

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.425 of 2003

- =====
1. Dileep Rajak, Son of Jagdish Rajak.
 2. Manoj Rajak, Son of Lotan Rajak.
- Both are residents of Mohalla – Shah Ki Gali, P.S. – Khajekalan, District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 360 of 2003

- =====
1. Jagdish Rajak
 2. Lotan Rajak
- Both sons of Bhanu Rajak
3. Smt. Chinta Devi Wife of Jagdish Rajak
- All are residents of Mohalla – Shah Ki Imli P.S. – Khajekalan, District – Patna.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.425 of 2003)

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

For the Respondent/s : Mr. Bipin Kumar, APP

(In CR. APP (SJ) No.360 of 2003)

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

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-03-2018

As none has appeared on behalf of the appellants in spite of repeated calls and it appears that the case is of the year 2003, I deem it appropriate to appoint Mr. Baban Roy, who is present in the Court as *Amicus Curiae* to assist the Court.

2. By way of the present appeal, appellants in both the appeals



seek to challenge the judgment of conviction and order of sentence dated 04.07.2003, passed by Sri Chandra Shekhar Sharma, the then Presiding Officer, Additional Court No. 1, Patna, Fast Track Court No. 1, Patna, Adhoc Sessions Judge, Patna, in Session Trial No. 360 of 1991 / 168 of 2001, by which all the appellants stood convicted under Sections 306 and 498A of the Indian Penal Code (hereinafter referred to as the “IPC”) were sentenced to undergo R.I. for 05 years under Section 306 and R.I. for 03 years under Section 498A of the IPC.

3. Prosecution case as per the fardbeyan of deceased Baby Devi recorded by the Lallan Prasad, S.I. of Pirbahore P.S., in Patliputra Nursing Home on 07.02.1990 at 11.15 hours, in short is that the marriage of the deceased/informant was solemnized with Deelip Rajak about three years ago and out of the said wedlock a female child was born. After marriage, the deceased was being subjected to cruelty and harassment by her husband Deelip Rajak, father-in-law Jagdish Rajak, cousin father-in-law Loten Rajak, mother-in-law Chinta Devi and brother-in-law (devar) Manoj Rajak. They all conspired to kill her and used to beat her and asked her to go out of the house. Manoj Rajak pressurized her to go out of the house and instigated her to kill herself. Thereafter, at about 12 A.M., she out of anger, sprinkled kerosene oil on her body and set herself in fire and due to which she received serious burn injuries and was taken to



hospital by the neighbours. On the basis of the said statement of the deceased Khajekalan P.S. Case No. 21/90 was registered against the appellants.

4. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Chandra Shekhar Sharma, the then Presiding Officer, Additional Court No. 1, Patna, Fast Track Court No. 1, Patna, Adhoc Sessions Judge, Patna for Trial and disposal.

5. Charges were framed under Sections 304B and 498A of the IPC and alternative charge under Section 306 of the IPC was also framed.

6. In order to prove its case, prosecution has examined altogether six witnesses, they are; P.W. 1 - Qudus Khan, P.W. 2 – Md. Yakub @ Md. Yusuf, P.W. 3 – Govind Prasad, P.W. 4 – Mukesh Gupta, P.W. 5 – Doctor Arvind Kumar Singh, who held post mortem examination on the dead body of Baby Devi, P.W. 6 – S.I. Lallan Prasad, who recorded the fardbeyan on the statement of deceased Baby Devi.

7. Defence of the appellants is of innocence and false impliation.

8. Learned Trial Court after considering the evidence available on record, though not found the appellants guilty under Sections 304B IPC, however, he convicted all the appellants under Sections 306 and 498A of the IPC and sentenced them in the manner as stated above.



9. Being aggrieved, the appellants preferred the present appeal.

10. Contention of learned *Amicus Curiae* is that in this case, there is no evidence at all to show that the deceased was being subjected cruelty or torture in connection with demand of dowry or she was ever forced to commit suicide and further none of the witnesses have supported the prosecution story, however, the trial court only on the solitary evidence of S.I. Lallan Prasad (P.W. 6), who has recorded the fardbeyan of the deceased Baby Devi and on the statement of Baby Devi, has convicted the appellants. Further the deceased Baby Devi had suffered 90 percent burn injuries and there is nothing available on record to show that whether she was in a fit state of mind to make statement before the police and also no signature of attesting witness was taken. It has further been submitted that she was in hospital and if the prosecution was interested to get her statement recorded, they might have called the Magistrate, in whose presence, the statement of deceased ought to have been recorded. In such a situation, so called statement of the deceased does not inspire confidence and on that basis alone the conviction of appellants under Section 306 and 498A IPC does not appear to be sustainable in the eye of law.

11. Learned counsel for the respondent – State, on the other hand, supported the finding of guilt recorded by the trial court and submitted that though prosecution witnesses have not supported the case but the deceased died after recording her statement and in her statement she



has stated that all the accused persons tortured and harassed her and forced her to commit suicide and the staid statement of the deceased was recorded by S.I. Lallan Prasad, who has proved her statement as such the statement of the deceased is admissible under Section 32 of the Indian Evidence Act and, therefore, there is no infirmity in the impugned judgment of trial court and conviction of appellants under Section 306 and 498A of the IPC is just and proper.

12. Considered the rival contentions of the parties. From perusal of the record, it appears that the deceased is informant in this case and she died later on. Record also shows that she remained in hospital for ten days with 90 percent burn injuries but no step was taken to get her statement recorded by a Magistrate. There is nothing available on record to show that she was in a fit state of mind to get her *fardbeyan* recorded after receiving 90 percent burn injuries and further there is no certification or endorsement of Doctor attending her to show that she was in a fit mental state to make such a detail. Even there is nothing in the evidence of I.O. (P.W. 6) that at the time of recording her statement, the deceased was in a fit state of mind or not. The post mortem report shows that she received burn injuries and burn injuries on all over her body and line of redness and blisters were seen on all the places of her body. Apart from that so far evidence of witnesses are concerned, though P.W. 1 to P.W. 4 has stated about the marriage of deceased with appellant Deelip Rajak and about her death also but



from perusal of evidence of these witnesses, there does not appear an iota of evidence to support prosecution case with regard to torture or harassment to the deceased and forcing her to commit suicide rather their evidence shows that there was some altercation on that day and due to which, she committed suicide. There is also nothing available on record to show as to who are the persons, who brought the deceased to hospital and there is also nothing to show as to whether there was any altercation between the deceased and her husband Deelip Rajak. As a matter of fact, except the statement of the deceased before police before her death, in which she made allegation of cruelty, there is absolutely no materials available to shows that she was tortured and harassed and was compelled to commit suicide by setting herself in fire. In such a situation, the whole case is based on the statement of deceased before the I.O., which is without any certification or endorsement so as to show as to whether she was in a fit mental state to get her fardbeyan recorded after receiving serious burn injuries. However, learned trial court without considering all the above inconsistencies, has based the conviction only on the surmises and conjectures that since the deceased was alive for about ten days, she must be in a fit state of mind to give her statement and there is no occasion for the I.O. to falsely implicate the appellants. As such, this Court does not find it safe to rely on statement of deceased without any certification or endorsement of doctor so as to suggest that she



was in a fit mental state and that too when there is no corroborative evidence to convict the appellants.

13. In view of the discussions made above, it appears that the prosecution has failed to establish its case beyond all reasonable doubts. Accordingly, this appeal is allowed. The judgment of conviction and order of sentence dated 04.07.2003, passed by Sri Chandra Shekhar Sharma, the then Presiding Officer, Additional Court No. 1, Patna, Fast Track Court No. 1, Patna, Adhoc Sessions Judge, Patna, in Session Trial No. 360 of 1991 / 168 of 2001 is set aside.

14. As the appellants are on bail, they are discharged from libailtiy of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	12.03.2018
Transmission Date	12.03.2018

