

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.29 of 1994

Against the judgment of conviction dated 15th January, 1994 and order of sentence dated 17.01.1994 passed in Sessions Case No.27 of 1991 by 4th Additional Sessions Judge, Begusarai.

Jai Mangal Mahton, son of Lakir Mahton, resident of Khanjapur, Police Station-Cheria Bariyarpur, District-Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (DB) No. 23 of 1994

Against the judgment of conviction dated 15th January, 1994 and order of sentence dated 17.01.1994 passed in Sessions Case No.27 of 1991 by 4th Additional Sessions Judge, Begusarai.

1. Sitaram Mahton, son of Lakir Mahton
2. Ram Sakhi Devi alias Chhoharia Devi, wife of late Lakir Mahton
Both residents of Khanjapur, P.S. Cheria Bariyarpur, District-Begusarai.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Narayan Singh, Senior Advocate
For the Respondent/s : Mr. Shiwesh Ch. Mishra, APP

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 07-11-2017

In Criminal Appeal No.29 of 1994, appellant Jai Mangal Mahton stands convicted in Sessions Trial No.27 of 1991 by the 4th Additional Sessions Judge, Begusarai on 15th January, 1994 for



offences under Sections 302/34 read with Section 304B/34 of the Indian Penal Code and has been awarded life imprisonment and for offence under Section 201/34 of the Indian Penal Code has been awarded sentence to undergo three years rigorous imprisonment for having committed the offence by killing his wife.

In Criminal Appeal No.23 of 1994, the appellant therein Sitaram Mahton, younger brother of the appellant Jai Mangal Mahton, and the appellant Ram Sakhi Devi alias Chhoharia Devi, mother of appellant Jai Mangal Mahton, stand convicted for offence under Section 302/34 and 304B/34 of the Indian Penal Code and sentence to undergo rigorous imprisonment for life and for offence under Section 201/34 of the Indian Penal Code have been awarded sentence to undergo three years rigorous imprisonment. Another accused person was Lakir Mahton, the father of Jai Mangal Mahton and Sitaram Mahton, but he died during the trial.

It is the case of the prosecution that the informant Ram Sakal Mahton, father of the deceased Ganga Devi, made statement that in the year 1986, his daughter was married to the appellant Jai Mangal Mahton. She used to live in her Sasural with her father-in-law Lakir Mahto, since dead, husband Jai Mangal Mahton, brother



-in-law Sitaram Mahton and mother-in-law Ram Sakhi Devi. It is said that at the time of marriage only Rs.3500/- was paid and three years after the marriage in the year 1989 and one year prior to the date of the incident, Ganga Devi was living in the Sasural after her Gauna and as the remaining Rs.4000/- was being demanded she was being harassed by all the accused persons for non-payment of dowry. It is said that on this count, she was being harassed and tortured. On 13.07.1990 on the eve of Nag Panchami, when the informant went to meet his daughter, who was pregnant, his daughter made complaint about harassment and told that he should make payment of Rs.4000/- otherwise his husband and other family members will torture her and kill her. The informant pacified his daughter by saying that he shall arrange for payment within five to seven days and thereafter took her to their village. Further, it is stated that on 18.07.1990 at about 4 P.M., Kalo Mahton, the cousin brother of the informant and a resident of village Khanjhapur, came to the house of the informant and told him that his daughter has been murdered and she has been cremated by the accused persons. The informant along with villagers Ram Bharos Mahton, Naresh Mahton, Sheo Kumar Mahto, P.W.4 and nephew Dhaneshwar Mahton, P.W.3, came to the village where he was informed about death of his daughter and



funeral being already conducted. The informant went to the accused persons and it is said that Jai Mangal Mahton, the appellant and his father informed the parent that let it go what has happened and requested not to file a case and you can take away all the belongings of his daughter. The informant lodged the FIR and the prosecution was launched. After trial, the appellants have been convicted and, therefore, this appeal.

Apart from examining the informant on behalf of the prosecution, the following witnesses were examined. P.W.1 Kalo Mahto, cousin brother of the informant, P.W.2 Anandi Mahto, P.W.3 Dhaneshwar Mahto, P.W.4 Shibani Mahto @ Shib Kr. Mahto, P.W.5 Ram Sakal Mahto and P.W.6 Syed Wasimul Haque. On behalf of the defence, two witnesses have been examined, namely Ram Bilas Mahton, D.W.1 and Vivekanand Singh, D.W.2.

It is the case of the defence that Ganga Devi suffered serious attack of diarrhea. She was taken to the Block hospital on the advise of D.W.1 Ram Bilas Mahto, a Compounder, but she died and, therefore, she was cremated. They deny the murdering Ganga Devi for dowry.

However, the informant and the prosecution witnesses do testify with regard to marriage happening, Rs.3,500/- being given at the time of marriage. The remaining Rs.4000/- being promised



to be paid subsequently and there are evidence to show that the deceased was harassed by demand of dowry from her. General statement with regard to demand of dowry has been made and the death of the deceased is also proved. Even though there is no evidence to substantiate the contention with regard to offence under Section 302 IPC being proved and the prosecution has not adduced any evidence to establish the commission of an offence under Section 302 IPC, but on analyzing the evidence, we find that offence under Section 304B IPC is clearly made out, particularly against the appellant Jai Mangal Mahton, the husband, and the appellant Ram Sakhi Devi, the mother-in-law. As far as the appellant Sitaram Mahton is concerned, there is no specific allegation against him with regard to harassment or demand of dowry.

When we analyze the evidence that have come on record and when we scrutinize the legal principle in the backdrop of the provision of Section 304B of the Indian Penal Code read with Section 113B of the Indian Evidence Act, we are constrained to hold that against the appellant Jai Mangal Mahton, the husband, and his mother Ram Sakhi Devi, offence under Section 304B of the Indian Penal Code is clearly made out. Section 304B of the Indian Penal Code speaks about dowry death and it contemplates



that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death will fall in the category of dowry death.

Now, if we analyze the evidence that has come on record, we find that the marriage took place in the year 1986, Gauna in the year 1989 and death in the year 1990. The death even though termed as a normal death due to diarrhea, but the circumstances available show that the appellants after death of the deceased did not even bother to inform her parents who were staying less than 10 km away from their residence. It is said that when the daughter-in-law dies, it is not necessary to inform her parents and, therefore, without informing the parents, funeral was conducted.

We are unable to accept the aforesaid contention. If the death has occurred in normal circumstances, before cremating the dead body, the prudent and normal human behaviour would be that the parents of the daughter are informed and they are given opportunity to see at least the dead body of their daughter and



participate in the funeral. Surprisingly enough, without informing anybody after death, the body is cremated.

That apart, D.W.1, the defence witness himself, namely Ram Bilash Mahto, in his statement says that in the night of the date of death, he was called to the house of Jai Mangal Mahton, he saw the deceased, who was suffering from diarrhea, and on his recommendation, she was taken to the Block Hospital. Neither any doctor from the Block Hospital is examined nor is there any witness to show that she was subjected to any treatment for dowry. Apart from the fact that death due to diarrhea is not established, the entire conduct of the accused persons and behavior immediately after the death becomes suspicious. Now, if we analyze their conduct in the backdrop of the requirement of Section 113B of the Indian Evidence Act, it is clear that when the question with regard to committing dowry death of a woman arises and when it is seen that just before her death, a woman has been subjected by the accused persons to cruelty or harassment for or in connection with demand or dowry, a presumption has to be drawn that such persons have caused dowry death.

If we analyze the facts of the present case in the backdrop of the law laid down by the Hon'ble Supreme Court in the case of **G. V. Siddaramesh v. State of Karnataka, (2010) 3 SCC 152**, we



find that in this case, the evidence of the informant and other witnesses do show that the deceased was subjected to some form of cruelty by demand of dowry, i.e. Rs.4,000/- which was remained unpaid and even on 13.09.1990, the informant, the father of the deceased, had come to meet her on Nagpanchmi, she had complained about harassment. This statement of harassment is further affirmed by the evidence of other witnesses available on record, namely P.W.5, P.W.3 and the statement recorded by the Investigating Officer, P.W.6. Therefore, it is a case where the deceased being subjected to demand of dowry and some form of cruelty and harassment in connection with demand is established and on this the only presumption that can be drawn in the facts and circumstances of this case is that the accused persons have committed the dowry death.

In the case of **Surinder Singh Versus State of Punjab, 1999 (1) Crimes 4296**, it is held that the husband being the direct beneficiary, it can be inferred that he has caused the death of the wife. In this case, the evidence available on record and the conduct of the accused persons in cremating the body of the deceased immediately after death all point out to the effect that the death was unnatural and it is the appellants who were responsible for the same. When speak of the appellants emphasis is on the appellant



Jai Mangal Mahto and his mother Ram Sakhi Devi. Appellant Sitaram Mahton has to be given the benefit of doubt as there is no specific evidence available with regard to role played by him, not only in the demand of dowry, but also causing harassment etc.

Taking note of all these circumstances, we have no hesitation in holding that the conviction of the appellant Jai Mangal Mahton and the appellant Ram Sakhi Devi alias Chhoharia Devi has to be upheld and as there is no cogent evidence available against appellant Sitaram Mahton, the benefit of doubt has to be given to him and he is acquitted.

Having held so, now the question would be with regard to the sentence to be awarded to appellant No.2 Ram Sakhi Devi alias Chhoharia Devi of Criminal Appeal No.23 of 1994. When she was prosecuted and when the offence was committed in the year 1990, she was more than 52 years of age. Accordingly, as on date, she would be more than 79 years of age and the records indicate that she has been in custody for about two months before trial and four months after conviction and since February, 1994 she is on bail. Taking note of her old age, we are of the considered view that it would be sufficient to reduce her sentence from life imprisonment to a period of seven years, but as looking to her age and the fact



that she has already suffered jail sentence, we direct for release on probation on her entering into a bond for a period of one year.

As far as the appellant Jai Mangal Mahton of Cr. Appeal No.29 of 1994 is concerned, he is the husband, he was responsible for the entire incident and we see no reason to take a lenient view in his case. However, looking to the fact that the offence was committed in the year 1990, we reduce his sentence from life imprisonment to undergo rigorous imprisonment for ten years. His bail bond be cancelled, he be taken back into custody to serve the remaining part of the sentence.

(Rajendra Menon, CJ)

(Anil Kumar Upadhyay, J)

Sunil/-

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