

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.367 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Munmun Singh, son of Late Singasan Singh, resident of village Chiraiyadih, P.S.
Akorhi Gola, District Rohtas

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar Singh with
Mr. Ranjeet Choubey, Advocates

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

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 06-03-2018

Sole appellant stands convicted under Sections 304B and 201/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years under Section 304B IPC and two years under Sections 201/34 IPC and both the sentences were directed to run concurrently vide judgment and order dated 17.7.2003 passed by Sri Baleshwar Prasad Singh, the then Presiding Officer, Additional Court No.1 (F.T.C.), Sasaram, in Sessions Trial No. 321 of 1998/130 of 2002.

2. Prosecution case, which was initiated on the basis of fardbeyan of P.W.3 Shiv Shankar Singh, in short, is that marriage of Kanti Devi, sister of informant Shiv Shankar Singh, was solemnized with Tuntun Singh about six years ago and after three years of marriage her Gauna was performed and she went to her matrimonial house and was living there. Further prosecution case is that after two and a half months of her Gauna the informant took her to his house



and again she went to her matrimonial house and it is alleged that at the time of Donga, her brother-in-law (appellant) and father-in-law Singasan Singh were demanding for a Rajdoot Motorcycle and one she buffalo as dowry on which the informant showed his inability for the present because of his poverty but told them that he would manage to fulfill the demand later on. It is further alleged that on 6.6.1996 when the informant along with Ramashankar Singh (P.W.2) went to the matrimonial house of his sister to meet her, the accused persons again started demanding for motorcycle and she buffalo but the informant expressed his inability to fulfill their demand. Further prosecution case is that deceased Kanti Devi used to tell the informant that accused persons used to torture her and also told her that if demands were not fulfilled she would be killed. It is further alleged that on 20.6.1996 in the morning the informant got an information that in the evening of 19.6.1996 his sister Kanti Devi was burnt to death by accused persons and her dead body was secretly cremated in order to disappear the evidence of murder and to screen themselves from legal punishment.

3. On the basis of aforesaid fardbeyan, Akorhi Gola P.S. Case No. 42 of 1996 was registered against the appellant and other accused persons. After investigation police submitted charge sheet and after cognizance the case was committed to the court of sessions, which ultimately came to the file of Sri Baleshwar Prasad Singh, the then Presiding Officer, Additional Court No.1 (F.T.C.), Rohtas at Sasaram



for trial and disposal. It further appears that during trial accused Singasan Singh (father-in-law) and husband Tuntun Singh were absconding and, as such, their case was separated from the case of appellant, brother-in-law, who has been tried along with Raghubanshi Devi, mother-in-law of the deceased and she has been acquitted from the charges leveled against her.

4. In order to establish its case, prosecution has examined altogether eight witnesses during trial, they are P.W.1 Jag Narayan Singh, who is uncle of deceased, P.W.2 Ramashankar Singh, who is FIR named witness, P.W.3 Shiv Shankar Singh, who is informant, P.W.4 Hari Narayan Singh, who has proved formal FIR, Ext.2, P.W.5 Banshropan, who is seizure list witness P.W.6 Narayan Singh, who is also seizure list witness and they have not supported the prosecution story by saying that seizure was not done in their presence, P.W.7 Hari Shankar Singh, who is I.O. on this case and P.W.8 Ram Niwas Singh, who is tendered witness.

5. Apart from that, the following documents have been admitted into evidence on behalf of prosecution : Ext.1 signature of Jag Narayan Singh on Fardbeyan, Ext.1/1 signature of Ramashankar Singh on Fardbeyan, Ext.1/2 signature of Sheoshankar Singh on Fardbeyan, Ext.2, FIR and Ext.3 is seizure list.

6. On behalf of defence one witnesses Hajari Singh has been examined.

7. Learned trial court on conclusion of trial has convicted the



appellant under Sections 304B and 201/34 IPC and sentenced him as stated above and being aggrieved by the said judgment and order this appeal has been preferred by the appellant.

8. Contention of learned counsel for the appellant is that there is absolutely no evidence available on record that appellant has demanded dowry or subjected her to cruelty soon before her death and, as such, the conviction of the appellant is not sustainable in the eye of law, whereas co-accused Raghubanshi Devi having similar allegation has been acquitted from the charges under Sections 304B and 201/34 IPC. Further submission of learned counsel for the appellant is that evidence of P.W.3 (informant) itself shows that demand for motorcycle and she buffalo was made by father-in-law, mother-in-law and son, i.e., Tun Tun Singh and he has not even named this appellant and so far other witnesses are concerned, they have not specifically stated about demand of dowry, rather allegation is general in nature and there is no evidence on the point of cruelty soon before her death due to demand of dowry. Further submission is that even in cross examination P.W.8 has not supported the prosecution case and the aforesaid infirmities in the evidence have not been taken into consideration by learned trial court while convicting the appellant, as such, the judgment of conviction is not just and proper and not sustainable in the eye of law.

9. On the other hand, learned counsel for the State has submitted that evidence of P.Ws. 1 to 3, who are natural witnesses on



the point of demand of dowry and torture and they are uncle and brothers of the deceased and, as such, they are competent to depose on the point and they have stated that there was demand of dowry and death was caused because of that demand and she was cremated without informing the family members of her and evidence shows that she was in her matrimonial house at the time of death and accused persons were present there and hence conviction of appellant under Sections 304B and 201/34 IPC is sustainable in the eye of law which does not require any interference.

10. In the background of rival contentions and on perusal of the evidence it appears that P.W.4 is a formal witness and P.Ws. 5 and 6 are seizure list witnesses and there is nothing relevant in their evidence to just decision of the case and they have not supported the prosecution case, whereas P.W.8 is a tendered witness for cross examination but in his cross examination this witness has given a go by to the prosecution story and has stated that deceased sari caught fire while preparing food. He has also stated that he has given similar statement before police earlier. So far evidences of P.Ws. 1 to 3 are concerned, they are uncle and brothers of the deceased and on perusal of evidence of P.W.3 it appears that he has stated that marriage was solemnized six years prior but he has further stated that father-in-law, husband and mother-in-law of the deceased had demanded dowry and informant told to them that demand will be fulfilled after managing the money.



11. On perusal of entire evidence it appears that there is absolutely no evidence to show that the aforesaid demand was made soon before her death or soon before her death she was subjected to cruelty. Evidence of P.Ws. 1 to 3 does not show that she was subjected to cruelty before her death though there is evidence of demand of dowry against the appellant also but no specific date has been mentioned for demand. For conviction under Section 304B IPC prosecution has to establish by cogent and reliable evidence with respect to circumstances of unnatural death and further she was subjected to cruelty soon before death in connection with demand of dowry, once prosecution succeeded in proving those ingredients there shall be a presumption under Section 113B of 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 had been subjected by such person to cruelty or harassment in connection with demand of dowry. In the present case, as discussed above, there is nothing available on record to show that she was subjected to cruelty soon before her death though there is allegation of demand of dowry but evidence also does not show that demand was made soon before death, rather the story of demand is general and omnibus. Furthermore, the case is based on circumstantial evidence, however, the circumstances on which the trial court based his conviction had been put to the accused under Section 313 Cr.P.C. It appears that learned trial court has not considered those aspects of the matter and



has convicted the appellant under Sections 304B and 201/34 IPC and there is also absolutely no evidence on record to show that appellant was living with other accused persons in the same house where the deceased was living and, in such a situation, there shall not be any presumption under Section 106 of Evidence Act against the appellant.

12. Considering the discussions made above, the conviction of appellant under Sections 304B and 201/34 IPC does not inspire confidence as it suffers from infirmities.

13. Accordingly, this appeal is allowed. The impugned judgment of conviction and order of sentence are set aside. As the appellant is on bail, he is directed to be discharged from the liabilities of his bail bond.

(Vinod Kumar Sinha, J)

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