

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.3562 of 2017

Arising Out of PS.Case No. -9 Year- 2014 Thana -DAUDPUR District- SARAN

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1. Prabhawati Devi, W/o Rabindra Singh,
2. Rita Devi, W/o Pappu Singh,
3. Shibu Singh, S/o Rabindra Singh,
4. Sonu Singh @ Sonu Kumar, S/o Rabindra Singh,
5. Pappu Singh, S/o Rabindra Singh,
6. Rabindra Singh, S/o Baban Singh,
7. Chandan Singh, S/o Rabindra Singh.

All are R/o Village- Banwar Ke Tola, P.S.- Daudpur, District- Saran.

8. Mritunjay Singh, S/o Jhulan Singh, R/o Village- Musehari, P.S.- Khaira, District- Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Udit Narayan Singh, Adv.

For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

C.A.V. ORAL JUDGMENT & ORDER

Date: 21-03-2018

The appellants have been convicted for the offences punishable under Sections 304B/34 of the Indian Penal Code (*in short "the IPC"*) by judgment dated 31.10.2017, passed by the learned 10th Additional Sessions Judge, Saran at Chapra



in Sessions Trial No. 473 of 2014, arising out of Daudpur P.S. Case No. 9 of 2014, and by order dated 08.11.2017, they have been sentenced to undergo rigorous imprisonment for 10 years.

2. The appellants are said to have killed the deceased, viz. Anju Devi who was married to appellant No. 7/Chandan Singh on 01.05.2013 in accordance with the Hindu religious rites. Appellant Nos. 1, 2, 3, 4, 5, 6 and 8 are related to appellant No. 7/Chandan Singh.

3. The First Information Report has been lodged by Umesh Kumar Singh (informant/P.W. 3), who is the father of the deceased. He has alleged in the First Information Report that he got his daughter married to appellant/Chandan Singh on 01.05.2013. After sometime of the marriage, the appellants, including her husband (appellant/Chandan Singh) started torturing her for additional dowry. On one or two occasions, the daughter of the informant was thrown out of her matrimonial home but with his intercession, she was again kept in the matrimonial home by the appellants. About four days prior to lodging of this case, P.W. 3 wanted to talk to his daughter but could not connect with her. He could somehow connect with the number of the mother-in-law of the deceased but the mother-in-law, on some pretext or the other, did not bring his daughter on line. Sensing some foul play, P.W. 3



made a telephonic enquiry with one of the neighbours of the appellants, who disclosed that the dead-body of a lady is lying near the railway tracks for about two days. On this information, he along with his relatives and the person who had given the aforesaid information to him went to the matrimonial home of his daughter and tried to inquire about her. The mother-in-law of the daughter told him that his daughter has run away from the house for the last three days. This raised suspicion in the mind of P.W. 3 and he along with other went near the railway tracks and found a dead-body of a women. It was stated by him that he could identify the dead-body to be of his daughter on the basis of her face, hair and the clothes which she was wearing. It was, therefore, alleged that for non-payment of additional dowry, his daughter was killed and in order to screen the offence, the dead-body was thrown near the railway tracks to give it a colour of accident on the tracks. He has further stated that the appellant No. 8, who is the brother-in-law of one of the brothers of the husband of the deceased, was also responsible for the same. He had threatened his daughter earlier also of killing her.

4. On the basis of the aforesaid written report lodged by P.W. 3, a case *vide* Daudpur P.S. Case No. 9 of 2014, dated 30.01.2014, was instituted for the offences under Sections 498(A), 304(B), 201 and 120(B)/34 of the IPC read



with Section 3/4 of the Dowry Prohibition Act, 1961.

5. The police after investigation submitted charge-sheet, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

6. The Trial Court, after examining seven witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellants as aforesaid.

7. While assailing the judgment and order of conviction and sentence, Mr. Udit Narayan Singh, learned Advocate for the appellants, has submitted that from the evidence on record, the case did not fall within the category of dowry death case and thus, the conviction and sentence under Sections 304(B) of the IPC was totally unwarranted.

8. In support of the aforesaid argument, it was submitted that but for a vague statement in the First Information Report, in a general way, that the deceased was tortured for additional dowry, no material was brought on record even through the mouth of the witnesses for concluding that the deceased was tortured soon before her death for dowry. Apart from the father of the deceased, who is the informant of this case, no other family member of the deceased have been examined at the trial.

9. It was further argued that the identification of the dead-body is absolutely doubtful inasmuch as the



informant, in his written report, has stated that he identified the dead-body of his daughter by her clothes, face and hair but during his deposition before the Court, he claimed to have identified the dead-body by her face. The *post-mortem* report revealed that the dead-body was decomposed and there were *post-mortem* injuries which had separated the scalp from the mid bone and the nostril were damaged. In that view of the matter, the identification by P.W. 3 and two others, who claimed to have identified the dead-body, viz. Deonath Singh (P.W. 1) and Bikarma Singh (P.W. 2), also appears to be doubtful.

10. Additionally, it was argued that the report of the *Viscera* was never brought on record, thus keeping behind the very basis for concluding that the dead-body which was found in a ditch near the railway tracks was that of the deceased.

11. Lastly, it was argued that in the written report, P.W. 3 did not disclose the source of information to him and only in his deposition, he has claimed to have been told about a dead-body of a women lying near the railway tracks by one Santu Singh, who has, without any reason, not been examined at the trial.

12. The deceased was stated to be a mentally sick person, who was being treated for the aforesaid mental illness.



It was also suggested by the appellants that prior to her death, the deceased was residing in the house of P.W. 3, from where she escaped and it is not known as to what had happened to her.

13. An unknown dead-body was wrongly identified to be that of the deceased.

14. In order to test the correctness of the prosecution version or the submissions made on behalf of the appellants, it would be relevant to analyze the evidence offered by P.W. 3 (informant). He has deposed that the deceased was married to appellant/Chandan Singh. The deceased used to tell him that the appellants tortured her for additional dowry. About few days before her death, the deceased had telephonically informed him that appellant No. 8/Mritunjay Singh had come to the matrimonial home of the deceased and was conspiring with other appellants for killing her. He has claimed to have talked to the mother-in-law of the deceased but could not connect with her. On the next day, he himself received a telephonic call from the accused persons that his daughter had run away from the matrimonial home.

15. P.W. 3, in his examination-in-chief, has further stated that one Santu Singh (not examined) had telephoned him that the dead-body of his daughter has been thrown near Sonia bridge. On this information, the P.W. 3 went near the



railway bridge, referred to above, and identified the dead-body to be of his daughter. The police also came there and a *Panchnama* of the dead-body was prepared. The *Panchnama* was signed by him (Ext.-1/A). The dead-body was found on 30.01.2014. The place where the dead-body was found, there only, the written report was given by him to the police officer.

16. In the cross-examination, P.W. 3 has stated for the first time that when his daughter had come back to his home, he found out that her in-laws had not given her anything. In fact, the appellants had told P.W. 3 that he should take back his daughter. The daughter of P.W. 3 remained in his house for about one month, whereafter her father-in-law took her to her matrimonial home. Thereafter, P.W. 3 never got an opportunity to go to the matrimonial home of the deceased nor he did not get any opportunity of talking to her. He has clearly deposed that his daughter did not suffer from any illness and that he had not got her treated with any doctor. He had never met appellant No. 8/Mritunjay Singh. It has further been deposed by P.W. 3 that at the time of marriage, his son-in-law worked in Nokia company at Delhi. It was further informed that his son-in-law never passed B.A. examination but his daughter was a graduate. He did not have any talk with his son-in-law after the marriage. He had given sufficient gift during the time of marriage. The dead-body



which was seen by him did not have the *torso*. It was also stated by P.W. 3 that the face of the dead-body was absolutely battered. There was no blood at the place where the dead-body was lying. The railway tracks were at a distance of about 10 to 12 feet. There was no blood at the railway tracks as well. He has denied the suggestion that the deceased was mentally ill and that she often came back to her parents' home. He has also denied the suggestion that before the death, the deceased had been living with him.

17. From the deposition of the aforesaid witness, what appears is that though, in his examination-in-chief, he has disclosed that his daughter (deceased) told him that the appellants tortured her for non-payment of dowry but in his cross-examination, he has stated that when her father-in-law took her to her matrimonial home, he did not get any opportunity of either visiting the matrimonial home of the deceased or of talking to her ever. The other fact which emerges from the deposition of P.W. 3 is that the face of the dead-body was absolutely battered and only the upper portion of the body was found. With respect to the other family members of the matrimonial home of the deceased, P.W. 3 did not have even rough idea and, in fact, he had never met appellant No. 8/Mritunjay Singh.

18. From the deposition of the aforesaid witness, it



does not get conclusively established that the deceased was being tortured for dowry. Apart from P.W. 3, neither the mother nor the brother of the deceased or for that matter anyone of the family members of the deceased have been brought to the witness box to establish the factum of torture prior to the death of the deceased. The identification of the dead-body also appears to be doubtful. If the dead-body was identified by face, as claimed by P.W. 3, that would have been only acceptable if the face of the dead-body would have been intact. P.W. 3 has himself stated that the face was completely battered.

19. In this connection, it would be relevant to examine the inquest report (Ext.-1/B), which has been signed by P.W. 3. It reads that the dead-body was found near the Sonia bridge, about 10 feet east of the railway tracks. The front portion of the face was absolutely battered. The right breast was also completely damaged. The part of the body below the waist was found missing. The length of the dead-body which was about 2 feet. The eyes were missing from the eye-sockets.

20. The *post-mortem* report, which is Ext.-4, discloses that the dead-body which was sent for *post-mortem* examination had decomposed. Only the upper portion of the dead-body was sent for *post-mortem*. Three parallel abrasions



and contusions were found over the front neck at the level of thyroid. The other injuries were on the right upper neck, forearm and front of upper-chest. There was fracture of right mid arm. Extra vassasation of blood was found under the contusions of the neck and blood clots were found near the right corner of hyoid bone. These injuries were found to be *ante-mortem* in nature. The *post-mortem* injuries were separation of scalp at the level of mid frontal bone, laceration of face and missing of eye balls. The nose was intact but crushed. The mandible and maxilla were fractured. Left lower five ribs, which were exposed, were found to be fractured. The time elapsed since death opined to be 2 to 3 days approximately. The cause of death was stated to be asphyxia due to strangulation. The *ante-mortem* injuries were stated to have been caused by exerting pressure of hard/blunt or soft but tough substance. The *post-mortem* injuries due to the crushing effect of hard blunt substance.

21. Dr. Arvind Kumar Singh (P.W. 7) has conducted the *post-mortem* of the body of the deceased. He has proved the *post-mortem* report (Ext.-4). In his cross-examination, he has stated that the place where the dead-body was found was not within the jurisdiction of Patna, but he had conducted the *post-mortem* on the deceased on receiving a letter from the Chief Judicial Magistrate, Chapra. He has further stated



that the *Viscera* and left clavicle portion were preserved but he did not have any idea whether those were sent for further forensic/chemical examination.

22. From the perusal of the inquest report (Ext.-1/B), the post-mortem report (Ext.-4) and the deposition of P.W. 7, it appears rather difficult to accept that under such condition of the dead-body, it could have been identified correctly even by P.W. 3, who is the father of the deceased.

23. Deonath Singh, who has been examined as P.W. 1 and Bikarma Singh, who has been examined as P.W. 2, though have also claimed to have identified the dead-body to be that of the deceased but their identification also does not inspire confidence. Both of them claimed to have gone along with P.W. 3 to the matrimonial home of the deceased after learning that a dead-body was lying for about two days near the railway tracks. Deonath Singh (P.W. 1) has signed on the inquest report (Ext.-1/B) and has identified his signature. Bikarma Singh (P.W. 2) has, in his deposition, stated that there were cut marks on the face and neck of the deceased. He has also deposed that the deceased used to come to her father's house along with her brother-in-law or father-in-law.

24. Rana Pratap Singh, the Investigating Officer of this case, has been examined as P.W. 6. He has deposed that on 30.01.2014, he was posted as S.H.O. of Daudpur Police



Station and on the same day, he received telephonic information that a dead-body of a women is lying near the Sonia railway bridge. He proceeded there with other police personnel. The informant (P.W. 3) was also present near the dead-body and he gave his written report to him there. He claims to have recorded the further statement of the informant at the spot. However, he has stated that the inquest report was prepared by one Ajay Kumar Paswan. He has identified the handwriting of the aforesaid Ajay Kumar Paswan (Ext.- 1/B). Because of his transfer, he handed over the charge of the investigation to Shambhu Manjhi, the Officer-In-Charge of the police station. He has denied the suggestion that on 30.01.2014, he did not receive any written statement from P.W. 3. The investigation of the case was taken over/handed over to A.S.I. Suresh Singh, who has been examined as P.W. 4. He also, on account of his deputation in Lok Sabha election, had to hand over the investigation to Ram Bhadur Choudhary (P.W. 5). Finding the case true, P.W. 5 submitted charge-sheet against the appellants of this case.

25. From the conspectus of the evidence referred to above, this Court is of the view that the prosecution has not been able to prove the case against the appellants except appellant No. 7/Chandan Singh, beyond all reasonable doubts. The evidence with respect to demand of dowry, consequent



torture and killing of the deceased has not been established beyond reasonable doubts as against the appellants except appellant No. 7/Chandan Singh.

26. With respect to appellant No. 7/Chandan Singh, there is positive evidence that after the marriage, he did not come to the home of P.W. 3 (informant). Whenever the deceased came to her parental home, she was accompanied by either her brother-in-law or her father-in-law. It has also come in evidence during the trial that appellant No. 7/Chandan Singh did not pass his B.A. examination, whereas the deceased was a graduate.

27. These isolated facts, seen in the background of an allegation put forth by P.W. 3 that the deceased complained about demand of dowry and torture, go a long way in establishing that the appellant No. 7/Chandan Singh did not treat the deceased well. That apart, he being the husband of the deceased had the responsibility to explain as to why, when and how the deceased went missing. Even if the identification of the dead-body is not established, the appellant No. 7/Chandan Singh cannot escape the responsibility of explaining as to how the deceased is died or went missing. If this Court accepts the explanation put forth by the defence witnesses that the deceased had run away from her matrimonial home under the spell of mental illness, then also it was the



responsibility of appellant No. 7/Chandan Singh to have either informed P.W. 3 or his family members or to have stated before the Court as to how and when the deceased left her matrimonial home. His silence over the issue re-confirms that he is responsible for the death of the deceased.

28. Section 106 of the Indian Evidence Act, 1872 reads as hereunder :

“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. If any offence like this, the appellant No. 7/Chandan Singh would be under an obligation to give a cogent explanation as to how the crime was committed. He cannot get away by simply remaining quiet and offering no explanation.

30. This Court is not going through the depositions of defence witnesses as the same is not required to be gone through in the present case.

31. For the aforesaid reasons, the conviction and sentence of appellant Nos. 1, 2, 3, 4, 5, 6 and 8, viz. Prabhawati Devi, Rita Devi, Shibu Singh, Sonu Singh @ Sonu Kumar, Pappu Singh, Rabindra Singh and Mritunjay Singh are set-aside. The appeal with respect to them is allowed.

32. Since the aforesaid appellants are in custody,



they are directed to be released forthwith, if no wanted in any other case.

33. The conviction of appellant No. 7/Chandan Singh for the offence under Section 304(B) of the IPC is affirmed and upheld. However, regard being had to the nature of accusation against appellant No. 7/Chandan Singh and his conviction being upheld with the aid of Section 106 of the Indian Evidence Act, 1872, this Court is of the view that the sentence imposed upon him be modified to rigorous imprisonment for a period of 7 years instead of 10 years.

34. Thus, the appeal with respect to appellant No. 7/Chandan Singh is also partially allowed inasmuch as the conviction under Section 304(B) of the IPC is sustained, but the sentence imposed is modified to the period indicated above, *i.e.*, rigorous imprisonment for 7 years.

35. Let a copy of the judgment be transmitted to the Superintendent of concerned jail as well as the Court concerned for necessary compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	14.03.2018
Uploading Date	21.03.2018
Transmission Date	21.03.2018

