

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.374 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

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1. Bulla Rai @ Bulla Yadav son of Darshan Yadav
2. Darshan Yadav son of Late Charitar Rai,
Both residents of village Semaria, P.S. Banjaria, District East Champaran
..... Appellants

Versus

State of Bihar

..... Respondent

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Appearance :

For the Appellants : Mr. Sandeep Kumar, Adv.
Mr. Ajit Kumar, Adv.
Mr. Archana Shahi, Adv.
Mr. Abhishekh Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 14-03-2018

Hard both the parties.

2. Both the appellants stand convicted under Section 304B and 201/34 of the Indian Penal Code and sentenced to undergo R.I. for 10 years under Section 304B of the IPC and S.I. for one year under Section 201 of the IPC, vide judgment and order dated 28.3.2003 by Sri Bimal Kumar, Presiding Officer of Fast Track Court No.3, Addl. District & Sessions Judge, East Champaran, Motihari, however, by the same judgment, he has acquitted other accused persons from the charges levelled against them.

3. The prosecution case, as per the fardbeyan of Sipahi Rai (P.W.6) recorded by A.S.I. Sri Rameshwar Singh at 09.30 P.M. on



3.5.1999 at Banjaria Police Station in short is that his sister Mina Devi was married with Bulla Rai son of Darshan Yadav resident of village Semaria, District East Champaran in the year, 1995 and at the time of *donga*, his brother-in-law and his father had demanded one golden chain and one watch but the same could not be fulfilled as they were unable to give the same. It is also stated that in the same village his elder sister (Mania Devi) was also married with Lalti Prasad Yadav and the accused/appellants demanded the watch and golden chain from his elder sister and brother-in-law and threatening of dire consequences. Mina Devi had come to his house one month prior and she has stated that in-laws people of Mina Devi have tortured and assaulted her in *Sasural*. It is also stated that on 1.5.1999 his elder brother-in-law sent information to him that Mina Devi was killed by the people of her *Sasural* and they are going to cremate the deadbody, on which information he went there but not found Mina Devi in the house and on enquiry appellant Bulla Yadav and others informed that she died due to *Kai and Dast* and when he enquired as to why they have not been informed about the same, they threatened him. Thereafter he had gone to his elder sister's house and along with his elder brother-in-law went to the place of cremation but that was made cleaned and in the morning he informed the Police Station about the same.

4. On the basis of the aforesaid fardbeyan, Turkaulia



P.S.Case No.91 of 1999 was registered, police after investigation submitted charge-sheet against the appellants and other accused persons, cognizance of the offence has been taken and the case has been committed to the court of Sessions, which ultimately came to the file of Sri Bimal Kumar, Presiding Officer of Fast Track Court No.3, Addl. District & Sessions Judge, East Champaran, Motihari for trial and disposal.

5. During trial charges were framed under Sections 304B and 201 of the IPC against the appellants and other accused persons. In course of the trial, the prosecution in order to substantiate his case has examined seven witnesses they are P.W.1 Yadu Rai (declared hostile by the prosecution), P.W.2 Ramashish Ram (declared hostile by the prosecution), P.W.3 Moti Ram, P.W.4. Wakil Yadav, P.W.5. Lalti Prasad Yadav, P.w.6 Sipahi Rai (brother of the deceased and informant) and P.W.7 Gyan Prakash Srivastava.

6. On behalf of the prosecution, following documents have been brought on record : Ext. 1 Signature of Sipahi Rai on the fardbeyan and Ext.2 Fardbeyan recorded by Rameshwar Singh, A.S.I.

7. On behalf of the defence also two witnesses have been examined, they are D.W.1 Chhotelal Rai and D.W.2 Bunilal Yadav.

8. The learned trial court on conclusion of the trial has convicted the appellants under Sections 304/201 of the IPC and sentenced as stated above.



9. Being aggrieved by the aforesaid judgment, the present appeal has been preferred mainly on the basis that evidence available on the record does not make any case under Sections 304B/201 of the IPC.

10. Further contention of the learned counsel for the appellants is that the evidence of the informant itself shows that he has not supported the prosecution case, as in his chief itself he has stated that the marriage was solemnized ten years ago and if above evidence is believed then the death of the deceased is not within seven years of her marriage and his evidence regarding demand and torture is also not specific rather falsifies by his evidence in cross examination. Evidence of other witnesses also does not disclose the ingredients of Section 304B of the IPC rather on the other hand there is specific defence case that she died due to *Kai and Dast*, however, the learned trial court has convicted the appellants under Section 304B and 201 of the IPC. The learned trial court has failed to consider that it is the prosecution who has to prove the ingredients of Section 304B of the IPC beyond all reasonable doubts and then only there shall be presumption under Section 113B of the IPC. Furthermore the evidence available on the record shows that she was killed and her dead body was cremated, hence conviction of the appellants under Section 304B of the IPC suffers from inconsistencies and is not sustainable in the eye of law.



11. On the other hand learned counsel for the State has defended the judgments on the ground that though there is evidence of demand of dowry and torture and death within seven years of her marriage and no doubt there are some contradictions in their evidence but there are ample evidence available on the record, as such conviction of the appellants under Section 304B and 201 of the IPC does not suffer from any infirmities.

12. In the background of the submission of the rival parties, on examination of evidence, it appears that P.W.6 is the informant in this case and his evidence discloses that the marriage of Mina Devi (deceased) was solemnized ten years prior with accused person. He was deposing in the year, 2001 hence his evidence suggests that she was married in the year, 1991 and death was caused even according the prosecution in the year, 1999, as such death was not in seven years of marriage. His evidence also discloses that she was living happily in her *Sasural* but again he has stated that there was demand of golden chain and watch by appellant Darshan Yadav and Bulla Rai, Chandeshwar Rai, Asman Rai, Bhuteli Rai and her deadbody was cremated, thereafter he had gone to the police station and disclosed everything to the police. However, his cross examination discloses that demand of watch and golden chain was never made to him and he used to go to his *Sasural* and in the *Sasural* he was treated well. His evidence in the cross examination at para 7



also shows that when he reached to the *sasural* of Mina Devi he was informed that she died due to *Kai and Dast* and para 8 of his cross examination further shows that his elder sister also disclosed him that she died due to *Kai and Dast*. His evidence in para 11 and 12 also shows that he is not so educated and on the direction of *Darogaji*, he put his signature. His evidence also shows that he is still visiting her *Sasural*. All the above evidence in cross examination demolished the story of demand of dowry and also the case of the prosecution that she was killed. So far other witnesses are concerned, P.Ws. 1 and 2 have been declared hostile by the prosecution and their attention has been drawn towards the statement made before the police but the main I.O. has not been examined in this case who has recorded statement of P.Ws. 1 and 2 and as such there was no opportunity to the appellants to confront the I.O. with the statement made by P.Ws. 1 and 2 with their earlier statement, to come to a finding that they are deposing falsely.

13. Evidence of P.W.3 shows that the deceased was married 10 to 12 years ago and he does not know as to how she died, he has also stated that he did not met Darogaji. No doubt in para 3 of his evidence, he has stated that due to dowry she was killed, however, in his cross examination, he has stated that in his presence never dowry was demanded. No doubt his evidence shows that for dowry she was killed but there is no specific date mentioned as to when



dowry was demanded and he could not know about the demand of dowry and at best he is hearsay witness in this case and on consideration of his evidence, it appears that this witness does not appear to be trustworthy.

14. P.W.4 has stated in his evidence that she was married two years prior with the appellant Bulla Rai. According to the prosecution she died in the year, 1999 and in the year, 2001 this witness was deposing. He has also further stated in his chief that there was demand of golden chain and watch and that could not be fulfilled and the dead body was cremated except it he does not know anything.

15. Considering the evidence of this witness, it appears that evidence regarding the marriage is itself against the prosecution case and except the general statement and there was demand of golden chain and watch there is nothing in his evidence and he has also not stated as to when demand was made rather he has stated in his evidence in cross examination in para 8 that Mina Devi informed him about the demand of golden chain and watch.

16. P.W.5 who is the elder brother-in-law of the informant and married with the elder sister of the informant and residents in the same village but he has stated that he could not know as to how she died. No doubt he has further stated that she was killed and thereafter he had informed the same to his *sasural*. There is contradiction from his earlier statement made before the police that appears to be major



contradictions but in absence of examination of the first I.O. who has recorded statement, the same can not be tested and though he has stated that she was killed but he is not a witness of that and he has not stated as to when such demand was made.

17. P.W.7 is the second I.O. in this case and he has recorded statement of the other witnesses.

18. Considering the evidence available on the record it appears that the evidence is not consistent about the death of the deceased as to whether she was killed within seven years of marriage and though there are some evidence about the demand and she was subjected to cruelty but no specific date as to when demand was made and she was subjected to cruelty has been brought on record rather evidence of the witnesses appears to be self-contradictory and does not inspire confidence.

19. Defence has also examined two witnesses and their evidence also shows that she was married ten to 12 years ago and some of the prosecution witnesses has also stated that marriage was solemnized 10 years ago.

20. Learned trial court has convicted the appellants in spite of the fact all the above discussed inconsistencies and improbabilities.

21. Considering the factum that consistent, cogent and reliable evidence are not available on the record and the prosecution has not proved any of the ingredients with the cogent and reliable



evidence and they failed to establish the death within seven years of marriage and secondly she was subjected to cruelty soon before her death with respect to demand of dowry but in spite of that the appellants were convicted under Section 304B and 201 of the IPC. So far cause of death, defence has given suggestion that she died due to *Kai and Dast* and the defence has also stated that she was treated by the Doctor but she could not be saved. As such the prosecution case suffers from sever inconsistencies and infirmities as such it is not sustainable in the eye of law.

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

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
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