submissions, made. From the fardbeyan of the informant, the case of the prosecution is that the marriage solemnized on 22nd April, 2002, and since the date of the marriage there was subjecting cruelty for non-fulfillment of the demand and, in this regard, also a case was filed in which they were on bail. The, further, case of the prosecution is that on 24.09.2008 the victim has come to the house of the informant and remained there for a period of four days, from 24.09.2008 to 28.09.2008, she used to disclose that she has been subjected to cruelty for non-fulfillment of the demand by her sasural people and the victim disclosed that she has been brutally assaulted and her life is in danger and the accused persons can take her life at any time and her mouth was found to be swollen.

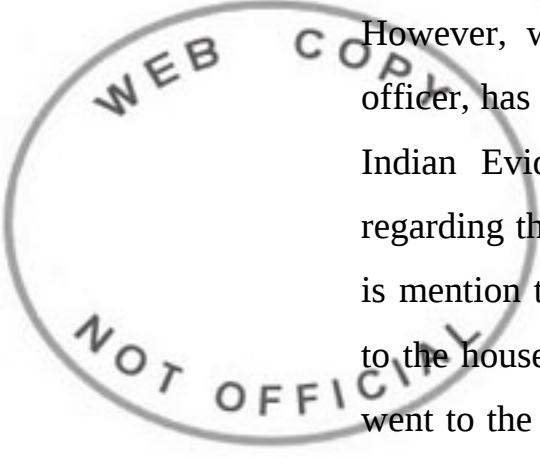
9. P.W. 1 is the mother of the victim and has deposed that marriage of Deepak Sah was solemnized in 2002 with her daughter. She has, further, stated that after marriage Deepak Sah, Baijnath Sah and Ragini Devi subjected her to cruelty and against them a case was also lodged for subjecting to cruelty. She has, further, that she has signed a case of compromise and before days of the occurrence her daughter has come and disclosed that she has been brutally assaulted and they can take her life at any time. However, a criticism has been

made regarding the evidence of this witness that though this witnesses stated that the marriage solemnized in 2002, but, in her cross-examination in 2014 she has stated that the marriage was performed about seven and half years prior to the institution of the case. However, this single line read in Section 145 of the Indian Evidence Act, 1872, can not be read in isolation. Going into her evidence, she has stated that she is an illiterate or less-literate. She has, further, stated that the marriage solemnized about seven and half years prior to the lodging of the case. However, subsequent in the very next line she has stated that it is only six years of the marriage. Her deposition was recorded on 17th September, 2011. The occurrence alleged to have taken place on 29.09.2008 and her evidence in her examination-in-chief that the marriage solemnized in 2002, hence, having regard to the fact to take consideration the evidence of this witness that the witnesses, itself, is a rustic lady and her evidence can not be refuted in one line that the marriage solemnized seven and half years prior to lodging of the case whereas in her evidence alone she has stated that marriage solemnized about six years back and, further, this evidence be taken into consideration that her evidence in first line that she is illiterate and she can not say what is the exact year about three years back. Hence, her evidence can not be rejected or hold that the marriage did not solemnize in 2002, in view of her evidence that the marriage solemnized about seven and half years back, when there is specific evidence that marriage solemnized in the year 2002. P.W. 2 is also the brother of the victim and he has stated that the victim, Anuradha Devi, was his full sister. He has also stated that his sister was married with Deepak Sah. He has, further, stated that after marriage, her sister was assaulted and vexed by her husband and sasural people for non-fulfillment of the demand of dowry. He has also stated that his sister has also filed a case of dowry and subjecting to cruelty against her husband and sasural people. He has, further, stated that his sister came to his house about four days prior to the occurrence and she was brutally assaulted and her cheeks were swollen. However, attention has been drawn to the statement made in



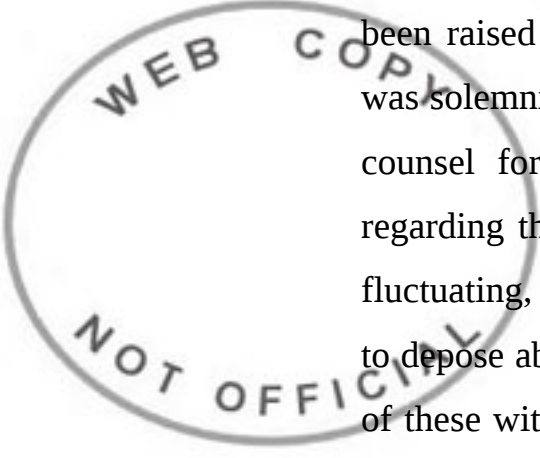
the examination-in-chief and he has stated this fact that his sister had come and she was assaulted and her cheeks were swollen. However, it appears that an attempt has been made to record a contradiction, but, the attention of the prior statement not drawn in compliance with Section 145 of the Indian Evidence Act, 1872, as the statement of the witness made before the police have not been drawn. Neither the statement made by this witness before the police has been proved to record contradiction nor attention of the witness drawn regarding his statement made before police under Section 161 of the Criminal Procedure Code to give him opportunity to afford an explanation. However, the statement or evidence recorded during evidence is not relevant to prove the evidence made by the witness. However, when the statement recorded under Section 161 of the Criminal Procedure Code has not been proved and no opportunity given or the witness has not been confronted with his earlier statement made before the police under Section 161 of the Criminal Procedure Code then it is very difficult to look into or to draw the contradiction. However, the fact that the victim came to the house of the informant about four days prior to the occurrence, i.e., on 24.09.2008 and she went to the sasural on 28.09.2008, disclosed about the subjecting cruelty for non-fulfillment of the demand and on 28.09.2008, it is alleged, the occurrence took place. P.Ws. 3 and 4 are the witnesses who have not supported the prosecution case and even declared hostile, hence, their evidences are not relevant to be considered. P.W. 5 is Anandi Sah. He has also deposed that marriage of his sister solemnized with Deepak Sah and after the marriage they always used to quarrel to meet the demand of dowry and her sister has also disclosed about the fact. He has also stated that four days prior to the occurrence his sister came to the house of the informant and she was assaulted and she disclosed about the assault, her mouth was swollen and on 28.09.2008 her husband came and took her. However, she has also stated that it is true that she has stated before police that her sister has come four days prior to the occurrence and disclosed that the accused persons used to assault with regard to this drawing the attention whatever deposed by





this witness in examination-in-chief in Court and the investigating officer. However, the investigating officer has stated that this witness had not stated before him that four days prior to the occurrence his sister has come and disclosed that the accused persons assaulted. However, whatever stated by this witness before the investigating officer, has not recorded as per the provision under Section 145 of the Indian Evidence Act, 1872. However, going into the question regarding the evidence in the fardbeyan though in the fardbeyan there is mention that the victim came on 24.09.2008 from Kanhaoli Mathh to the house of the informant and on 28.09.2008 at about 05.00 P.M. went to the house of Baijnath Sah at Kanhaoli Mathh, however, there is no mention in the first information report that she disclosed that she was assaulted or subjected to cruelty for non-fulfillment of the demand. P.W. 6 is the informant and he has deposed that he received information from the sasural of the victim about her illness, but, he could not go as it was raining and he could not get a vehicle and when on next day at about 09.00 A.M. he reached there he saw that accused persons were about to take the victim on pyre for her last rites. However, this witness stated that the marriage of his daughter solemnized with Deepak Sah, who used to misbehave her frequently and demands for dowry. However, there is nothing in his evidence regarding the demand and subjecting cruelty in his deposition. P.W. 7 is the investigating officer, who investigated the case, and P.W. 8 is the doctor who conducted the post mortem examination on person of the victim-deceased and he has stated that he saw the rigour mortis present and found two injuries, (i) bruise 3" x 1" on left side of face below ear and (ii) bruise and swelling of left parietal and occipital region of skull. On dissection, there was fracture of sternum of 2 to 4 ribs with haemorrhage in the chest and there was massive extradural and sub dural haemorrhage and the doctor has opined that the cause of death is haemorrhage and shock due to above mentioned injuries, caused by hard and blunt substance and there was pressure over the chest (asphyxia).

10. Hence, going into the evidences, it is apparent that the



informant and his wife are most rustic that the death of the victim in suspicious circumstance and marriage solemnized in 2002 within seven years of the occurrence and there is evidence of subjecting cruelty for non-fulfillment of the demand. However, a criticism has been raised that the witnesses stated that the marriage of the victim was solemnized in April, 2002. However, the criticism by the learned counsel for the appellant is that there is no consistent evidence regarding the date of marriage and the evidence of the witnesses are fluctuating, however, the father-in-law is the most competent witness to depose about the date of marriage. However, going to the evidence of these witnesses, it is apparent that the informant, P.W. 6, is one of the most illiterate person, but, having regard to the fact that P.W. 1 has specifically deposed that the marriage solemnized in 2002 have stood the cross-examination and, further, the evidence of P.W. 2 is that the marriage solemnized in April, 2002, in his deposition, hence, in view of the evidence of P.Ws. 1 and 2 there are evidence that the marriage solemnized in April, 2002. The case of the prosecution, itself, in the fardbeyan is that the marriage solemnized in 2002, however, in the evidence of P.W. 6 in cross-examination that the marriage solemnized in 2001 is a contradictory statement made in the fardbeyan. Moreover, the witness, P.W. 6, appears to be a rustic, hence, the evidence of P.W. 2 appears to be more reliable to hold that the marriage solemnized in April, 2002, well within seven years from the date of occurrence.

11. Hence, taking into consideration the entire evidence, it is apparent that there is allegation that the marriage solemnized in the year 2002 and there is allegation of demand and subjecting cruelty. There is, further, allegation that since the date of marriage the victim was subjected to cruelty for non-fulfillment of the demand and, in this regard, the first information report has been lodged and the case proceeded which ended in compromise. However, the fardbeyan mentioned that the victim came to the house of the informant on 24.09.2008 and again on 28.09.2008 at 17 hours she had come to house of Baijnath Sah. However, there is no whisper in the fardbeyan

that the victim disclosed about subjecting cruelty. However, the witnesses have deposed in their evidences that the victim disclosed that she was subjected to cruelty and her cheeks were found swollen. The circumstance is that the evidence suffers from contradiction, but, the contradiction has not been recorded in compliance of Section 145 of the Indian Evidence Act, 1872, as neither the attention of the earlier statement of witness has been drawn nor the statement under Section 161 of the Criminal Procedure Code has been proved. However, there is consistent evidence of the witnesses that the victim is subjected to cruelty. Hence, ingredients for offence under Section 304B of the Penal Code that the victim-deceased was done to death within seven years of marriage in suspicious circumstance and there is evidence of demand and subjecting cruelty and subjecting cruelty for non-fulfillment of the demand.

12. Hence, having regard to the fact that the prosecution has been able to prove the charges and the order of conviction and sentence, recorded by the trial Court, under Section 304B of the Penal Code is sustainable. However, taking into consideration the evidence that the appellant has remained in custody since 24.11.2008, i.e., more than seven years, the ends of justice will meet by sentencing the appellant for the period already undergone.

13. With these modifications, in sentence, the appeal is **dismissed**.

(Gopal Prasad, J)

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