

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.519 of 2015

Arising Out of PS.Case No. -58 Year- 2012 Thana -SONO District- JAMUI

Vinod Mandal @ Binod Mandal Son of Ghanshyam Mandal, Resident of Village - Tetariya, Tola - Telwaper, P.S. - Sono, District - Jamui (Bihar).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 548 of 2015

Arising Out of PS.Case No. -58 Year- 2012 Thana -SONO District- JAMUI

1. Ghanshyam Mandal son of late Bansi Mandal,
2. Amiya Devi wife of Ghanshyam Mandal, all resident of village- Tetariya, tola- Telwaper, P.S.- Sono, District- Jamui (Bihar).

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (SJ) No.519 of 2015)

For the Appellant/s : Mr. Rakesh Kumar Sinha

For the Respondent/s : Mr. Sujeet Kr. Singh, APP

(In CR. APP (SJ) No.548 of 2015)

For the Appellant/s : Mr. Rakesh Kumar Sinha

For the Respondent/s : Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 12-10-2017

Heard learned counsel for the appellants as well as learned APP for the State.

2. As both the aforesaid two Criminal Appeals have cropped up from the common judgment, hence they are taken together for consideration and are disposed of by this common



judgment.

3. The Criminal Appeal no. 519 of 2015 has been filed by the appellant Vinod Mandal @ Binod Mandal and Criminal Appeal no. 548 of 2015 has been filed by the appellants Ghanshyam Mandal and Amiya Devi against the Judgment and Order of conviction and sentence dated 08.07.2015 passed by the learned Additional District & Sessions Judge-III, Jamui in Sessions Trial No. 156 of 2014 arising out of Sono P.S. Case No. 58 of 2012, whereby the learned trial court acquitted the accused Rekha Devi of the charges levelled against her and convicted the accused namely, Vinod Mandal, Ghanshyam Mandal and Amiya Devi for the offence punishable under Sections 304-B and 201 of the Indian Penal Code and sentenced them to undergo R.I. for ten years each and also slapped them with a fine of Rs. 10,000/- each and in default of payment of fine to undergo S.I. for three months each for the offence under Section 304-B of the Indian Penal Code and sentenced them to undergo R.I. for three years each under Section 201 of the Indian Penal Code. Both the sentences were directed to run concurrently.

4. The factual matrix of the case is that Sono P.S. Case no. 58 of 2012 was instituted under Section 304-B and 201 of the Indian Penal Code against the accused persons, namely, Vinod Mandal, Ajay Mandal, Ghanshyam Mandal, Amiya Devi and Rekha Devi on the basis of fardbeyan of Vikash Mandal S/o Dipan Mandal, R/o Rani Kura P.S. Jhajha, District-Jamui recorded by S.I. Ram



Avtar Paswan S.H.O. P.S. Sono on 07.05.2012 at Tetariya Bargharba Badhar at 17:00 hours with the allegation, in succinct that, he performed marriage of his daughter namely, Sima Devi four years back with Vinod Mandal and her second marriage (Duragaman) three years back, she was living in her marital house since then. she went to her matrimonial house, but she used to pay visit to him and on her visit, she used to divulge that her husband Vinod Mandal, brother-in-law Ajay Mandal, mother-in-law Amiya Devi and sister-in-law Rekha Devi mount pressure upon her to fetch motorcycle in dowry from her parents and on refusal to oblige them, they used to subject her to torture and cruelty. On 2.05.2012 his daughter and son-in-law had arrived at his house and his son-in-law had demanded motorcycle. On 05.05.2012, he got telephonic information about missing of his daughter. On the said information, he arrived at her matrimonial house along with his villagers and relatives and found the house locked. He made search of his daughter at his relatives but in vain. On 07.05.2012, he got information on mobile phone about finding of a dead body of a girl in the well located at Bargharba Badhar in village Tetariya. On the said information, he rushed there and witnessed the police present there. He identified the dead body of his daughter. It is claimed by the informant that all the accused persons strangulated his daughter to death over the aforesaid dowry demand of motorcycle and dumped her dead body in the well.

5. The aforesaid case was investigated by the police



and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons, namely, Ghanshyam Mandal and Vinod Mandal under Sections 304-B and 201/34 of the Indian Penal Code, showing the accused Amiya Devi, Ajay Mandal and Rekha Devi as innocent.

6. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against all the five accused persons namely, Vinod Mandal, Ajay Mandal, Amiya Devi, Ghanshyam Mandal and Rekha Devi and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the Additional District & Sessions Judge-III, Jamui for trial.

7. Charges against all the aforesaid accused persons were framed under Sections 304-B and 201/34 of the Indian Penal Code. Charges were read over and explained to them to which they pleaded not guilty and claimed to be tried. During the course of trial case of accused Ajay Mandal was split up and sent to Juvenile Justice Board for making enquiry regarding his juvenility. Thus, only four accused persons faced the trial.

8. To substantiate its case, in ocular evidence, the prosecution has been able to examine altogether eleven prosecution witnesses namely, Sakaldeo as PW-1, Sacchidanand as PW-2, Nityanand Mandal as PW-3, Nathu Mandal as PW-4, Nageshwar Mandal as PW-5, Santosh Mandal as PW-6, Ram Lakhan Mandal as



PW-7, Gauri Shankar Mandal as PW-8, Baliram Mandal as PW-9, Dr. Nagina Paswan as PW-10 and informant Vikash Mandal as PW-11. In documentary evidence, the prosecution has filed and proved several documents.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming that the deceased has committed suicide by plunging into the well due to depression as she was not blessed with any child. In buttress of their case, in ocular evidence, the defence has examined one witness namely Mahadeo as DW-1 only.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convicts have preferred the aforesaid two Criminal Appeals.

12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by the learned counsel for the appellants that none of the witnesses examined by the prosecution have supported the occurrence. Moreover, PW-1 to PW-7 have not supported the prosecution case rather PW-2 has stated that relation



between husband and wife was cordial and PWs-5, 6 and 7 have frankly stated that in-laws of Sima Devi used to maintain her properly. It is further submitted that there is vital contradiction between the statement of the informant and prosecution case regarding the place of recording *fardbeyan*. As per statement of informant, the *fardbeyan* was recorded at the P.S., but *fardbeyan* indicates that the aforesaid *fardbeyan* was recorded in village Tetariya at Bargharba Badhar. Though, as per case of the prosecution, the accused persons used to demand dowry and subject the victim to cruelty and torture, but the informant has not given any information regarding the said occurrence prior to death of the deceased either to the police or to the Panchayat and he has also not filed any case regarding the same which rules out the aforesaid case of the prosecution. It is further submitted that though the doctor has found the bruise on the neck and tongue of the deceased protruded, but the police who was the first person to see the dead body of the deceased, has not found any external injury on the person of the deceased and tongue of the deceased protruded at the time of preparation of the inquest report. None of the witnesses have supported the occurrence of eliminating the deceased by the appellants over the dowry demand rather some of the witnesses have vented their ignorance about the cause of death. Thus, the prosecution has failed to prove the death of the deceased in otherwise than under normal circumstances. As a matter of fact, the deceased



has died by taking plunge into the well out of depression as she was not blessed with any child for long time since marriage. It is further submitted that other ingredients of Section 304-B of the Indian Penal Code does not stand established by the prosecution, hence, the burden does not stand shifted upon the defence under Section 113-B of the Evidence Act. The prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy and reliable evidence. Hence, the impugned Judgment and Order of conviction and sentence passed against the appellants by the learned lower court is liable to be set aside.

14. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence, submitted that it is an admitted case of the parties that the deceased has died within seven years of her marriage in her matrimonial house in otherwise than under normal circumstances as the dead body was found in the village well and doctor has found the mark of injury on the neck of the deceased and her tongue protruded and the prosecution witnesses have supported the occurrence of demand of dowry and subjecting the victim to torture over the said demand soon before her death and after rightly appreciating the facts and evidence available on record, the learned lower court has passed the impugned Judgment and Order of conviction and sentence, and the same is liable to be upheld and this



appeal has no substance in it and is liable to be dismissed.

15. As per provision of 304-B of the Indian Penal Code, there are four ingredients of the aforesaid section which the prosecution is required to prove to ensure the conviction of the accused under the said section namely, the death of deceased must be within seven years of marriage, it must be caused by burns or bodily injury or otherwise than under normal circumstances, it must be in connection with the dowry demand and deceased must have been subjected to cruelty or harassment by her husband or by any relative of her husband in connection with the demand of dowry soon before her death. As per Section 113-B of the Evidence Act, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. A conjoint reading of Section 113-B of the Evidence Act and 304-B of the Indian Penal Code shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment in connection with dowry demand to shift burden on the accused to prove that he has not committed dowry death.

16. From perusal of record, it appears that it is admitted case of the parties that the deceased has died within seven years of her marriage. So far as the death of the deceased in otherwise than



under normal circumstances is concerned, it is the case of the prosecution that the dead body of the deceased was recovered from the well located in village Tetariya at Bargharba Badhar which happens to be in-laws village of the deceased. Though, from perusal of inquest report, it appears that the police has not mentioned in the inquest report about finding of external injury on the person of the deceased and her tongue protruded from the teeth. But, from perusal of postmortem report, it appears that the doctor conducting autopsy of the dead body of the deceased has specifically mentioned about finding of bruise with blackening of skin on the anterior surface of neck of the dimension of 5"x1/4" and tongue protruded and clinch in between teeth and has opined cause of death as Asphyxia due to strangulation. The police person does not happen to be medical expert and has no expertise to observe any injury etc. on the person of the deceased minutely as done by the doctor. So, in view of the aforesaid contradiction between the finding of police and that of doctor in my considered opinion, the finding of the doctor shall outweigh the finding of police. PW-8 and informant PW-11 have also supported committing of murder of the deceased by the accused persons. Thus, from perusal of aforesaid ocular and documentary evidence, I find that the deceased has died in the marital house in otherwise than under normal circumstances. So, in view of the aforesaid facts and circumstances, the aforesaid two ingredients of death of the deceased within seven years of marriage in otherwise



than under normal circumstances stand established.

17. So far as the other two ingredients are concerned, it is the case of the prosecution, as per F.I.R. that the accused persons used to demand motorcycle and subjected the deceased to torture over the said demand and the deceased also used to divulge her sorry tale on her visit to them. It is further case of the prosecution that on 2.05.2012, his daughter and son-in-law had paid visit at his house and her son-in-law had also made the said demand of dowry. The informant (PW-11) has stated in his examination-in-chief that after *Bidai*, her daughter went to her matrimonial house and was living there happily for one year. Thereafter, his daughter divulged him that the accused persons used to demand motorcycle and on failure to cough up the demand, subjected her to torture and extended threatening of dire consequences. His son-in-law has also demanded motorcycle on 2.05.2012 on his visit at his house and PW-8 who happens to be maternal uncle of the deceased has stated in his examination-in-chief that the victim lived at her matrimonial house comfortably for one year, thereafter, the accused persons started demanding Rs. 1 lac and motorcycle in dowry and subjected him to cruelty and committed her murder over the said demand. But the informant has not filed any case regarding the aforesaid demand and subjecting his daughter to torture and cruelty over the said demand at the hand of the accused persons. He also not made any complain in Panchayat and organized any panchayati as in paragraph 4 of his



cross-examination, he has stated that he has not filed any case regarding assaulting his daughter by the accused persons and there was also no panchayati regarding the same. In the said paragraph, he has further stated that on 02.05.2012 his daughter and son-in-law had paid visit to his house and he has interacted with his daughter, but he has not stated that his daughter has made any complain of subjecting her to torture over dowry demand by the accused persons. Moreover, PW-2 has stated in his cross-examination that relation between the husband and wife was cordial and PW-3 has stated in his cross-examination that relation of Sima Devi with her in-laws is cordial since beginning and PW-5 has stated in his examination-in-chief that accused Binod Mandal used to Keep Sima Devi properly and PW-6 and 7 have unanimously stated in their respective cross-examination that her in-laws used to keep the deceased Sima Devi properly. The aforesaid evidence of the prosecution rules out any demand of dowry by the accused persons from the deceased and the informant and subjecting the deceased to cruelty and harassment on the said demand by them. From perusal of fardbeyan, it appears that the informant has stated about demand of motorcycle by accused persons from his daughter and subjecting her to cruelty on the said demand by them and making of complain by the deceased regarding the same on her visit to her maternal house, but none of the family member of the informant has been examined by the prosecution in corroboration of the aforesaid statement of the informant. Moreover, as per



prosecution case, accused Binod Mandal on his visit to his house on 02.05.2012 had demanded the motorcycle and as per statement of informant given in paragraph 4 of his cross-examination his wife was present in the house on that date, but wife of the informant has not been examined by the prosecution in corroboration of the aforesaid case of prosecution rather withheld and no reason has been assigned by the prosecution for her non-examination, hence adverse inference is drawn against the prosecution. As per prosecution case, informant on 5.05.2012 got telephonic information about missing of his daughter, but in quite contradiction to aforesaid prosecution case, informant (PW-11) has stated in paragraph 4 of his cross-examination that his son-in-law arriving his house on 05.05.2012 informed about missing of his daughter. The aforesaid contradiction indicates that the informant has not come with clean hand and does not appear to be reliable and trustworthy. Thus, by adducing the aforesaid evidence, the prosecution has also not succeeded to substantiate that the accused persons subjected the victim to cruelty and subjected her to torture over the said demand soon before her death. Thus, the aforesaid two ingredients of dowry demand and subjecting the victim to torture and cruelty over the said demand soon before her death does not stand established by the prosecution by adducing consistent, trustworthy worth credence and reliable evidence. As the aforesaid ingredients of Section 304-B of the I.P.C. does not stand established, so the burden does not shift on the



shoulder of the accused persons under Section 113-B of the Evidence Act to prove that they have not committed dowry death of the deceased.

18. From perusal of fardbeyan of informant, it appears that the fardbeyan was recorded at Tetariya Bargharba Badhar, but the informant (PW-11) has stated in paragraph 5 of his cross-examination that both the S.H.O. and S.I. of P.S. Sono was present at the house of Binod Mandal, but the fardbeyan was recorded on the P.S. From perusal of record it appears that fardbeyan of the informant was recorded on 7.05.2012 and information of the incidence was given to the P.S. on 7.05.2012 and the case was registered on 7.05.2012 at 7:40 P.M., but FIR was sent to the court on 10.05.2012 i.e. after inordinate delay of 3 days and no reason has been assigned by the prosecution for aforesaid delay in sending the F.I.R. to the court. The aforesaid aspect of the case and delay in sending the FIR to the court giving sufficient hiatus and time to the prosecution for manipulation of the case against the appellants creates serious doubt about the prosecution case.

19. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned Judgment and Order of conviction and sentence passed by



learned lower court is set aside and the appellants are acquitted of the charges levelled against them. As the appellants are in custody, they are directed to be released forthwith, if not wanted in any other case. Accordingly, the aforesaid Criminal Appeals are allowed.

(Prakash Chandra Jaiswal, J)

rohit/-

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