

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1701 of 2017

Arising Out of PS.Case No. -132 Year- 2011 Thana -SONO District- JAMUI

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1. Praveen Singh @ Pappu Singh, Son of Harinandan Singh @ Nanda Singh,
Resident of Village- Ashahna, Police Station- Sono in the district of Jamui.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhilesh Kr. Prasad, Sr. Adv.
Mr. Vijay Kumar, Adv.

For the Respondent/s : Mr. S.A. Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 17-10-2017

Appellant, Praveen Singh @ Pappu Singh has been found guilty for an offence punishable under Section 304B of the IPC and sentenced to undergo RI for 10 years as well as fined of Rs. 10,000/- in default thereof, to undergo SI for six months additionally vide judgment of conviction and sentence dated 28.04.2017 passed by Additional Sessions Judge-1st, Jamui in Sessions Trial No. 271/2012.

2. After admission, there has been prayer for suspension of sentence as well as grant of bail in terms of Section 389(1) of the CrPC and during course of consideration of the same, some sort of anomaly has been perceived whereupon, this appeal has been directed to be listed out of turn.

3. Accordingly, heard both sides and gone through the lower court records.

4. Mahendra Dev (not examined) filed written report on 22.11.2011 alleging inter alia that his daughter Mamta Devi (deceased) was married with Praveen Singh @ Pappu Singh (appellant). After marriage she had gone to her *Sasural* and during her



stay after some time, her *Sasuralwala* began to torture her on the pretext that her father happens to be a teacher so procure Rs. 1 Lakh cash, one Hero Honda Motorcycle and one chain in lieu of dowry. They had also threatened that they will not allow her to live in calm and peace, congenial atmosphere till procurement of the aforesaid items. Father-in-law, mother-in-law and Bhainsur of the deceased also actively associated themselves during such activity. They were also threatening that as they happen to be members of MCC, on account thereof, they would eliminate her in case, demand is not fulfilled. On 21.11.2011, Praveen Singh @ Pappu Singh, Ajay Singh, Ramdulari Devi, Harinandan Singh, wife of Ajay forcibly administered poison to his daughter causing her death and then, they are to dispose of the dead body.

5. On the aforesaid written report, Sonu PS Case No. 132/2011 was registered under Section 304B/34 of the IPC, investigation was taken up during course of which, the dead body was recovered, witnesses were examined and during midst thereof, as appellant was apprehended, on account thereof, charge-sheet was submitted against him keeping the investigation pending against others and further event relating to them is not traceable from the lower court record.

6. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial. Furthermore, plea of alibi has also been taken up by way of disclosing that he was not at all present at his



house. However, neither oral evidence nor documentary evidence has been adduced on behalf of defence.

7. In order to substantiate its case, prosecution had examined altogether 9 PWs out of whom PW-1, Pawan Kumar Dev, PW-2, Umesh Pd. Rai, PW-3 Gautam Kr. Dev, PW-4, Indira Devi, PW-5, Muskan Kumari, PW-6, Dr. Naushad Ahmad, PW-7, Shugan Nath, PW-8, Gayatri Devi and PW-9, Ajit Singh, as well as had also exhibited Ext-1, written report, Ext-2, Postmortem Report, Ext-3, Inquest Report, Ext-4, Formal FIR.

8. While challenging the judgment impugned, it has been submitted by the learned counsel for the appellant that the same happens to be wrong and erroneous in the background of the fact that from the perusal of the judgment impugned, it is evident that the learned lower court had acted in casual manner while convicting and sentencing the appellant. To substantiate such plea, it has been submitted that learned lower court had failed to perceive basic ingredients of Section 304B of the IPC, that means to say (a) death of the deceased should be within seven years of marriage, (b) she died of burn injury or otherwise than natural circumstance, (c) there was persistent demand of dowry, (d) soon before her death, she was tortured on that very pretext, (e) by her husband or his relative.

9. Here in the present case, right from the initial version, that means to say from the written report as well as from the evidence of PWs, there happens to be complete absence of date, month and year of



marriage and so death of deceased could not be considered to be within seven years of marriage. Furthermore, it has also been submitted that there happens to be no legal fiction available on that very score whereunder the court should take judicial notice thereof. In likewise manner, it has also been submitted that as none of the witnesses happen to be an eyewitness to the occurrence nor they properly deposed over demand as well as meeting of torture in order to procure the same, rather suffer from vagueness and so, the prosecution could not succeed in substantiating that there was persistent demand of dowry and for that, the deceased was tortured soon before her death that too by her husband or his relative. The learned lower court simply incorporated the evidence of the PWs without scrutinizing, analyzing that those ingredients have been duly fulfilled. Having absence of such finding at the score of learned lower court did not justify the conviction and sentence.

10. Learned APP though had submitted that the judgment impugned suffers from inherent defect whereupon is fit to be set aside but, refuting the submissions made on behalf of appellant has submitted that it is a fit case wherein the matter should be remanded for proper appreciation of the evidence in its right perspective and to pass judgment afresh accordingly.

11. In depth scrutiny of the evidence is forbidden as it will affect upon the interest of the appellant as well as influence the court save and except identifying the salient features which is evident from



the judgment impugned inconsonance with the materials available on the lower court record which clearly shows that the learned lower court did not properly appreciate the evidence on its right perspective in order to find out whether prosecution has been able to satisfy the mandatory requirement to constitute dowry death as prescribed under Section 304B of the IPC.

12. Daughter of the deceased has been examined as PW-5, she had disclosed her aged to be eight years. Neither the prosecution, nor the appellant challenged the same. She was examined on 04.01.2014. The occurrence is of dated 21.11.2011. So she was aged about 6 years on the date of alleged occurrence. There happens to be no evidence on the record that just after 9 months from the date of marriage, she was begotten. When this aspect is taken together with other evidence, it is evident from the written report that informant had not disclosed the date of marriage nor the time span since after marriage.

13. In likewise manner, PW-1 who happens to be brother of deceased also failed to disclose the date, month and year of marriage. PW-3, another brother also failed to disclose the same. PW-4, is the mother of the deceased. She had stated in para-1 that the marriage took place about 10 years ago. She was examined on 27.11.2013. So deducting the period of 2 years, on the alleged date of occurrence, the period since marriage happens to be nearly eight years.

14. The Investigating Officer (PW 7) is silent on that very score. That being so, on account of keeping mum by other PWs over



the date, month and year of marriage, the evidence of PW-4, mother of the deceased, who in her examination-in-chief alone, had deposed that marriage was solemnized about 10 years ago and her evidence being recorded on 27.11.2013, that means to say, deducting approximately 2 years, it crosses the time frame prescribed for attracting Section 304B of the IPC whereupon, learned counsel for the appellant rightly argued that Section 304B would not be attracted whereupon, the finding of the learned lower court on that very score is found not at all duly acknowledgeable in the eye of law.

15. At the present moment, it looks desirable to mention that at page no. 13 the learned lower court took the issue and for that, recognized evidence of PW-5, daughter of the deceased as well as appellant, ignoring other evidences including that of PW-4. Had there been proper appreciation of the evidence of the PWs, certainly, the finding would not have visualized.

16. Furthermore, from the lower court record as well as from perusal of the judgment impugned, it is evident that alternative charge, that means to say, under Section 304B/34 IPC as well as 302/34 of the IPC were framed against the appellant. Furthermore, it is also evident from the judgment impugned that the learned lower court did not care to deal with the evidences with regard to the offence punishable under Section 302/34 IPC rather flow of the judgment inspires that the learned lower court was pre-determined to proceed as a case of dowry death and while exercising the concert, kept the other



evidences away from the consideration as a result thereof, the judgment impugned is found speckled.

17. From the record as pointed out hereinabove, the learned lower court, on account of irretrievable lapses crucified the trial which happens to be a glaring example of miscarriage of justice. That being so, the finding recorded by the learned lower court is found unsustainable in the eye of law.

18. Accordingly, the judgment impugned is set aside. Appeal is allowed. The matter is remitted back to the learned lower court to proceed afresh from the stage of argument giving opportunity to both the parties for argument and then thereafter, will pass judgment afresh in accordance with law.

19. Appellant who is in custody will be produced before the learned lower court. The aforesaid exercise must be completed within ten weeks from the date of receipt of the lower court records.

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(Aditya Kumar Trivedi, J)

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