

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1707 of 2017

Arising Out of PS.Case No. -7 Year- 2014 Thana -KHIRHAR District- MADHUBANI

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1. Lakshman Sah son of Late Ram Lakhan Sah
2. Shailia Devi wife of Lakshman Sah
3. Ram Pravesh Sah son of Lakshman Sah All are residents of village - Sonai, P.S. -
Khirahar, District - Sheikhpura.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kumar Thakur, Adv.
Ms. Babita Kumari, Adv.
Mr. Shashank Shekhar, Adv.
Mr. Ritwaj Raman, Adv.
For the Respondent/s : Ms. Abha Singh (App)

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 05-02-2018

Heard the learned counsels for the parties.

2. The appellants have been convicted under Sections 304B and 201/34 of the Indian Penal Code by the judgment dated 29.05.2017 passed by the learned Fast Track Court II, Madhubani in S.Tr. No. 5/2015+8/2015, arising out of Khirhar P.S. Case No. 07/2014 and by order dated 31.05.2017, they have been sentenced to undergo R.I. for seven years for the offence under Section 304(B) of the Indian Penal Code and R.I. for three years for the offence under Section 201/34 of the Indian Penal Code; the sentences however having been ordered to run concurrently.



3. The case of the prosecution is based upon the fardbeyan statement of the father of the deceased, viz. Kishori Sah, who has been examined as P.W. 1 at the trial.

4. The appellant nos. 1 and 2 are the parents-in-law of the deceased whereas the appellant no. 3 is the younger brother of the husband of the deceased.

5. In the F.I.R., the father of the deceased/informant/P.W.1 has alleged that he had married his daughter Ranjeeta Devi with the son of appellant nos. 1 and 2 about five years ago. The deceased used to live in her matrimonial home with the appellants whereas her husband was working as a labourer at Guwahati. The appellants, it was alleged, always troubled and harassed the deceased. About four days prior to the occurrence, the daughter of the informant had intimated that the appellants are fighting with her. Thereafter, it was further alleged that on 14.01.2014, appellant no. 1 informed him on telephone that his daughter is very ill and that he should come to see her. When P.W. 1 went to the matrimonial home of the deceased, he did not find anybody and there he learnt that the appellants along with 10 to 12 other villagers were trying to burn the dead body of the deceased. With the help of the police, the fire was doused and the dead body was recovered.



6. On the basis of the aforesaid fardbeyan/statement, a case vide Khirhar P.S. Case No. 7/2014 dated 14.01.2014 was instituted for investigation under Sections 304B and 201/34 of the Indian Penal Code.

7. The police after investigation submitted charge-sheet whereupon cognizance has been taken and the case was committed to the court of Sessions for trial.

8. The learned trial court after having examined 9 witnesses on behalf of the prosecution and none on behalf of the defence, convicted and sentenced the appellants as aforesaid.

9. Mr. Ajay Thakur, learned counsel for the appellants has submitted that there is no material on record for the trial court to have convicted and sentenced the appellants. He has further argued that even the deposition of PWs 1 and 2, who are the parents of the deceased, do not bring home the charges under Sections 304B and 120B of the Indian Penal Code. The other witnesses, it has been submitted, have not supported the prosecution version and have been declared hostile.

10. The doctor also, it has been submitted, has opined the cause of death as hypothermia which is death by contacting cold.

11. Ms. Abha Singh, learned Public Prosecutor, on the other hand, has submitted that from the F.I.R. itself, it would appear



that the deceased was troubled by the appellants, who are her in-laws and some days prior to the occurrence also, she was being harassed and troubled. Thus, it was argued that with the death of the deceased in her matrimonial village, offence under Section 304B of the Indian Penal Code was clearly attracted and no fault could be found with the trial court judgment in convicting the appellants as aforesaid.

12. In order to appreciate the rival contention of the parties, it would be necessary to go through the deposition of PWs 1 and 2, who have not been declared hostile and P.Ws. 8 and 9, who are the doctor and the I.O. respectively.

13. Kishori Sah (P.W.1) has in his cross-examination stated that right from the time of marriage, the deceased was staying separately with her children. The parents-in-law of the deceased were also living separately. He has further stated that about one week prior to the death of the deceased, appellant no. 1 had informed him that his daughter is seriously ill, but for some pre-occupation, P.W. 1 could not go to see his daughter. When he was informed by appellant no. 1 that the condition of his daughter is very serious, he went to her matrimonial village at about 4 O'clock in the evening where he was informed that the deceased had been killed. He went to the police station thereafter and along with the police, he came to the place where the dead body was being burnt. On seeing the police party,



persons who were attempting to burn the dead body fled away. The half burnt dead body was recovered and was sent for post-mortem examination.

14. Similar deposition has been made by Jagtaran Devi, mother of the deceased, who has been examined as P.W. 2 before the trial court. She has also stated that the deceased, ten days prior to her having met her end, was ill and that she died because of her illness. She has also stated that because of misunderstanding, her husband had filed a case against the appellants.

15. Ramlal Sah, who is one of the brothers of the deceased, has been examined as P.W. 3, who has been declared hostile. In his cross-examination by the APP, he has stated that his sister never complained about any ill-treatment in her matrimonial home. He has also stated that on information he had gone to the matrimonial home of the deceased and had participated in the cremation.

16. Raj Kumar Sah, Hareram Sah, Shanti Devi and Saraswati Devi have been examined as P.W.s 4, 5, 6 and 7 respectively and all of them have been declared hostile. None of them have supported the prosecution version, though they could have, because of their special relationship with the parties, thrown some light on the cause of the occurrence.



17. The doctor, who conducted the post-mortem on the dead body of the deceased, has been examined as P.W.8. He has curiously stated the cause of death as Hypothermia; though, nothing has been stated by him as to the reason for such a finding. From his deposition, it appears that he did not know about Hypothermia or otherwise, he would have stated the reasons for his coming to such conclusion. Hypothermia is death under cold conditions and from the post-mortem report there does not appear to be any symptoms of Hypothermia.

18. Ramchandra Mandal (P.W.9) is the I.O. of this case, who has deposed that the witnesses who were examined by him during the course of investigation had testified to the fact that the deceased was troubled by the appellants and then he had visited the place where the dead body was attempted to be burnt. He had conducted the investigation and had submitted charge-sheet against the appellants.

19. From the conspectus of the depositions of all the witnesses, it appears that even though P.Ws. 1 and 2 have not been declared hostile, but they have not supported the prosecution version.

20. Learned counsel for the appellants, assailing the judgment of conviction, has submitted that even from the F.I.R., this case under Section 304B of the Indian Penal Code cannot be made out



as there is no statement that the deceased was done to death for non-payment of dowry and that she was harassed for money soon before her death. That apart, it has been submitted that admittedly the husband of the deceased did not stay in the village; rather he was working as a labourer in Guawahati. In that view of the matter, the statement of P.Ws. 1 and 2 appear to be convincing that the appellants stayed separately and the deceased also was living in a different house with her children.

21. In the event of P.Ws. 1 and 2 not having been declared hostile, this Court is left with no option but to believe their deposition indicating that the deceased was living separately from the appellants. In that view of the matter, the provisions of Section 106 Indian Penal Code also cannot be invoked for convicting the appellants for the said offence. But what has shocked this Court is the deposition of P.W.8, the doctor who was conducted the post-mortem examination. No symptom has been stated by P.W.8 for his coming to the conclusion that the death was because of hypothermia.

22. However, what remains on record is that nobody has supported the prosecution version.

23. Thus, left with no other alternative, the judgment and order of conviction against the appellants is set aside and the appeal is allowed.



24. The appellants are in custody. They are directed to be released forthwith from jail, if not wanted in any other case.

25. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
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