

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.319 of 1994

(AGAINST THE JUDGMENT OF CONVICTION, DATED, 22nd June, 1994, AND THE ORDER OF SENTENCE, DATED, 23rd June, 1994, PASSED BY SHRI AWADHESH KUMAR VERMA, 3rd ADDITIONAL SESSIONS JUDGE, AURANGABAD, IN SESSIONS TRIAL NO. 173 OF 1986/86 OF 1991, ARISING OUT OF BARUN POLICE STATION CASE NO. 71 OF 1987 (CORRESPONDING TO G.R. NO.66 OF 1987).

Dharam Raj Giri, son of Kedar Giri, resident of Village-Bagtarpa, P.S.-
Baroon, District-Aurangabad.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Ashok Kumar Singh, Advocate
For the Respondent : Mr. S. N. Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date : 11-11-2017

Appellant stands convicted under Section 302 of the Indian Penal Code and sentenced to life. He has been further sentenced for a period of seven years under Section 201 of the Indian Penal Code. The appeal has been preferred against the order dated 22nd June, 1994 by virtue of which the finding of guilt and punishment has been pronounced.



As per the First Information Report, on 5th June, 1987, at about 9 P.M., one Braj Kishore Giri along with his mother, Sobbat Devi, his brother, Satyanarayan Giri and Harinarayan Giri, who are prosecution witnesses No. 3, 5, 6 and 7 went to Barun Police Station and gave information that his sister Manju Devi, who happen to be the wife of the appellant, has been tortured on account of dowry and killed. Barun Police Station Case No. 71 of 1987 under Section 302 and 201 of the Indian Penal Code was registered against the appellant, his mother, his sister and brother Ramnarayan Giri.

However, police after investigation submitted charge sheet only against appellant and one Ram Narain Giri. Cognizance has been taken and case has been committed to the Court of Sessions.

The appellant has been convicted under Section 302 read with Section 201 and not under Section 304B of the Indian Penal Code and sentenced as stated hereinabove named co-accused Ram Narain Giri has been acquitted from the charges against him.

Submission of the counsel for the appellant is that merely because the death happened in the house of the appellant and he happens to be the husband, murder having been committed by the appellant cannot be presumed. There is no clear and direct evidence to link the death of the wife of the appellant with the



appellant. In fact, the evidence had come that the wife had been unwell and that she was even treated locally at the village level and probably she died of cholera or loose motion. Hence an explanation about cause of death has been given by the appellant.

It is also submitted on behalf of the appellant that the evidence of the deceased not keeping well and some treatment having been given has also been accepted by PW 1 and 2 co-villagers produced on behalf of the prosecution and they have not been declared hostile.

The stand of the prosecution is that as per Section 106 of the Indian Evidence Act, onus is upon the appellant, as to how one died, when the death had happened while deceased was in her sasural but no information was given to the near and dear ones and the body was hurriedly buried. It was subsequently exhumed and the medical report with regard to the death was suspected to be the pressing of nose which broke the bone and caused asphyxiation.

The learned trial Court seems to have gone more by the fact that the appellant happened to be the husband of the deceased and as a husband if anything foul happened with the deceased in the four corners of the house, then the appellant has to explain the cause of death under Section 106 of the Indian Evidence Act to the satisfaction of one and all.



Unfortunately, in this case the conviction has not been made under Section 304B of the Indian Penal Code, rather from the judgment it appears that the learned trial Court has disbelieved the prosecution story of demand of dowry and also acquitted the appellant and other accused persons from the charge under Section 304B of the Indian Penal Code though on conjoint reading of Section 304B of the Indian Penal Code along with Section 113B of the Indian Evidence Act, once the prosecution has been able to prove the death within seven years of marriage and there is demand of dowry and cruelty soon before the death in relation to demand of dowry, there shall be presumption, as stated above, but conviction is not under Section 304B of the Indian Penal Code rather under Section 302 of the Indian Penal Code.

On perusal of the evidence available on record, it is the case of the prosecution as per the First Information Report that there was demand of Rs.20,000.00 as appellant was to re-pay the same as his earlier marriage with another lady has not been materialised and same was spent as legal expenses. It is also the prosecution case that due to that they killed the deceased and buried the dead body.

P.W. 3 is the informant in this case as well as brother of the deceased and he has also stated in his evidence-in-chief about



demand of dowry and murder of the deceased by the accused persons and burying the dead body. The other witnesses including P.W. 5, Sohbat Devi, P.W. 6, brother of the deceased, all have stated about the demand of Rs.20,000.00. No doubt, P.W. 5 has stated that demand of dowry was made, however, other witnesses stated that the demand was with respect to re-pay the expenses made in the case and their consistent evidence is that due to that she was killed and buried. P.W. 8, Dr. Chandra Shekhar Prasad, who had examined the dead body, has stated that some injuries and depression of nose was there and P.W. 8 has also stated that death was due to throttling, but P.W.8, the Doctor, has also stated in his cross-examination that in case of throttling, eyes generally come out and tongue protrudes, but in the present case no such case was found and he has also stated in paragraph 15 that such fracture is possible if the dead body is buried and hard pressure is applied and such can also be possible while taking out the dead body. Even the trial Court has also noticed the same, in spite of that it appears that the trial Court on the ground that the appellant was the husband of the deceased and death has occurred inside his house, as such he is responsible for the same and he has not informed the others about the death being caused.



Section 106 of the Indian Evidence Act provides that burden of proof is on the persons within four corners of whose house the death has occurred to explain the cause of death. In the present case, there is categorical evidence of P.W. 1 and 2 that the deceased died due to Cholera and they are villagers of the appellant and even the P.W. 7 who is Mukhiya of the Gram Panchayat and also the prosecution witness has stated that he heard that the deceased died due to Cholera. None of the aforesaid witnesses have been declared hostile by the prosecution and their evidence is un-rebutted. Admittedly, there is no eye witness of the occurrence of causing death of the deceased and the case is purely based on circumstantial evidence and it is well established that in case of circumstantial evidence each and every circumstance on which the Court wants to rely has to be proved beyond reasonable doubt and burden of proof is always on the part of the person where such occurrence has taken place and the aforesaid circumstance must be incompatible with the innocence of the accused and incapable an explanation upon other reasonable hypothesis.

Further Section 313 of the Code of Criminal Procedure provides, firstly, for the accused an opportunity to explain his conduct and, secondly, to use the denial of established facts as



incriminating evidence against him. The aforesaid provision is mandatory in nature and there is a purpose behind it. However, the aforesaid settled principle of law has been referred by the Hon'ble Apex Court in a decision in the case of *Munna Kumar Upadhyay @ Munna Upadhyay Vs. State of Andhra Pradesh through Public Prosecutor, Hyderabad, Andhra Pradesh*, reported in (2012) 6 SCC 174, in the case of *Munna Sao v. State of Bihar*, reported in (2010) 12 SCC 310 and also in the case of *Satish Nirankari Vs. State of Rajasthan*, reported in (2017) 8 SCC 497. But on perusal of the statement of the accused under Section 313 of the Code of Criminal Procedure in the present case, it appears that the accused has only been asked that he was married with Manju Devi in the year 1980 and he was demanding Rs.20,000.00 from the Naihar people of Manju Devi as dowry on account of his expenses in a case and he and other accused persons had killed the deceased and buried the dead body. Apart from that, he had heard the evidence of witnesses. He had denied the aforesaid question except the last one. None of the circumstances which have been used against the appellant that the death occurred in his house or he has not informed the Maike people or the police about her death, buried the dead body hurriedly had been put to the appellant



and that certainly is against the mandatory provisions of Section 313 of the Code of Criminal Procedure.

The evidence and the material which has been dealt with and discussed by the learned trial Court is more on suspicion and inferences and those suspicion and inference do not point finger directly upon the present appellant. The appellant has been convicted not because there was materials and evidence to link him with the death of the wife, but because he happened to be husband.

The case being such, the benefit of doubt accrues in favour of the appellant because there is no clear evidence to show that he caused the injury or death by any kind of means and he can be held responsible for the said act.

There is evidence of prosecution witness of death due to cholera, on the other hand, there is no clear evidence or material even emerging from the medical report that it was a clear cut case of murder having been committed of the wife of the appellant.

So far circumstances are concerned, those circumstances do not appear to be complete, so as to lead only one inference, i.e., towards guilt of accused persons.



In view of the above, the judgment dated 22nd June, 1994 convicting the appellant under Section 302 read with Section 34 and 201 of the Indian Penal Code stands set aside.

The appeal is allowed.

The appellant is acquitted and discharged of his liability of bail bonds.

(Ajay Kumar Tripathi, J)

(Vinod Kumar Sinha, J)

Pawan/-

AFR/NAFR	N.A.F.R.
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