

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.454 of 2003

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Lal Babu Chowdhary @ Lal Babu Sahni, Son of Magan Sahani, Resident of
Batraula, P.S. Motihari Muffasil, District – East Champaran.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sandeep Kumar, Adv.
Mr. Ajit Kumar, Adv.
Mr. Rohit Raj, Adv.
Mr. Neeraj Kumar, Adv.

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 29-03-2018

This appeal is directed against the judgment of conviction dated 18.08.2003 and order of sentence dated 04.09.2003, passed by Sri Ram Bilash Rai, the then 5th Additional Sessions Judge, East Champaran, Motihari, in Sessions Trial No. 199/2002, 26/2002 by which the sole appellant Lal Babu Chowdhary @ Lal Babu Sahni stood convicted under Sections 304B of the Indian Penal Code (hereinafter referred to as the “IPC”) and was sentenced to undergo R.I. for ten years. He has further been convicted under Section 498A and 201 of the IPC, however, no separate sentence was passed under those sections.

2. Prosecution case as per the fardbeyan of informant Bhutur Choudhay (P.W. 7), in short is that the marriage of his sister-in-law



(Sali) Sharda Devi was solemnized with appellant Lal Babu Chowdhary @ Lal Babu Sahni of his village, according to Hindu rites and customs and in the marriage, dowry was also given as per the capacity of father of Sharda Devi but soon after the marriage, appellant started demanding cow, bicycle and watch, for that the appellant used to assault the Sharda Devi. It is also his case that in view of such demand, his father-in-law had given a cow and a calf to the appellant twenty days ago but in spite of that appellant did not stop assaulting the Sharda Devi. It has also been alleged that the Sharda Devi had no issue, which was also one of the reasons that she was being subjected to cruelty. It has further been alleged that the informant received information that his sister-in-law has been done to death by the appellant by pressing her neck and the dead body was being carried by him for disposing of the same, on which, he along with his wife went to the house of his sister-in-law but nobody was found present there and came to know that after committing murder of his sister-in-law, the appellant had gone along with nearby people with the dead body carrying on the cycle to dispose of the dead body. It is further case of the prosecution that about 12 'O' clock in the night, he saw appellant with a wetted gunny bag along with other persons and when he enquired about his sister-in-law, they told him that she had died and her dead body has been disposed of. It is



claimed that his sister – in – law Sharda Devi was killed by the appellant by throttling her neck and disposed of the dead body of Sharda Devi.

3. On the basis of the aforesaid fardbeyan of informant, F.I.R bearing Mufasil P.S. Case No. 108/2001 was registered.

4. Police after investigation submitted charge-sheet. Cognizance of the offence was taken and the case was committed to the court of Sessions, which ultimately came to the file of Sri Ram Bilash Rai, the then 5th Additional Sessions Judge, East Champaran, Motihari, for trial and disposal.

5. Charges were framed under Sections 498A, 304B and 201 of the IPC against the appellant.

6. To substantiate the charges, prosecution examined altogether eleven witnesses. They are: P.W. 1 Ramesh Sahani, declared hostile, P.W. 2 Sheomangal Choudhary, father of informant, P.W. 3 – Bachi Devi, sister of deceased and wife of informant and has been declared hostile, P.W. 4 – Narayan Mahto, who has not supported the case of prosecution, P.W. 5 – Gyani Devi, mother of informant, declared hostile, P.W. 6- Jhhakhar Sahani, father of the deceased, declared hostile, P.W. 7 – Bhuthur Chaudhary (informant), P.W. 8 – Umesh Sahani, brother of the deceased, declared hostile, P.W. 9 – Abdul Jabbar, declared hostile, P.W. 10 – Rajendra Prasad Singh (I.O.), P.W.



11- Dr. Sailendra Kumar Jha, who along with other doctors conducted post mortem examination on the dead body of deceased Sharda Devi and P.W. 12 – Sk. Sagir Hussain, a formal witness, who proved fardbeyan (Ext. 2), Formal F.I.R (Ext. 3), Inquest Report (Ext. 4) and writing of case diary from 04.07.2001 to 14.11.2001 (Ext. 5)

7. Apart from that following documents have been brought on record and marked as Ext. 1 to 1/C – Post mortem examination report and signatures of S.S. Mehta and S.N. Chaudhary over the post mortem report, Ext. 2 – Fardbeyan, Ext. 3 – Formal F.I.R, Ext. 4 – Carbon copy of inquest report and Ext. 5 – Case diary.

8. The defence of the accused person is of innocence and of false implication due to enmity. Further defence is that the deceased died due to epilepsy

9. On conclusion of trial, the Trial Court has convicted the appellant under Sections 304B ,498A and 201 of the IPC and sentenced him in the manner as stated above.

10. Contention of learned counsel for the appellant is that the trial court has failed to consider that most of the witnesses have either not supported the case of prosecution or has been declared hostile and even the P.W. 3, who is sister of the deceased and wife of informant and P.W. 6, who is father of the deceased has not supported the case of prosecution. It has further been submitted that though the informant



has supported the case of prosecution in his evidence in chief, however, in his cross examination he has stated that he heard about demand of cycle and watch from others and has further stated that his sister-in-law was suffering from epilepsy. Similarly, P.W. 2 has also stated in his examination that he has no knowledge of demand of dowry and whether there was a difference between the parties with regard to demand of dowry. Further submission of learned counsel for the appellant is that in fact the deceased died due to sudden epilepsy attack and appellant had no role to play in his death and the trial court without considering all these facts has convicted the appellant under Section 304B, 498A and 201 of the IPC, which is out and out perverse and not sustainable in the eye of law.

11. On the other hand, learned counsel for the respondent – State supported the finding of guilt, recorded by the Trial Court and has submitted that there are consistent evidence of witnesses that the deceased died within seven years of her marriage and in the house of the appellant and the burden is on the appellant to explain the exact cause of death of the deceased. Further the doctor, who conducted the post mortem examination of the dead body of the deceased has also found that the deceased died due to asphyxia and the F.I.R also shows that there was demand of a cow, bicycle and a watch and for that appellant used to assault and torture the deceased, as such, there is no



infirmity in the impugned judgment and conviction of appellant under Section 304B, 498A and 201 of the IPC is just and proper.

12. In the background of rival contentions of the parties, on perusal of the evidence of witnesses, it appears that P.W. 1, co-villager, P.W. 3, who is sister of the deceased and wife of informant, P.W. 4, co-villager, P.W. 5 – mother of the deceased, P.W. 6- father of the deceased and P.W. 8 – brother of the deceased and P.W. 9, co-villager, either have not supported the case of the prosecution or have been declared hostile by the prosecution and as such prosecution case rests only on the evidence of P.W. 2, who is father of informant and P.W. 7, who is informant in this case. From the evidence of P.W. 2, it appears that he has supported the prosecution story so far marriage of deceased with appellant is concerned. However, his evidence shows that he does not know as to when the marriage was solemnized and the deceased Sharda Devi used to live in her *Sasural*. His evidence also disclosed that demand of appellant of a cow was fulfilled by the father of the deceased and he has no knowledge about the demand of cycle and watch. His evidence further disclosed that he did not have any knowledge that the deceased Sharda Devi was used to be tortured as she had no issue. His evidence further shows that deceased Sharda Devi died in her *Sasural* and appellant was in his house and as to how deceased Sharda Devi died, he could not say. However, his evidence



shows that he is a witness on inquest report. This witness has stated in his evidence that the dead body was recovered from four kilometers away from his village from a field. He has also stated that the dead body was thrown at a distant place with a view to screen the evidence. His evidence in cross-examination shows that at the time of occurrence, he was in his house.

13. Evidence of P.W. 3, who is the sister of the deceased and wife of informant, before her being declared hostile shows that she has stated in his evidence that Sharda Devi died in her *Sasural* but how she died she could not say and she had not seen the occurrence.

14. P.W. 7 is the informant in this case and brother-in-law of the deceased and he has stated in his evidence that marriage of the deceased was solemnized with the appellant five years ago and in-laws have demanded bicycle and watch. His evidence also disclosed that the Sharda Devi died in her *Sasural* and he came to know about the same. His evidence also shows that at 12 'O' clock in the night, he met appellant Lal Babu Chowdhary and others, who disclosed that deceased Sharda Devi had died, thereafter, he informed the same to police. However, in his cross-examination, this witness has stated that there was no demand of dowry by appellant and he had heard about demand of bicycle and watch from others. His evidence also disclosed that as the deceased Sharda Devi had no issue, sometime she used to



behave in insane manner and had tried to commit suicide and she was also suffering from epilepsy. His evidence also disclosed that he came to know from the villagers that she died due to epilepsy.

15. P.W. 10 is the Investigating Officer in this case and it appears from perusal of his evidence that he only submitted charge-sheet in this case and not even recorded the statements of the witnesses.

16. P.W. 11 is the doctor, who along with other doctors, conducted postmortem examination on the dead body of the deceased Sharda Devi and opined that no external injury was discovered on dissection. The injury detected on dissection in the neck and chest were ante-mortem caused by hard and blunt substance. In the opinion of doctor, the cause of death was asphyxia caused by throttling. His evidence also disclosed that in epilepsy, a person may die due to suffocation or may not die.

17. On perusal of the entire evidence of prosecution witnesses, it appears that so far the allegation of demand of dowry and subjecting the deceased to cruelty is concerned, there is absolutely no evidence available on record. No doubt prosecution case as per F.I.R is that there was a demand of cow, cycle and watch but the evidence of P.W. 2 shows that a cow was demanded and that has been fulfilled by the father of the deceased and he has not disclosed with regard to demand of other articles. Similarly the evidence of P.W. 7 (informant) in cross



examination shows that there was no demand of dowry. Further it appears that the prosecution has not been able to prove that whether the deceased was subjected to cruelty soon before her death and there is nothing except general allegation that she was subjected to cruelty and harassment. No doubt, all the prosecution witnesses are consistent on the point that the deceased died in her *Sasural* including the witnesses, who have been declared hostile and further the evidence of doctor also shows that cause of death of the deceased was asphyxia due to throttling and as such, the prosecution has been able to establish the death beyond normal circumstances. However, for conviction under Section 304B IPC, the prosecution must establish that the deceased died within seven years of her marriage and she was subjected to cruelty soon before her death in connection with demand of dowry. As discussed above, in this case prosecution evidence is that she died within seven years of her marriage under abnormal circumstances but so far evidence of cruelty soon before her death is concerned, there is absolutely nothing on record. No doubt, the evidence shows that the deceased died in her *Sasural* and no proper explanation has been given by the appellant for her death and there shall be a presumption under Section 106 of the Indian Evidence Act but in the present case the appellant has not been convicted under Section 302 of the IPC and even no charge was framed under Section



302 of the IPC and since the case is of the year 2003 and fifteen years have passed since then, therefore, it will not be proper to remand the matter back to court below to conduct the trial afresh.

18. Considering the facts and circumstances of the case and the discussions made above, the conviction of the appellant under Section 304B, 498A and 201 of the IPC does not appear to be sustainable.

19. Accordingly, this appeal is allowed. Judgment of conviction dated 18.08.2003 and order of sentence dated 04.09.2003, passed by Sri Ram Bilash Rai, the then 5th Additional Sessions Judge, East Champaran, Motihari, in Sessions Trial No. 199/2002, 26/2002, is hereby set aside.

20. As the appellant is on bail, he is discharged from liability of bail bond.

(Vinod Kumar Sinha, J)

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AFR/NAFR	NAFR
CAV DATE	N/A
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