

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.23 of 2009

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Pramod Yadav S/o Late Chunchun Uadav, Resident of Village jamalpur,
P.S. Shahkund, Bhagalpur

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Mukherjee

For the Respondent/s : Mr. S.N.Prasad(App)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

6 09-03-2018

This appeal has been filed against the judgment and order dated 4.12.2008 and 05.12.2008 passed by the learned Additional District & Sessions Judge, Fast Track Court No. 1 Bhagalpur in Session Trial No. 280 of 1995 by which the appellant has been convicted for the offence punishable under Sections 304-B, 201 and 498-A of the I.P.C. and has been sentenced to undergo R.I. for 10 years for the offence under Section 304-B IPC, R.I. for 2 years for the offence under Section 201 of the IPC and R.I. for 2 years for the offence under Section 498-A IPC. He is also directed to pay fine of Rs. 2,000/- each for the offences under Sections 498-A and 201 IPC.

Counsel for the appellant has submitted that appellant has already remained in custody for four years before conviction and has undergone another three years imprisonment after conviction. He has further submitted that during trial total nine



witnesses have been examined out of them six witnesses i.e. P.Ws. 1, 2, 3, 4, 5 and 7 have been declared hostile by the prosecution. They have stated in their evidence that they came to know that Usha Devi died in Sasural and marriage between Usha Devi and Parmod Yadav was solemnized just 4-5 years back.

P.W. 7 Sanjay Kumar Yadav has stated in his evidence that Usha Devi was married to Parmod Yadav and she died in her *Sasural*. He has further stated in evidence that he had gone to her *Sasural* but her dead body was not found there. He further stated that after 10-11 days, the dead body was recovered. He has also stated in his evidence that he has no suspicion upon any of the accused.

The informant, P.W. 8, who is brother of the deceased, has stated in his evidence that his sister was married to the appellant. He got information that she has been killed in her *Sasural* in the night of 23.01.1994. He went along with others to *Sasural* of her sister and found the house locked. He has further stated that earlier also appellant used to demand money in dowry and had burnt her thigh by heated rod. He has further stated that due to non-fulfillment of demand of dowry appellant Pramod Yadav murdered his sister Usha Devi and threw her dead body in river. He has proved the written report, which is marked as



Annexure-I. Dead body of Usha Devi was recovered from Chanan river on 28.01.1994 and in presence of the witness, inquest report of the dead body of Usha Devi was prepared by the I.O. upon which this witness had put his signature.

P.W.-6 Shiv Nandan Yadav has stated in his evidence that Usha Devi, deceased was married about five years prior to the occurrence. He along with others went to her *Sasural* after hearing about her death. He did not find her dead body. He has stated that earlier in the month of Asharh, Parmod Yadav burnt her thigh by heated iron rod. Appellant used to make demand of money in dowry from his father-in-law. He has stated in his evidence that Usha Devi was killed by pressing her neck and her dead body was recovered after eight days of murder from Chanan river. It appeared from her dead body that her hands were tied with cloth of the shirt and that shirt was of the appellant. It was also apparent from the dead body that her hairs were burnt and her face was smashed and her legs were also cut. There was water up to waist in the said river from where the dead body of Usha Devi was recovered. He has also stated that the shirt with which the hands of Usha Devi were tied belonged to Parmod Yadav and the same was stitched in village Amarpur in a tailoring shop.

P.W.-9, Dr. Atul Kumar Malic had prepared the



report of Medico Legal Examination, which is marked as Exhibit-2. Dead body of Usha Devi was recovered from river Chanan. Doctor had found the remains of the dead body of deceased but no soft tissue over neck was available in examination showing marks of injuries. Doctor assessed her age between 20 to 22 years. He did not give any definite opinion regarding cause of death. Report also shows that the said lady died 10 to 15 days prior to receipt of report of Medico Legal Examination.

In terms of provisions of Section 113-B of the Evidence Act, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

The defence in the instant case has examined two witnesses. D.W. 1 is Lal Budhani Yadav, who has stated in his evidence that Usha Devi was issueless. She was of unsound mind. She used to go anywhere without informing the family members due to un-soundness of mind. He has further stated that Usha Devi was not killed by the accused persons.

D.W. 2 Wakil Yadav has stated in evidence that Usha



Devi was his maternal sister. She was married with Parmod Yadav. He was the mediator of the marriage. He has further stated that Usha Devi was issueless and her mental condition was not sound. She used to go anywhere without informing her family members. He has further stated in Para-3 that dead body of Usha Devi was recovered from Chanan river after five days of occurrence. He has further stated that accused persons had no hands in the killing of Usha Devi.

Defence of the accused is that the deceased was issueless and was of un-sound mind and used to go out of house without giving information to anyone. Her dead body was recovered from Chanan river as per evidence of defence witnesses. From evidence of defence witness it does not appear that defence has discharged their liability to prove their innocence that the deceased died natural death due to un-soundness of mind. One of the defence witness has stated that her dead body was found in Chanan river after five days of occurrence.

The prosecution has on the other hand been able to prove the charge against the accused persons beyond all reasonable doubts. Therefore, this Court does not find any illegality in the impugned judgment of conviction passed by the court below against the appellant. Accordingly, the conviction of



the appellant is hereby affirmed.

The court below has sentenced the appellant to undergo R.I. for 10 years under Section 304(B) of the IPC. As per order dated 11.11.2009 passed by this Court, the appellant has already remained in custody for about six years and seven months at the time when he was granted bail by this Court. Therefore, in such circumstances, since appellant has already remained in custody for more than six years, the order of sentence passed by the court below is modified to the period already undergone by him in the custody .

This appeal is accordingly dismissed with modification in sentence as mentioned above.

(Sanjay Priya, J)

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