

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.33 of 2015**

Arising Out of PS.Case No. -66 Year- 2012 Thana -ANGARGHAT District- SAMASTIPUR

=====

Uday Kumar Rai @ Uday Kumar, son of Ravi Shankar Rai, resident of Village -
Suryatada Harpur Rawari P.S- Anganghat, District - Samastipur.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Baban Roy-Amicus Curiae

For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 16-01-2018

Learned counsel for the appellant is absent, on account thereof, Sri Baban Roy, learned Advocate has been requested to assist the Court as an Amicus Curiae.

2. Heard, learned Amicus Curiae as well as learned Additional Public Prosecutor.

3. Appellant Uday Kumar Rai @ Uday Kumar has been found guilty for an offence punishable under Section 304B of the I.P.C. and sentenced to undergo R.I. for eight years vide judgment of conviction dated 11.11.2014 and order of sentence dated 17.11.2014 passed by the 5th Additional Sessions Judge, Samastipur in Sessions Trial No.570 of 2013.

4. Rajendra Rai (PW-2) filed written report on



03.10.2012 disclosing therein that he had married his daughter Bibha Kumari about a year ago with Uday Kumar Rai of village-Surya Tar as per Hindu Rites and Customs. Today, that means to say on 03.10.2012, he received information at an early hour with regard to murder of his daughter, whereupon he along with his villagers came to Surya Tar, at the place of his daughter where he found dead body of her daughter over a cot. It has also been disclosed that father of son-in-law namely Ravi Shankar Rai, brother Sarwan Kumar and son-in-law Uday Kumar Rai were torturing his daughter since before for procurement of a motorcycle as well as cash appertaining to Rs.10,000/- in lieu of dowry and for that, she was even occasionally being assaulted.

5. On the basis thereof, Angarghat P.S. Case No.66 of 2012 was registered and after completing investigation, chargesheet was submitted only against Uday Kumar Rai (appellant) as well as Ravi Shankar Rai exonerating Sarwan, brother of the appellant, whereupon appellant along with Ravi Shankar Rai faced trial which ultimately concluded recording judgment of acquittal against co-accused Ravi Shankar Rai while convicting and sentencing the appellant in a manner, as indicated above, the subject matter of instant appeal.

6. Defence case, as is evident from mode of cross-



examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has also been pleaded that deceased was suffering from stomachache as a result of which she died of natural death.

7. In order to substantiate its case, prosecution had examined altogether eight PWs, who happens to be PW-1, Manoj Kumar Rai, PW-2, Rajendra Rai (informant), PW-3, Amresh Kumar, PW-4, Satyanarain Sahani, PW-5, Jaideo Rai, PW-6, Mithilesh Rai, PW-7, Dr. B. P. Rai and PW-8 Satya Prakash Jha, the I.O. as well as had also exhibited as Exhibit-1 signature of witness Manoj Kumar Rai over post mortem report, Exhibit-2, post mortem, Exhibit-2/1 signature of Dr. Bibhash Ranjan, observer, over post mortem report, Exhibit-3, endorsement over F.I.R., Exhibit-4, formal F.I.R. Defence had also examined one DW, viz. DW-1 Naresh Thakur, a formal, who had exhibited a petition having been filed by the informant as Exhibit-A, vakalatnama as Exhibit-B.

8. The learned Amicus Curiae while challenging the finding recorded by the learned lower Court has submitted that no offence whereunder appellant has been found guilty is made out, because of the fact that there happens to be no consistency amongst the evidence of the PWs, more particularly PW-1 (uncle of the deceased), PW-2, father of the deceased as well as informant and PW-



3, cousin brother of the deceased over demand as well as torture having subjected to since before death, which happens to be the major ingredients to constitute an offence punishable under Section 304B of the I.P.C. and that being so, the finding recorded against the appellant for an offence punishable under Section 304B of the I.P.C. would not be maintainable.

9. Furthermore, it has also been submitted that as per evidence of the doctor (PW-7) along with Exhibit-2, the post mortem report, it is apparent that deceased died of hanging and not of strangulation. Strangulation happens to be on account of external force having applied while hanging happens to be suicidal. So, it happens to be a case of suicide. It has also been submitted that deceased out of anguish had committed suicide in the background of the fact that from the evidence available on the record, it is apparent that even she was newly married, the appellant, being a labourer gone to Punjab to earn livelihood, which was not at all accepted by the deceased. Therefore, neither it happens to be a case falling within the ambit of Section 304B of the I.P.C. nor under Section 306 of the I.P.C., even attracting presumption in terms of Section 113A of the Evidence Act, though rebuttable. Apart from this, from the evidence of PW-2, it is apparent that appellant is the person, who had informed him regarding the misfortune and in likewise manner, from the



evidence of PW-2 under Para-5, it is evident that appellant had not demanded anything from him. Referring Paras-3 and 4 of the cross-examination of PW-2, it has been submitted by the learned Amicus Curiae that informant himself admitted that soon after marriage, appellant had gone to Punjab to earn livelihood, then in that background, demand and torture at the end of appellant appears to be mere an ornamental in order to launch a case. That happens to be reason behind that in due course of time, informant had realized that appellant should not be prosecuted, whereupon filed a petition before the learned lower Court to this effect, happen to be Exhibit-A and B of the record. It has also been submitted that from the deposition of witnesses, it is apparent that similar kind of allegation has been attributed, which has been disbelieved relating to father, while acquitting him, then in that circumstance, appellant should also been given same treatment. In the aforesaid facts and circumstances of the case, the finding recorded by the learned lower Court happens to be unsustainable in the eye of law and is accordingly, fit to be set aside.

10. On the other hand, learned Additional Public Prosecutor while supporting the finding has submitted that aforesaid petition, Exhibit-A and B, has got no identity in the eye of law that too, in same proceeding as the evidence having been adduced during course of trial is the substantive evidence, which is to be admitted,



recognized and permissible in the eye of law. Furthermore, it has also been submitted that death within shortest span of time covering just a year after the marriage had occurred and that too, otherwise than normal circumstance. Be it a suicidal or homicidal, the only criteria now remains is that whether there was demand of dowry and for that, deceased was tortured soon before her death. In this context, it has also been submitted that death within one year of marriage, and further, having positive evidence at the end of informant (PW-2) that there was demand and for that, she was tortured satisfy the remaining ingredients, whereupon the finding recorded by the learned lower Court is fit to be concurred.

11. For attracting application of Section 304B of the I.P.C., prosecution is bound to prove the following ingredients:-

A) Death should be by burn or bodily injury or otherwise than normal circumstance.

B) Death should be within seven years of marriage.

C) There should be demand of dowry.

D) And for that, deceased would have tortured soon before her death by the husband or relative of the husband.

Though cruelty or torture subjected to soon before her death, has not been ascertained under straight jacket formula rather



the conclusive finding relating thereto as propounded by the Apex Court would vary from case to case and for that, the Court has been given wide power to appreciate, analyze, weigh the same. If the aforesaid components are being fulfilled, then in that circumstance, the Court will presume that deceased died of dowry death in terms of Section 113B of the Evidence Act, though rebuttable and to that extent, accused has been given an opportunity to rebut the same. If he succeeds, will get an acquittal, if not then bound to be convicted and sentenced there for.

It is also to be noted down that only homicidal death is not at all warranted to satisfy one of the components rather also covers the act of suicide, because of the fact that it fall within the category otherwise than normal circumstance as has been held by the Hon'ble Apex Court in *Maya Devi and another vs. State of Haryana reported in 2016 CRI.L.J. 629*.

12. In the aforesaid background, now, the evidences have to be seen whether prosecution has succeeded to substantiate the same. PW-4, PW-5 and PW-6 are the witnesses hailing from the village of the appellant, who though admitted death of the deceased within a year or near about so of her marriage, but failed to disclose, divulge the cause of death. Now, coming to the evidence of remaining prosecution witnesses, it is evident that PW-1 had stated that deceased



was married with appellant, Uday Kumar Rai about a year ago. Son-in-law of accused Ravi Shankar Rai came at their place and disclosed that Bibha Kumari is dead, whereupon he along with his nephew, brother and other family members gone to the place of Bibha Kumari where they found dead body of Bibha Kumari lying over cot. All her family members (sasuralwala) were absent. They have seen spot over her neck. Police was informed, whereupon came, brother had handed over written report, inquest was prepared by the police over which he had put his signature. So, during his examination-in-chief, alone he had not supported the demand of dowry or torture meted out to the deceased in order to facilitate procurement thereof.

13. PW-3 had deposed that deceased was his sister. She died at her sasural within one year of her marriage with Uday Kumar Rai. Then had disclosed that deceased while visiting Maika, had disclosed that motorcycle, cash are being demanded at her sasural and for that, her husband and other members were regularly torturing her. They have not provided the same. All of a sudden, his uncle received telephonic information with regard to death of Bibha Kumari, whereupon they all have gone there and found the dead body over a cot having some spot over neck. None of her sasuralwala was present there. So, this witness had stated that after coming to Naihar by the deceased, they came across the news with regard to demand of dowry



as well as torture having subjected to her. In Paras-7 and 8 of his cross-examination, he had stated that he is unable to say the exact date on which, Bibha Kumari had come to sasural and in likewise manner, on which date, he met with her. No other source has been divulged at his end.

14. PW-2 is the informant, father of the deceased, who had stated that Bibha Kumari was his daughter, who was married with Uday Kumar Rai about a year ago from the date of occurrence. On the date of occurrence, Bibha was at her sasural. He had further stated that after marriage, he had gone to his sasural. His daughter was hail and hearty, then had disclosed that some relative of sasuralwala of Bibha Kumari had informed him regarding death of Bibha. His son-in-law had also informed. Then had stated that his son-in-law was always quarrelling with his daughter for procurement of Rs.10,000/- as well as a motorcycle which they have not provided. After coming to know about her death, they have rushed to her place and found the dead body over a cot, none of her sasuralwala was present. Then police was informed. During cross-examination at Para-5, he had stated that his son-in-law had not demanded cash as well as motorcycle from him, but his daughter had disclosed. In Para-6, he had stated that he frequently visited sasural of his daughter. In Para-7, he had stated that whenever he used to visit sasural of his daughter, he found her



perplexed on same pretext. Though at an earlier he denied, but under Para-14 that he had admitted that he had filed petition before the learned lower Court.

15. After scrutinizing the evidence of the PWs either independently or conjointly, it is apparent that PW-1 is completely silent over demand of dowry and torture having subjected to the deceased. While PW-3 had disclosed source of information to be after having presence of deceased at her Maika, which PW-2 had demolished as he had not disclosed coming of deceased to his place. On the other hand, he had stated that he used to visit frequently at the place of his daughter's sasural. He had further stated that whenever he visited the place of his daughter, he found her perplexed, but he had not disclosed the reason. Furthermore, he had not stated that at any occasion, he had found his son-in-law.

16. Now, coming to other part of evidence, PW-7 is the doctor, who had conducted post mortem over the dead body and found the following:-

i) External Injury-blackish ligature mark present over the neck between chin and throat oblique in nature extending from lower part of right ear to lower part of left ear size 3" x ½".

ii) On dissection:- a) Neck-subcutaneous tissue



*beneath the ligature mark was white and glistering,
b) Trachea-mucus membrane was congested and
contained frothing mucus and all viscerae were
congested.*

*iii) Time elapsed since death within 36 hours and
cause of death due to asphyxia caused by hanging.*

So as per evidence of the doctor, it is crystal clear that deceased died of hanging which as per Modi Medical Jurisprudence and Toxicology happens to be usually suicidal. From the evidence of the I.O. (PW-8), it is evident that he had not given any additional help to the prosecution as he had not found rope etc. in or around the place, nor had disclosed the height of roof of the hut, which could have in order to adjudge.

17. At the present juncture, the other kind of evidences is to be taken into consideration which would play a pivotal role in due appreciation of the present controversy. PW-2, informant, had disclosed at Para-2 of his cross-examination that his son-in-law is a labour and does the job at Punjab. In Para-4, he had stated that few days after the marriage, his son-in-law had gone to Punjab for doing labour while his daughter remained at her sasural. PW-3 under Para-11 had also admitted that husband of Bibha namely Uday Kumar Rai is a labourer. So far other witnesses are concerned, that means to say,



PW-4, PW-5 and PW-6, they consistently stated that appellant happens to be engaged at Punjab as a labourer and was not available on the alleged day.

18. Though whatever been suggested to the prosecution witnesses at the end of the appellant happens to be contrary to the material having on the record, but it happens to be an obligation on the part of the prosecution to substantiate its case at a first instance, then and then only the accused will be under obligation to explain by way of rebuttable. Because of the fact that sketchy nature of evidences have been adduced on behalf of prosecution, which did not satisfy the ingredients prescribed for an offence punishable under Section 304B of the I.P.C. On account thereof, the finding so recorded by the learned lower Court would not survive. Then the event justifying application of Section 306 of the I.P.C. has also been traced out, which is also found lacking in the background of the fact that none of the witnesses including PW-1, PW-2 and PW-3 have disclosed that they have seen the appellant to be at his place since before death of deceased. Contrary to it, PW-2 had specifically stated that soon after marriage, his son-in-law had gone to Punjab to earn his livelihood. He had not disclosed his presence subsequently. This theme might be a cause for committing suicide by the deceased, who soon after marriage got absence of company of her husband, who ignoring her,



gone to Punjab in order to earn livelihood.

19. That being so, the judgment of conviction and sentence recorded by the learned lower Court is hereby set aside. Appeal is allowed. Appellant is on bail, hence is discharged from its liability. First and last page of the judgment should be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	23.01.2018
Transmission Date	23.01.2018

