

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2846 of 2017

Arising Out of PS. Case No.-95 Year-2011 Thana- RAGHUNATHPUR District- Siwan

1. Birbahadur Singh s/o Baliram Singh
2. Gyanti Devi w/o Birbahadur Singh Both residents of Village - Patar, P.S. Raghunathpur, District - Siwan.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

with

Criminal Appeal (SJ) No. 2879 of 2017

Arising Out of PS. Case No.-95 Year-2011 Thana- RAGHUNATHPUR District- Siwan

Manoj Singh S/o Birbahadur Singh, R/o Village- Patar, P.S.- Raghunathpur, District- Siwan.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In Criminal Appeal (SJ) No. 2846 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ranjan Kumar Dubey, Advocate
Ms. Swati Sinha, Advocate

For the Respondent/s : Mr. Shyed Ashfaque Ahmad, APP

(In Criminal Appeal (SJ) No. 2879 of 2017)

For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Ranjan Kumar Dubey, Advocate
Ms. Swati Sinha, Advocate

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

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 13-08-2018

Both the appeals have been heard together and are being disposed off by this common judgement.

2. All the appellants have been convicted under Sections 304-B, 498-A and 201/34 of the I.P.C. by the



judgement dated 30.08.2017, passed by the learned 4th Additional District & Sessions Judge, Siwan in Sessions Trial No. 202 of 2013 and by order dated 06.09.2017, appellant / Manoj Singh (Cr. Appeal No. 2879 of 2017) has been sentenced to undergo RI for 10 years for the offence under Section 304-B I.P.C. and RI for three years for the offence under Section 498-A of the I.P.C. For both the offences, the appellant / Manoj Singh has been directed to pay a fine of Rs. 10,000 / (Rs. Ten Thousand) each and in the event of non-payment of fine, to further suffer simple imprisonment of six months each. Appellants / Birbahadur Singh and Gyanti Devi (Cr. Appeal No. 2846 of 2017) have been sentenced for seven years and three years respectively for the offence under Sections 304-B I.P.C. and three years for the offence under Section 498-A I.P.C. and have been directed to pay a fine of Rs. 10,000 (Rs. Ten thousand) for each of the offences; and in default of payment of which, to further suffer imprisonment for six months.

3. The sentences have been ordered to run concurrently.

4. The appellants are alleged to have killed Rinki Devi for non-fulfillment of dowry.

5. Chandrama Singh / P.W. 4, who is the uncle of the deceased, lodged the first information report alleging



that the deceased was married to the appellant / Manoj Singh about four years ago. The appellants and others always insisted upon her to bring a Bolero car and non-fulfillment of such demand led to her mental and physical torture. On 11.08.2011, at about 5 o'clock in the morning, he was informed by his relatives that the deceased has been done to death by her in-laws. On receiving such information, he went to the matrimonial home of the deceased but the house was found to be locked. On further inquiry, he learnt that after killing the deceased, her dead body has been carried on a cot to the banks of river Sarju where the dead body has been immersed in water. A search was made by P.W. 4 along with others and a sack containing the dead body of the deceased was recovered.

6. On the basis of the aforesaid written report, a case vide Raghunathpur P. S. Case No. 95 of 2011 dated 11.08.2011 was registered for investigation under Sections 304-B and 34 of the I.P.C. against the appellants and others.

7. The police after investigation submitted charge-sheet, whereupon cognizance was taken under Sections 304 B, 498 A, 201/34 of the I.P.C.

8. The learned trial court, after examining nine witnesses on behalf of the prosecution and none on behalf



of the defence, convicted and sentenced the appellant as aforesaid.

9. It has been argued on behalf of the appellants that admittedly the deceased was the wife of appellant / Manoj Singh but she committed suicide for her not having been taken to Kolkata, i.e., the place of work of the appellant / Manoj Singh. On the day of the occurrence, the deceased was insisting for going to Kolkata with her husband / Manoj Singh but on refusal, she closed herself in a room and set herself on fire.

10. It has further been argued that the case was not lodged by the family members of the deceased, rather by the agnates and that the burnt dead body was immersed in the river as per the tradition of the family in cases of death by suicide.

11. On the other hand, the learned Public Prosecutor has made attempts to justify / defend the judgement of conviction on the ground that all the ingredients of the offence under Section 304-B of the I.P.C. has been satisfied, in as much as, the death took place within seven years of the marriage of the deceased; the deceased was subjected to cruelty and ill treatment for not bringing Bolero vehicle from her parent's house; and that she was done to death because of the aforesaid act of torture of the appellants. Even if the evidence of some of



the witnesses were discrepant, it was upon the appellants to explain as to how the deceased suffered burn and sharp cut injuries on her body, all of which was found to be ante-mortem.

12. It has further been argued on behalf of the State that the story propounded by the defence that the deceased was thrown in the river as per the tradition of the family is also not acceptable. Had there been any truth in the matter, the appellants would have waited for family members of the deceased before attempting to dispose off her dead body.

13. On the contrary, it has been argued, that the evidence clearly indicates that immediately after the information about the occurrence, the family members of the deceased came to the matrimonial home, and when they did not find anyone of the accused persons/appellants, P.W. 4 went to the police station and thereafter conducted search and found out the dead body. Thus, there was no delay in the arrival of the family members of the deceased and in that event, the defence of the appellants that because of the delay in the arrival of the family members of the deceased, the dead body was immersed in river water, is not sustainable.



14. In order to appreciate the contention of the parties, it would be necessary to refer to the evidence adduced on behalf of the prosecution.

15. Upendera Singh, Vijay Kumar Singh, Mritunjay Kumar Singh and Satrugan Singh, who are residents of village Patar, i.e., the matrimonial home of the deceased, have been examined at the trial as P.W. 1, 5, 6 and 7, respectively.

16. P.W.s 1 and 5 in their deposition have clearly stated that the deceased died in the house of the appellants, whereas P.W.s 6 and 7 have expressed their ignorance about the cause and reason for the death of the deceased. Their deposition do not throw any light for unravelling the truth of the matter.

17. Shailesh Kumar Singh, who is one of the cousins of the deceased, has been examined as P.W.2. He has narrated the same version as was stated by P.W. 4 in the written report. He has further deposed that he along with others had gone to the matrimonial home of the deceased where he found the appellants missing from their house. He along with P.W. 4 thereafter went to the Police Station and brought the Officer In-charge, who assisted them in searching the dead body. On the banks of river Sarju, a broken cot and few pieces of clothes were found. Later, the dead body of the deceased was found kept in a



sack filled with brick pieces. The dead body was taken out with the help of the police. There were signs of knife blows on her body. The deceased also appeared to be totally burnt. An inquest report was prepared which was signed by aforesaid P.W. 2 and one Sunny Kumar Singh, who has not been examined at the trial. In his cross-examination, however, he had stated that though the information regarding the death of the deceased was received by P.W. 4 at about 5 o'clock in the morning on 11.08.2011 but the source which provided such information was not known. He has denied all the suggestions of the defence that no demand for any additional dowry was made and that the deceased was a temperamental woman, who had committed suicide for her desire to go along with her husband to Kolkata, his place of work, was not fulfilled. With respect to demand of dowry, the aforesaid witness has stated that earlier also such demands were made and non-fulfillment of the same led to ill treatment. He has also spoken about a Panchayati having been held in 2010 but no report in that regard was lodged with the police.

18. Parmanand Singh, who is a relative of the deceased has been examined as P.W. 3. He has also narrated the same story and with respect to demand of dowry. He has stated that earlier also the deceased had been subjected to ill treatment.



19. The uncle of the deceased / informant, namely, Chandrama Singh has been examined as P.W. 4. He has given a go by to the prosecution version and has stated that the deceased was an obstinate woman and she always fought with her family members. Since she did not want to stay in her matrimonial home, she always complained that if she is not brought from her matrimonial home, she might commit suicide. On assuaging her anger by P.W. 4, the deceased anyhow continued to stay in her matrimonial home.

20. The post-mortem report which has been proved by Dr. Ravi Ranjan / P.W. 8 discloses that there were three incised wounds on the person of the deceased and the cause of death was stated to be asphyxia caused by burning. From the evidence of the Doctor (P.W. 8), it stands established that the deceased died of homicidal death. The presence of incised wounds on her body, caused by sharp cutting weapon further demolishes the defence version that the deceased had committed suicide by burning. If at all, the aforesaid story of the deceased, having set herself on fire, were to be believed, the incised injuries on her body was required to be explained.

21. Jitendra Kumar / P.W. 9, who is the IO of the case, has testified to the fact that the dead body was not found in her matrimonial home and all other family



members were also found to have run away. At the banks of river Sarju, a sack was discovered, in which the dead body of the deceased was found kept. The same was opened and an inquest report was prepared which was signed by P.W. 2 and one Sunny Kumar Singh.

22. From the prospectus of evidence discussed above, the defence of the appellant that the deceased committed suicide is not acceptable. The excessive haste in disposing off the dead body; the manner of disposal of the dead body; and the presence of two incised wounds on the person of the deceased establishes that the deceased was done to death and then her dead body was thrown for screening / concealing the offence.

23. That apart, under Section 106 of the Evidence Act, if any fact is especially within the knowledge of any person, the burden of proving the same is on him. Admittedly, the deceased was living in the house of appellant / Manoj Singh. In the statement given by the appellants under Section 313 of Cr.P.C., it has been admitted that the deceased had been living in the same house and only because her desire to go to Kolkata along with the appellant / Manoj Singh was not fulfilled, she committed suicide. If that were so, it was necessary for the defence to have explained the ante-mortem incised wounds on the dead body of the deceased.



24. That apart, it has been stated above that the family members of the deceased arrived within no time of the information received by them and thus there was no urgency for immersing the dead body in the river.

25. Apart from this, there is no evidence on record to suggest that it is an established custom / precedent of disposing off the dead body of a person who has committed suicide, by immersing it in flowing river. Even if that were the precedent, since no effort was made to rescue the deceased or to take her to any hospital for resuscitation, the whole story of the deceased having committed suicide therefore stands rubbished and is rendered absolutely unbelievable.

26. But, what is of relevance is that but for the statement of P.W. 2, a cousin of the deceased that a panchayati was held for ill treatment to the deceased in the year 2010, there is no evidence on record about appellants / Birbahadur Singh and Gyanti Devi torturing the deceased or participating in the killing of the deceased. The appellants / Birbahadur Singh and Gyanti Devi have been made accused in this case because they are the parents of Manoj Singh who is the husband of the deceased. Even in the F.I.R. lodged by P.W. 4, there is no specific reference of the appellants / Birbahadur Singh and Gyanti Devi having committed any overt act for them to be



prosecuted for the offences under Sections 304-B and 498-A of the I.P.C. Appellant / Manoj Singh, being the husband of the deceased, is under an obligation to explain the cause of death of his wife. He only was responsible for her well-being.

27. It is also worth mentioning that the other family members of the appellants also were made accused but finding no material against them, they were not sent up for trial.

28. The conviction of appellant / Manoj Singh is therefore sustained by taking resort to provisions of Section 106 of the Evidence Act and 113-B of the Evidence Act.

29. However, the cases of appellants / Birbahadur Singh and Gyanti Devi stand on a different footing altogether. Without there being any evidence against them, it would be rather unsafe to allow the judgement of conviction as against them to be sustained.

30. Thus the conviction of appellant / Manoj Singh is affirmed and upheld.

31. The conviction of appellants / Birbahadur Singh and Gyanti Devi is set aside.

32. But having regard to the circumstances viz absence of any direct evidence and the fact that appellant / Manoj Singh has participated in the trial, this



Court is of the view that the interest of justice would be served if the sentence imposed upon him is reduced from the period of 10 years to the period of 7 years for the offence under Section 304 B of the I.P.C. No interference is required with the sentence under other Sections of the I.P.C.

33. Thus the appeal of appellant / Manoj Singh in Cr. Appeal No. 2879 of 2017 is partially allowed with the affirmation of the conviction but reduction of sentence as aforesaid.

34. The appellants / Birbahadur Singh and Gyanti Devi in Cr. Appeal No. 2846 of 2017 are acquitted of their charges and are discharged from the liabilities of their bail bonds. The aforesaid appellants viz Birbahadur Singh and Gyanti Devi, are in custody. They are directed to be released forthwith, if not required in any other case.

A copy of the judgement be transmitted to the Superintendent of the concerned Jail for information, compliance and records.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	18.08.2018
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