

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.75 of 2016

Arising Out of PS.Case No. -186 Year- 2012 Thana -DHAKA District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Jahoor Ansari Son of Bhola Ansari,
 2. Bhikhainiya Khatoon, W/o Jahoor Ansari, Both are Residents of Village -
Khairaihiya, P.S. - Dhaka (Pachpakari), District - East Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 229 of 2016

Arising Out of PS.Case No. -186 Year- 2012 Thana -DHAKA District-
EASTCHAMPARAN(MOTIHARI)

=====

Karmulla Ansari Son of Jahoor Ansari, Resident of Village - Khairaihiya, P.S. -
Dhaka (Pachpakari), District - East Champaran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.75 of 2016)

For the Appellant/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

(In CR. APP (SJ) No.229 of 2016)

For the Appellant/s : Mr. Manoj Kumar, Advocate

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 15-02-2018

Both the appeals have been heard together and
a common judgment is being passed.

2. Appellants Jahoor Ansari, Bhikhainiya
Khatoon (Cr. Appeal No. 75 of 2016) and appellant Karmulla Ansari
(Cr. Appeal No. 229 of 2016) have been convicted under Sections
304(B) read with Section 34 of the Indian Penal Code by judgment



dated 13.01.2016 passed by the learned 7th Additional Sessions Judge, East Champaran, Motihari in Sessions Trial No. 223 of 2014/2013/15 and by order dated 20.01.2016, appellant Karmulla Ansari has been sentenced to undergo rigorous imprisonment for ten years but appellants Jahoor Ansari and Bhikhainiya Khatoon have been sentenced to undergo rigorous imprisonment for seven years by taking into account their age.

3. Appellant Karmulla Ansari is the husband of the deceased Sahnaj Khatoon whereas appellants Jahoor Ansari and Bhikhainiya Khatoon are the parents-in-law of the deceased. All the appellants are alleged to have killed Sahnaj Khatoon (deceased) for non-fulfilment of dowry.

4. The case of the prosecution is based on the written report of Nabi Rasool Ansari who has been examined as P.W. 5 at the trial. He has alleged in the written report referred to above that he had married his daughter Sahnaj Khatoon aged about twenty two years with appellant Karmulla Ansari in the year 2009. Right after the marriage, the appellants troubled her for additional dowry. She was also assaulted for non-fulfilment of demand of money. About a month before lodging of the present F.I.R, the accused persons were insisting for payment of rupees forty thousands but the informant (P.W. 5) expressed his inability to pay that amount. On



31.08.2012, at about 6:00 O'clock in the morning, one of the relatives of the informant informed him that his daughter had been killed. On such information, he along with others visited the matrimonial home of his daughter and found his daughter lying dead on the floor in her matrimonial home. It was, therefore, alleged by him that the deceased had been killed at the hands of the appellants and others and thereafter they ran away from their residence. On the basis of the aforesaid written report, Dhaka (Pachpakari O.P.) P.S. Case No. 186 of 2012 dated 31.08.2012 was instituted for the offence under Section 304(B) of the Indian Penal Code.

5. The police, after investigation initially submitted charge-sheet against the appellant Karmulla Ansari whereas the investigation with respect to other accused persons including appellants Jahoor Ansari and Bhikhainiya Khatoon was kept pending. After the charge-sheet against the appellant Karmulla Ansari was submitted, cognizance was taken and his case was committed to the Court of Sessions for trial. During the pendency of the trial of Karmulla Ansari, a supplementary charge-sheet was filed by the police, on which cognizance was taken against the appellants Jahoor Ansari and Bhikhainiya Khatoon and their cases were transferred and amalgamated with the case of Karmulla Ansari. However, before the amalgamation of the two Sessions Trials, most



of the witnesses had been examined in Sessions Trial No. 223 of 2013 (Karmulla Ansari). However, charges were framed against the appellants Jahoor Ansari and Bhikhainiya Khatoon but the witnesses were not recalled as the appellants Jahoor Ansari and Bhikhainiya Khatoon did not demand the same and they made statement before the Trial Court that no prejudice would be caused to them because the witnesses were cross examined at their insistence also.

6. The Trial Court, after examining seven witnesses on behalf of the prosecution and none on behalf of the defence convicted the appellants as aforesaid.

7. In order to appreciate the contentions of the appellants, it would be necessary to refer to the relevant portion of the deposition of the witnesses.

8. Nasruddin Ansari (P.W.1) is the co-villager of the appellants. On the date of occurrence, he claims to be present at his home. He has supported the prosecution version of the deceased having been married with appellant Karmulla Ansari and her being ill treated by the accused persons. P.W. 1 has also testified to the fact that rupees forty thousands was being demanded by the accused persons and non-fulfilment of the same led to the deceased being murdered. Though, an effort was made by the defence to discredit the aforesaid witness but nothing could be garnered from his



evidence which could discredit him. He may not be the eye witness to the occurrence, but it is quite possible for a co-villager to know about the disturbed marital condition of the deceased. The suggestion which was given to him that he had enmity with the appellants regarding possession of some land which was claimed by the accused persons, has also been categorically denied by him.

9. Similarly, another person of the same name, i.e. Nasruddin Ansari, has been examined as P.W. 2 in this case. He has supported the prosecution version in as much as he has deposed that the deceased was married to the appellant Karmulla Ansari and when she went to her matrimonial home, she was pressurized for bringing additional dowry. Rupees forty thousand was demanded by the appellants from the parents of the deceased about a month prior to the occurrence. P.W. 2 has also stated in his examination-in-chief that the people of the matrimonial home of the deceased were threatening the deceased of dire consequences, in case the money which was demanded by the accused persons was not given to them. The accused persons including the appellants had run away from their house after killing the deceased.

10. During the cross examination of the aforesaid witness, it came to light that he is the maternal uncle of the deceased. Prior to the occurrence, he claims to have visited the



matrimonial home of the deceased. He has also stated that after the occurrence, someone had made a telephone call to the informant of this case viz. P.W. 5 and thereafter they had come to the place where the deceased was found lying dead on the floor. He too had visited the matrimonial home of the deceased but did not find anyone of the accused persons at that time.

11. Learned counsel for the appellants, however, while assailing the credibility of the aforesaid witness has stated that he has made a discrepant statement before the Trial specially with respect to the place where the dead body was found. P.W. 2, according to the learned counsel for the appellants, has stated that he saw the dead body of the deceased on the main gate of the house. However, other witnesses, it has been argued, have talked about the deceased lying dead on the floor but inside the house. The aforesaid witness viz. P.W. 2 though claims to have remained in the matrimonial home of the deceased for about an hour but none came to inform them about the occurrence. Nothing was also said to have been found from the place where the dead body was lying which could throw some light on the cause of death or the manner of causing death.

12. True it is that the statement of P.W. 2, so far as the place where the dead body was found is different from the



rest of the witnesses but that fact alone would not discredit the aforesaid witness.

13. Similarly, Israil Ansari (P.W.3) has deposed before the Trial Court that he had visited the matrimonial home of the deceased along with other relatives on being informed about the deceased being killed. He is the full brother of P.W. 5 (the informant) and therefore stood in relation of an uncle of the deceased. In his cross examination, he has clearly stated that about six months ago, he had visited the matrimonial home of the deceased and had talked to the accused persons. He has expressed his complete ignorance about the name of the person who informed the P.W. 5 about the death of the deceased. He had accompanied the informant to the police station and was aware of the fact that the dead body of the deceased was sent to hospital. He has also stated that no complaint was lodged against the appellants before the Panchayat. However, he has also testified to the fact that the appellants are labourers and on many occasions, appellant Karmulla Ansari had to go out of the village for earning his livelihood.

14. Raimun Nesha (P.W. 4) is the mother of the deceased and she has completely supported the prosecution version. She was questioned with respect to the deceased being issueless and that being the cause of ending her life herself. The aforesaid witness



withstood the rigors of cross examination and deposed that there was no feeling of depression in the mind of the deceased and that she had not committed suicide; rather she had been killed.

15. Nabi Rasool Ansari, (P.W. 5) has supported the prosecution version and has reiterated his allegation that the deceased was troubled and harassed and was being pressurized for bringing rupees forty thousand, immediately prior to the occurrence. He had been telephonically informed by somebody whose name he could not remember at the trial that the deceased had been killed.

16. Learned counsel for the appellants has submitted that in the F.I.R, the P.W. 5 had spoken about the information having been given to him through one of his relatives but he changed his version at the trial and did not disclose the name of the person who informed him about the occurrence.

17. It does not make any difference if the name of the person who informed the P.W. 5 about the occurrence is not disclosed. The factum of death of the deceased and that also in her matrimonial home cannot be doubted on this score. What is of importance is to see as to how the deceased died.

18. Dr. Prabhat Prakash (P.W.7) had conducted the postmortem on the deceased. On examination, though he did not find any external injury but a ligature mark was found present which



was encircling the entire neck around the middle portion which was about 2 ½ c.m. In the margin of the ligature mark, there were two bruises. In his opinion, the cause of death was strangulation. The colour of the injury was not stated by P.W. 7 in the postmortem but the size was clearly stated to be 2 ½ c.m. in diameter. On being specifically questioned, P.W. 7 has deposed that the kind of ligature mark which was found on the neck of the deceased, could not have been possible if the deceased would have committed suicide by hanging. In cases of hanging, the ligature mark is not in an exact circle; rather the lines are irregular.

19. Learned counsel for the appellants, has however submitted that the postmortem report cannot be relied upon for it completely misses out on the details about clothes and the identification mark of the deceased. This argument has been advanced on the strength of the fact that the dead body was brought for postmortem by the Chaukidar.

20. Since no issue has been raised before the Trial Court regarding the identification of the deceased, the aforesaid submission of the learned counsel for the appellants is only being noted to be rejected.

21. Thus, from the deposition of the P.W. 7 as well as the postmortem report, which is exhibit-2, it stands



established that the deceased died a homicidal death. It could not have been a case of suicide because when the Investigating Officer had visited the place of occurrence, he did not find any rope or other incriminating material which could suggest that an attempt was made by the deceased to end her own life. There is no other material to come to the conclusion that because of the deceased being issueless, she took the harsh steps of killing herself.

22. However, from the deposition of the witnesses of the case, what comes to the fore is that, there is no specific allegation with respect to either demand of dowry or additional dowry or torture. A general statement has been made by P.W. 5 that the deceased was not treated well in her house and because the dead body was found in the house of the appellants, it was suspected that the deceased had been done to death by the appellants and others.

23. Learned counsel for the appellants has also submitted that on such vague allegation of all the accused persons torturing the deceased and thereafter killing her for non-fulfilment of dowry demand, the other accused persons who are the relatives of the appellants have been acquitted.

24. The appellants Jahoor Ansari and Bhikhainiya Khatoon (Cr. Appeal No. 75 of 2016) were aged about



80 and 70 years respectively as on the date of the judgment i.e. in the year 2016. In the absence of any specific accusation against them and specially in their old age, it would be difficult to come to the conclusion that they had participated in the killing of the deceased. That apart, their case stand on the same footing as that of the other accused persons who have been acquitted in this case for paucity of any cogent evidence. However, so far as appellant Karmulla Ansari (Cr. Appeal No. 229 of 2016) is concerned, he is the husband of the deceased and he is only required to explain as to how the deceased had died.

25. Section 106 of the Evidence Act enjoins upon any person having special knowledge about any fact to prove the same at the trial.

“Burden of proving fact especially within knowledge.-When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.”

26. The appellant Karmulla Ansari (Cr. Appeal No. 229 of 2016) being the husband of the deceased had the responsibility of explaining as to how the deceased died. The Investigating Officer not having found any rope or material which could indicate towards self infliction of the injury of the deceased, establishes that the deceased was done to death.

27. In that view of the matter, taking into



account that there are cogent evidence with respect to demand of dowry soon before the death and harassment for non-fulfilment of the same, appellant Karmulla Ansari (Cr. Appeal No. 229 of 2016) in the opinion of this Court has rightly been convicted for the offence under Section 304B of the Indian Penal Code.

28. Since there is no other incriminating material against the appellants Jahoor Ansari and Bhikhainiya Khatoon (Cr. Appeal No. 75 of 2016), their conviction and sentence is difficult to be sustained.

29. As such, the conviction of the appellants Jahoor Ansari and Bhikhainiya Khaton (Cr. Appeal No. 75 of 2016) are set aside and their appeals are allowed.

30. The appellants aforesaid are on bail. They are discharged of the liabilities of their bail bonds.

31. The conviction of the appellant Karmulla Ansari (Cr. Appeal No. 229 of 2016) is sustained. However, looking at the surrounding circumstances and the age of the appellant Karmulla Ansari, this Court is of the view that the interest of justice shall be met, if the sentence imposed upon him is reduced to seven years, which is the minimum sentence provided under Section 304B of the Indian Penal Code.

32. Thus, the appeal of the appellant Karmulla



Ansari (Cr. Appeal No. 229 of 2016) is partially allowed whereby his conviction is sustained but the sentence is reduced to the period of seven years as indicated above.

33. The appeals are disposed of accordingly.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
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