

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.22 of 2003

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Dwarika Rai & Ors

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Jitendra Narain Sinha, Adv.

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-01-2018

By way of present appeal, appellants seek to challenge the Judgment of conviction and order of sentence dated 23.12.2002, passed by Shri Shyam Nandan Prasad Verma, learned Adhoc Additional District & Sessions Judge, Fast Track Court No. 1, Saran, Chapra in Sessions Trial No. 291 of 1986, by which the appellants were held guilty under Sections 304B/34 and 201/34 of the Indian Penal Code (hereinafter referred to as "the IPC") and were sentenced to undergo R.I. for 10 years under Section 304B/34 IPC and R.I. for 05 years under Section 201/34 IPC. All the sentences were directed to run concurrently.

2. Prosecution case as narrated by informant P.W. 2 in his written statement before Dighwara Police Station in short is that marriage of the daughter of the informant (P.W. 2) was solemnized in the year



1982 with appellant Dwarka Rai son of Bhola Rai. It has been alleged that in the night of 28.06.1985, one Kauleshwari Devi of village – Dalalpur informed him that his daughter has been strangled to death by the appellants – accused and they have disposed of the dead body of the deceased without informing anybody. On which informant went to the *Sasural* of his daughter and found the appellant absent from their house. It has also been alleged that appellant used to demand a Motorbike and was also threatened that if he fails to fulfil the said demand, he might not see the face of her daughter. It has also been alleged that when brother of informant, namely, Shailesh Rai had gone to meet her daughter on 16.06.85, she told him to take her to her house otherwise she will be killed. Above written statement led to the registration of F.I.R in Dighwara P.S. Case No. 47 of 1985, against the appellants under Sections 143/302/201 of the IPC and police after investigation submitted charge-sheet under Section 306/201 of the IPC.

3. Cognizance of the offence was taken and the case was committed to the court of sessions, which ultimately came to the file of Shri Shyam Nandan Prasad Verma, learned Adhoc Additional District & Sessions Judge, Fast Track Court No. 1, Saran, Chapra, for trial and disposal.

4. It appears from perusal of the record that earlier charges were



framed against the appellants under Section 302 and 201 of the IPC but later on vide order dated 26.11.2001, charge was amended and appellants were charged under Section 304B/34 IPC

5. During the trial, large number of witnesses were examined including P.W. 2 (informant) but from perusal of the record, it appears that the trial court has disbelieved the evidence of P.W. 3, P.W. 10 and P.W. 11, who are relative and villagers of the informant side, without assigning any reasons. Further the trial court also disbelieved the evidence of P.W. 5, P.W. 7, P.W. 8 and P.W. 9, who are villagers of the informant and has based his finding only on the sole testimony of P.W. 2 (informant).

6. When examined under Section 313 Cr.P.C., appellants pleaded not guilty and completely denied the occurrence.

7. After conclusion of trial, the learned trial court convicted the appellants and sentenced them in the manner stated above.

8. Contention of learned counsel for the appellants is that the occurrence is of the year 1985, whereas Section 304B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 and, therefore, conviction of the appellants under Section 304B in the facts of the present case, is not sustainable. Further contention is that the trial court before recording his finding has not considered the evidence of P.W. 3, 10 and 11, who are the



relatives and villagers of informant and they have not supported the prosecution case of demand of dowry. Likewise, evidence of P.W. 5, 7, 8 and 9, who had deposed that the deceased had committed suicide and P.W. 5 had also participated in the funeral of the deceased, have also been disbelieved by the trial court without assigning any reason. It has also been submitted by learned counsel for the appellant that no circumstance of demand of dowry or harassment of the deceased being subjected to cruelty and death within seven years of marriage, has been put to the appellants under Section 313 Cr.P.C, which are mandatory provisions of law. On the basis of above submission, it has been contended that learned trial court without appreciating all the above inconsistencies and infirmities, has convicted the appellants under Section 304B/34 and 201/34IPC, which is out and out erroneous and is not sustainable in the eye of law.

9. On the other hand, learned counsel for the respondent –State supported the finding of guilt recorded by the learned Trial Court and submitted that it is evident from the evidence of P.W. 2 (informant), who is father of the deceased that there was demand of Motorbike from him and when he failed to fulfill the said demand his daughter was done to death. Furthermore, appellant, namely, Bigan Rai has stated in his statement under Section 313 Cr.P.C. that he should be pardoned, which shows the circumstances against the appellants.



However, learned Counsel for the State could not counter the submission of learned counsel for the appellants with regard to application of Section 304B of the IPC.

10. Heard both sides. Considering the evidence available on record, it appears that P.W. 2 is the only witness in this case, who has stated about the demand of a motorbike and harassment to the deceased and so far other prosecution witnesses viz. P.W. 3, P.W. 10 and P.W. 11, who are relative and villagers of the appellants are concerned, none of them has supported the prosecution story with regard to demand of motorbike and harassment to the deceased for non –fulfillment of the said demand and they have not been declared hostile by the prosecution. Similarly, P.W. 5, P.W. 7, P.W. 8 and P.W. 9, who are the villagers of the appellants have also not supported the prosecution case rather those witnesses have stated in their evidence that the deceased had committed suicide and P.W. 8 and P.W. 9 have also disclosed that the death of the deceased was informed to her uncle but they came only after the cremation of dead body of the deceased. Evidence of P.W. 5 further disclosed that the deceased had committed suicide and, thereafter, the dead body was disposed of by the appellants and other villagers and family members of the deceased were informed. These witnesses have not been declared hostile by the prosecution and the trial court has not assigned any reason for



discarding the evidence of these witnesses and has relied only on the sole testimony of informant (P.W. 2). No doubt, his evidence discloses about demand of motorbike and also about harassment to the deceased, however, evidence of this witness has not been corroborated by evidence of any other witness. Though one Shailesh Rai, uncle of the deceased was also examined as P.W. 4 but as he did not appear for his cross-examination after amendment of charge, as such, his evidence was discarded.

11. Moreover, this is a case based on circumstantial evidence and the circumstances, which has been considered by the Trial Court for recording the finding of guilt, has not been put to the appellants during their examination under Section 313 Cr.P.C, which is against the spirit of principle of natural justice and the Hon'ble Apex Court in case of **Tara Singh V. State** reported in **AIR 1951 SC 441** has held that complete non compliance of Section 313 caused miscarriage of justice as held in catena of decisions. This court also finds force in the argument of learned counsel for the appellants that admittedly the occurrence is of the year 1985, whereas Section 304B was inserted in IPC with effect from November 19, 1986 by the Dowry Prohibition (Amendment) Act, 1986 and since the aforesaid Act was not in existence on the date of occurrence, there will be no application of Section 304B of the IPC as well as Section 113A of Indian Evidence



Act. Hon'ble Apex Court while dealing with the similar issue in the case of **Sonibhai Devrajbhai Babubhai v. State of Gujarat and Ors.** reported in [AIR 1991 SC 2173] *held that the respondents cannot be tried and punished for the offence provided in [section 304-B](#) of the Indian Penal Code which is a new offence created subsequent to the commission of the offence attributed to the respondent.*

12. This court in line with the view taken by Hon'ble Apex Court in the case of Sonibhai Devrajbhai Babubhai (supra) observes that there shall be no application of Section 304B IPC as well as Section 113B of Indian Evidence Act in the facts of the present case.

13. So far conviction of appellant under Section 201 of IPC is concerned, there is solitary evidence of P.W. 2, whereas the witnesses of the village and relatives of the informant as well as the villagers of the appellants have categorically stated in their evidence that the deceased had committed suicide and, thereafter, the dead body was disposed of. They had also stated that the information regarding death of the deceased was given to the family members of the informant (P.W. 2). No doubt, the prudence require that appellants ought to have informed the police or should have waited for arrival of informant and other family members. However, considering the facts and circumstances of the case and also considering the fact that no such circumstance was put to the appellants in the present case, conviction



of appellants under Section 201 of the IPC also does not appear to be sustainable.

14. In view of the aforesaid enunciation of law, there can be no doubt that when the requisite question have not been put to the appellants, which has caused serious prejudice to them and furthermore, as observed above, there is no application of Section 304B IPC as well as Section 113B of Indian Evidence Act in the facts of the present case, the finding of guilt under Section 304B of the IPC, recorded by Trial Court does not appear to be sustainable.

15. Accordingly, the appeal is allowed. The judgment of conviction and order of sentence recorded by the Trial Court is set aside.

16. As the appellants are on bail, they are discharged from the liabilities of bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.01.2018
Transmission Date	15.01.2018

