

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.428 of 1994

1. Ram Bhushan Singh, son of Prahlad Singh
2. Prahlad Singh, son of Late Ram Khelawan Singh
3. Gayatri Devi, wife of Prahlad Singh
All residents of Village- Rahua, P.S. Sahebpur Kamal, District- Begusarai

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s :

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 25-11-2017

Appellants herein who are convicted and sentenced to undergo R.I. for life for an offence under Section 304B I.P.C. and three years R.I. for offence under Section 201/34 I.P.C. vide judgment dated 01.09.1994 rendered by 6th Additional Sessions Judge, Begusarai in Sessions Trial No. 301 of 1993/152 of 1994 challenge their conviction in this appeal filed under Section 374(2) Cr.P.C.

It is the case of the prosecution that Appellant No. 1 Ram Bhushan Singh is the son of Appellant No. 2 Prahlad Singh and Appellant No. 3 Gayatri Devi. He was married to the deceased Madhu Kumari according to the prosecution on 10.05.1989 and it is said that within seven years of the marriage



on 13.07.1992 on account of demand of dowry and harassment Madhu Kumari died. It is alleged that after the marriage of Prahlad Singh with Madhu Kumari all the accused persons started demanding motorcycle and T.V. Madhu Kumari in a letter written by her in June 1992 had indicated so and based on the same the appellants have been convicted. It is the case of the prosecution that on 15.07.1992 the informant herein who is brother of the deceased P.W. 5 Satish Choudhary came to know that his sister has been murdered in her Sasural and it was alleged that her body was cremated by informing everybody that she died on 13.07.1992 because of stomach pain and various other ailments.

The prosecution was launched, witnesses were examined who were primarily P.W. 1 Vijay Singh cousin of the deceased who speaks about the marriage on 10.05.1989, harassment on Madhu Kumari and the news of her death coming, P.W. 2 Arjun Choudhary is also cousin of the deceased and speaks in identical term as stated by P.W. 1 Vijay Singh. P.W. 3 Dinesh Rajak is known to the family of the deceased. He also speaks about marriage on 10.05.1989, death of the deceased but thereafter he has been declared hostile as he has not supported the case of the prosecution. P.W. 6 is Dinesh Kumar



Singh. He is a formal witness and has proved certain documents pertaining to investigation. There is no medical evidence available on record and P.W. 5 Satish Choudhary is the informant.

Defence has also examined two witnesses, namely, Dr. Ram Prawesh Roy (D.W. 1) who is a Civil Assistant Surgeon in Begusarai and speaks about having examined the deceased on 01.07.1992 and the fact that she was suffering from acute pain on the lower abdomen, was having Pyrexia and nauseating tendency. He had advised sonography because of appendix and various other ailments and had referred the patient to Patna Medical College and Hospital finding various complications. He has proved certain documents with regard to treatment. It is the defence of the accused person that the deceased died because of these ailments. P.W. 7 Lalan Pandey is the Investigating Officer of the case and speaks about the investigation done, the evidence collected about harassment and the death of the deceased. Even though it is the case of the prosecution that after death of the deceased without informing her family members she was cremated and treating the date of marriage as 10.05.1989 the prosecution proceeds under Section 304B I.P.C. and the presumption under Section 113 Evidence



Act has been put into force but a very crucial lacuna in the case of the prosecution is seen on going through the statement of the accused persons recorded under Section 313 Cr.P.C. While putting the questions to the accused persons and the exonerating circumstances that came against them, in his statement appellant Ram Bhushan Singh husband of the deceased is put a question that you are married to the deceased in the year 1989 and you have done her to death. He specifically denies this and contends that the marriage was solemnized in the year 1985 in the month of Falgun. He specifically denies about the marriage being solemnized in year 1989. Similarly, in the statement of accused Prahlad Singh father-in-law of the deceased recorded under Section 313 Cr.P.C. he also denies about the marriage in the year 1989. He also says that the marriage of his son Ram Bhushan Singh was solemnized in the year 1985. Similarly, Gayatri Devi also denies about marriage being solemnized in the year 1989. On the contrary, they all say that the marriage was solemnized in the year 1985. Even though in Paragraph 5 of the judgment, the learned trial court speaks about statement of the accused being referred under Section 313 Cr.P.C. but while proceeding with the trial for offence under Section 304B I.P.C. and holding that the presumption under Section 113B of the Evidence Act



with regard to dowry death can be made applicable in the present case but while doing so he has totally ignored the statement and the defence of the accused persons denying occurrence of the marriage on 10.05.1989 as orally stated by the witnesses to the prosecution.

Once from the exonerating circumstances that have come on record, it was the case of the accused persons that the marriage had taken place in the year 1985 and not in the year 1989 and if the offence is said to have been committed on 13.07.1992 then the provisions of Section 304B I.P.C. and the presumption under Section 113 B of the Evidence Act could not be drawn in the present case. Before drawing the presumption under Section 113B of the Evidence Act, 1872 and proceeding to convict the appellants under Section 304B I.P.C. it was incumbent, mandatory and the burden to prove that the death occurred within seven years of marriage was primarily on the prosecution and in this case when the prosecution has failed to discharge his burden and when the trial court has also totally ignored the defence of the appellants that the marriage took place in the year 1985, the entire trial which proceeds under the assumption that the marriage was solemnized on 10.05.1989 stands vitiated and the legal presumptions drawn under Section



113B Evidence Act to convict the appellants under Section 304B I.P.C. stands vitiated. Once it was the case of the accused persons specifically denying solemnization of the marriage on 10.05.1989 and when it was the specific case that the marriage was solemnized more than seven years back in the year 1985, the prosecution and the learned trial court should have caused a proper inquiry into the matter, determined the date of the marriage and then proceeded in the matter, once it was established that the death occurred due to demand of dowry within seven years of the marriage. This vital aspect of the matter having been totally ignored and not established by the prosecution, it is a case where the entire trial for convicting the appellants under Section 304B I.P.C. stands vitiated and the sentence unsustainable. Even the trial court did not take note of the statement of the accused in this regard and their explanation and defence was not at all addressed in the trial. This vitiates the entire trial.

Taking note of all these circumstances, it is a case where the entire trial stands vitiated and this Court has no other option but to allow the appeal and acquit the appellants of the charges levelled against them and their consequential conviction.



Accordingly, this appeal is allowed, the conviction and sentence set aside, appellants are acquitted of the charges levelled against them and discharged from the liability of their respective bail bonds.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	29.11.2017
Transmission Date	

