

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.397 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

- =====
1. Visakh Rai son of Ram Sagar Rai
 2. Ranjit Rai son of Ram Sagar Rai
 3. Ram Sagar Rai son of Late Jaglal Rai
 4. Ram Babu Rai son of Late Jaglal Rai
 5. Surti Devi wife of Ram Sagar Rai
 6. Sindhu Devi wife of Visakh Rai

All are residents of village- Chakbibi, P.s.- Rja Pakar, District- Vaishali

.... Appellants

Versus

State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 482 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- VAISHALI(HAJIPUR)

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Ashok Rai son fo Ram Sagar Rai

Resident of Village Chakbibi, P.S. Rajapakar Distt. Vaishali

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No.397 of 2003)

With

(In CR. APP (SJ) No.482 of 2003)

For the Appellants : Mr. Vishwanath Pd. Sinha, Sr. Adv.
Mr. Sanjay Kumar Singh, Adv.
Sri Suresh Mishra, Adv.

For the Respondents : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 07-03-2018

Six appellants of Cr. Appeal No.397 of 2003 and sole
appellant of Criminal Appeal No.482 of 2003 had been convicted
under Sections 304(B)/34 of the Indian Penal Code as well as under



Section 201 of the Indian Penal Code and sentenced to R.I. for seven years under Sections 304(B)/34 of the Indian Penal Code and R.I. for one year under Section 201 of the Indian Penal Code by judgment dated 7.8.2003 and order dated 8.8.2003 passed by Sri Ram Gati Sharma, 2nd Addl. Sessions Judge, Vaishali at Hajipur.

2. Both the Appeals arises out of common judgment and order, as such both the Appeals are being disposed of by a common judgment.

3. The prosecution case as appears from the fardbeyan of Raju Kumar Singh (P.W.10) is that his sister Renu Devi was married with the appellant Ashok Rai in the year, 1998 and as per his capacity he had given gifts to his sister but after *Duragaman*, she went to her *Sasuran* and again she came back to her *Naihara* 1 ½ months before 1.5.2000 in the marriage of her niece Pinki Kumari and the marriage of her niece took place on 1.5.2000 but on 3.5.2000, appellant Ashok Rai along with his younger brother Vishakh Rai came to the house of informant to take deceased Renu Devi, on which father of Renu Devi asked to allow her to stay for some time more, however, they persuaded the family members of the informant to send her and as such she was sent to her *Sasural* and on 5.6.2000 they came to know in the morning from the reliable sources that his sister has been done to death on 4.5.2000 during night hours as demand of dowry of Motor Cycle had not been fulfilled. The informant along with father and



other members of his family went to the *Sasural* of Renu Devi but only mother-in-law of Renu Devi was found in the house and other members were absconding and when he asked about Renu Devi, no proper reply was given. It is further alleged that at the time of marriage, husband, father-in-law, mother-in-law and brothers of Ashok Rai had demanded Rajdoot Motorcycle but the father of the informant shown his inability and after persuasion, they became ready to take Motorcycle later on. At the time of *Duragaman* motorcycle was not provided and threatening was given to the father of Renu Devi that his daughter will not be allowed to live and Renu Devi was tortured and harassed by her husband and other family members including the appellants and for that a *Panchayati* was also held and it was decided that due to economic condition, the same could not be fulfilled and the same will be provided later on to them. It is also alleged that Renu Devi told his family members to fulfil the demand of Rajdoot Motorcycle without any delay otherwise she will be killed.

4. On the basis of the aforesaid fardbeyan, Rajapakar P.S.Case No.44 of 2000 was instituted against the appellants, after investigation, the police submitted charge-sheet against them, cognizance was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Ram Gati Sharma, 2nd, Addl. Sessions Judge, Vaishali at Hajipur for trial and disposal.

5. The prosecution in support of its contention has



examined altogether 12 witnesses, they are P.W.1 Maheshwar Singh, who has been examined on the point of seizure list, P.W.2 Upendra Pd. Singh, cousin brother of the informant, P.W. 3 Meena Devi wife of the informant, P.W.4 Sakuntala Devi, P.W.5 Rinki Devi, P.W.6 Santi Devi, mother of the informant P.W.7 Santi Devi, aunt of the informant, P.W.8 Ravindra Singh, cousin brother of the deceased, P.W.9 Amod Kumar Singh, P.W.10 Raju Kumar Singh (informant and brother of the deceased) P.W.11 Arun Kumar Dubey (I.O.) and P.W. 12 Amresh Prasad Mishra, who is the formal witness, who has proved the protest petition.

6. Apart from the following documents have been brought on the record as exhibits in the present case- Ext.1 Seizure list, Ext. 1/1 seizure list, Ext.2 signature on the written report, Ext. 3 signature of the informant on protest petition, Ext. 3/1 signature of Anil Kumar, Advocate, Ext. 4 , Ext. 4/1 protest petition dated 13.6.2000. On behalf of the defence also three witnesses have been examined, they are D.W.1 Raghunath Singh, D.W.2 Narendra Prasad Singh and D.W.3 Dr. Nawal Kishore.

7. The evidence of the appellants on the death of the deceased is that she was suffering from diarrhea and vomiting and she was taken to the Primary Health Centre and from there she was referred to P.M.C.H, where she died and the defence has tried to show that the death was not under abnormal circumstances rather she died



due to vomiting and diarrhea. A suggestion to that effect has also been given to almost all the witnesses.

8. The learned trial court on conclusion of the trial convicted the appellants under Section 304(B)/34 of the IPC as well as under Section 201 of the IPC.

9. Being aggrieved by the impugned judgment and order, the present appeal has been preferred.

10. Contention of the learned Senior counsel for the appellants, Sri Vishwanath Prasad Sinha is that in this case that admittedly prior to death for about 1 ½ months, she was in her *Naihar* and there is no evidence that after returning from her *Naihar*, she was subjected to cruelty in connection with demand of the dowry. Whatever evidence is that there is general allegation against all the appellants and no specific date or time has been mentioned about the demand of dowry or torture meted out to her. It has further been submitted that even the death occurred due to diarrhea and vomiting and the witnesses have been examined to that effect. It has further been submitted that the Doctor (Nawal Kishore) has also been examined and he has proved the register of the outdoor patient, in which name of the patient was mentioned and a suggestion to that effect has been given to almost all the witnesses, in such a situation it can not be said that death was unnatural. It is further submitted that for establishing a case under Section 304B of the IPC, the



prosecution has to introduce by cogent and reliable evidence and not a general and all the ingredients of Section 304B IPC in the present case no specific date and time of demand and torture has been mentioned. Learned Senior counsel for the appellant has cited a decision of the Hon'ble Apex Court in the case of **Manohar Lal – vrs. – State of Bihar** reported in **2014 (9) SCC 645** and drawing my attention towards para 21 and 22 of the judgment, wherein the Hon'ble Apex Court has not found it a case under Section 304 (B) of the IPC as there was no evidence that she was subjected to cruelty soon before her death as the demand of the dowry was not fulfilled. Another submission of the learned Senior Counsel for the appellant is that the appellants has not put any specific questions with regard to ingredients of Section 304 of the IPC in their statement under Section 313 of the Cr.P.C., as such this amounts to miscarriage of justice and no opportunity was given to the appellants to explain the same, as such on that ground also conviction is not sustainable in the eye of law. In that connection learned senior counsel for the appellant has referred decisions in the case of **SK Maqsood – Vrs. State of Mahastra** reported in **2009 (9) 6 SCC 583**.

11. Submission of the learned Senior counsel on the basis of above contention is that conviction is not sustainable in the eye of law and the impugned judgment is not free from infirmities and



inconsistencies.

12. On the other hand learned cousinly for the State has defended the judgment of guilt against the appellants on the ground that almost all the witnesses have stated that the demand of motorcycle was made from her and for that she was subjected to cruelty and one day prior to her death she was brought to *Sasural* and there she was killed and dead body was disposed of without informing the informant, as such conviction of the appellants under Sections 304(B) & 201 of the IPC is sustainable in the eye of law.

13. Heard both parties and on perusal of the evidence it appears that almost all the witnesses have stated about the demand of motorcycle by all the appellants and their evidence further discloses that deceased was tortured for that but it appears from the close scrutiny of the evidence that it is admitted fact that she was in her *Naihar* just two days prior of her death for 1 ½ months and there is absolutely no evidence that she was subjected to cruelty about the demand and torture being meted out to her by the accused persons either at the time she was in her *Maike* or *Bidai* from *Maike* and whatever evidence of demand of dowry or torture is, no specific date or time has been mentioned as to when the demand of the dowry was made and as to when the deceased was subjected to cruelty. Furthermore, it appears that the prosecution has come with a case that she was killed and her dead-body was disposed of by cremating her,



but there is no eye witness of the occurrence and the case is based on circumstantial evidence. No doubt she died in her *Sasural* and under Section 106 of the Indian Evidence Act, the defence has to explain that under what circumstances she died, however, defence has brought evidence that she suffered from vomiting and diarrhea and she was taken to the Primary Health Centre for treatment referred to PMCH but on way she died.

14. The defence has also examined three witnesses including the Doctor, who has treated her at Hospital as outdoor patient and the register has also been shown that she was treated there. All the three witnesses have suggested that she was taken to Primary Health Centre Bidupur for treatment and from there she was referred to the PMCH, on way she died. Learned trial court has disbelieved the aforesaid story on the ground that there is cutting in the register and that shows manipulation in the register, however, so far cutting and manipulation is concerned, it is not in the column of name of the accused rather in the column of the husband's name and address and also initial was put over that, which appears from the Ext. A/A. It appears that defence has tried to show that she died due to diarrhea and vomiting. So far contention of the learned counsel for the State is that the informant was not informed and in the back, the dead body was cremated, however, so far death of the deceased is concerned it has come that the informant and his family members received



information however they tried to show that they received information from the confidential sources or from the villagers, which is evasive in nature. In such a situation, it can not be ruled out that information was given to them by the accused-appellants. One of the witnesses has also stated that information was given by P.W.1 Maheshwar Singh, father-in-law of sister of the deceased as she was married in the same village and the same *tola* where *Sasural* of the deceased is situated.

15. So far conviction of the appellants under Section 304B of the IPC is concerned, from plain reading of 304B of the IPC read with Section 113B of the Indian Evidence Act, it appears that for establishing a case under Section 304B of the IPC, the prosecution has to prove following ingredients by cogent and reliable evidence :-

“(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.”

16. Once the above ingredients are established by the prosecution by cogent and reliable evidence, there shall be “Presumption” under Section 113B of the Indian Evidence Act. In the present case the defence has come with a case that she died due to



vomiting and diarrhea and there is no other evidence available on the record and there is no direct evidence to show that she was done to death or she was killed and thereafter she was cremated. It appears that it is almost admitted fact that she was married with appellant Ashok Rai within seven years of her marriage and as stated above, she died, according to the defence, due to diarrhea and vomiting whereas the prosecution has come with a case that she was killed but there is no incriminating circumstance available that she was killed and as discussed above, the Doctor has also been examined and the register has also been shown that she was under treatment as outdoor patient, however, no cogent reason has been shown by the learned trial court for disbelieving the evidence of Doctor. So far other ingredients are concerned, there is general and omnibus allegation against the accused persons of demand of motorcycle and subjecting her to cruelty and in that regard several contradictions had also been taken from their earlier statement and the evidence of the I.O. also shows that he was confronted with those evidence and they had not stated about the detail of dowry and about the assault, however, even if it is believed that there is such evidence, there is nothing available on record to show as to when the demand was made and as to when she was subjected to cruelty. Some witnesses have stated that grand father of the deceased was told that if they do not fulfil the demand, he has to loss her grand daughter but that grand father has not been examined



in the present case. Further, the father of the victim has also not been examined and no cogent reason has been assigned for non-examination of the father of the deceased.

17. The Hon'ble Apex Court in a decision in the case of ***Manohar Lal- Vrs. – State of Haryana*** (supra) in para 21 and 22 has dealt with the aforesaid aspect of the matter, which are as follows : -

“21. In the present case, from the statement of PW.1 it appears that the death took place within seven years of marriage. Admittedly, death of the deceased was due to burning i.e. not in normal circumstances. We have to see now whether the remaining two ingredients are satisfied looking into the evidence on record.

22. The statement of the complainant PW.1 is general and not specific. No specific incidence has been indicated suggesting the cruelty or harassment made by the accused-Manohar Lal. Her statement is not reliable and not trustworthy. Though the allegation of demand of dowry was made none of the witnesses including PW.1 stated that the deceased was harassed “soon before her death” for or in connection with demand of dowry. The accused appellant was charge-sheeted under Sections 498-A and 304-B IPC but the Trial Court has not convicted the accused under Section 498-A. In this background, we are of the opinion that the prosecution has miserably failed to prove that the accused harassed the deceased soon before her death for or in connection with a demand of dowry.

18. As discussed above in the present case also evidence does not disclose that the deceased was subjected to cruelty soon before her death in connection with demand of dowry. Apart from that



submission of the learned counsel for the appellant is that the case is based on the circumstantial evidence but circumstances, which according to the prosecution are against the appellants was not asked from appellants with respect to subjecting her to cruelty or demand of dowry soon before her death and in such a situation conviction can not be maintained and are liable to be set aside.

19. From the discussions as made above, it appears that the case is not based on the direct evidence rather it is based on circumstantial evidence and from perusal of the statement of the appellants under Section 313 of Cr.P.C. it appears that general question has been asked that Renu Devi was killed as demand of motorcycle was not fulfilled. No question was put with regard to subjecting her cruelty in connection with demand of motorcycle soon before her death. The Hon'ble Apex *Court in SK Maqsood – Vrs. State of Mahaashtra (supra) at Para 9* held as follows :-

“9. We find substance in the plea of learned counsel for the appellant that no question was put to the accused which established that he was the author of the crime. That being so, the conviction cannot be maintained and is set aside. The appeal is allowed. The appellant be set at liberty forthwith unless required to be in custody in connection with any other case.”

20. It appears from perusal of the impugned order that the learned trial court has not considered the infirmities and inconsistencies discussed above.



21. Considering the discussions as made above, conviction of the appellants under Sections 304 (B)/34 of the IPC as well as Section 201 of the IPC does not appear to be sustainable.

22. Accordingly, both the appeals are allowed and the impugned judgment and order are set aside. As the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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