

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.867 of 2016

Arising Out of PS.Case No. -81 Year- 2006 Thana -
SIDHWARA District- DARBHANGA

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1. Ram Naresh Yadav Son of Late Lal Bahadur Yadav.
2. Bajrangi Yadav @ Ram Babu Yadav Son of Late Lal Bahadur
Yadav Both are residents of Village- Asthua, Police Station-
Singhwara, District- Darbhanga.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Girish Chandra Jha Mr. Kumar Gautam Mr. Rajesh Kumar
For the State	:	Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 04-04-2018

The appellants have been convicted under Sections 304(B), 201 and 120(B) of the Indian Penal Code by judgment dated 26.08.2016 passed by the learned 3rd Additional Sessions Judge, Darbhanga in Sessions Trial No. 437 of 2010 and by order dated 03.09.2016 they have been sentenced to undergo rigorous imprisonment for ten years for the offence under Section 304(B) I.P.C with the aid of Section 120(B) I.P.C and rigorous imprisonment for two years, to pay a fine of Rs. 2000/- and in default of payment of fine, to further suffer simple imprisonment for two month for the offence under Section 201 I.P.C; the sentences having been ordered to run



concurrently.

2. The appellant No. 1/Ram Naresh Yadav is the husband of the deceased Anita @ Guria whereas appellant No. 2/Bajrangi Yadav @ Ram Babu Yadav is the younger brother of the appellant No. 1.

3. The deceased/Anita/Guria is said to have been killed and her dead body was buried beneath the *Pipal* tree.

4. The regular defence of the appellants is that the deceased died of small-pox and according to the custom prevalent in the village, anybody dying of pox is not cremated but is buried: hence the dead body was buried.

5. The F.I.R was lodged by the Chaukidar/Shambhu Paswan (P.W. 10) on 20.07.2006 wherein it has been alleged that on the same day, while he was uprooting the paddy crops in the village, a woman of the same village informed him that the daughter-in-law of Lal Bahadur Yadav has run away. On this information, he went to the house of Lal Bahadur Yadav and asked him about his daughter-in-law but he did not say anything in that regard. Soon thereafter, aforesaid Lal Bahadur Yadav became nervous and spilled the beans. P.W. 10, thereafter informed the Officer-in-charge of the Police Station and on his information, the Officer-in-charge along with another Chaukidar viz. Rama Paswan and some police personnel went to the house of the aforesaid Lal Bahadur



Yadav. Seeing the Police Party, aforesaid Lal Bahadur Yadav began to flee away but was nabbed.

6. On further interrogation, he disclosed before the Police Party that he had buried the dead body of his daughter-in-law in the field situated adjacent to his house. On his pointing, the dead body was recovered and was sent for postmortem. On the basis of the aforesaid fardbeyan statement, a case vide Singhwara P.S. Case No. 81 of 2006 was instituted for investigation for the offences under Sections 304(B), 201, 34 of the Indian Penal Code.

7. The appellant No. 1 was found to have been married with the deceased only four years ago and the relatives of the deceased clearly stated during investigation that because of non-fulfillment of the dowry demand, the deceased was done to death. These facts led to the filing of the case against the appellants and others under Sections 304(B), 201 and 120(B) of the Indian Penal Code.

8. The Trial Court, after examining sixteen witnesses on behalf of the prosecution and one on behalf of the defence convicted the appellants as aforesaid.

9. It may be noted that only these two appellants were put on trial together. With respect to other accused persons, their trials are still pending adjudication.

10. During the trial, Raghunath Rai (P.W. 1), Munshi



Rai (P.W. 2), Harendra Rai (P.W. 4) and Sital Rai (P.W. 6) who are uncles of the deceased have supported the prosecution version. They have stated that the deceased was married to the appellant No. 1 in the year 2002. After the marriage, the deceased went to her matrimonial home. Her father had died few days prior to the birth of the deceased. After the marriage, the appellants and their family members started demanding money for purchase of motorcycle. Later, a demand was made for purchase of computer and on the insistence of appellant No. 1, Rs. 35,000/- was paid to him for the purposes of undergoing training in computer course. Thereafter, considering that the deceased was the only issue of her parents, an attempt was made by the accused persons to have the entire property of the mother of the deceased transferred in the name of the accused persons including the appellant No. 1. Because of non-fulfillment of the aforesaid desire of the appellants/accused persons, the deceased was killed on 20th of July, 2006 and the dead body was buried.

11. P.W. 1 has proved the fact that the dead body was exhumed on 22.06.2006 which was seen by him and his other family members. The dead body was found to have been buried near the house of the appellants. He identified the dead body of the deceased. Thereafter, it was sent for postmortem. Only after the postmortem was conducted, the dead body was



cremated in accordance to the prevalent/customary rites.

12. Similar statements have been made by the aforesaid witnesses viz. P.W.s. 2, 4 and 6.

13. Sharda Devi/P.W. 3 is the mother of the deceased, who in her examination-in-chief has stated that when the deceased came back from her matrimonial home, she told her that the accused persons were demanding motorcycle. She (P.W. 3) is then said to have made payment of Rs. 55,000/-. Again, there was a demand for a computer. This time also Rs. 35,000/- was paid by P.W. 3 to the appellant No. 1 for purchase of computer. The demand of the accused persons of transferring the property standing in her name to them was not acceded to, therefore, the deceased was tortured. She also claimed to have seen the exhumation of the dead body from beneath the *Pipal* tree. P.W. 3 has denied that the deceased had died of small-pox. Had this fact been true, she would definitely have been informed by the family members of the appellants.

14. The statement of P.W. 3 has also been corroborated by Asha Devi (P.W. 5), who is the aunt of the deceased. She has also narrated about the demand of money by the appellants.

15. Pramod Kumar Rai (P.W. 7) has also supported the prosecution version.



16. However, it further appears that Manoj Yadav (P.W. 8) and Sakindar Yadav (P.W. 9) have not supported the prosecution version and have been declared hostile.

17. The factum of exhumation of the dead body of the deceased has been proved and established by Md. Salim Akhtar Ansari, Minority Welfare Officer, posted at Sitamarhi, who has been examined as P.W. 11 at the trial. He has deposed that at the relevant time, he was posted as Block Development Officer and was deputed as Magistrate by the learned Chief Judicial Magistrate, Darbhanga for getting the dead body of the deceased dug-out from the field. He has proved that the dead body was taken out from beneath the ground and thereafter inquest was prepared in his presence. The family members of the deceased came and identified the dead body.

18. The place of occurrence also is sought to be proved by Nand Keshwar Ram (P.W. 12) and Ram Pravesh Yadav (P.W. 14).

19. The postmortem (Ext-7) over the dead body was conducted by Dr. Vijay Pratap Singh (P.W. 15), who found the dead body to be absolutely decomposed. No internal or external injury was seen over the body. No opinion could be given about the cause of death and the viscera was preserved for chemical analysis. The time of death was assessed at



between three days to one week from the date of the postmortem. The postmortem was conducted on 30.07.2006.

20. From the deposition of the aforesaid witnesses, what comes to the fore is that the deceased was the only issue of her parents and was reared up by her mother, P.W. 3. It is precisely for this reason that the uncles of the deceased have come to the witness box to depose against the appellants. However, from the deposition of the aforesaid uncles, aunts and the mother of the deceased, except for a general statement regarding the demand of money for the purchase of motorcycle and later the demand for the purchase of computer, nothing specific has been alleged against any other family members of appellant No. 1. In fact, nothing specific has been alleged against appellant No. 1 as well.

21. However, since appellant No. 1 is the husband of the deceased, he ought to explain as to how the deceased died. The explanation given by the appellants that the deceased died of small-pox and therefore, was buried, is not acceptable. If this were the fact, necessary information ought to have been given to the family members of the deceased. In the absence of any such communication between the family members of the appellants and the mother and uncles of the deceased, such an explanation appears to be conjured up for the purposes of the defence of the accused persons including the appellants.



22. Section 106 of the Evidence Act enjoins upon an accused person to explain as to how the death was caused but this provision would be applicable to the case of appellant No. 1 who is the husband of the deceased.

23. There is no evidence on record to demonstrate that the appellant No. 2 stayed in the same house as that of the deceased or appellant No. 1. There being no specific material against appellant No. 2 of having demanded any money or in the event of such demand not having been met, tortured the deceased. There is no evidence also against appellant No. 2 with respect to either killing of the deceased or concealing her dead body.

24. Thus, even if Section 106 of the Evidence Act is pressed into use, except for appellant No. 1, nothing can be read against appellant No. 2.

25. The deceased died within even years of the marriage and the allegation against appellant No. 1 of having demanded money and tortured the deceased for non-fulfillment of the aforesaid demand, brings home charges under Sections 304(B) I.P.C as against appellant No. 1. That the dead body was recovered from beneath the field also makes him liable for the offence under Section 201 I.P.C.

26. For the aforesaid reason, the conviction of appellant No. 1 under Sections 304(B) and 201 I.P.C is



affirmed and upheld.

27. However, regard being had to the other circumstances of the case, the social background from which the appellant No. 1 hails from and his conviction being upheld only with the aid of Section 106 of the Evidence Act, this Court is of the view that interest of justice would sufficiently be met, if the sentence of ten years under Section 304(B) I.P.C is reduced to a period of seven years. There is no need of any modification in the sentence imposed for the offence under Section 201 I.P.C.

28. Thus, in the result, the conviction of appellant No. 1 is upheld but the sentence is modified to a period of seven years rigorous imprisonment for the offence under Section 304(B) read with Section 120(B) of the I.P.C and rigorous imprisonment for two years for the offence under Section 201 I.P.C, to pay a fine of Rs. 2000/- and in default of payment of fine, to further suffer simple imprisonment for two months.

29. So far as appellant No. 2 is concerned, since there being no cogent material/evidence against him, the conviction as against him is set aside. He is acquitted of all the charges.

30. This Court has been informed that appellant No. 2 is on bail. He is discharged from the liabilities of his bail



bonds.

31. The appellant No. 1 is in custody since 14.06.2010 and therefore has completed more than seven years in custody.

32. If this fact be correct, let the appellant No. 1 be released forthwith from jail, if not wanted in any other case.

33. The appeal is partially allowed.

34. A copy of the judgment be transmitted to the Superintendent of the concerned Jail for compliance and needful action.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10/04/2018
Transmission Date	10/04/2018

