

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2063 of 2017

Arising Out of PS.Case No. -93 Year- 2011 Thana -SHAMBHUGANJ District- BANKA

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1. Ramashish Sah, S/o- Shri Ganesh Sah, Resident of Village+ P.O.- Chhatrahar,
P.S.- Shambhuganj, District- Banka.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Praveen Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 10-11-2017

This appeal has been preferred by the appellant against the judgment dated 03.06.2017 and order of sentence dated 07.06.2017 passed by Sri Ram Lal Sharma, 1st Additional District & Sessions Judge, Banka, in S.T. No. 132 of 2012, whereby the appellant was convicted for the offence punishable under Sections 304(B) of the Indian Penal Code and was sentenced to undergo rigorous imprisonment of seven years.

2. Facts indispensable for adjudication of present appeal are that informant filed a written application before the Incharge Shambhuganj police station stating therein that marriage of her daughter (deceased), namely, Nilam Devi was solemnized with appellant - Ramashish Sah, according to Hindu rights and customs in the year 2004 and, thereafter, she was living in her Sasural, where she gave birth to a son and a daughter but she was being tortured both physically and



mentally for demand of cash and a T.V. It has further been stated that on 04.08.2011, informant received a phone call that her daughter has died due to fall in the well, thereafter, informant along with other family members went to the place of occurrence and found the dead body of the deceased lying in the Veranda of the house of the appellant and further found blood near her ear and an injury on her mouth. Further on enquiry from the villagers, they told her that they did not see and hear about the fall of deceased into the well, thereafter, she went to the Shambhuganj police station for reporting the matter. She further stated that she had belief that her son-in-law has killed the deceased for non fulfillment of demand of dowry.

3. On the basis of above written application Shambhuganj P.S. Case No. 93 of 2011 under Section 304(B) of the Indian Penal Code was registered against the appellant and police after investigation submitted charge-sheet against the appellant under Section 304(B) Indian Penal Code.

4. Cognizance of the offence was taken and, thereafter, the case was committed to the court of sessions, which ultimately traveled to the file of learned Sri Ram Lal Sharma, 1st Additional District & Sessions Judge, Banka, for trial and disposal.

5. Charges were framed under Section 304(B) of Indian Penal Code against the appellant.

6. In this case altogether eight witnesses have been examined from the side of the prosecution and they are: P.W. 1- Sulochna Devi, P.W.



2- Mantu Sah, P.W. 3-Sindhu Devi, P.W. 4- Gautam Sah, P.W. 5 – Rubi Devi (informant of the case), P.W. 6 – Bhimsen Patel, P.W. 7- Rajesh Kumar and P.W. 8 – Dr. Laxman Pandit, who conducted postmortem examination on the body of the deceased.

7. Apart from oral evidence following documentary evidences have been admitted into evidence and marked as ; Ext. 1 – written application, Ext. 2- Signature of Bhimsen Patel on inquest report,, Ext. 3- Post mortem report.

8. It appears from perusal of the records that neither any oral nor any documentary evidence has been adduced on behalf of the defence and it appears from the statement of the appellant recorded under Section 313 Cr.P.C, the defence of the appellant is of innocence and complete denial of the occurrence. Further defence is that the deceased fell down into the well and died.

9. Learned Trial Court after conclusion of trial convicted the appellant under Section 304(B) and sentenced him as stated above.

10. Aggrieved by the said judgment, the appellant preferred the present appeal.

11. Learned counsel for the appellant assailed the judgment of trial court and submitted that the trial court has erred in appreciating that there are serious infirmities in the entire prosecution story, which will appear from the fact that though P.W. 1 to 3 are not the eye witness of the occurrence but they have not supported the prosecution story, as



P.W. 1 in her evidence has stated that the deceased was mentally ill and she died due to drowning into the well and she has also stated that there was no dispute between the deceased and the appellant, the said fact has also been substantiated by the evidence of P.W. 2 and none of them have been declared hostile in this case. It has also been argued that evidence of P.W. 3, who is sister of the appellant, clearly shows that on the date of occurrence she and the deceased had gone to ease out, where the deceased accidentally fell down in the well and lost her life, apart from that father of the deceased has not been examined and though own brother of the deceased, namely, Rajesh Kumar, P.W. 7 has been examined but he has not supported the prosecution story and has been declared hostile. Further submission of learned counsel for the petitioner that so far evidences of P.W. 4 and 5, who are cousin brother and mother of the deceased respectively are concerned, P.W. 4 has stated about demand of dowry of Rs. 50,000/- as dowry, whereas, the evidence of P.W. 5, mother of the deceased shows that she is not definite about the demand as she has stated that Rs. 20, 25, 30 and 50 thousand and a T.V. was demanded as “*Tilak*” as such, there evidences are contradictory to each other, so far demand is concerned, which casts the serious doubt about the prosecution story with regard to demand of dowry and in such a situation non-examination of father of the deceased and own brother of the deceased turning hostile, certainly negates the prosecution story. Further submission is that the evidence of P.W. 5, mother of the deceased



shows that she lodged the case against the appellant at the instance of one Bhimsen Patel (P.W. 6) and the case has been lodged in order to force the appellant to gift the land in favour of grand maternal son and daughter (nati and natini) of the informant. Hence evidence of P.W. 4 and P.W. 5 does not appear to be trustworthy on the other hand evidence of P.W. 1 to P.W. 3 shows that deceased died due to fall into the well, as such, conviction of appellant by the learned Trial Court under Section 304(B) is not sustainable.

12. Learned counsel for the State, on the other hand, countered the submission of learned counsel for the appellant and submitted that there are sufficient materials available on record to support the case of prosecution, as there is evidence against the appellant with regard to demand of dowry and torture, as such, there is no infirmity in the judgment of trial court and the appellant has rightly been convicted under Section 304(B) of the Indian Penal Code.

13. Heard both sides. From perusal of the record, it appears that P.W. 1, 2 are the villagers of the appellant and P.W. 3 is the sister of the appellant and there evidence suggests that the deceased died due to drowning into the well and none of these prosecution witnesses have been declared hostile nor there is anything on record to show that their evidences, lack credibility. It further appears that P.W. -7 Rajesh Kumar, who is brother of the deceased has been declared hostile by the prosecution as he has not supported the case of prosecution. P.W. 5, mother of the deceased is the informant in this



case and she has stated in her evidence about the demand of Rs. 20, 25, 30 and 50 thousand as well as a T.V and that is her prosecution story also as per F.I.R. She had also stated in para -17 of her cross-examination that she had gone to the police station and filed her written report, which was read over and explained to her and she put her L.T.I. and nowhere else, she put her L.T.I. whereas, evidence of P.W. 6, shows that written report has been written in his hand writing she, P.W. 5, put her L.T.I. there. Evidence of P.W. 5 in para 24 and 25 of her cross-examination also shows that she has deposed in this case at the instance of said Bhimsel Patel (P.W. 6) and all the expenses were borne by the said Bhimsen Patel. So far recovery of dead body from the well is concerned, evidence of P.W. 5 is contradictory on this point as in her evidence in chief, she had stated that when she had gone to the place of occurrence, the dead body of the deceased was lying in the "Aangan" whereas, in her cross-examination, she has stated that she had gone there and found the dead body in to the well and she brought of the body of the deceased from the well with the help of his son. Further para -14 of her cross-examination also shows that if the appellant would execute the land in the name of her grand maternal son and daughter, she would withdraw the case against the appellant, for there present case has been lodged.

14. P.W. 4 is cousin brother of the deceased and his evidence shows about the demand of dowry but he has stated that the appellant was demanding Rs. 50,000/- for the purpose of business. His evidence



also shows that prior to occurrence, appellant has also demanded money in presence of P.W. 7, Rajesh Kumar, brother of the deceased and at that time, he has also assaulted him but his evidence does not show that he made any complaint with regard to assault. However, the evidence of P.W. 7, Rajesh Kumar has been declared hostile and his evidence does not support the story of demand and assault.

15. Apart from that the doctor, who conducted post mortem examination on the dead body of the deceased has not found any injury on the person of the deceased either internal or external and finding of the doctor clearly shows that the death of the deceased was caused by suffocation due to drowning.

16. In this case father of the deceased has not been examined and as stated above own brother (P.W. 7) but he has not supported the prosecution case. Evidence of P.W. 5, mother of the deceased and informant of this case further shows that they left dead body of the deceased at her "*Sasural*" and last rituals were performed by appellant and his family members. Evidence of P.W. 5 also shows that her maternal grand son and grand daughter were living with the appellant, this appears to be one of the circumstances, which goes in favour of the defence.

17. In this case, Investigating Officer has also not been examined and from perusal of the Judgment, it appears that the trial court has disbelieved the evidence of P.W. 1, 2 and 3 and also the story of drowning into the well on the ground that on query of court P.W. 5



has stated that 'the well' was about one "Kos" (Mile) away from the house of the appellant and he disbelieved as to why she would go to such a long place to ease out. In such a situation, non examination of Investigating Officer had certainly caused prejudice to the defence, as had he been examined, he would be the most competent person to throw some light about the place of occurrence and its distance from the house of appellant as P.W. 5 is a rustic villager and witness is generally in habit of exaggerating about the fact, especially narrating the actual distance. Learned Trial Court ought to have been cautious while disbelieving the evidence of P.W. 1 to 3 on her evidence especially when their evidence remain unrebuted.

18. On close scrutiny of evidence, it appears that prosecution has not brought any material on record to show that the death did not cause due to drowning and appellant and other accused persons killed the deceased and thrown the dead body into the well. On the other hand, evidence of P.W. 2 in para -5 shows that appellant was not present in the house and evidence of P.W. 1 shows that he never heard about any altercation between the deceased and the appellant.

19. The case is under Section 304(B) of Indian Penal Code and on conjoint reading of Section 304(B) and Section 113B of Indian Evidence Act, no doubt, there is presumption against the husband and in-laws of the deceased, once the prosecution has been able to establish that death of the deceased was within seven years of her marriage, secondly, there was demand of dowry and thirdly the



deceased was subjected to cruelty in connection with demand of dowry soon before her death. It is well settled that once prosecution has been able to establish all these ingredients against the appellants by a cogent, consistent and reliable evidence and only, thereafter, there shall be presumption against the accused persons and onus will be on the accused person to explain the cause of death of the deceased. However, in this case except the fact that the deceased died within seven years of marriage, from the discussions made above, it appears that evidence regarding demand of dowry and the deceased was subjected to cruelty in connection with demand of dowry does not appear to be convincing and free from reasonable doubt rather the evidence has come that mental condition of the deceased was not good and the evidence has also come that the deceased accidentally fell down into well when she had gone to east out and lost her life, which has been supported by the evidence of doctor as well as from the evidence of villagers and their evidence remained unrebuted.

20. On the other hand, materials available on record shows that “*Shradh*” (last rituals) of the deceased was performed by appellant and grand maternal son and daughter of the informant were living with the appellant, clearly goes in favour of the appellant.

16. Considering the entire discussions made above, the finding of Trial Court, convicting the appellant under Section 304B of the Indian Penal Code does not appear to be convincing.

21. Accordingly, this appeal is allowed and the judgment dated



03.06.2017 and order of sentence dated 07.06.2017 passed by Sri Ram Lal Sharma, 1st Additional District & Sessions Judge, Banka, in S.T. No. 132 of 2012, is set aside.

22. As the appellant is in judicial custody, he is directed to be released forthwith, if not required in connection with any other case.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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