

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.630 of 2013

Against the judgment of conviction dated 18.06.2013 and order of sentence dated 26.06.2013 passed by Shri Ram Darash, learned 2nd Additional Sessions Judge, Siwan in Sessions Trial No. 15 of 2010 (arising out of Siwan Muffasil P.S. Case No. 232 of 2009).

Abdul Rashid, Son of Late Manshi Mian, Resident of Baletha, Tola Kewal Hata, P.S. Siwan Mufasil, District- Siwan.

.... Appellant

Versus

The State of Bihar

.... Respondent

WITH

Criminal Appeal (SJ) No. 508 of 2013

Guddi Khatoon Wife of Abdul Rashid Resident of Baletha, Tola Kewal Hata, P.S.- Siwan Mufasil, District- Siwan

.... Appellant

Versus

The State Of Bihar

.... Respondent

Appearance :

(In CR. APP (SJ) No. 630 of 2013)

For the Appellant : Mr. Ranjeet Kumar, Advocate.
Mr. Kundun Kumar, Advocate.
Mr. Akash Keshaw, Advocate.
Mr. Yogesh Kumar, Advocate.
Ms. Ranjeeta Singh, Advocate.
For the State : Mr. Z.Hoda, A.P.P.

(In CR. APP (SJ) No. 508 of 2013)

For the Appellant : Mr. Ranjeet Kumar, Advocate.
Mr. Kundun Kumar, Advocate.
Mr. Akash Keshaw, Advocate.
Mr. Yogesh Kumar, Advocate.
Ms. Ranjeeta Singh, Advocate.
For the State : Mr. Binod Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

Date: 21-01-2016

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



2. Two appeals having being heard together and disposed of by common order as two appeals arise out of the same judgment of conviction dated 18.06.2013 and order of sentence dated 26.06.2013 passed by Shri Ram Darash, learned 2nd Additional Sessions Judge, Siwan in Sessions Trial No. 15 of 2010 (arising out of Siwan Muffasil P.S. Case No. 232 of 2009) by which the appellants had been convicted for offence under Sections 306/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for eight years and to pay fine of Rs. 5000/- each and for non-payment of fine further sentenced to undergo simple imprisonment for three months. Further all the sentenced were ordered to run concurrently.

3. The prosecution case as alleged by the informant Md. Yasin in written report filed before Officer-in-Charge, Muffasil P.S. Siwan, alleging therein that on 17.09.2009 at about 4.00 A.M. he received information on his mobile bearing Mobile No. 9934857910 that daughter of the informant had been burnt to death in the night and dead body being taken away for disposal. The person who gave information discloses that he is speaking from Beletha Tola Kewal Hata. On hearing information, he enquired from several places on telephone then it was learnt that information received on telephone is true. Further case is that in the night itself kerosene oil had been sprinkled on the body of the daughter of the informant and she had been done to death by burn injury and dead body had been disposed



off. Further case is that husband Abdul Rashid, Dewar Ahdul Hakik, Umed Khatoon wife of Manshi Mia, Najara Khatoon, wife of Anis Mia, Bhasur Moibul Mian, Rajjaitun Khatoon wife of Idris Mian, Saira Khatoon, wife of Rafique at Village- Baletha, Tola Kewal Hata, Siwan have burnt to death the daughter of the informant. Further case is that since the daughter of the informant had not good relation with her husband so his daughter had filed a case in the court of Chief Judicial Magistrate, Siwan, for offence under Section 498A of Indian Penal Code and in the said case accused persons had given an undertaking in the court below that they will keep the victim wife with due dignity and they will not subject her to cruelty. The name of the daughter of the informant was Nasra Khatoon.

4. On the written report of the informant, F.I.R. was lodged on 17.09.2009 at 10.30 A.M. After lodging the F.I.R. the investigation proceeded. During investigation, the I.O. inspected the P.O. village- Baletha, Tola Kewal Hata. He found the P.O. is a two storeyed building of Rafiq Mian and had given detailed description of the P.O. He prepared inquest report and sent dead body for post mortem examination of the victim. On 17.09.2009 at 1.30 P.M., the doctor conducted post mortem examination and found the following injuries;

“rigor mortis was present in all four limbs.

There was dermo epidermal burn 100% on the

body. There was presence of carbon particle inside tracksa. Time elapsed 6 to 24 hours. Cause of death- due to shock caused by extensive burn injury”.

5. The I.O. examined the witnesses and after investigation submitted charge sheet for offence under Section 306, 498A and 504/34 of Indian Penal Code. The cognizance was taken for offence under Sections 302 of Indian Penal Code and allied Sections and consequently charge was framed for offence under Section 302/34 of Penal Code as well as for offence under Sections 306/34, 498A and 304B of Indian Penal Code against three accused persons namely Umed Khatoon, Abdul Rashid and Guddi Khatoon.

6. During trial six witnesses were examined by the prosecution as P.W. 1 Dr. Ashok Kumar Verma, who conducted post mortem examination, P.W. 2 Nasar Ahmed, the brother of the victim in his cross-examination in paragraph 26 he has stated that he learnt accused persons demanded motorcycle and colour T.V. from his father and denied suggestion that since the victim has not been blessed with a child so she was not satisfied and committed suicide by setting herself in fire. P.W. 3 Mainuddin had come to depose that marriage of Nasra Khatoon with Abdul Rashid solemnised about eight-nine years back after four-five years of marriage there was quarrel and demand of motorcycle. Further, in cross-examination he had stated that with



regard to demand of dowry and subjecting cruelty he has been learnt from mohalla people and inmates of the house and this part of evidence hit by hearsay. P.W. 4 Israr Ahmed had stated that marriage of Nasra Khatoon was solemnised with Abdul Rashid and has deposed that accused persons were demanding dowry of motorcycle, colour T.V. and the victim was subjected to cruelty for non-fulfillment of demand. Further, in his cross-examination he has stated in paragraph 7 that Nasra Khatoon had remained in sasural for about seven-eight years. She used to come to her naihar even met him but she never made any complaint to him. He has further stated in paragraph 5 that he heard about demand of dowry. Further, he has stated that he had no knowledge about the date when she was subjected to cruelty or assaulted. However, he has stated that accused persons used to demand dowry, but he cannot say the exact date and time. P.W.5 is the informant and has stated that marriage of Nasra Khatoon with Abdul Rashid was performed in the year 1992 and she remained well for about four-five years and she used to be abused and assaulted for not blessing with a child and there was demand of colour T.V. and motorcycle and on 16.01.2009 the appellant Abdul Rashid married with Guddi Khatoon and driven out his daughter after assaulted her. He has further stated that accused persons driven out the victim then a compromise was made in terms that they will keep the victim with due dignity and pay to her Rs. 2000/- per month.



Thereafter, they took the victim. Further he has stated that when the victim returned to her sasural, she was again subjected to cruelty and assault and abused by passing sarcastic remark. Further he has stated he got information on telephone from his daughter-in-law who intimated him to take the victim immediately, else she will be killed. Further stated that accused persons are planning to murder his daughter. The informant came to know this fact in the night, but on the second day i.e. on 17.09.2009 in the morning he received a call that his daughter had been done to death by burning then he went there and found the dead body in burnt state and lodged the case. Further, in his cross-examination in paragraph 10, he had deposed that his daughter had remained in sasural for about five-six years and at that time there was no demand of dowry of motorcycle or T.V. He has further stated that he did not remember when for the first time demand of dowry was made. He has further stated that his daughter used to live in sasural well. He has further deposed that a compromise was made by well of his daughter and accused persons were also consented. After compromise, they took the victim and again used to assault her and in this regard his daughter has given information and a telephone was received on 16.09.2009 to take her. However, this evidence about subjecting cruelty and received telephone call by daughter-in-law of P.W.5, but said daughter-in-law had not been examined nor telephone number has been proved so it is hit by

hearsay. P.W.6 is Amarkant Jha the I.O. and after investigation charge sheet submitted.

7. The trial court taking into consideration the evidence of witnesses held that since Abdul Rashid performed second marriage with Guddi Khatoon and after marriage Abdul Rashid and Guddi Khatoon ousted the victim so a case was filed by the victim for offence under Section 498A of Indian Penal Code. After compromise, they have taken undertaking to keep the victim with due dignity and she was taken to her sasural. Thereafter, she was done to death by sprinkling kerosene oil on her body and doctor found 100% burn injury on the person of the victim and I.O. has also found stick and match box from the place of occurrence. Hence the trial court held that accused persons namely, Abdul Rashid and Guddi Khatoon found guilty for offence under Section 306/34 of Indian Penal Code.

8. Learned counsel for the appellants however contended that, though, charge has been framed under Sections 302/34, 306, 498A and 504/34 of Indian Penal Code, but no conviction had been recorded for offence under Section 302/34, 498A and 504/34 of Indian Penal Code and conviction has been recorded under Section 306/34 of Indian Penal code as the victim died due to cause of burn injury and sticks and match was found near the place of occurrence, but appellants had been acquitted for offence under Section 498A, 504/34 and 302/34 of Indian Penal Code. It has further been



contended that there is evidence that the victim died due to burn injury but there is no eye witness to the occurrence. Further taking into consideration of the evidence there is no cogent and reliable evidence with regard to subjecting her to cruelty or demand of dowry. It has further been contended that only evidence adduced that prior to the occurrence the informant received information through his daughter-in-law on mobile phone to take the victim immediately else they will kill her as the accused persons tried to kill her. However, the said daughter-in-law of the informant had not been examined and informant learnt about the fact from his daughter-in-law and hence evidence to this extent is hit by hearsay as neither daughter-in-law had been examined nor mobile number of daughter-in-law has been mentioned from which information was received. The informant, P.W.5 stated in his evidence that he did not verify the information which he received on 17.09.2009 and hence contends that unless demand and subjecting cruelty is established, conviction for offence under Section 306 of Indian Penal Code is not sustainable. Moreover, there is no evidence regarding unity of mind nor common intention of the appellants had been established in furtherance of their common intention to record conviction under Section 306/34 of Indian Penal Code.

9. Learned counsel for the State however contends that since the death has been occurred in the four in the matrimonial

home, but no explanation had been given about cause of death and doctor had found 100% burn injury on the person of the deceased and hence appellants are liable for conviction. It has further been contended that there is allegation of demand and subjecting cruelty and death of the victim had been occurred within four walls of the house. Hence conviction under Section 306/34 of Indian Penal Code is sustained as well as Section 304B of Penal Code is also attributed.

10. Having regard to the facts and circumstances of the case, I proceed to consider as to whether the prosecution has been able to prove the charges beyond all reasonable doubt. The prosecution case as alleged in the First Information Report that the informant received a telephone call on 17.09.2009 at 4.00 A.M. that his daughter had been done to death and accused persons taking the dead body. On hearing information, he verified the information then learnt that victim had been done to death by burn injury by sprinkling kerosene oil and dead body had been disposed of and husband and in-laws of the victim are instrumental by committing the crime. It has further been stated that relation of the victim with her husband was not cordial and his daughter had earlier filed a case against her husband and in-laws for offence under Section 498 A of Indian Penal Code. Later on, matter was settled by compromise and victim was taken by the appellant Abdul Rashid on undertaking to keep her with due dignity and not to subject her cruelty. However, the informant,



P.W. 5, though have supported the prosecution case as well as he had deposed that after filing a case for offence under Section 498A of Penal Code and matter was settled by compromise and the victim-daughter was taken by her husband with undertaking that he will keep the victim with due dignity and not to subject her to cruelty. Further the informant had deposed that after taking the victim to her sasural on 01.06.2009 again she was subjected to cruelty. He has further stated that on 16.09.2009 he received an information on mobile of his daughter-in-law to take the victim-daughter immediately as accused are planning to kill her and when the informant had received information, it was night. However, the daughter-in-law has not been examined to support the prosecution case regarding receiving telephone call even telephone number has not been given. Hence this part of evidence is hit by hearsay. Since the daughter-in-law received the information. Moreover, this fact has not been mentioned in the First Information Report and this part of evidence does not inspire confidence. Further he has stated that on 17.09.2009 he received information about killing of the victim-daughter, though, on received information, he made inquiry. Further in his cross-examination, he has stated that he did not make any enquiry and he immediately rush and informed the police. The informant in his cross-examination in paragraph 10 of his deposition stated that his daughter remained in sasural about five-six years and there was no demand of dowry of



motorcycle during this period. He has further stated that he did not remember that when for the first time demand of motorcycle was made. Moreover, in his written report there was not mentioned regarding demand and subjecting cruelty and the victim had returned to her sasural by giving undertaking by her husband, but there is no whisper regarding subjecting to cruelty for demand and there is no eye witness to the occurrence. Moreover, P.W.2 is full brother of the victim, though, in his examination-in-chief stated about subjecting cruelty and demand of colour T.V. and motorcycle, but in his cross-examination stated that he had not seen the occurrence about murder or setting fire on the victim from his own eyes and in paragraph 26 he has stated he learnt from his father that accused persons demanded motorcycle and colour T.V. He has specifically stated that no demand was made and this witness does not support the prosecution case regarding demand of motorcycle or subjecting cruelty. P.W. 3 is co-villager has stated that with regard to demand and subjecting cruelty of the daughter of the informant, he heard from mohalla people and family members so his evidence on demand and subjecting cruelty hit by hear say. However, P.W.5 the father of the victim-daughter stated that accused persons taken the victim after compromise on 01.06.2009. Thereafter, he received information about subjecting cruelty on mobile. He has further stated that on 16.09.2009, he received an information on mobile from his daughter-in-law in which



she intimated him to take the victim-daughter, else, she will be killed, but neither the said daughter-in-law had been examined nor mobile number has been given. Hence, evidence regarding demand and subjecting cruelty suffers from various infirmities. There is no mention regarding any demand or subjecting cruelty in the written report in which First Information Report lodged and as per deposition received a telephone call from daughter-in-law of the informant but the daughter-in-law having not been examined and hence evidence regarding subjecting cruelty for non-fulfillment of demand has not been established, though, there is evidence that the victim died due to burn injury. However, only evidence that victim died in the matrimonial home by burn injury. The trial court held that it was case of suicide so convicted the appellant for offence under Section 306/34 of Penal code. However, on mere evidence that victim was done to death in four walls of the matrimonial house, a conviction cannot be recorded either Section 302 or 306 of Indian Penal Code. However, the appellant acquitted by trial court and no appeal preferred against the order of acquittal under Section 302 of Indian Penal Code and hence, it attain its finality. So far offence under Section 306 of Indian Penal Code is concern since, there is no reliable evidence regarding demand or subjecting cruelty and hence conviction under Section 304B or 306 of Indian Penal Code is not sustainable in view of the fact that there is no cogent and reliable



evidence regarding demand and subjecting cruelty. Moreover, the trial court acquitted the appellants for offence under Sections 302, 498A and 504/34 of Penal Code and hence conviction under Section 302, 498A and 504/34 cannot be recorded when no appeal has been preferred by the State. Moreover, the evidence regarding demand or subjecting cruelty suffer from various infirmities as there is no cogent and reliable evidence on fact that victim was subjecting to cruelty or any demand of dowry made. There is no allegation about demand and subjecting cruelty in the written report on the basis of F.I.R. lodged. However, the prosecution had developed the prosecution story regarding demand and subjecting cruelty, but there is no eye witness to the occurrence. P.W. 3 is full brother of the victim has stated that he learnt from his father regarding demand and subjecting cruelty. P.W. 5 is informant, father of the victim-daughter stated that he learnt this fact from his daughter-in-law from whom he received a telephone call, but the said daughter-in-law has not been examined. P.W. 3 has stated that he learnt about demand and subjecting cruelty from the family members and mohalla people. Hence having regard to the fact demand and subjecting cruelty is hit by hear say. There is no cogent and reliable evidence regarding demand or subjecting cruelty. Hence, conviction for offence under Section 306/34 of Penal Code cannot be recorded merely for the reason that victim died in matrimonial house in the absence of an evidence. The prosecution

has not been able to prove the charge for offence under Section 306/34 of Penal Code. Hence, conviction and sentence recorded by the trial court is hereby set aside. The appeal is allowed.

11. The appellant in Cr.Appeal (SJ) 630 of 2013 is in jail custody be set at liberty forthwith if not required in any other case. The appellant, namely, Guddi Khatoon in Cr.Appeal (SJ) 508 of 2013 is on bail, her bail bonds are hereby cancelled and her sureties shall remain discharged.

(Gopal Prasad, J)

m.p.
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