

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.3062 of 2017

Arising Out of PS. Case No.-32 Year-2015 Thana- SAHARGHAT District- Madhubani

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Rajesh Mandal Son of Sukh Sagar Mandal Resident of village- Pakarsam,
P.S.- Saharghat, District- Madhubani

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ravindra Kumar Singh Advocate
For the Respondent/s	:	Ms. Abha Singh A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 25-08-2018

Heard the learned counsel for the appellant and
the State.

2. The Appellant / Rajesh Mandal stands
convicted under Section 304 (B) of the I.P.C. by
judgement dated 29.08.2017 passed by the learned Fast
Track Court No. 2, Madhubani in Sessions Trial No. 35 of
2016 and by order dated 01.09.2017, he has been
directed to suffer rigorous imprisonment for 10 years.



3. The appellant is alleged to have killed his wife / Nain Devi by strangulating her.

4. The mother of the deceased (P.W. 5) has lodged the F.I.R. on 01.05.2015 alleging that the deceased, aged about 20 years, was married to the appellant about a year ago. At the time of marriage, P.W. 5 had given sufficient articles and money by way of dowry. Some other household items were given at the time of the second marriage (Bidai). The appellant used to reside in Delhi and had come back to his home only about four months ago. The deceased had been residing with the appellant for the last three months. The deceased always used to telephonically inform her that she was having pressurized for bringing motorcycle and TV. The deceased had specifically told P.W. 5 that on the day when other family members had gone out of the house in some function, the appellant fought with her and had assaulted her. She was apprehensive that she might be killed. Only in the previous night of the lodging of the report, she received an information through the Dafadar of Basopatti that her daughter has died. On receiving such an information, P.W. 5, along with her agnates and villagers, namely, Shankar Mandal Nagina Devi etc. came to the matrimonial home of the deceased and found that she had been killed by strangulation. The dead body was found



kept on the *Charpoy*. At the time of lodging of the case, she was sure that the appellant had strangled the deceased and had run away.

5. On the basis of the aforesaid fard-beyan / statement, Saharghat P.S. Case No. 32 of 2015 dated 01.05.2015 was instituted for investigation against the appellant under Section 304 (B) of the I.P.C.

6. The police after investigation however submitted charge-sheet against other accused persons also.

7. The appellant as well as 6 others were put on trial.

8. The learned trial court, after examining eight witnesses on behalf of the prosecution, acquitted the other accused persons, but convicted and sentenced the appellant as aforesaid.

9. Mr. Ravindra Kumar Singh, learned advocate for the appellant, while assailing the judgement and order of conviction, has submitted that none of the prosecution witness has supported the prosecution version. Even the parents of the deceased have not supported the prosecution case and have stated that the information which was given by P.W. 5 to the police was on the basis of wrong information given to her by the detractors of the appellant.



10. He has further submitted that even the medical evidence is not in consonance with the prosecution testimony. Lastly, it has been submitted that in the absence of any proof of the fact that the deceased was tortured soon before her death, the appellant could not have been convicted and sentenced under Section 304 (B) of the I.P.C. In that event, direct evidence was required for convicting and sentencing the appellant and the principle of reverse onus of proof would not apply in the facts of the case.

11. Additionally, it has been submitted that according to the fard-beyan of P.W. 5, at the time of marriage, household articles and money was given to the appellant and his family without any demand for the same. If there was no demand of dowry in the beginning, it appears to be rather surprising that after many months of the marriage, the demand of additional dowry would be made.

12. On such ground, it has been argued, that the appellant be acquitted of the charges.

13. On the other hand, Ms. Abha Singh, learned Public Prosecutor has submitted that the manner in which P.W. 5 has given a volte-face clearly demonstrates that the witnesses have been won over by the appellant. Had it not been the case, the father and mother of the deceased



would not have given a go by to the prosecution version. It has further been submitted that there is no explanation about the ligature mark on the neck of the deceased and the medical evidence clearly establishes that the deceased died a homicidal death and not a suicidal death. The reason for the Medical Officer / P.W. 8 to say so was the regularity of the ligature mark, which was not possible in cases of suicide.

14. Thus, it is urged that the appellate court not only should sustain the conviction, but should also consider enhancing the sentence because of the appellant having killed his wife within one year of marriage for non-fulfillment of demand of dowry.

15. Ram Kumar Mandal / P.W. 1 is the father of the deceased. He has admitted that at the time of occurrence he was at Pune and had come back home only on his wife (P.W. 5) informing him telephonically that the deceased had died. His attention was drawn to the earlier statement made by him before the police, which he denied.

16. He has been declared hostile.

17. Similarly, Ravindra Nath Thakur and Nagina Devi are P.W.s 2 and 3, who are the co-villagers and distantly related to P.W.s 1 and 5. They even though being the co-villagers have expressed their complete ignorance



about the occurrence. They have also therefore not supported the prosecution version.

18. The learned counsel for the State has submitted that P.W. 3 not supporting the prosecution version clearly demonstrates that the witnesses have been won over.

19. P.W. 3 had visited the matrimonial home of the deceased along with P.W. 5 which fact was first stated by P.W. 5 in her fard-beyan.

20. Ajay Kumar Roy @ Manjay Kumar Roy is P.W. 4, who has been tendered.

21. The informant / mother of the victim (P.W. 5) though has supported the prosecution case in her examination-in-chief but surprisingly and curiously has made a somersault and has stated that she was wrongly informed by the enemies of the family of the appellant about her daughter being killed for non-fulfillment of dowry. She has stated that there was no such dowry demand and the deceased was living happily in her *sasural*.

22. The brother of the deceased (P.W. 6) has also followed the same course as that of his parents (P.W.s 1 and 5).

23. This Court expresses its concern over the manner in which this case has been investigated and the



manner in which the witnesses have tried to save the appellant.

24. The IO / P.W. 7 has stated that he had visited the place of occurrence, mainly the house of the matrimonial home of the deceased. After finding the accusation to be true, he had submitted the charge-sheet. However, he has admitted of his not having recorded the statement of any person of the village or of the neighborhood. The only explanation which he has offered is that local persons who were not willing to depose against the appellant and others before the police. However, from his evidence it is established that the deceased died in her matrimonial home.

25. The dead body was subjected to inquest by P.W. 7 and thereafter was sent to the mortuary for post-mortem. The inquest report also refers to the mark of tying of rope over the frontal portion of the neck.

26. What clinches the issue whether the deceased died a homicidal death or committed suicide is the evidence of the doctor (P.W. 8), who had conducted the post-mortem on the body of the deceased on 08.05.2015 at Madhubani Sadar Hospital. He had found ligature mark around the neck of the deceased below her throat. He has proved the post-mortem report (Exhibit -2). The time of death was stated to be within 48 years. According to P.W.



8, on dissection of the subcutaneous tissues, blood clots were found in the cavity. He has specifically opined that the death was because of asphyxia caused by strangulation. In his cross-examination also, he has unambiguously stated that the death was homicidal and not suicidal.

27. Though, none of the prosecution witnesses have supported the case of the appellant having killed the deceased but the fact remains that the deceased died in her matrimonial home. There is no explanation whatsoever about the cause of her death.

28. Section 106 of the Evidence Act reads as follows:

"106. Burden of proving fact especially within knowledge. - When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him."

29. Since the appellant was the only person present in the house prior to the death of the deceased, it was incumbent upon him to explain the reason / cause of the death of the deceased. One could have accepted that the deceased committed suicide provided the post-mortem report read anything of that kind. The regular ligature mark encircling the thyroid bone makes it very obvious that the deceased was strangled. There is no explanation even in the statement of the appellant



recorded under Section 313 of the Code of Criminal Procedure. The very fact that the deceased had informed the mother (P.W. 5) that in the absence of the other family members, she was brutally assaulted by the appellant and that she apprehended danger to her life, is good enough material to hold that soon before her death, the deceased was subjected to mental and physical torture; thus, bringing the case within the four corners of Section 304 (B) of the I.P.C.

30. Rightly and justifiably, because of the paucity of any evidence against the other accused persons, who were put on trial, they have been acquitted.

31. This Court is of the view that the conviction of the appellant under Section 304 (B) of the I.P.C. is absolutely justified for absence of any explanation regarding the cause of death of the deceased. The parents and the brother of the deceased have unfortunately succumbed to the pressure; but since there is no evidence to the effect that they have been won over, nothing else is being stated here.

32. The conviction of the appellant therefore is affirmed and upheld.

33. Mr. Ravindra Kumar Singh, learned advocate for the appellant has however submitted that because of the poverty and lack of education of the appellant, he



could not defend himself properly in the trial. The appellant comes from a poor strata of society and after the marriage, he had been residing in Delhi. Only for his desire to lead a happy matrimonial life with the deceased, he had come back from Delhi and for the last three-four months before the deceased died, he lived in her company. That the deceased was not assaulted brutally, as was stated by P.W. 5 in her fard-beyan, is evident from the fact that there was no injury on the other part of the body of the deceased. Thus only for the appellant not having said anything under Section 313 of the Code of Criminal Procedure, about the cause of death of the deceased, he ought not be sentenced for 10 years and some leniency be shown by reducing the sentence to the minimum as provided under Section 304 (B) of the I.P.C.

34. Considering the aforesaid facts as also taking into account that the appellant has been languishing in jail continuously ever since he was taken into custody after the registration of the case, his age as well as his satisfactory conduct in jail, this Court is of the view that the interest of justice would be sub-served if the sentence imposed upon the appellant is reduced to a period of seven years.

35. The sentence of the appellant is therefore reduced from 10 years to 7 years.



36. The appeal is thus partially allowed in as much as the conviction under Section 304 (B) of the I.P.C. is affirmed and upheld, but the sentence is reduced to the period of seven years.

A copy of the judgement be transmitted to the Superintendent of the concerned jail for information and records.

(Ashutosh Kumar, J)

skm/-

AFR/NAFR	N.A.F.R.
CAV DATE	
Uploading Date	28.08.2018
Transmission Date	28.08.2018

