

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.15 of 1995

(AGAINST THE JUDGMENT OF CONVICTION AND THE ORDER OF SENTENCE, DATED, 29th SEPTEMBER, 1994, PASSED BY SHRI VIKAS KUMAR SHARMA, 2nd ADDITIONAL SESSIONS JUDGE, SAHARSA, IN SESSIONS TRIAL NO. 59 OF 1993/7 OF 1993, ARISING OUT OF SAHARSA (SON. KOT) POLICE STATION CASE NO. 173 OF 1991, CORRESPONDING TO G.R.NO.421 OF 1991).

Prabir Kumar Singh @ Nagendra Singh, son of Suresh Singh @ Suresh Prasad Singh, resident of Village-Dhakjari, P.S.-Sonbersa Katchary, District-Saharsa.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. Ranbir Singh, Advocate (Amicus Curiae)
For the Respondent : Mr. P. Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

and

HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SANJAY PRIYA)

Date : 06-01-2018

Nobody appears for the appellant. Shri Ranbir Singh, Advocate, is requested to appear as Amicus Curiae to assist the Court.

2. Heard learned Amicus Curiae representing the appellant as well as the learned Additional Public Prosecutor representing the State.

3. The sole appellant is convicted by the learned Court below for the offences under Section 302/34, 498A and 201 of the Indian Penal Code along with Section 4 of the Dowry Prohibition Act. He



has further been convicted for an alternative charge under Section 304B/34 of the Indian Penal Code. The learned trial Court has sentenced the appellant to undergo rigorous imprisonment for life for the offence under Section 302/34 of the Indian Penal Code and to undergo rigorous imprisonment for three years for the offence under Section 201 of the Indian Penal Code. Both the sentences were said to run concurrently, but no separate sentence for the alternative charge under Section 304B together with that of Section 498A of the Indian Penal Code and Section 4 of the Dowry Prohibition Act has been passed.

4. The prosecution case as per *fard beyan* of the chowkidar (PW 3) is that he heard in the village that accused Suresh Singh along with his son Prabir Singh @ Nagendra Singh and daughter Prema Kumari (since dead) have committed the murder of Rita Devi by inflicting cut injuries through spade and in course of commission of said murder, 3-4 year old daughter of the deceased had also sustained injuries. The accused person took away the said baby for getting her treatment stealthily. Besides they were cremating the dead body of Rita Devi, in order to destroy the evidence of murder, hurriedly. The informant went to enquire into the matter and saw the accused Suresh Singh and his son Prabir Singh cremating the dead body with the help of some villagers.



The informant has further alleged that he has learnt from the villagers that the appellant, Prabir Singh, used to ill-treat the deceased for non-fulfillment of demand of dowry and, therefore, he has killed her by inflicting spade blow.

5. The police submitted charge-sheet after the investigation against the appellant and other accused persons as stated in the impugned judgment. Thereafter trial proceeded and the present accused appellant has been convicted and sentenced as mentioned above.

6. The prosecution has during trial examined six witnesses. The informant has been examined as PW 3. Another chowkidar has been examined as PW 1. The brother of the deceased has been examined as PW 4. The father of the deceased has been examined as PW 6 for the first time in the Court. He has not earlier given any statement before the police during investigation. Dr. Surendra Kumar, who performed the postmortem has been examined as PW 2.

7. The defence has also examined altogether eight witnesses. Ram Swaroop Yadav (DW 4) has been examined to prove the civil dispute pending between the family of the informant Achak Tanti and one Deolal Yadav and the accused persons were extending their help to the said Deolal Yadav in litigation. DW 2 Amod Singh



has been examined to prove the death of the deceased due to stomach ache. DW 3 Udit Narayan Karn is a Dresser at Primary Health Centre, Kisanpur. He has proved the *alibi* of accused Suresh Singh. DW 5 Purushottam Narayan Singh was Medical Officer Incharge at Primary Health Centre, Kisanpur. Both DW 3 and DW 5 have been examined as witnesses to prove the *alibi* of accused Suresh Singh. DW 4 Ram Sajjan Prasad Singh is the maternal uncle of the accused Prabir Singh, who is witness to the *alibi* of accused Prabir Singh. DW 6 Surendra Narayan Singh and DW 7 Sikandar Yadav have been examined to show that marriage of accused Prabir Singh, the appellant, was solemnized at the Singheswarsthan temple with the deceased on 07.05.1986. DW 8 has been examined to show that the intimation of the death of the deceased has been given to her father in time at Saharsa.

8. The defence, besides the oral evidence, has also produced three prescriptions, which is Ext. A to A/b together with the pathological test report (Ext. B) of the mother of the accused Prabir Singh. A certificate granted by the Medical Officer, Primary Health Centre, Kisanpur, (Ext. C) has been produced to show the presence of accused Suresh Singh, who was a Government employee, at duty on the date of alleged occurrence. A carbon copy of the marriage certificate (Ext. D) has also been produced to



prove the factum of solemnization of marriage of the appellant with deceased at Singheshwarsthan Temple.

9. It is admitted position that the deceased was the daughter of PW 6 Gajendra Prasad Singh and was sister of PW 4. It is also admitted that she was the wife of the appellant.

10. The Doctor (PW 2), who has conducted the postmortem examination, has found various injuries on the person of the deceased, as mentioned in detail in the postmortem report. He has also found ante mortem injuries on the body of the deceased to the effect that there was horizontal cut wound below thyroid across trachea. It was about 2-1/2" in length x 1/2" apart. Trachea was cut in full thickness. The Doctor has further mentioned in his report that as the entire tissue was partially burnt so other details of wound could not be assessed. The major blood vessel of the neck were also destroyed due to burn.

11. From the *fard beyan* as well as the evidence of the informant (PW 3) and the evidence of the Doctor (PW 2) it is apparent that none has seen the deceased being assaulted. These witnesses have all stated that they found the accused persons burning the dead body of the deceased. The informant (PW 3) in his evidence has stated that he heard in the village that wife of the appellant, who was daughter-in-law of Suresh Singh has been done



to death in her Sasural by *Kudal* for demand of dowry. Thereafter he went for enquiry and found the accused persons burning the dead body in the orchard, who fled away on seeing the police party. Similar evidence has been given by Mahadev Tanti (PW 1) in the Court. This part of evidence of PW 1 and PW 3 also gets support from the postmortem report. The Doctor, who has performed the postmortem i.e. PW 2, has stated that as the entire tissue was partially burnt so other details of wound could not be assessed.

12. Admittedly, the informant (PW 3) and another witness examined on behalf of the prosecution (PW 1) are hearsay witnesses. Both of them have stated that they heard in the village that the daughter-in-law of Suresh Singh has been done to death by spade blow. The brother of the deceased Sanjay Kumar Singh has been examined as PW 4. He has not supported the case during evidence. He has stated that his sister never made complain against the family members of her Sasural. She died in her Sasural. She used to visit her Naihar and Sasural several times after marriage. The evidence of father of the deceased (PW 6) only shows that the demand of dowry was made by the appellant. Besides this, there is no material in his evidence to substantiate about the murder having been committed by the appellant. Moreover, he has appeared for



the first time for his evidence in the Court. He was not earlier examined before the police. Biresh Prasad (PW 5) is Investigating Officer. He has submitted charge-sheet after completing the investigation.

13. In the instant case, the learned Court below has convicted the accused (appellant) for the offence under Section 302 Indian Penal Code and also for the alternative charge under Section 304B of the Indian Penal Code. The charge was also framed under Section 304B of the Indian Penal Code.

14. In terms of provision of Section 113B of the Evidence Act, the onus under Section 304B of the Indian Penal Code is on the defence to prove his innocence. Defence has in its support produced and examined altogether eight witnesses. The case of the defence is that the deceased died of chronic stomach ache and the information was given about her death to her family members.

15. It is a fact that in terms of provision of Section 113B of the Evidence Act, the onus in a case under Section 304B of the Indian Penal Code is on the defence to prove its innocence but at the same time it cannot be said that prosecution has no responsibility to prove its case. The initial burden lies on prosecution to prove the basic ingredients of Section 304B of the Indian Penal Code including the fact that such woman soon before



her death was subjected to cruelty or harassment in connection with demand of dowry. In absence of such evidence recourse cannot be taken to legal presumption envisaged in Section 113B of the Evidence Act and the accused cannot be convicted for offence under Section 304B of the Indian Penal Code.

16. In the instant case, from the evidence produced by the prosecution, as mentioned above in detail and also mentioned in the impugned judgment, it appears, that there is not an iota of reliable evidence on behalf of prosecution except the hearsay evidence of PW 1 and 3, to substantiate, that the appellant has committed the offence. The own brother of the deceased (PW 4) has not supported the case. He has stated in his evidence in clear terms that his sister never complained against her members of Sasural. The father of the deceased (PW 6), who is not charge-sheeted witness, has appeared in the Court for the first time to give the evidence. On perusal of his evidence, it appears that he had nowhere alleged any specific overt act committed by this appellant in committing murder of his daughter. He has merely made a statement during his evidence that his daughter was tortured in her sasural by the appellant for demand of dowry.

17. The Court below has convicted the accused (appellant) merely on suspicion and surmises on the ground that the accused



persons attempted to cremate the dead body in a most hurried manner even before informing the father of the deceased. The defence has produced DW 8. This witness has stated in the Court during his evidence that information was given about the death of the deceased due to stomach ache to his father Gajendra Prasad Singh (PW 6) at Saharsa.

18. Learned Amicus Curiae, appearing for the appellant, has submitted that the appellant was not present at the time of occurrence as he was busy in treatment of his mother. In support of such *alibi*, the defence has produced the maternal uncle of the appellant as DW 4, who has stated in his evidence that the appellant has come to his house for treatment of his mother. This Court, however, does not want to go in deep to test the plea of *alibi* taken by the appellant. In fact, this Court finds that as per *fard beyan* itself, the very initiation of the case has been done merely on the basis of suspicion and hearsay. Similarly, during investigation also no cogent evidence was brought on record by the investigating officer against the appellant about his involvement in murder of his wife. The witnesses, who have been produced during trial, are all hearsay witnesses. They have stated that they have only heard that the deceased has been done to death in Sasural by the accused persons. Therefore, this Court is of the



view that the judgment of conviction and sentence passed by the Court below against this appellant cannot be sustained in law and suffers from illegality. Accordingly, judgment of conviction and sentence, dated 29.09.1994, passed by the learned Court below against the appellant is hereby set aside. The appeal is allowed. The accused-appellant is acquitted from the charges levelled against him. He is also discharged from the liability of bail bonds.

(Ajay Kumar Tripathi, J)

(Sanjay Priya, J)

Pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
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