

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.387 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- WESTCHAMPARAN(BETTIAH)

- =====
1. Chhotelal Sah sonfo Lae Ram Prasad Sah
 2. Muni Lal Sah son of Chhotelal Sah
- Both residents of village Barwat Sena, P.S. Bettiah Mofassil, District West Champaran.

.... Appellants

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Rashmi Jha, Adv.

For the Respondent : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 30-08-2018

Both the appellants have been convicted under Sections 304B & 201/34 of the Indian Penal Code and sentenced to undergo R.I. for seven years and R.I. for two years, vide judgment dated 30.7.2003 and order dated 31.7.2003 passed by Sri Surya Narayan Mandal, 3rd Additional Sessions Judge, West Champaran at Bettiah in Sessions Trial No.3 of 2003.

2. The prosecution case as per the written report of P.W.11 (Bali Sah) is that his daughter was married with appellant no.2 Muni Lal Sah on 14.2.2002 according to the hindu rites and custom and after the marriage his daughter Chanda Devi went to her *sasural*. It is alleged that after two months of marriage, accused Muni Lal Sah and Chhotelal Sah started torturing her for demand of wrist watch and



cycle, which was informed by Chanda Devi to the informant and they were also threatening her of the consequences if the demand is not fulfilled. It is further stated that on 1.8.2002 the informant (P.W.11) along with Ali Ahmad (P.W.10) went to her *sasural* to see her and they came to know that she has been killed by burning by her in-laws and the deadbody was disappeared. They enquired about his daughter and they were told by the appellants that she has committed suicide by burning herself and the dead boy was cremated. On the basis of the aforesaid written report, Muffasil P.S.Case No.186 of 2002 was registered and the police after investigation submitted charge-sheet, cognizance of the case was taken and the case was committed to the court of Sessions, which ultimately came to the file of Surya Narayan Mandal, 3rd Additional Sessions judge, West Champaran at Bettiah for trial and disposal.

3. During trial, charges were framed under Section 304B and 201/34 of the IPC.

4. In order to prove its case, the prosecution has examined altogether 12 witnesses and they are : P.W.1 Umesh Sah (declared hostile), P.W.2. Ramayodhya Prasad (declared hostile), P.W.3 Ganga Mahto (declared hostile), P.W.4 Bhagmani Devi (declared hostile), P.W.5 Ramchandra Sah(declared hostile), P.W.6 Mohan Prasad



(declared hostile), P.W.7 Manager Sah (declared hostile), P.W.8 Ramesh Sah (declared hostile), P.W.9 Sunil Kumar, son of the informant (declared hostile), P.W.10 Ali Ahmad (declared hostile), P.W.11 Bali Sah (informant) and P.W.12 Sanjeev Kumar, I.O. of the case. Apart from the above, following documents have been brought on the record and they are Ext. 1 Forwarding regarding institution of the case, Ext.2 Formal FIR, Ext.3 Fardbeyan, Ext.4 case diary of Muffasil P.S.Case No.186 of 2002.

5. Defence of the accused persons is of total denial of the occurrence and is of innocence and also of false implication.

6. It appears from the statement recorded under Section 330 of the Cr.P.C. that the learned trial court on conclusion of the trial has convicted the appellants under Section 304(B) and 201/34 of the IPC and sentenced them as mentioned above.

7. In this case all the witnesses except P.Ws. 11 and 12 have been declared hostile including the brother of the deceased. P.W.11 is the informant and P.W.12 is the I.O. in this case. It further appears from the evidence of P.W.11 , who is the only witness in this case that his daughter was married with Muni Lal Sah in the year, 2002 and thereafter they started demanding wrist watch and cycle and for that they have killed his daughter Chanda Devi by setting her on



fire. In his cross examination also he has supported the demand of cycle and the wrist watch. He has stated in para 11 that his son Sunil Kumar had gone to Kaleva but he has not made any such type of complaints to him. A suggestion has been given to him that his daughter was pregnant and she has committed suicide though this witness has denied the suggestion but in the next line he has stated that he had heard that Chandra Devi had set her on fire and his evidence in para 21 further discloses that villagers told that the accused persons were not present in the village at that time.

8. P.W.12 is the I.O. in this case and he has submitted that he has not seized any articles from the place of occurrence and found the accused persons absconding.

9. Learned counsel for the appellants has assailed the judgment on the ground that this case is based on the evidence of solitary witness of P.W.11 so far demand and torture is concerned and moreover the evidence of P.W. 11 does not inspire confidence as P.W.11 has himself stated that his son had gone to Kaleva and she has not made any complaint about this and further his evidence discloses that villagers told them that the accused persons were not present at the time of occurrence and his evidence also discloses that he heard that she had committed suicide by setting her on fire, as such



evidence of P.W.11 is self-contradictory and it does not inspire confidence, in spite of that conviction of the appellants by the learned trial court on the basis of such evidence does not appear to be sustainable in the eye of law.

10. Learned counsel for the State has supported the judgment stating that though P.W.11 is the solitary witness who has disclosed that she died during one year of her marriage and there was demand of cycle and the wrist watch and there is allegation also that she was subjected to cruelty for that as such conviction of the appellants under Section 304B of the IPC is just and proper and it does not require any interference by this Court.

11. Having considered the submissions of both the parties as discussed above, it appears that the whole case is based on the basis of evidence of P.W.11 and his evidence itself appears to be self-contradictory as he has stated that she has herself set on fire and his evidence further discloses that the accused persons were not present at that time. Hence, the evidence of P.W.11 does not inspire confidence as his evidence is shaky. Moreover all the other witnesses including brother of the deceased have not supported the prosecution case and they have been declared hostile. In such a situation conviction of the appellants under Section 304B and 201/34 of the IPC does not appear



to be sustainable and in such a situation, the appellants are entitled at least for benefit of doubt.

12. Accordingly, this appeal is allowed and the impugned judgment and the order are set aside and as the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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