

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.102 of 2015

Arising Out of PS.Case No. -207 Year- 1999 Thana -DUMRAUN District- BUXAR

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1. Triloki Rai Son of Late Ramji Rai
 2. Usha Rai wife of Sri Triloki Rai Both residents of village- Dakhin tola, Dumraon, Police Station- Dumraon in the district of Buxar.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Akhileshwar Pd. Singh, Sr. Advocate
Mr. Surendra Pd. Singh, Adv.

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

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 18-12-2017

Appellants, Triloki Rai and Usha Rai have been found guilty for an offence punishable under Section 304B IPC and sentenced to undergo SI for 10 years vide judgment of conviction dated 22.01.2015 and order of sentence dated 27.01.2015 passed by 4th Additional Sessions Judge, Buxar in connection with Sessions Trial No. 111/2007 .

2. Dr. Awadh Bihari Rai (since deceased) filed written report on 09.12.1999 disclosing therein that his niece Kamini Rai daughter of late Brijbihari Rai was married with Triloki Rai son of Late Ramjee Rai, resident of Dumraon, Buxar about 3 ½ years ago. After marriage, Kamini came to her Sasural and during course of her stay, there was persistent demand of Hero Honda Motorcycle at the end of her husband, Triloki Rai and for that she was subjected to



torture. It has also been disclosed that today i.e. on 09.12.1999, he was telephonically informed that Kamini has been burnt to death by one Bablu whereupon, he along with his wife, nephew came to the place of occurrence over a vehicle and found, police carrying dead body. After coming to PS, they had seen body in completely burnt condition. Tongue was protruded. There was injury over the head of the deceased and so, he alleged that after assault and murder, she has been put under fire in order to obliterate the evidence.

3. On the basis of the aforesaid written report, Dumrao PS Case No. 207/1999 was registered and after completing the investigation charge-sheet was submitted. During course thereof, as is apparent, appellant, Triloki Rai was under custody while his wife appellant no.2, Usha Rai as well as Chandramauli Rai were shown absconding out of whom, appellant no.2, Usha Rai subsequently surrendered and has been prosecuted under present trial itself while there is nothing on record with regard to the status of Chandramauli Rai.

4. The appellants have specifically pleaded and suggested during course of cross-examination of the witnesses in the defence that appellant, Triloki Rai and husband of the deceased, Chandramauli got separated much before alleged date of occurrence and for that, substantiated by way of exhibiting the judgment/decree



of a Civil Court relating to Title Suit No. 57/1994. Furthermore, it has been pleaded that deceased was suffering from chronic disease and was being treated at Banaras and out of frustration, depression, anguish she committed suicide. After coming to know about the same, Triloki (appellant) had informed the police whereupon a U.D. Case No. 87/1999 has been registered. Furthermore, ocular as well as documentary evidence has been adduced in order to substantiate the plea.

5. Learned counsel for the appellant emphatically argued and during course thereof, submitted that judgment of conviction and sentence recorded by the learned lower court happens to be unsustainable in the eye of law. To substantiate the same, it has been submitted that though there happens to be a compromise decree but from perusal thereof, it is apparent that both the brothers, namely, appellant, Triloki Rai and Chandramauli Rai got separated. There happens to be no evidence contrary to the same having at the end of the prosecution and that being so, the status of the appellants are found completely distinguished. It has also been submitted that though death of the deceased had occurred within seven years of marriage and further, death is on account of burn but, there happens to be absence of conclusive evidence of demand of dowry as well as torture soon before death of the deceased. In the aforesaid facts and



circumstances of the case, the major ingredients of Section 304B of the IPC is found lacking and that being so, the judgment of conviction and sentence could not sustain. Furthermore, also placed reliance in the case of *Manohar Lal v. State of Haryan* as reported in **2014 (3) PLJR 409 (SC)**.

6. Learned APP controverting the submission made on behalf of appellants has submitted that death is otherwise than in normal circumstance within seven years of marriage is found properly proved. In likewise manner, the demand of dowry and torture having been meted out therefor is also found duly substantiated by the prosecution witnesses. Consequent thereupon, appeal is fit to be dismissed.

7. In order to substantiate its case, prosecution had examined 9 PWs and they are, PW-1, Baijnath Singh, Formal in nature, PW-2, Rabindra Nath Singh, cousin brother of the deceased, PW-3, Kailashi Devi, aunt of the deceased, PW-4, Mangla Rai, agnate of the deceased, PW-5, Praksh Kr. Rai, Full brother of the deceased, PW-6, Surendra Rai, Hostile, PW-7, Ram Kr. Pandey, though supported death of the deceased but on other aspect, he was declared hostile, PW-8, Dr. Hari Narayan Pandey who had conducted postmortem, PW-9, Nageshwar Nand Sah, Investigating Officer. Side by side, prosecution had also exhibited Ext-1, Formal FIR, Ext-2,



Inquest Report, Ext-3, Postmortem, Ext-4, written report. In similar fashion defence had also exhibited relevant order-sheets of Title Suit No. 97/94 as Ext-A, Decree as Ext-B.

8. Before coming to merit of the case, it is apparent from the lower court record that the learned APP who was incharge of the case had not acted in an impartial manner nor he happens to be responsible towards his professional conduct. In likewise manner, is the conduct of PW-9, Investigating Officer and that also happens to be conduct of the Presiding Officer concerned. Although, the judgment could not be based upon the case diary but, during course of judgment, the court is fully competent to go through the same in order to arrive at the just conclusion and for the purpose, when the case diary has been gone through, more particularly, the place of occurrence incorporated under para-16 of the case diary, the objective finding of the Investigating Officer discloses that the Kerosene Oil was spread over in the room. There was no mark of violence in order to break the door, over the door of the room which happens to be the place of occurrence and in likewise manner, its latch was not at all broken. That means to say, taking out the dead body from the room happens to be under mysterious circumstance and it also speaks that during course of commission of occurrence door was not closed from inside. That means to say, had there been a case of suicide, then in



that event, the door would have been closed from inside, there should have been bucket whereunder K-oil was kept, not found and in likewise manner, after giving pressure, pushing the door even to such an extent the facilitating either putting the latch or breaking the same in order to rescue the deceased was not at all and that suggests otherwise which, if taken together with the evidence of doctor PW-8 will give impression relating to the occurrence in different manner than as flashed by the prosecution. Not only this, when the evidence of PW-7, one of the inquest witnesses has been gone through, it is apparent that he had also admitted K-oil smell coming from the room and in likewise manner, PW-3 had also deposed that while she was seeing the dead body, there was K-oil smell. From the evidence of Investigating Officer, it is apparent that aforesaid objective finding was completely been kept out of record and in likewise manner, the presiding officer failed to see, even during course of judgment. Had there been, it would have been a case of murder, and so, the charge would have been amended.

9. Now coming to the present scenario, in order to prosecute and got an order of conviction of an accused punishable under Section 304B of the IPC, prosecution is under obligation to prove:-

(a) that death occurred within seven years of



marriage

(b) the death should be by burning or bodily injury or otherwise than in normal circumstance,

(c) there was demand of dowry and soon before her death deceased was tortured on that very score

(d) the aforesaid eventualities should be at the hands of the husband or relative of the husband.

10. When prosecution succeeds in substantiating the aforesaid ingredients of the offence punishable under Section 304B of the IPC, then in that event, the court has to accept the death as a dowry death by way of presumption so prescribed in terms of Section 113 B of the Evidence Act but, subject to rebuttal which, the accused is bound to discharge. That means to say, the presumption of dowry death is to be inferred after satisfaction of the components of Section 304B of the IPC and thereafter, the accused is under obligation to rebut the same. That means to say, presumption in terms of Section 113B of the Evidence Act is rebuttable.

11. Now coming to the facts of the case, PW-8, the doctor during course of conduction of postmortem over the dead body of Kamini Rai has found the following:-

External Examination:- Rigor Mortis present in all four limbs, fair complexion, on ear and mouth partially open, tongue



protruded, face congested, hairs partially burnt, blood stained secretion from nostril.

Ante-mortem injury:- Lacerated wound on head in middle ½” x ½” deep upto bone with extraverted blood in surrounding tissue.

Postmortem burn:- Involving whole of the living behind while marble like surface in most of the parts of body except lower abdomen and pelvic, lower abdominal wall completely burnt with expose intestine pelvic bone (ilium) partially burnt to ash, upper part of right thigh and its muscle charred exposing bone.

Internal Examination:- Skull, brain and meninges congested, Chest- lungs congested, Heart:- Right chamber contained blood and left chamber empty. Trachea & Larynx:- Congested, Abdomen:- Stomach contained semi liquid materials, liver congested. Spleen & Kidney:- NAD (No abnormality deducted). Urine Bladder- Full, Uterous:- Non pignant, Cause of death:- Asphyxia and head injury, Time since death:- within 36 hours.

12. According to the doctor as discussed hereinabove the cause of death has been shown as asphyxia and head injury but surprisingly, learned APP failed to draw the attention of the doctor whether soot was present inside the trachea or not and in likewise manner, there happens to be complete absence at the end of doctor



himself in incorporating whether soot was present inside the trachea or not. From the topography of the place of occurrence, it is apparent that there was devastating fire inside the room and so, had the deceased been alive during course thereof, there was every possibility of presence of soot inside the trachea which MODI in his classic book of Medical Jurisprudence also justifies. On account of some sort of slackness at the end of the learned APP true picturisation of the occurrence is found unduly wrapped. In likewise manner, the Presiding Officer also failed to exercise his power with due diligence.

13. Now coming to the evidence, it is apparent that PWs, 2, 3, 4, 5 are the witnesses belonging to family members of the deceased who supported the case of the prosecution. After going through the respective evidence, it has categorically been found that they had affirmed with regard to demand of dowry in the form of Hero Honda Motorcycle and for that there happens to be also discloser at their end that deceased had disclosed them that she was being tortured on that very score but, the source of information as none had spoken that demand was made directly from them by the appellants is found lacking. PW-2 is the cousin brother who had stated that the deceased used to write letters but, the aforesaid letter is not an exhibit of the record. On the other hand, PW-3, aunt had said that whenever she used to come, she had complained but again she failed



to disclose her last visit. PW-4 is the agnate who also failed to disclose the same and the worst part happens to be that of PW-5, full brother of the deceased who had taken risk to explain that not only by letters but, whenever victim came to his place, she had complained, but afraid to complain with regard to letters as well as the last visit.

14. The Apex Court had settled the issue that there should be torture, soon before death has not to be considered in its rigidity rather it should be accepted and calculated in relatively in order to appreciate the evidence. Admittedly, marriage had solemnized 3 ½ years ago. Death had occurred otherwise than normal circumstance. There was insistence over demand but, in the facts and circumstances of the case, on account of absence on behalf of prosecution to divulge at least approximate time preceding to death, it looks unsafe to accept the finding of the learned lower court, the ingredients so prescribed for constitution of dowry death is found duly fulfilled.

15. That being so, the judgment of conviction and sentence recorded by the learned lower court is set aside. Appeal is allowed.

16. Since appellants are on bail, they are discharged from the liability of bail bond. However, considering the conduct of the prosecution, the Investigating Officer and the P.O. concerned, it



looks appropriated to refer the matter to the Standing Committee and for that office is directed so along with all the relevant papers and documents.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
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