

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.224 of 2016

Arising Out of PS.Case No. -53 Year- 2013 Thana -LALGANJ District- VAISHALI(HAJIPUR)

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Sarbjit Kumar Son of Sri Bhagwat Singh, Resident of Village - Anjani, P.S. - Sarai, District - Vaishali.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mr. Nilesh Kumar , Advocate Mr. Imteyaz Ahmad, Advocate
For the Informant	:	Mr. Yogesh Chandra Verma, Sr. Advocate Mr. Priyanka Singh, Advocate Mr. Om Prakash, Advocate
For the State	:	Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 11-01-2018

Heard Mr. Ajay Kumar Thakur, learned counsel for the appellant, Mr. Yogesh Chandra Verma, learned senior counsel for the informant and Mr. Bipin Kumar, learned Additional Public Prosecutor.

2. Sarabjit Kumar, the appellant has been convicted under Sections 304B/149 and 201/149 of the Indian Penal Code by judgment dated 18.03.2016 passed by the learned 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 452 of 2013. By order dated 29.03.2016, the appellant has been sentenced to undergo RI for ten years for the offence under



Sections 304B/149 of the Indian Penal Code, two years simple imprisonment for the offence under Sections 201/149 of the Indian Penal Code and a fine of rupees two thousand; and in default of payment of the aforesaid fine to further suffer simple imprisonment for two months.

3. The appellant is the husband of the deceased.

4. The Trial Court, after examining ten witnesses on behalf of the prosecution and none on behalf of the defence has convicted and sentenced the appellant as aforesaid.

5. Mr. Braj Kishore Mishra (P.W.6) who is the father of the deceased has lodged the F.I.R on 26.03.2013, alleging that he had married his daughter Reema Devi (deceased) in accordance with Hindu religious rites in the month of May, 2006 with the appellant. He has clearly stated in the F.I.R that for some time, the deceased was kept well in her matrimonial home. Out of the wedlock of the deceased with the appellant, a daughter was born who, at the time of lodging of the F.I.R was stated to be of six years. Later, it was alleged that the appellant and other members of the family started demanding rupees five lacs for purchase of a Bolero vehicle and non-fulfillment of the aforesaid demand led to mental and physical torture of the deceased. The informant (P.W. 6)



has also alleged that when he came to learn about ill treatment referred to above, he had gone to the matrimonial home of the deceased and had interceded with the accused persons. The informant was also told by her daughter that when she wanted to undergo nurse training, the accused persons including the appellant had asked her to bring money from her father. The informant, thereafter, undertook to foot the expenses of the training and the deceased took the Nursing training. On 26.03.2013, the informant learnt that the deceased had been done to death. On such information, he went to the village Anjani (matrimonial home of the deceased) where he did not find his daughter and the accused persons were also found to be missing. The house was found to be locked. He learnt from the neighborhood that the dead body of his daughter has been thrown in a Jungle, falling in Lalganj area. On such information, when the informant and others reached there, he found that the local police were already present there. He identified the dead body to be of his daughter. It was, therefore, suspected by him that the deceased was killed for the non-fulfillment of the dowry and her dead body was thrown in the Jungle for screening the offence.

6. It appears from the records that on such information, the F.I.R viz. Lalganj P.S. Case No. 53 of 2013 dated



26.03.2013 was instituted for investigation for the offences under Sections 304B, 201/34 of the Indian penal Code. It further appears that the appellant surrendered before the local police on 26.03.2013. Since the statutory period for concluding the investigation was getting over, charge-sheet was submitted against the appellant, whereas the investigation with respect to the other accused persons viz. the family members of the appellant remained pending. Mr. Ajay Kumar Thakur, learned counsel for the appellant has submitted that till date none of the accused persons have been put on trial.

7. At the trial, the informant (P.W. 6) has tried to support the prosecution version but neither he nor the deceased had given any written complaint regarding the deceased being ill treated. Even the records of the *Panchayati* were not produced into writing. The informant (P.W. 6), during the course of trial, did not even remember the dates on which the *Panchayati* was held. What is of relevance is that the informant (P.W.6) has clearly stated that after the deceased completed her Nursing training, she came to Hazipur to work with a doctor. Many a times, the deceased used to stay at the doctor's house. It has also been admitted by the informant (P.W. 6) that the deceased lived with her sister-in-law at Hazipur and he had never visited the aforesaid house in which the



deceased lived.

8. Avinash Chandra Mishra (P.W.3), who is the brother of the deceased has reiterated the prosecution version that the deceased was tortured for non-fulfillment of rupees five lacs for the purchase of Bolero vehicle and that his father had spent on the training of the deceased as Nurse. He has also stated that when he along with his father reached the Jungle where the dead body of the deceased was found, the local police were already present there from before.

9. P.W. 3 has also testified to the fact that during the period of training, the deceased lived in Bihta and thereafter, on completion of the training, she took up a job at Hazipur and had been residing at Hazipur only. The deceased, according to P.W. 3, stayed with her sister-in-law and on many occasions also stayed in a room provided by the doctor with whom, she was working in his clinic. However, he has also stated that prior to the occurrence, the deceased was forced to come back to her matrimonial home. On the question put to the aforesaid witness regarding any prior information about the torture having been given to any public authority, P.W. 3 has admitted that even the local *Panchayat* functionaries were not informed about the ill treatment meted out to the deceased.



10. Mr. Ajay Kuamr Thakur, learned counsel for the appellant has drawn the attention of this Court to the fact that P.W. 3 has stated that the deceased stayed in her matrimonial village for six years and after about one and half years of her marriage with the appellant, a daughter was born.

11. Be it noted that the daughter of the deceased, at the time of lodging of the F.I.R is stated to be six years of age. It was, thus, submitted that the marriage, for all purposes, was seven and half year old, thus obviating the mischief under Section 304 B of the Indian Penal Code.

12. Mr. Ram Prasad Singh (P.W. 1), a co-villager has deposed before the Trial Court that on 25.03.2013 at about 12:00 O' clock in the night, he heard a sound of quarrel from the house of the appellant. He and his daughter Sumitra Devi (P.W.2) went to the house of the appellant but could not gather any information. However, he claims to have heard the voice of the deceased, who was seeking help. On the next day, he learnt that the dead body of the deceased was found in the Jungle. P.W. 1 has admitted in his deposition that with regard to the aforesaid occurrence in the night, he did not inform anybody and claims to have got his statement recorded on 18.05.2013 and 25.05.2013 i.e. after about two months of the lodging of the F.I.R. P.W. 1 has also



admitted that the grandfather of the appellant had filed a case against him which is continuing as Sessions Trial No. 154 of 1986. He has also admitted of a civil litigation between his family and the family of the appellant.

13. Surprisingly, the daughter of P.W. 1 viz. Sumitra Devi, who has been examined as P.W. 2 in the case has not supported the version of her father and has been declared hostile.

14. At this stage, it would really be relevant to note as to how the deceased died.

15. Dr. Pranaya Punj (P.W. 5) had performed the autopsy of the dead body and he found the tracheal ring to be fractured. In his opinion, the death was due to asphyxia and strangulation. P.W. 5 found ecchymosis around the neck. There was no anti-mortem injury except the aforesaid ecchymosis but the rigor mortis was present. It was on the basis of rigor mortis on the body of the deceased that P.W. 5 came to the conclusion that death ensued within twenty four hours.

16. Mr. Ajay Kumar (P.W. 7) has testified to the fact that an inquest was held over the dead body and he found a wound on the neck of the deceased.

17. The I.O. of this case has been examined as P.W. 9. He has deposed before the Trial Court that on 26.03.2013 at



about 8:30 A.M., while he was at the police station, somebody informed him that the dead body of a female has been thrown in the Jungle at Balua Basanta, falling under the territorial jurisdiction of Lalganj police station. On such information, a station diary entry was recorded and he along with the police party proceeded for the place of occurrence. At the place where the dead body was found, there was already a crowd of villagers. From looking at the dead body, it appeared that the deceased was strangled to death and thereafter was thrown in the Jungle for screening the offence. After the inquest proceeding, the dead body was sent for postmortem examination. P.W. 9 has stated about his having examined the witnesses in the village. He has also stated that he learnt that the appellant has surrendered before the Hazipur Police Station and has also accepted his guilt. He has further stated that this information was reduced in writing as station diary entry No. 669 dated 26.03.2013. P.W. 9 has also claimed to have taken down the confession of the appellant.

18. The judgment and order of conviction has primarily been assailed on the ground that there is no evidence of the killing of the deceased and even if the special provision under the Evidence Act viz. 113B is pressed into use, the evidence against the appellant is absolutely lacking in all material particulars.



19. Learned counsel for the appellant has urged that admittedly the deceased, after being trained in Nursing, had been residing at Hazipur with her sister-in-law. This fact stands established not only by the deposition of the father of the deceased (P.W. 6) but also of the brother (P.W. 3) and maternal uncle of the deceased (P.W. 4). The maternal uncle of the deceased has stated before the Trial Court that the expenses of the living of the deceased at Hazipur were being met by the father-in-law of the deceased. There is no evidence, it has been argued, to the effect that same day or a night prior to the occurrence, the deceased had come back or was residing at her matrimonial home. The evidence with respect to the place where the deceased was killed/strangled, is absolutely lacking. There is no material on record to know or to ascertain as to at what point of time, the deceased left her residence at Hazipur and came to her matrimonial home for her to have been strangled or killed by the appellant or anybody else. There is no evidence again with respect to taking away the dead body and throwing it in the Jungle. On the contrary, it has been argued, the evidence is replete with such facts which lead to the inference that the deceased had been staying at Hazipur continuously and many a times, she stayed back in the room provide by the doctor with whom she was working.



20. Learned counsel for the appellant has also stressed upon the fact that even the marriage is more than seven years old as P.W. 4 has clearly stated in his deposition that the deceased stayed in her matrimonial home for about six years and after about one and half years of the marriage of the deceased with the appellant, a child was born, who, at the time of lodging of the F.I.R is stated to be six years of age. In that view of the matter, the appellant could not have been charged and tried for the offence under Section 304B of the Indian Penal Code.

21. So far as the evidence of P.W. 1 is concerned, it has been argued on behalf of the appellant that the very fact that the statement of P.W. 1 was recorded after about two and half months of the lodging of the F.I.R and admitted enmity between him and the family of the appellant, it would be difficult to rely upon P.W. 1 as a reliable witness with respect to the aforesaid deposition. That apart, his version is not supported by his daughter who also, according to P.W. 1, had rushed to the matrimonial house of the deceased on hearing the sound of quarrel.

22. Mr. Yogesh Chandra Verma, learned senior counsel who has appeared for the informant has submitted that this is a gross case where the appellant, after killing the deceased, suffered a compunction of heart and he surrendered



before the police and accepted his guilt. He has further submitted that, no doubt, confession before the police is of no consequence and cannot be relied upon, but in the peculiar facts of this case, when the matrimonial relationship existed between the deceased and the appellant, the appellant would only be under an obligation to explain as to how the deceased died and how her dead body was found in the Jungle. He has further submitted that from the records, it appears that the dead body was recovered on the indication and on the showing of the appellant.

23. This assertion of the learned counsel for the informant does not appear to be tenable in as much as P.W. 9 (I.O.) has clearly stated that he, while sitting in the police station on 26.03.2013 had learnt that the dead body of a female had been thrown in the Jungle. On such information, the I.O. of the case had visited the place where the dead body was found and by that time, many persons of the village had assembled there. In his deposition before the Trial Court, P.W. 9 has stated that later, he learnt that on the same day, the appellant had gone to Hazipur Police Station and had surrendered before the Hazipur Police Station and had confessed his guilt. Thus, from his deposition, it is clearly established that the dead body was not recovered at the instance of the appellant.



24. Thus, there cannot be said to be any evidence at all with respect to either killing of the deceased or throwing the dead body in the Jungle and it would be highly unsafe to allow the judgment and order of conviction to be sustained.

25. For attracting the provisions of Section 304(B) of the I.P.C, it is extremely necessary for the prosecution to prove that soon before the death of the victim, she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with any demand of dowry. Otherwise, the death of the victim would not be called a dowry death. From the evidence on record, I find that the prosecution has not brought up any material to suggest that soon before the death of the deceased, she was subjected to any cruelty or harassment for, or in connection with any demand for dowry. The witnesses do not claim to have had any talk with the deceased for about one and half months prior to her death. It has been discussed in the previous paragraphs that even the maternal uncle of the deceased has stated that the father of the appellant spent on the living of the deceased. That apart, the deceased was a working lady and she would not have been done to death for demand of dowry of rupees five lacs as she, if had remained alive, would have contributed to the family income. For the aforesaid reason also, the conviction under Section 304B of the



I.P.C. cannot be sustained in the eyes of law.

26. Thus, the judgment of conviction dated 18.03.2016 and the order of sentence dated 29.03.2016 passed by the learned 4th Additional Sessions Judge, Vaishali at Hajipur in Sessions Trial No. 452 of 2013, arising out of Lalganj P.S. Case No. 53 of 2013 are set aside.

27. The appellant is acquitted of the charges. He is directed to be released forthwith if not wanted in any other case.

28. A copy of the judgment be communicated to the Superintendent of the concerned Jail for compliance and needful.

29. The appeal stands allowed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
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