

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.342 of 1994

(Against the Judgment of conviction and order of sentence dated 24.06.1994 passed by the learned
Additional Sessions Judge-V, Chapra, in Sessions Trial No. 413 of 1993)

1. Fulan Rai @ Ram Pravesh Rai, son of Bhagat Rai,
2. Manki Devi, wife of Fulan Rai @ Ram Pravesh Rai, Both resident of
village Bathui, P.S. Parsa, District-Chapra at Saran.

... .. Appellants

Versus

The State of Bihar

... .. Respondent

with

Criminal Appeal (DB) No. 394 of 1994

Shambhu Rai, son of Ram Prakash Rai, Resident of village Bathui, P.S. Parsa,
District-Chapra at Saran.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

(In Criminal Appeal (DB) No. 342 of 1994)

For the Appellant/s : Mr. Anupa Nand Jha, Adv. (Amicus Curiae)

For the Respondent/s : Mr. Shivesh Chandra Mishra, APP

(In Criminal Appeal (DB) No. 394 of 1994)

For the Appellant/s : Mr. Anupa Nand Jha, Adv. (Amicus Curiae)

For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

And

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 23-02-2018

Both the above stated Criminal Appeals (DB) have arisen
out of Judgment of conviction and sentence order dated
24.06.1994 passed by the learned Additional Sessions Judge-V,



Chapra, in Sessions Trial No. 413 of 1993 by which and whereunder, he convicted all the above stated appellants for the offence punishable under Section 304(B)/34 of the Indian Penal Code and sentenced them to undergo imprisonment for life. Since, the above stated Appeals have arisen out of common Judgment, accordingly, both the above stated Criminal Appeals are being disposed off by this common Judgment.

2. Originally, appellant No.1 Fulan Rai @ Ram Pravesh Rai of Criminal Appeal (DB) No. 342 of 1994 gave his fardbeyan to S.I. Sri R.P. Singh of Maker Police Station on 27.06.1992 at about 7.30 A.M. (On the top of his fardbeyan, it appears that it has wrongly been mentioned as 26.07.92) to this effect that in the intervening night of 26/27.06.92, he along with his son Shambhu Rai were sleeping at his *Dalan* and at about 12.30 A.M, he heard noise of *Chor-Chor*. Having heard the aforesaid noise, he along with his son ran towards his house. In the meantime, his villagers Baliram Ram, Damodar Rai, Sheoparasan, Rajaram, Sheolagan Rai etc. also accompanied them. Thereafter, he along with above stated persons entered in his house. The female members of his house disclosed that unknown persons having scaled the wall of the house entered into the house and assaulted his daughter-in-law Radhika Devi



by means of bricks as a result whereof, Radhika Devi died then and there. He noticed that his daughter-in-law, namely, Radhika Devi was lying on a mat at Varandah. He further stated that his wife disclosed that four persons had entered in the house and committed the above stated occurrence, but they managed to scale the wall of the house.

3. After recording the fardbeyan, the S.I. of Maker Police Station forwarded the aforesaid fardbeyan to Officer-in-Charge of Parsa Police Station on the same day as the place of occurrence was under the jurisdiction of Parsa Police Station. However, in Parsa Police Station, on the same day, Parsa P.S. Case No. 73 of 1992 was registered for the offence punishable under Section 302/34 of I.P.C. against four unknown persons and the Investigating Officer took the charge of investigation. However, in the meantime, P.W.9 Bhola Prasad Yadav gave a petition to Officer-in-Charge of Parsa Police Station suspecting the murder of his sister Radhika Devi, but no action was taken on his written report and, thereafter, he filed a complaint petition before the Court of Chief Judicial Magistrate, Chapra, which was sent to Parsa Police Station for institution of F.I.R. under Section 156(3) Cr.P.C. Since, a criminal case had already been lodged in respect of murder of deceased Radhika Devi, the



aforesaid complaint petition was tagged with the Parsa P.S. Case No. 73 of 1992.

4. After investigation, Police submitted Chargesheet against the appellants for the offence punishable under Section 302/34 of the I.P.C. The cognizance of the offence was taken in usual way and the case was committed to the Court of Session. The appellants stood trial before the learned Addl. Sessions Judge, who framed charge for the offence punishable under Section 304(B)/34 of the I.P.C. against all the above stated appellants.

5. In course of trial, the prosecution examined, altogether 11 witnesses and got exhibited some documents. The statement of appellants was recorded under Section 313 Cr.P.C. in which they denied the prosecution story and claimed their innocence.

6. The appellants also got examined three defence witnesses and got exhibited certain documents, as documentary evidence. It would appear from the materials available on the record that the defence of the appellants was that the deceased was killed by some unknown persons.

7. Sri Anupa Nand Jha, learned *Amicus Curiae* appearing for the appellants submits that the prosecution failed



to prove all the ingredients of Section 304(B) of the I.P.C. He further submitted that the deceased was killed by some unknown persons when the unknown persons had entered in the house of deceased to commit theft, but even then the learned trial Court failed to take note of the aforesaid fact and convicted the appellants in arbitrary manner.

8. On the other hand, learned Addl. Public Prosecutor appearing for the State submits that prosecution, successfully, proved the charge of Section 304(B) of I.P.C. as, admittedly, the marriage of deceased had taken place in the year 1988, whereas she died in the year 1992 i.e. within seven years of her marriage. He further submits that P.W.10 Salil Kumar Ghosh, who did the Postmortem Examination on the dead body of deceased, found injuries, which were homicidal in nature, and therefore, it is obvious that the death of deceased was not natural rather, she was killed. He further submits that the deceased died within four walls of the house of her in-laws and in course of trial P.W.9 Bhola Prasad Yadav very clearly stated that the appellants were demanding gold chain and cash in dowry and when the aforesaid demand was not fulfilled, they put the deceased into cruelty.

9. Having heard the contentions of both parties, we



went through the record and we find that P.W.1 Mahendra Rai, P.W.2 Sheo Parsan Rai, P.W.3 Pradeep Manjhi and P.W.4 Surendra Rai stated that in the night of alleged occurrence they heard noise and went inside the house of appellants, where they saw the deceased lying on the mat in pool of blood. They further stated that they came to know that some unknown persons had entered in the house of appellants with object to commit theft and the aforesaid unknown persons committed the murder of the deceased.

10. P.W.5 Bir Bahadur Rai, P.W.6 Rajnarain Rai and P.W.7 Bideshi Rai have supported the story of prosecution and stated that they came to know about the death of deceased from P.W.9 Bhola Prasad Yadav who had disclosed to them that the appellants were demanding dowry and had put the deceased in torture.

11. P.W.8 Paras Rai, father of deceased has been tendered by the prosecution. We are surprised as to why P.W.8 was tendered by the prosecution, particularly, in the circumstances, when he was a competent witness to say about the so called demand and torture.

12. P.W.9 Bhola Prasad Yadav is the brother of deceased Radhika Devi and on the basis of complaint petition of



this witness, the case took u-turn and the appellants were made accused. This witness stated that the marriage of deceased had taken place in the year 1988 and she died due to injuries in the year 1992. This witness further stated that he did not get any information regarding the death of his sister from the appellants, rather, one Anil Rai gave information to him regarding the death of his sister and, thereafter, he went to the house of appellants and inquired about the death of his sister. This witness further stated that he gave a written report to the concerned Police Station, but no action was taken and, thereafter, he filed complaint petition. In cross-examination, this witness stated that the appellants had demanded gold chain and Rs. 10,000/- cash in dowry. He further stated that the appellants were doubting the character of the deceased. Although, this witness makes statement regarding the so called demand of dowry, but he has, nowhere, stated that deceased was subjected to cruelty due to non-fulfillment of above stated demand. No doubt, if a married woman dies within seven years of her marriage in mysterious circumstances and if it is shown that the aforesaid woman has been subjected to cruelty soon before her death due to non-fulfillment dowry demand in connection with her marriage, it would be presumed that she has been killed by her husband and



relatives of her husband. One of the most important ingredients of Section 304(B) of the I.P.C. is that there must be torture soon before her death, but in the present case, there is no evidence to show that the deceased was put into cruelty soon before her death. The prosecution could not bring any evidence to show that deceased was ever tortured by the appellants due to non-fulfillment of illegal demand of dowry. It is true that there is presumption under Section 113 (B) of the I.P.C., but in this case the appellants have, successfully, discharged the burden of proof by taking stand that the deceased was killed by some unknown persons and, therefore, in our view the learned trial Court failed to appreciate the evidences available on the record in right prospective and in the aforesaid circumstances, the conviction and sentence order of the appellants cannot be sustained in the eye of law and are liable to be set aside.

13. Accordingly, on the basis of the aforesaid discussions, both the aforesaid Criminal Appeals are allowed and the impugned Judgment of conviction and sentence order dated 24.06.1994 passed by the Addl. Sessions Judge-V, Chapra in Sessions Trial No. 413 of 1993 are, hereby, set aside. The appellants are on bail, therefore, they are discharged from the liabilities of their bail bonds.



14. Let the copy of the first and last page of this Judgment be handed over to learned Amicus Curiae, who has given his valuable time to assist this Court, for needful.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Manish/-

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

