

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.2946 of 2017

Arising Out of PS. Case No.-208 Year-2014 Thana- PALIGANJ District- Patna

Manoj Kumar, Son of Gyan Chand Mahto, resident of Village- Dharhara,
Police Station- Paliganj, District- Patna.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant : Mr. Krishna Pd. Singh, Sr. Advocate
Mr. Pramod Kumar, Advocate.
For the Informant : Mr. Ansul, Advocate.
For the Respondent : Ms. Abha Singh, APP.

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 26-03-2018

Heard the learned counsels for the appellant, the
informant and the State.

2. The appellant/Manoj Kumar has been convicted
under Section 306 of the Indian Penal Code by
judgment dated 26.08.2017 passed by the learned
Additional Sessions Judge VII, Danapur, Patna in
Sessions Trial No. 179 of 2016 arising out of Paliganj
P.S. Case No. 208 of 2014 and by order dated
30.08.2017, he has been sentenced to undergo R.I.
for five years, to pay a fine of Rs. 5000/- and in



default of payment of fine, to further suffer S.I. for six months for the offences under Section 306 of the IPC.

3. The appellant is said to have goaded his wife Pinki Kumari to commit suicide.

4. Initially, case was filed under Sections 341, 323, 307, 498A, 201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act but with the death of the deceased, Section 304B of the IPC was added.

5. Apart from the appellant, two other persons viz. his mother and sister were also put on trial but they have been acquitted of all the charges.

6. The father of the deceased, Rajeshwar Singh (P.W. 1) lodged a fardbeyan on 09.09.2014 alleging that he had married his daughter about a year back with the appellant. At the time of marriage, sufficient gifts by way of money and articles were given to the family of the appellant. After about 2-3 months of the



marriage, a demand of Rs. 3 lakhs was regularly being made by the appellant and his mother and sister. Non-fulfillment of the aforesaid demand led to the physical and mental torture of his daughter. The daughter of the informant (P.W. 1), at one point of time, came in family way and she had to be hospitalised. During that period, despite the informant (P.W. 1) asking the appellant and his family members to come to the hospital to see her, nobody came. His daughter thereafter again went to her matrimonial home. On 08.09.2014, at about 7 o' clock in the evening, co-villagers of the appellant informed him that his daughter has been set on fire by pouring petrol over her. On such information, P.W. 1 went to the house of the appellant where he was informed that his daughter is being treated at Patna. In the house of the appellant, the informant could only find a small burnt piece of cloth. There was no evidence of any fire in kitchen. The



gas cylinder also was found to be intact. The informant thereafter came to Patna on 09.09.2014 and visited her daughter in Maurya Hospital, New Jaganpura on the Bypass Road. His daughter was unconscious and had suffered almost 100 percent burn injuries. The appellant, his mother and his sister were present at the time of occurrence in their village home. All of them had conjointly made attempts to kill the deceased. In the past also his daughter was tortured by the mother and sister of the appellant. As such, it was asserted by the informant (P.W. 1) that the appellant and others have killed the deceased.

7. On the basis of the aforesaid fardbeyan-statement, a case vide Paliganj P.S. Case No. 208 of 2014 dated 15.09.2014 was instituted for the offences under Sections 498A, 307, 201, 341, 323 and 34 of the Indian Penal Code read with Sections 3/4 of the Dowry Prohibition Act. The deceased died after about a



week i.e. on 14.09.2014 whereafter Section 304B of the Indian Penal Code was added.

8. The trial court, after examining ten witnesses on behalf of the prosecution and one on behalf of the defence, did not find any material to convict the appellant under Section 304B of the IPC and therefore acquitted him of such charge. However on the materials available on record, the appellant has been convicted under Section 306 of the Indian Penal Code and has been sentenced as aforesaid. The other two accused persons who were put on trial, as has been stated earlier, have been acquitted.

9. The informant has been examined as P.W. 1. One of the cousins of the informant (P.W. 1) though had not given his statement before the police but has been chosen by the prosecution to enter the witness box and depose as P.W. 10. He was summoned under



Section 311 of the Code of Criminal Procedure by the trial court.

10. The prosecution witness nos. 2, 4, 5, 6, 7 and 8 have neither been declared hostile nor have they supported the prosecution version. Almost all of them have stated that they saw fumes coming out from the house of the appellant and when they entered the house, they found Pinki Kumari (deceased) in flames. They made efforts to extinguish the fire and took her to Paliganj Hospital. Neither the appellant nor his mother and sister were present in the house. According to them, the appellant had gone to his service station. Pinki Kumari (deceased) told the aforesaid witnesses that she had caught fire and since her mother-in-law and sister-in-law were not available, she should be taken to the hospital. These witnesses have also unanimously stated that the relationship between the appellant and the deceased was very cordial.



11. Since these witnesses have not been brought at the instance of the appellant and have not been declared hostile, their depositions have to be taken into consideration.

12. The witnesses who have spoken against the appellant are P.Ws. 1 and 10. The I.O. of this case has been examined as P.W. 11 whereas the doctor who conducted the post-mortem of the deceased has been examined as P.W. 9. It would be relevant, in this context now, to scrutinize the evidence offered by P.W. 1 and P.W. 10.

13. P.W. 1 has supported his initial version given in the FIR. However in his cross-examination, he has stated that after the marriage, he had visited the matrimonial home of his daughter about 2-3 times. His daughter was educated till intermediate and most of the times she stayed in her matrimonial home, except for approximately 1½ months when she stayed with



him. During her stay in her matrimonial home, his daughter never wrote any letter to him or to his other family members regarding any torture for non-fulfillment of dowry demand. He also admitted of not giving/offering any medical paper with respect to his daughter having become pregnant at some point of time. He had not spoken about the torture to his daughter to anybody, much less any police officer. He had also not asked anyone of his relatives to intercede with the appellant for not torturing his daughter. P.W. 1 was also not in a position to tell the court as to who had told him that the deceased had been put on fire. The father of the appellant and his neighbours told him that his daughter is being treated at Patna. He had not taken the name of the father of the appellant as he had no complaints against him. He has also clarified in his cross-examination that in the night of 08.09.2014, when he along with 8-10 others had visited the home



of the appellant, the father of the appellant did not raise any objection in opening the door of the house and letting them in to inspect the house. The deceased was admitted in the hospital at the instance of the family of the appellant and was being treated at their instance. The treatment began on 08.09.2014 and till about 11.09.2014, the expenses incurred on the treatment was borne by the appellant. Thereafter the informant spent money from the 12.09.2014 till 14.09.2014, when the deceased finally succumbed to the burn injuries. P.W. 1 did not remember the name of anybody who told him that the deceased was set on fire by pouring petrol on her. He had visited the hospital with around 8-10 persons of his village. A suggestion was given to him that all the villagers had told him that the deceased caught fire while cooking food in the house and the fire was extinguished by the villagers. He was also suggested that at the time when



the deceased caught fire, there was nobody present in the house and the appellant had gone to Paliganj. All the aforesaid suggestions were denied by P.W. 1.

14. What appears to be evident from the deposition of P.W. 1 that the deceased was brought to hospital at the instance of the appellant. For half of the period that the deceased was alive, the expenses of the treatment were borne by the appellant himself. Only later, the aforesaid witness paid for the expenses incurred on treatment. If there was any intention on the part of the appellant to have killed the deceased, he would not have taken the care of bringing her to the hospital and affording treatment to her. The other thing which becomes very evident is that no effort was made by the family members of the appellant to keep the informant and his associates out of the house. Again, if there was any suspicion about any incriminating substance in the house to be present, the family



members of the appellant would not have allowed easy entry of P.W. 1 in the house.

15. These two facts which emerges from the deposition of P.W. 1, if seen in the context of the deposition of other prosecution witnesses, would very clearly indicate that the deceased was not put on fire in any spite or anger for not having provided her in-laws and her husband with the additional money which was being demanded. As noted earlier, P.Ws. 2, 4, 5, 6 and 7 have categorically stated that they went to the house of the deceased on seeing smoke coming out. The deceased told them that she caught fire while cooking and that in the absence of her in-laws, she be taken to hospital. The deceased was taken to hospital at Paliganj from where she was referred to Patna.

16. Rightly and justifiably, the trial court, on the aforesaid materials held that there was no evidence to bring home charges under Section 304B of the IPC.



The evidence of P.W. 10 who was summoned under Section 311 Cr.P.C. is also only based on what he was told to him by P.W. 1, his cousin. Though he claims to have gone to the matrimonial home of the deceased along with P.W. 1 and had also visited the hospital but he could not answer to the specific questions put to him. What he categorically admitted was that he had seen the deceased for the first time in the hospital and that he did not know the names of the persons who had told P.W. 1 about the occurrence. He has also admitted the fact that without any objection, P.W. 1 and his associates including P.W. 10 were allowed entry in the matrimonial home of the deceased.

17. For the offence under Section 304B of the IPC to be brought home, what is necessary is to ascertain that the deceased died within seven years of her marriage and soon before her death, she was tortured for dowry. Though the period of one year between the



marriage and the death of the deceased is "soon enough" for the offence to be attracted but in the absence of any other evidence apart from the deposition of P.W. 1 regarding the demand of dowry, it would be very difficult for any court to rely upon the sole testimony of P.W. 1 regarding demand of money and consequent torture. Even the evidence of P.W. 1 is lacking in many respects in as much as he has stated before the court that he did not ever make any complaint in any quarter regarding the torture of the deceased. The deceased also never told him or wrote to him that she was subjected to any ill-treatment. In that view of the matter, this Court is also of the view that no offence under Section 304B of the IPC could be said to have been made out against the appellant.

18. Now the question which remains to be answered is that if the appellant has been acquitted under Section 304B of the IPC for paucity of evidence,



would there be any justification for convicting him under Section 306 of the IPC on the sole ground that the death had taken place during the period when the deceased was residing in her matrimonial home.

19. Section 306 of the Indian Penal Code reads as follows:

306. Abetment of suicide.- If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

20. For punishing a person for abetment to suicide, it has to be proved beyond reasonable doubts that the person charged has abetted or goaded the deceased into committing suicide. A person is said to abet if he instigate any person to do that thing or engages with one or more other persons in any conspiracy for doing that thing and intentionally aids by any act or omission



to doing of that thing. Similarly, an abettor is a person who abets the offence either in the commission of the same or in the commission of an act which would be an offence, if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor.

21. Thus to prove the charge of abetment, the prosecution is required to prove that the abettor had instigated the commission of suicide. In the present case, there is no evidence with regard to the appellant having committed any act which could be said to have goaded/instigated the deceased into committing suicide. This gets strengthened by the fact that P.Ws. 2, 3, 4, 5, 6, 7 and 8 have not stated anything which could throw light on any such material warranting the conviction under Section 306 of the IPC.

22. A question but remains unanswered is that if the death had taken place while the deceased was



staying in her matrimonial home, it was for the appellant to have explained about the cause of death.

23. Section 106 of the Evidence Act enjoins upon a person to prove a fact which is specially within his knowledge. For the sake of completeness the provision of Section 106 of the Evidence Act is being extracted below:

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.*

24. For the application of Section 106 of the Evidence Act, the prosecution is duty bound to discharge the initial burden of establishing the *prima facie* guilt of the accused beyond all reasonable doubts. As Section 106 is only an exception to 101 of the Evidence Act which deals with *onus probandi*, it is not



attracted unless the initial burden of the prosecution is proved.

25. In the present case, though the appellant has not stated anything in his defence under Section 313 of the Code of Criminal procedure but from the deposition of the witnesses referred to above it becomes apparent that the cause of death was not suicide but the deceased having caught fire while cooking.

26. True it is that the evidence with respect to catching fire while cooking has not been completed; nonetheless convicting the appellant under Section 306 of the IPC i.e. for abetment of committing suicide, by taking aid of Section 106 of Evidence Act would not be justified in the present case. This Court can only lament about not being able to decipher the actual cause of the occurrence. What can definitely be said, but is that the appellant did not abet the commission of



suicide. It was no suicide either. The reason for the death of the deceased thus remains under wraps. That obviously cannot be made the reason for convicting the appellant under Section 306 of the Indian Penal Code.

27. For the reasons aforesaid, the appellant is entitled to the benefit of doubt.

28. This Court has been informed that he has already remained in jail for about 3½ years.

29. Finding the conviction and sentence of the appellant under Section 306 of the IPC in cloud, there is no option to this Court but to set aside the judgment dated 26.08.2017 and order of sentence dated 30.08.2017 passed in Sessions Trial No. 179 of 2016 arising out of Paliganj P.S. Case No. 208 of 2014 and set the appellant at liberty.

30. The appeal succeeds.

31. The appellant is in custody. He is directed to be released forthwith, if not required in any other case.



32. A copy of the judgment be transmitted to the Superintendent of jail for information, compliance and record.

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28/03/2018
Transmission Date	28/03/2018

