

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1081 of 2012

Arising Out of PS.Case No. -46 Year- 2007 Thana -null District- SARAN

- =====
1. Ramesh Sah son of Sri Shila Sah @ Shailanath Sah @ Shailan Nath Sah Gangajal P.S. Dariyapur District Saran.
 2. Maya Devi wife of Sri Shila Sah Resident of village Gangajal P.S. Dariyapur District Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Singh, Advocate

For the Respondent/s : Mr. S.N. Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date: 17-10-2017

Both the appellants were convicted under Section 304B IPC and appellant no. 1 (husband) was sentenced to suffer R.I. for life whereas appellant No. 2 (Maya Devi) was directed to suffer R.I. for 10 years.. During the pendency of the appeal, appellant no. 2 (Maya Devi) died. On furnishing an affidavit to this effect and after calling for a report, the appeal on behalf of appellant no. 2 was held abated vide order dated 18.09.2017.

2. Rani Devi, the sister of the informant (P.W.1) was married to the appellant in the year 2005. She was residing at the sasural. The informant in the fardbeyan (Ext.1) lodged on 17.05.2007, alleged



inter alia that soon after the marriage, the appellant and her other in-laws started demanding T.V., gold chain, ring etc.in lieu of dowry. The informant had visited the deceased only few months prior to her death when she weepingly disclosed the ill-treatment meted out to her by the appellant. She was also being assaulted occasionally. The manner in which the torture was perpetuated on her was disclosed. The informant consoled her and then requested to the in-laws to treat her well saying that he was not in a position to fulfil the demand due to the poverty with an assurance that whenever he would be able, those articles shall be given. On the morning of 17.05.2007, his nephew gave a telephonic message about the unnatural death of his sister at her sasural. The informant promptly went to the sasural of the victim and found the dead body lying inside the house. All the family members had fled away. A formal F.I.R. (Ext.3) was drawn and investigation was carried out. A death inquest report was prepared. The dead body was sent for post mortem examination. Dr. Rameshwar Prasad (P.W.2) held the autopsy on 18.05.2007 at 9.20 a.m. and reported the following ante-mortem injuries in the post-mortem report:-

“External- (1) Bruise on the front of neck 1/2” X 1/2” in front of hyoid prominence (2) Bruise below the (R) mandibular angle in the neck- 1” X 1” (3) Bruise just above the hyoid prominence (4) Bruise on the margin of (R) sternomy stoid muscle in the middle 1/2” X



1/4”.

On dissection:- Neck- Fracture of body of hyoid bone in the middle.

In my opinion the cause of death due to asphyxia caused by throttling”.

3. On conclusion of the investigation, challan was filed. The charges framed against the appellant was read over and explained to him which was denied. The defence is complete denial of the occurrence and his false implication in this case. The trial was assigned to the learned 1st Additional Sessions Judge, Saran at Chapra. The Trial Court, on analysing the evidence, held the appellant guilty as noted above vide judgment of conviction dated 7th September, 2012 passed in S.T. No. 568 of 2009. Taking exception to the judgment of his conviction, the appellant has filed the present appeal.

4. With a view to prove the charges, the prosecution examined four witnesses. P.W.1 Ram Vichar Sah is the informant and step brother of the deceased. P.W. 2 Dr. Rameshwar Prasad is the autopsy surgeon who conducted the post-mortem examination. P.W.3 Sanjay Kumar Singh is the formal witness who has proved the formal F.I.R.(Ext.3) and the inquest report (Ext.4). P.W.4 Kameshwar Ram is Sub-Inspector of Police and the investigating officer of the case. There is no denial that the appellant was married to the deceased only two years before. He is charged of having committed dowry



death. The evidence of P.W.1 (informant) clearly indicates that after the marriage of the deceased with the appellant in the year 2005, she was residing at the sasural. The in-laws including the appellants were demanding T.V., gold chain, ring etc as demand of dowry for which the victim was being tortured. The victim used to complain about the demand of dowry and subjecting her to torture in diverse ways. On hearing the news of her death, he immediately went there to find the appellant absconding from the house and the victim lying dead inside the sasural.

5. In order to raise a presumption under Section 113-B of the Evidence Act, the prosecution is required to first prove that it was a case of unnatural death which occurred within 07 years of marriage and immediately prior to the death, the victim was subjected to harassment/cruelty on account of non-fulfilment of demand of dowry. The findings of the doctor noticed above leave no doubt about the homicidal death of the victim while living at the sasural. It was caused by asphyxia due to throttling. The first two conditions are satisfied. The defence has also not disputed on these two circumstances. Counsel for the appellant has submitted that own brothers of the victim have not taken the dock to support the prosecution case. The informant was the step elder brother born from the first wife of the father of the victim. The evidence of step brother should not be



accepted particularly when the own brothers have not deposed. It is next submitted that there is no convincing evidence that immediately prior to the occurrence, she was subjected to torture. There is nothing to show that any panchayati was ever made or any complaint was lodged with any authority. It is next submitted that nobody had actually seen the incident. The conviction has been sustained on the strength of the presumption raised in law. There are several relevant factors which do not justify the imposition of extreme punishment on the appellant. It is an unfortunate case where his mother also expired.

6. We have carefully perused the evidence of P.W.1. Except criticising his evidence as that of the step brother of the informant, the testimony of P.W.1 remain unpolluted on the point of demand of dowry by the appellant and the torture on the victim by him. Only few months prior, the deceased had complained to her about the ill treatment by the appellant inasmuch as she was not being provided proper food. A cruelty may be physical or mental. What should be the proximity of such atrocity on the victim cannot be put in a straight jacket. It shall depend on particular facts of the case. The marriage was solemnised only two years ago. Soon after the marriage, such demand of the articles was being made. The evidence of P.W.1 throws adequate light on the torture perpetrated on the victim by the appellant and other in-laws.



7. Apart from Section 113-B of the Evidence Act, the accused of such offence can also be saddled with the presumption under Section 106 of the Evidence Act. It is well proved that she died an unnatural death at the sasural. The appellant being the husband owes a responsibility to explain the circumstances which resulted in her death. For this reason, we perused his statement under Section 313 Cr.P.C. wherein he took the plea that she was unable to bear child and out of frustration, she committed suicide. The objective finding of the doctor completely belies such explanation. It was a case of strangulation to death. It shall be treated yet another incriminating circumstance against the appellant. The F.I.R. and the deposition of P.W.1 clearly establish that the appellant had absconded or fled away from home after the incident. The conduct of the appellant also gives credence to the prosecution case in establishing the charge/guilt.

8. On analysing the evidence in the light of the criticism made by the Counsel for the defence, the Court does not find any legal flaw in the finding of guilt recorded by the learned Trial Court. The Trial Court has concluded on the guilt of the appellant relying mainly on the medical evidence which clearly suggests a homicidal death and the evidence of the informant (PW 1). From perusal of the evidence of PW 1 it is quite limpid that the victim was being tortured by the appellant on account of non-fulfillment of demand of dowry



9. Counsel for the appellant has submitted that own brothers of the deceased have chosen not to support the prosecution case, the conviction of the appellant is based only on circumstantial evidence and the presumption of his guilt in law arising out of the interplay of Section 106 as well as Section 113B of the Evidence Act. The same, in our opinion, is a relevant consideration in the matter of dowry death where more after evidence of eye-witness is not found as the death occurs secretly within four walls of the matrimonial house.

10. However, the Trial Court has awarded the maximum punishment prescribed under Section 304B i.e., rigorous imprisonment for life. The same has been done without discussing any legal and cogent circumstance which may call for imposition of the severe punishment as imposed by the Trial Court. The “Principles of Sentencing” has been the subject of various pronouncements by the Apex Court. The prime objective of the criminal law is the imposition of adequate, just and proportionate punishment commensurate with the gravity, nature of the crime keeping in mind the civil object. Recently the Apex Court in the case of **Raj Bala v. State of Haryana** reported in **AIR 2015 SC 3142** has considered the earlier pronouncements to sum up the “Principles of Sentencing”.

11. We compel to reproduce the paragraphs relevant from the case of **Raj Bala** (supra) which are as follows :



“1. In [Gopal Singh v. State of Uttarakhand](#)[1], while focusing on the gravity of the crime and the concept of proportionality as regards the punishment, the Court had observed:-

“Just punishment is the collective cry of the society. While the collective cry has to be kept uppermost in the mind, simultaneously the principle of proportionality between the crime and punishment cannot be totally brushed aside. The principle of just punishment is the bedrock of sentencing in respect of a criminal offence. A punishment should not be disproportionately excessive. The concept of proportionality allows a significant discretion to the Judge but the same has to be guided by certain principles. In certain cases, the nature of culpability, the antecedents of the accused, the factum of age, the potentiality of the convict to become a criminal in future, capability of his reformation and to lead an acceptable life in the prevalent milieu, the effect — propensity to become a social threat or nuisance, and sometimes lapse of time in the commission of the crime and his conduct in the interregnum bearing in mind the nature of the offence, the



relationship between the parties and attractability of the doctrine of bringing the convict to the value-based social mainstream may be the guiding factors. Needless to emphasise, these are certain illustrative aspects put forth in a condensed manner. We may hasten to add that there can neither be a straitjacket formula nor a solvable theory in mathematical exactitude. It would be dependent on the facts of the case and rationalised judicial discretion. Neither the personal perception of a Judge nor self-adhered moralistic vision nor hypothetical apprehensions should be allowed to have any play. For every offence, a drastic measure cannot be thought of. Similarly, an offender cannot be allowed to be treated with leniency solely on the ground of discretion vested in a court. The real requisite is to weigh the circumstances in which the crime has been committed and other concomitant factors which we have indicated hereinbefore and also have been stated in a number of pronouncements by this Court. On such touchstone, the sentences are to be imposed. The discretion should not be in the realm of fancy. It should be embedded in the conceptual essence of just



punishment.” [Emphasis added]

2. Seven years prior to that, in [Shailesh Jasvantbhai v. State of Gujarat](#)[2], it has been held that:-

“7. The law regulates social interests, arbitrates conflicting claims and demands. Security of persons and property of the people is an essential function of the State. It could be achieved through instrumentality of criminal law. Undoubtedly, there is a cross-cultural conflict where living law must find answer to the new challenges and the courts are required to mould the sentencing system to meet the challenges. The contagion of lawlessness would undermine social order and lay it in ruins. Protection of society and stamping out criminal proclivity must be the object of law which must be achieved by imposing appropriate sentence. Therefore, law as a cornerstone of the edifice of “order” should meet the challenges confronting the society. Friedman in his Law in Changing Society stated that: “State of criminal law continues to be—as it should be—a decisive reflection of social consciousness of society.” Therefore, in operating the sentencing system, law should adopt the



corrective machinery or deterrence based on factual matrix. By deft modulation, sentencing process be stern where it should be, and tempered with mercy where it warrants to be. The facts and given circumstances in each case, the nature of the crime, the manner in which it was planned and committed, the motive for commission of the crime, the conduct of the accused, the nature of weapons used and all other attending circumstances are relevant facts which would enter into the area of consideration.

8. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law, and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in [Sevaka Perumal v. State of T.N.](#)³

[Emphasis supplied]

And again:-



“The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and the victim belong. The punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should “respond to the society’s cry for justice against the criminal”.”

12. In the instant case, conviction of the appellant, as discussed above, on the basis of circumstantial evidence, is sustainable since Section 304B is a presumptive offence and all the ingredients for deeming the offence have been proved. However, the exact manner of the occurrence has not been established. During pendency of the appeal, the appellant has lost his mother (co-convict). The own brothers of the deceased, as seen, have chosen not to appear to support the case. Evidence of the I.O. shows that he had recorded CD statement of some persons from the neighbourhood who had stated that information regarding death of the victim was conveyed by



her in-laws to her 'maika'. The appellant has no criminal history and it is his first offence. These factors, coupled with the young age of the accused at the time of occurrence (25 years of age), may be considered the mitigating circumstances while awarding sentence on the appellant.

13. Having observed as above, we deem it appropriate that without altering the finding of guilt, alteration in the sentence, to rigorous imprisonment for 10 years would serve the ends of justice in the instant case.

14. Accordingly, the conviction of the appellant under Section 304B IPC is upheld and the sentence awarded on him is reduced to R.I for 10 (ten) years.

15. The appeal is dismissed with modification in sentence.

(Kishore Kumar Mandal, J)

I agree

(Madhuresh Prasad, J)

Prakash/-

AFR/NAFR	NA
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