

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.894 of 2011

Arising out of judgment of conviction dated 27.8.2011 and order of sentence dated 29.8.2011, passed by the learned Additional Sessions Judge-cum FTC 1, Sheikhpura, in Sessions Trial No. 348 of 2010/Tr.No.12 of 2010, Ariyari Police station Case No. 72 of 2009 dated 18.5.2009.

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1. Kartik Sao Son Of Ramdeo Sao Village Hussaina Bad P.S. Ariyari District Sheikhpura
 2. Ramdeo Sao Son Of Late Mishri Sao Village Hussaina Bad P.S. Ariyari District Sheikhpura
 3. Shanti Devi Wife Of Ramdeo Sao Village Hussaina Bad P.S. Ariyari District Sheikhpura
- Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Pankaj Kumar, Advocate

For the Respondent : Mr. Ashwini Kumar Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 04-05-2017

All the three appellants have been convicted by judgment, dated 29.8.2011, passed in Sessions Trial No. 348 of 2010/12 of 2010, by the Additional Sessions Judge- cum-Fast Track Court-I, Sheikhpura under sections 304B/34 of the Indian Penal Code (in short 'the IPC'). For the offence under these sections, appellants have been sentenced to undergo rigorous imprisonment for life vide order, dated 29.8.2011.

2. The prosecution case, as made out in the fard beyan of



Shankar Sao s/o Kishan Sao of village Trimohani Police Station Hussainabad recorded by Sub-Inspector Ashok Kumar Yadav, SHO, Ariyari on 18.5.2009 at 4 AM at Primary Health Center, Ariyari, in short, is as follows:-

(a) The informant Shankar Sao stated that he got married his niece (Bhatiji) Pinki Devi about 11 months back with Kartik Sao son of Ramdeo Sao of village Hussainabad, Police Station Ariyari, district Sheikhpura. In marriage, he gave gifts and ornaments as per his capacity in the marriage. After marriage, accused persons began to torture his niece for dowry. They used to make a demand for Rs.50,000/- for business. Thereafter, the informant met all the accused persons and expressed inability to pay the aforesaid amount. However, the accused persons were insisting that they should be paid the said money. The informant further alleged that for not fulfilling the dowry demand, the accused persons used to assault his niece.

(b) The informant stated that on 17.5.2009 at 10 PM he received information on mobile phone that the husband, mother-in-law, father-in-law and both brother-in-laws (Dewar) of his niece have killed her by sprinkling Kerosene oil. On receipt of the information, the informant along with his relatives and villagers proceeded for her Sasural at Hussainabad. However, no one was



present in the house and on enquiry, he learnt that people have taken his niece in a burnt condition to the Ariyari Hospital, for treatment. The informant thereafter arrived at the Ariyari Hospital where he found his niece dead on account of burn injury.

(c) The informant stated that the father of the girl has already denounced the world and has become Sadhu, whereas her mother is a mental patient.

3. The informant met police and made his fard beyan and finding the same to be true put his signature on it. On basis of fard beyan, police registered Ariyari police station case no. 72 of 2009, dated 18.5.2009 under sections 304B/34 IPC against Kartik Sao, Ramdeo Sao, Shanti Devi, Binod Sao and Rinku, who are husband, father-in-law, mother-in-law and dewars of the deceased respectively. Police after investigation, finding the allegation to be true against the accused persons, submitted charge sheet against Kartik Sao for offence under sections 304B/34 IPC. It also submitted supplementary charge sheets against accused Ramdeo Sao and Shanti Devi under the aforesaid sections. Learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions for trial. Charges were framed under sections 304B/34 IPC to which the accused persons pleaded not guilty and claimed to be tried. The defence of the case in the



statement under section 313 of the Cr.P.C. the accused denied the involvement. The trial court considering the materials on record convicted all the three appellants under sections 304B/34 IPC and sentenced them RI for life.

4. The prosecution altogether examined 13 witnesses. PW 1 Siya Saran Yadav, PW 2 Sonu Sao, PW 3 Bhola Sao, PW 4 Ranjay Chaudhary, PW 5 Bibhisan Sao, PW 6 Naresh Sao, PW 7 Upendra Sao, PW 8 Ram Swaroop Sao, PW 9 Kishori Sao, PW 10 Rajendra Sao, PW 11 Shankar Sao, PW 12 Dr. Chandrashekhar Pd. Mahto and PW 13 Ashok Kumar Yadav.

5. Out of these witnesses, PWs 1, 2, 3, 4 and 5 are co-villagers of the appellants. They have stated that there was good relation between the accused Kartik Sao and his wife, the deceased, whereas mother-in-law and father-in-law of the deceased used to stay separately. Some of them have deposed that in fact niece of informant accidentally caught fire by an earthen lamp. However, some of them stated the informant's niece caught fire while cooking.

6. Case of the prosecution, in fact, is based on the evidence of the witnesses of informant's village, namely, PW 6 Naresh Sao, PW 7 Upendra Sao, PW 8 Ram Swaroop Sao, PW 9 Kishori Sao, PW 10 Rajendra Sao and PW 11 Shankar Sao.



7. PW 12 is Dr. Chandra Shekhar Pd. Mahto. He was posted as Medical officer in the Sadar Hospital at the relevant time. He conducted post mortem of the deceased on 18.5.2009 at 4.15 AM. He stated that the deceased sustained superficial as well as deep burn injuries on her person. He opined that the deceased died due to shock caused by burn injuries. PW 13 Ashok Kumar Yadav is the I.O. of the case. He recorded the fard beyan of informant.

8. PW 11 Shankar Sao is the informant of the case. He supported the prosecution case in the FIR. He stated that the incident took place on 17.5.2009. On receipt of the news, he proceeded to the Sasural of his niece at Hussainabad in the night of 17/18.5.2009. On arriving at the Sasural of his niece, he could not find his niece and her in-laws. On enquiry by villagers, he learnt that police took Pinki Devi to the Ariyari Hospital. PW 11 further stated that when he reached the hospital along with other villagers, he found Pinki Devi lying in a dead condition. He stated that Pinki Devi had been married to the accused Kartik Sao on 16.7.2008. She stayed at her Sasural for ten months, in which early five months went by happily. Thereafter her husband and her in laws tortured and coerced her to get Rs.50,000/- from her parents. Earlier he had gone to the Sasural of his niece with his father Kishori Sao (PW 9) to pacify the accused persons. However, the appellant Kartik Sao



and his family members were insistent in their demand for Rs.50,000/-. He explained that father of his niece had become Sadhu and had denounced the world and the mother is mentally challenged, so he being uncle of the girl, is not in a position to meet the huge demand. He also proposed to allow his niece to return with him, which too was refused by the accused persons stating that unless a sum of Rs.50000/- is paid, she would not be allowed to go to her house. After fifteen days, the informant heard the news of her death at the hands of the accused persons.

9. PW 6 Naresh Sao, PW 7 Upendra Sao, PW 8 Ram Swaroop Sao, PW 9 Kishori Sao and PW 10 Rajendra Sao, all are residents of informant's village Tirmuhani, Police Station Ghoswari, district Patna. They stated that on hearing the news of death of informant's niece, they proceeded to her Sasural at Hussainabad. They did not find her in-laws at their house. Thereafter they rushed to the Hospital and found Pinki Devi lying dead in the Hospital in a burnt condition. The witnesses further stated that they learnt from the informant (PW 11) that husband and the in-laws of Pinki Devi tortured her for dowry and finally killed her.

10. Learned counsel appearing for the appellants assails the impugned judgment of conviction and sentence on more than



one ground. He stated that PW 11, the informant did not make any complaint either to the Mukhia, Sarpanch of the area or to the Police about the torture being meted out to his niece. He further submits that the demand of Rs.50, 000/- was made only by way of help for starting a business and not as a dowry. He next submits that the father-in-law and mother-in-law of the deceased were living separately and they had nothing to do with the affairs of the deceased and her husband. He pointed out discrepancies in the statement of PW 11 (the informant) and PW 9 Kishori Sao, father of informant. PW 11 stated in the FIR that two months back he along with his brother Suresh Sao had gone to the house of his niece to pacify the accused persons, whereas PW 9 stated that it was he alone who had gone to the house of his niece to pacify the accused persons. On these basis, learned counsel for the appellants submits that the prosecution has not been able to prove charge under sections 304B/34 of the IPC against the accused persons beyond all doubts.

11. Mr. Ashwini Kumar Sinha, learned Additional Public Prosecutor appearing for the State supports the impugned judgment of conviction and sentence. He submits that the prosecution has proved the case under section 304B/34 IPC against the appellants.

12. We have heard learned counsel for the appellants and



the State.

13. In order to establish a case of dowry death, the prosecution has to prima facie establish that the (a) death was caused within seven years of marriage (b) the deceased died of unnatural death and (c) there must be a demand of dowry followed by torture due to non-fulfilment of dowry amount, before the death.

14. In the case in hand, the informant (PW 11) in his FIR as well as in his deposition stated that when he went to the Sasural of his niece, accused persons demanded Rs. 50,000/-. In his further statement, he stated that because of on non-payment of dowry, his niece was subjected to torture. At one point of time, he went to her Sasural and tried to pacify the accused persons. The accused persons did not allow her even to return with him without payment of the dowry money. On perusal of the inquest report and the post mortem report, it is established that the girl died unnatural death having sustained burn injuries on her person. Besides this, she was carrying 4 ½ months pregnancy at the time of her death. PWs. 6 to 10, who are co-villagers of the informant, also supported the prosecution case that the accused persons used to demand a sum of Rs.50,000/- and for non-fulfilment of the same, they tortured her and did her to death. The prosecution has produced all necessary ingredients for establishing a case of dowry death.



15. Learned counsel submits that PW 13, the I.O. (Ashok Kumar Yadav) in his deposition did not state that the dead body was smelling of Kerosene oil. The plea is only to be noticed to be rejected as the I.O. has stated that the deceased died on account of burn injuries which was too supported by the doctor in his evidence. The other submissions of the appellants that the informant did not make any complaint before the Mukhia or the Sarpanch as well as before the police, are also not sustainable. PWs 6 to 10 have consistently stated that the informant (PW 11) told them that the accused persons used to demand dowry and tortured his niece for non-payment of dowry money of Rs.50,000/-. Furthermore, the defence did not adduce any evidence to show that the victim died otherwise or it was accidental death. As such, we are of the considered view that the prosecution has been able to establish the case under sections 304B/34 IPC against her husband.

16. So far as the mother-in-law and father-in-law are concerned, we find that the prosecution has not been able to establish that they were also living together with the appellant Kartik Sao and his wife, (the deceased) and that they also demanded dowry along with their son/appellant Kartik Sao.

17. In the result, the appeal is allowed against appellants no. 2 and 3, namely, Ramdeo Sao and Shanti Devi. As they are on



bail, they are discharged from the liabilities of the bail bond. Appeal against appellant no.1 Kartik Sao is dismissed.

18. Before parting with the judgment, we are constrained to observe that the I.O. of the case, namely, Ashok Kumar Yadav has conducted the investigation in a very casual manner. He was in receipt of the news that a lady died due to burn injuries at her Sasural, still he did not inspect the place of occurrence nor did he enter in the room in which she was found burnt. There prima facie appears to be a serious negligence on the part of the I.O.

19. Let a copy of this order be sent to the Director General of Police, Bihar for the needful.

(Samarendra Pratap Singh, J)

(Arun Kumar, J)

Shashi.

AFR/NAFR	NAFR
CAV DATE	NA
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