

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.110 of 2015

Arising Out of PS.Case No. -34 Year- 2014 Thana -MAHILA PS District- JEHANABAD

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1. Kaushalya Devi Wife of Naresh Yadav R/o Village Mishra Bigha, P.S. Makhdumpur, District Jehanabad

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Sujeet Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 25-04-2018

None appears on behalf of appellant on repeated calls, on account thereof, Sri Baban Rai, Advocate has been requested to assist the court as an Amicus Curiae.

2. Appellant, Kaushalya Devi has been found guilty for an offence punishable under Section 304B IPC and sentenced to undergo RI for 10 years, under Section 201 IPC, and sentenced to undergo RI for 3 years as well as to pay fine of Rs. 10,000/-, in default thereof, to undergo SI for 1 year, additionally, vide judgment of conviction dated 12.02.2015 and order of sentence dated 13.02.2015 passed by Additional Sessions Judge-IV, Jehanabad in Sessions Trial No. 420/2014/330/2014.

3. Mithilesh Yadav (PW 1) filed a written report on 07.06.2014 before Mahila Police Station, Jehanabad disclosing therein that preceding year, he had married his daughter, Sangita Kumari with



Ajay Yadav son of Naresh Yadav of Village- Sumera Tola, Mishra Bigha, P.S. Makhdumpur, District, Jehanabad as per Hindu rites and rituals. After marriage, his daughter has gone to her Sasural where she was kept in a harmonious, congenial atmosphere for some time. Approximately, after a month, her Sasuralwala, i.e., son-in-law, Ajay Yadav, mother-in-law, Kaushalya Devi, father-in-law, Naresh Yadav, brother-in-law, Sanjay Yadav began to torture her on the pretext of fulfillment of demand of dowry so advanced in the form of golden chain and bedstead. His daughter, so many times, complained to him relating to torturous activity of the accused persons whereupon, he had also tried to convince them but they have not accepted his plea. On account of being financially crunch, he failed to fulfill their demand. Lastly, in the night of 06.06.2014, as has been informed, she was done to death by way of strangulation and her dead body has been disposed of as disclosed by his co-villager, Vijay. Then thereafter, he along with his brother Suresh Yadav, his brother-in-law, Bugan Yadav along with others rushed to the place of his daughter where none was present. Lock was hanging over the door. On query, he came to know from the neighbours that his daughter has been murdered in the night of 06.06.2014 and then, her dead body has been removed. Further came to his knowledge that she was frequently cauterized by way of turner (Chholni) for procurement of demand of



dowry.

4. After registration of Jehanabad Mahila P.S. Case No. 34/04, investigation commenced and as appellant has been apprehended on account thereof charge-sheet has been filed against the appellant keeping investigation pending against remaining regarding which no information is available. Furthermore, it is also evident that on the basis of the aforesaid charge-sheet, cognizance was taken, case was committed to the Court of Sessions where trial proceeded meeting with the ultimate result, subject matter of the instant appeal.

5. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has further been asserted that all of a sudden, deceased suffered from heart stroke and while she was in a way to hospital, she died. Information was given to the prosecution party after whose appearance, funeral effected but, they developed dishonest intention and demanded huge money which, the accused persons could not afforded as a result of which, this case has been filed taking the police in their collusion in antedate manner. Furthermore, two DWs have also been examined in order to substantiate the same.

6. In order to substantiate its case prosecution had examined



altogether 5 PWs., who are PW.-1 Mithilesh Yadav, informant, PW.-2, Sunita Devi., wife of the informant, PW.-3, Rajkumar Yadav, co-villager of the appellant, PW.4, Dhanesh Yadav, co-villager of appellant and PW.-5, Kusum Bharti, Investigating Officer. Side by side had also exhibited Ext.-1 written report, Ext.-2 endorsement over written report, Ext.-3 formal FIR. Defence had also examined two DWs., DW.1, Suresh Yadav and DW.2 –Baleshwar Yadav.

7. Learned Amicus Curiae while assailing the judgment of conviction has submitted that death otherwise than normal circumstance within 7 years of marriage is admitted. The only question happens to be whether there was demand of dowry and for that, she was subjected to torture soon before her death. When the evidence of the witnesses is gone through, it is evident that the allegation whatever been attributed appears to be completely false. The defence version looks more palpably than prosecution version as a result of which, the judgment impugned would not survive.

8. On the other hand, learned A.P.P. supporting the finding recorded by the learned lower court, has submitted that the reasons so assigned by the learned lower court happens to be more probable than the defence version as, the defence version cast doubt over its genuineness, and that being so, the judgment of conviction and sentence appears to be fit for confirmation.



9. Under criminal jurisprudence, the backbone happens to be presumption of innocence in favour of accused unless and until recorded contrary to it by a competent court of justice. Furthermore, to check undue harassment, certain provisions have been prescribed and one of them happens to be Section 157 whereunder Officer-in-charge has to send the FIR to the local Magistrate as early as possible preferably within 24 hours excluding the time of journey. Violation of the aforesaid requirement has not been seen adverse to the prosecution in routine manner, rather by different judicial pronouncement, it has been held that it varies case to case, that means to say, facts emerging therefor. So far present case is concerned, it is apparent that the written report was filed on 07.06.2014 while it reached the office of the C.J.M on 10.06.2014, that means to say, beyond the period of 24 hours. It is also evident that Mahila Thana lies at Jehanabad itself where Civil Court happens to be. On that very score, PW.1, informant was suggested under Para- 18 that it is wrong to say that he after taking officials of Mahila police station in his collusion got this case registered antedated.

10. PW.5, Investigating Officer was elaborately cross-examined under Para- 8, 9, 10. Under Para-8 she had stated that Civil Court lies at a distance which could be covered within 15- 20 minutes on foot. She had further admitted that FIR is to be transmitted to the



Civil Court at once. In Para-9 she had stated that the case was registered on 07.6.2014 at about 4 P.M but, there happens to be no description on which date and at what time FIR was transmitted from the police station to the court of CJM. In Para-10 she had admitted that FIR was received at the office of the CJM on 10.6.2014. She is unable to explain the delay. Then had denied the suggestion that the FIR happens to be antedated.

11. Now coming to the status of the witnesses, it is apparent that out of 5 witnesses so examined two witnesses, PWs.3 and 4 being co-villagers of appellant had supported case of the defence and on account thereof, they were declared hostile. PW.1 and 2 are the parents of the deceased while PW.5 is the Investigating Officer.

12. PW.1 had stated that he happens to be informant of this case. He had filed written report which was scribed by Ajay Yadav (not examined) on his dictation. He had further stated that his daughter Sangita was married with Ajay about a year ago and accordingly, she had gone to her *Sasural* where, after staying for a month in congenial and harmonies atmosphere, she was subjected to torture over fulfillment of demand of one bedstead and a golden chain. One day he had also gone there. His daughter had stated that her husband used to assault her with heated iron substance. Then had stated that Ajay, Sanjay, Kaushalya Devi, Naresh used to torture her.



On 06.06.2014 in between 7-8 P.M, his daughter was murdered by throttling and then her dead body was burnt. No information was given to him. Vijay Yadav (not examined) informed him whereupon, he had gone there on 07.6.2014 and found house locked, all the family members were absent. Then thereafter, he had gone to Mahila police station where submitted written report. Identified the accused. During cross-examination, he had stated that Sumera is Tola of village Misri Bigha which lies 3 K.M away from his village. In Para-10 he had stated that he had not informed police officials at an earlier occasion regarding torture or cruelty having at the end of accused persons. In Para- 11, he had disclosed the economical status of the accused happens to be at par with him. At Para-12, he had stated that when Vijay had gone to Ghanshayam Bigha, he came across the news. In Para-13, he had stated that one Gupta Ji, a shopkeeper had informed Vijay Yadav. In Para- 14 he had stated that Vijay had informed him on the following morning. Then thereafter, he had gone there and talked with neighbours whose names are Jagdish, Sushil and others (not examined). Whatever been disclosed by them on the basis thereof, this case has been instituted. In Para- 17, he had stated, first of all, he had gone to Tehta P.S. where from he was directed to go to Mahila Police Station. Then had denied the suggestion at Para 19, that there was no demand nor deceased was subjected to torture therefor.



She, all of a sudden, developed pain in her chest, and for that, she was being taken to hospital, during midst thereof, she died. They were informed, participated in funeral and then thereafter, advanced illegal demand which the accused failed to fulfill. Then thereafter, taking Mahila Police in his collusion, got this case filed antedated.

13. PW.2 is mother of deceased who during course of examination-in-chief, had reiterated the version of the informant with a further disclosure that about a month prior to the occurrence deceased came to her place and disclosed that they brutally assault her for procurement of chain as well as bedstead. They got her burnt with iron rod. She had shown inability. Claimed identification of the accused. During cross-examination at Para-5, she had admitted that both the parties are poor. Her son in law resides outside in order to earn his livelihood. Sanjay also used to live outside. At Para-6, she had stated that her daughter had disclosed when she came at about a month ago, she also used to go regularly at her place out of affection. In spite of receiving information regarding torture over her daughter, she had not informed the police station as well as Court. She had not brought her to her house. In Para-7, she had stated that she had not seen the occurrence. Vijay Yadav simply informed regarding murder of her daughter. Rest information was given by the neighbours but she is unable to disclose their names. Then at Para- 8, there happens to be



contradiction duly corroborated by PW.5 (Para-17). Then had denied the suggestion.

14. PWs.3, 4 along with DWs.1 and 2 are over the facts that the deceased had developed chest pain and for that, while she was being taken to hospital, during midst thereof, she died. Information was given to her *Naiher* whereupon prosecution party came, participated in funeral and than thereafter, they advanced undue demand which the accused persons shown inability, as a result of which, the instant case has been filed, antedated. During cross-examination of PW.2 who happens to be full brother of father-in-law of deceased had stated during course of court question that he had not gone to funeral place. He remained at his house. Mithilesh Yadav had participated during course of funeral and then thereafter he returned back to house.

15. PW.5 is the Investigating Officer, who had deposed that after registration of the case, she was entrusted with the investigation. She recorded further statement of informant, inspected the place of occurrence which happens to be *Sasural* of deceased, Sangita. Then had shown boundary of the house as North, house of Satendra Yadav, West, house of Vijay Yadav, East, house of Jitendra Yadav and West, house of Kul Yadav, recorded statement of witnesses and then, after receiving supervision note submitted charge-sheet. During cross-



examination, she had stated at Para-12 that place of occurrence was shown by the informant. Nothing incriminating material was found at the place of occurrence. In Para-13 she had stated that house was dismantled one. She had not recorded statement of the people having their house in the boundary. She had not recorded the statement of Chowkidar, Dafadar. She had further stated that she had not inspected the place where funeral is said to have effected. Then had denied the suggestion with regard to institution of this case in antedated manner.

16. From the evidence, it is apparent that marriage is not under controversy and in likewise manner, the death otherwise than normal circumstance within 7 years of marriage. Now coming over demand of dowry and torture having effected soon before her death, it is apparent that there happens to be inconsistency amongst PW.1 as well as PW.2. PW.2 had disclosed that when deceased had come to her place at about a month ago, she had disclosed the event. PW.2 had not disclosed that PW.1 had visited her place in order to pacify the situation rather PW.2 had claimed herself to be visiting place of the deceased frequently which, from evidence of PW.1, is found lacking. Further PW-1 had not disclosed that deceased had visited her place a month prior to her death. Apart from this, whatever been alleged by PW.1 as well as PW.2 happens to be against the husband and that being so, the appellant being mother-in-law is found entitled for, at



least, benefit of doubt. Consequence thereupon, the judgment of conviction and sentence impugned is set aside. Appeal is allowed.

17. Since appellant is on bail, she is discharged from the liability of bail-bond.

18. The first and last page of the instant judgment be handed over to learned amicus curiae for the needful.

(Aditya Kumar Trivedi, J)

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