

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3072 of 2017

Arising Out of PS.Case No. -109 Year- 2016 Thana -JOGAPATTI District-
WESTCHAMPARAN(BETTIAH)

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1. Amika Ram @ Amerika Ram Son of Late Budhan Ram
2. Upendra Ram Son of Amika Ram @ Amerika Ram
3. Manohar Ram Son of Amika Ram @ Amerika Ram All residents of Village :
Bharatha Patti, P.S. Yogapatti (Nawalpur), District : West Champaran.
.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 3135 of 2017

Arising Out of PS.Case No. -109 Year- 2016 Thana -JOGAPATTI District-
WESTCHAMPARAN(BETTIAH)

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1. Santosh Ram Son of Somari Ram Resident of Village: Bharatha Patti, P.S.
Yogapatti (Nawalpur), District- West Champaran.
.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 3136 of 2017

Arising Out of PS.Case No. -109 Year- 2016 Thana -JOGAPATTI District-
WESTCHAMPARAN(BETTIAH)

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1. Somari Ram Son of late Bhikhari Ram
2. Chhathiya Devi Wife of Somari Ram Both Resident of Village: Bharatha Patti,
P.S. Yogapatti (Nawalpur), District- West Champaran.
.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) Nos.3072+3135+3136 of 2017)

For the Appellant/s : Mr. Sanjeev Kr. Srivastava,
Mr. Satyapal Singh, Advocates.

For the Respondent/s : Mr. Syed Ashfaq Ahmad,
Smt. Abha Singh,
Mr. Zeyaul Hoda, APPs

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 09-02-2018

Criminal Appeal (SJ) No.3072 of 2017 wherein Amika

Ram @ Amerika Ram, Upendra Ram, Manohar Ram are the



appellants, Criminal Appeal (SJ) No.3135 of 2017 wherein, Santosh Ram is the appellant and Criminal Appeal (SJ) No.3136 of 2017 wherein Somari Ram and Chhathiya Devi are the appellants, arise out against the common judgment of conviction dated 19.09.2017, order of sentence dated 23.09.2017 passed by Sessions Judge, West Champaran at Bettiah in Sessions Trial No. 12/2017, whereby and whereunder they all have been convicted for an offence punishable under Section 304B/34 IPC and each one has been directed to undergo RI for 10 years, under Section 201/34, IPC and each one has been directed to undergo RI for 3 years and fined appertaining to Rs. 5000/- in default thereof, to undergo SI for six months with a further direction to run the sentences concurrently, on account thereof, have been heard together and are being decided by a common judgment.

2. Ram Prit Ram (PW 5) filed a written report on 21.04.2016 disclosing therein that his daughter, Ramavati Devi was married with Santosh Ram, son of son of Somari Ram Resident of Village, Bharatha Patti, P.S. Yogapatti (Nawalpur), District- West Champaran in the year 2014. In the night of 18.04.2016, Santosh Ram, Somari Ram, Umesh Ram, Bablu Ram, Chhathiya Devi, Upendra Ram, Manohar Ram, Amrika Ram caused murder of his daughter and thrown the dead body. While he was engaged in watching the crop at Mauja Pirpati and was informed by a villager of his daughter's Sasural regarding mishappening whereupon he has



gone to the place of his daughter. He has not found his daughter over which he inquired from the members of her Sasural who disclosed that after leaving her daughter aged about 1 ½ years, she escaped. Then thereafter, he went in search of his daughter but in vain. However, during course thereof, he met with Bindeshwari Yadav of the same village who disclosed that his daughter has been murdered by the accused persons and then, disposed of the dead body in order to screen themselves. It has further been narrated that the accused persons were insisting for milching she-buffalo which he was unable to provide on account of his being financial constraint and for that, his daughter was regularly tortured, at some occasion she was not provided food and lastly, she has been murdered.

3. After registration of Yogapatti (Nawalpur) PS Case No. 109/2016, investigation commenced and concluded by way of submission of charge-sheet against the appellants at two different occasions facilitating the trial meeting with ultimate result, subject matter of instant appeal.

4. Defence case as is evident from the mode of cross-examination as well as statement recorded under Section 313 CrPC is that of complete denial of the occurrence. However, neither oral nor documentary evidence has been adduced in defence.

5. Learned counsel for the appellant while challenging the judgment of conviction and order of sentence has submitted that the learned lower court had acted contrary to the spirit of law and on



account thereof, the same is fit to be set aside. In order to substantiate the same, it has been submitted that none of the witnesses including informant PW-5 and his son PW-3 had deposed that there was demand of dowry and for that, the deceased was tortured soon before her death. That being so, the major ingredients for constituting offence punishable under Section 304B of the IPC is lacking. The learned lower court had referred the judgment of Hon'ble Apex Court in *AIR 2004 SC 1731 (Kunhiabdulla V/s. State Of Kerala)*, to justify his conclusion that soon before death be used in relative term and it depends upon the facts of each case which, in the present case, is found non applicable as, though, in the written report there happens to be some sort of whisper but during course of evidence they have not substantiated. That being so, the judgment of conviction and sentence is found perverse whereupon, is fit to be set aside.

6. During course of argument when the legal question relating to applicability of Section 302 of the IPC has been raised, learned counsel for the appellants has submitted that though charge was framed in an alternative under Section 302 of the IPC which has been ignored by the learned lower court as held under para-18 of the judgment on the ground that prosecution has succeeded in substantiating the case under Section 304B/34 IPC, 201/34 IPC and on account thereof, the aforesaid finding would tantamount to acquittal under Section 302 of the IPC. Because of the fact that



State has not preferred an appeal against the finding of the learned lower court and so, it has become final which, at the present moment, goes out of consideration. That being so, this appeal is fit to be allowed.

7. On the other hand, learned APP has submitted that from the judgment impugned, it is evident that there happens to be non application of judicial mind and on account thereof, instead of Section 302 IPC, appellants have been convicted for an offence punishable under Section 304B/34 of the IPC which, in the facts and circumstances of the case did not justify and that being so, the judgment impugned is fit to be set aside and the matter be remitted back to the learned lower court to decide afresh in accordance with law.

8. In order to substantiate its case, prosecution had examined altogether 12 witnesses who are PW-1, Tijiya Dev, PW-2, Dr. Sarangdhar Jha, PW-3, Kedar Ram, PW-4, Lalan Yadav, PW-5, Ram Prit Ram, PW-6, Dharmendra Yadav, PW-7, Raj Pati Devi, PW-8, Nagendra Ram, PW-9, Vijay Kumar Sinha, PW-10, Raj Mani, PW-11, Hira Yadav and PW-12, Bindeshwari Yadav. Side by side had also exhibited Postmortem Report, Ext-1, Endorsement on written petition, Ext-2, Forwarding of the written petition, Ext-3, Formal FIR, Ext-4 and Inquest Report, Ext-5. As stated hereinabove, defence had not adduced ocular or documentary evidence.

9. In the case of *Rajbir v. State of Haryana* reported in



(2010) 15 SCC 116, it has been directed by the Hon'ble Apex Court that whenever a charge under Section 304B of the IPC is being framed, a charge under Section 302 of the IPC should also be framed in an alternative and the aforesaid judgment has been subject to scrutiny in subsequent judgments reported in the case of *Jasvinder Saini v. State (Govt. of NCT of Delhi)* reported in *(2013) 7 SCC 256* as well as *in Vijay Pal Singh v. State of Uttarakhand* as reported in *(2014) 15 SCC 163*.

10. From the judgment impugned, it is evident that learned lower court had framed charge under Section 302/34 IPC, 304B/34 of the IPC, 201/34 IPC. From para-6 of the judgment, it is evident that the learned lower court had perceived the ingredients of the Section 304B of the IPC which happens to be as follows:-

A. The death should be within seven years of marriage.

B. The death should be by burn, bodily injury or otherwise than normal circumstance.

C. There should be demand of dowry and for that, deceased would have been tortured soon before her death

D. By her husband or relative of the husband.

11. Now coming to the evidence of witnesses, although the learned lower court had not detailed the description of the postmortem report but explained the same under para-11 of the judgment mentioning the opinion of the doctor (PW 2) who had conducted postmortem over the dead body of Ramavati Devi, cause



of death, by means of strangulation. As per ‘ A TEXTBOOK OF MEDICAL JURISPRUDENCE AND TOXICLOGY, 24TH EDITION’ by Modi, it has been explained that “*Strangulation is defined as the compression of the neck by the force other than hanging. Weight of the body has nothing to do with strangulation.*

Strangulation is a violent form of death, which results from constricting the neck by means of ligature or by any other means without suspending the body”.

And that being so, death of deceased by means of external force is found duly proved.

PW-2 was cross-examined whether the injury could be on a fall in a sugarcane field and the answer was in negative.

12. Though the learned lower court had considered and took notice of the evidence of PW-3 who happens to be brother of the deceased and on that very score, with the aid of principle laid down by the Hon’ble Apex Court as reported in **AIR 1984 SC 1731** concluded that a charge under Section 304B/34 of the IPC along with Section 201/34 IPC is found duly substantiated. When the evidence of PW-3 has been gone through, it is evident therefrom that he had only alleged that Ramavati Devi was his sister who was married with Santosh Ram about a year ago. She died at her Sasural. Her murder was committed for dowry. Her sister was murdered by the accused persons so named, identified the accused. During cross-examination, he has stated that he is not an eyewitness to occurrence.



His sister had not disclosed in his presence with regard to torture having been inflicted upon her for fulfillment of demand of dowry. His father had instituted this case as per disclosure made by the villagers. Later on, he came to know that his sister had gone to sugarcane field where she fell down and died. His sister was coming unwell. None had murdered his sister.

13. So far other evidences are concerned, PW-1, Tijiya Devi had simply deposed that Ramavati died at her Sasural but how, she is unable to say whereupon, she was declared hostile. She had denied the statement allegedly made by her before the police in terms of Section 161 CrPC.

14. PW-4 had stated that Ramavati was married with Santosh about a year ago. She died at her Sasural. During cross-examination, he had stated that wife of Santosh was suffering from illness. She was suffering from epilepsy. She died after falling in the field. There was no demand of dowry nor she was murdered.

15. PW-5 is the informant who had stated that his daughter, Ramavati was married with Santosh about 2 years ago. After marriage, his daughter used to remain at her Sasural where she died. Villagers have disclosed that she had gone to field where she died. He had lodged this case. During cross-examination he had stated that he had not seen the occurrence. Her Sasuralwala had informed whereupon he had gone to the place. His daughter was suffering from illness since before. He had further stated that in due



course of time he came to know that his daughter had gone to meet nature's call in a sugarcane field where she died. There was no demand of dowry. He had participated in the funeral.

16. PW-6 had stated that Santosh was married about 2 years ago. Wife of Santosh was residing at her Sasural where she died. During cross-examination, he had stated that deceased was suffering from ailment as a result of which she died. There was no demand and the same happens to be evidence of PWs-7, 8, 11 and 12.

17. PW-9 is the Investigating Officer. On the alleged date and time of occurrence was O/C of the police station. On the basis of the written report filed by the informant, he had forwarded the same to Yogapatti PS for institution of the case (Exhibited). In para-2, he has stated that he took up investigation as directed by O/C Yogapatti. He had recorded further statement of the informant. Visited the place of occurrence which happens to be Sasural of Ramavati Devi lying at village-Bhartha Patti and detailed the same. He had recorded the statement of other witnesses. Conducted raid for apprehension of the accused. In para-6, he had stated that informant had intimated him that dead body of the deceased has been concealed at village, Dudhiyama whereupon, he had directed ASI and Chowkidar to trace out the same. Thereafter, he took proper instruction from superior police officials and then proceeded along with BDO Saheb and in their presence, the site was located and then



after digging the dead body of a female was taken out which, the informant's son identified to be that of deceased. Accordingly, the inquest report was prepared. It has further been disclosed that body was properly identified. Exhibited inquest report as Ext-5. Sent the dead body for postmortem. Then recorded the second P.O. Took statement of inquest witness as well as other witnesses and then thereafter as he has been transferred, handed over the charge.

18. During cross-examination at para-14, he had stated that he had not found any sign of occurrence during course of inspection of first place of occurrence. He has further admitted that his signature is not present over the inquest report. He has further stated that the dead body was identified but blood was not falling from the dead body. In para-15, he had stated that after digging the dead body was taken out. It happens to be a barren land. In para-17, he had stated that none is an eyewitness to the occurrence.

19. PW-10 is the part Investigating Officer who had simply submitted charge-sheet. During cross-examination whatever been brought up is the statement of the witnesses recorded under Section 161 CrPC but, those witnesses have not been confronted with the aforesaid statement and that being so, happens to be inadmissible in the eye of law.

20. After analyzing the evidence available on the record, it is evident that there happens to be lacking of positive evidence which could be found sufficient to satisfy the ingredients,



i.e., demand of dowry and torture having at the end of the husband or relative of the husband soon before death of the deceased. The time is flexible but there should be a concrete evidence on that very score. PW-3 during course of his cross-examination had completely gutted down the allegation and that being so, the finding of the learned lower court on that very score relating to dowry death is not at all found legally justified.

21. From para-11 of the judgment, it is apparent that though the learned lower court had not given his finding that in the background of getting the offence under Section 304B/34 of the IPC proved, accused are acquitted for an offence punishable under Section 302/34 of the IPC but, the manner whereunder it has been dealt with observing that considering the offence under Section 302 of the IPC will not be just and proper speaks a lot, that means to say, the learned lower court escaped the issue without deciding the same in its true sense.

22. Be that as it may, as the death happens to be at the place of appellant but, considering the nature of the evidence whereunder none of the witnesses has stated that murder was committed inside the house or, deceased died at her house rather the witnesses have stated that deceased died while she had gone to meet nature's call or at the field, that means to say, outside the house without having presence of these appellants and that being so, it will be unsafe to apply obligation at the end of accused/appellant in terms



of Section 106 of the Evidence Act to explain whereupon though finding of the learned lower court happens to be blurred one, needs no intervention.

23. So far finding relating to Section 201/34 of the IPC is concerned, that has been sufficiently proved from the evidence of PW-10 who has not been sacked during course of cross-examination and although there happens to be deficiency in the prosecution evidence relating to activity of the appellant but, according to evidence of PW-2, deceased was done to death by means of strangulation and further as per evidence of PW-10, the dead body of deceased was buried and was taken out after excavation and that being so, even considering that the evidence is found deficient one to attract other appellants but considering the status of appellant, Santosh to be husband, he would not escape therefrom.

24. That being so, Criminal Appeal (SJ) No.3135 of 2017 relating to husband, Santosh Ram to the extent of Section 201/34 of the IPC is found non maintainable and to that extent the same is dismissed confirming the finding recorded by the learned lower court including the sentence therefor, annulling his conviction and sentence relating to Section 304B/34 IPC. Since, he is under custody which he will remain till saturation of the sentence.

25. So far remaining appellants of Criminal Appeal (SJ) No.3072 of 2017, i.e., Amika Ram @ Amerika Ram, Upendra Ram, Manohar Ram, and Criminal Appeal (SJ) No.3136 of 2017



wherein Somari Ram and Chhathiya Devi are the appellants , are concerned, their conviction and sentence so recorded are set aside.

26. Consequent thereupon, Criminal Appeal (SJ) No.3072 of 2017 and Criminal Appeal (SJ) No.3136 of 2017 are allowed.

27. Since Amika Ram @ Amerika Ram, Upendra Ram, Manohar Ram, Somari Ram and Chhathiya Devi are under custody, they are directed to be released forthwith if not wanted in any other case.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	13.02.2018
Transmission Date	13.02.2018

