

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.502 of 2015

Arising Out of PS.Case No. -121 Year- 1997 Thana -BANIAPUR District- SARAN

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1. Ashok Kumar Pandey.

2. Sunil Kumar Pandey, Both are sons of Late Bharat Pandey, resident of Village-
Chorauwa, Police Station- Baniapur, District- Chapra, Saran.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Mukesh Kumar Singh, Adv

For the Respondent/s : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 30-04-2018

Appellants, Ashok Kumar Pandey and Sunil Kumar Pandey have been found guilty for an offence punishable under Section 304B IPC and sentenced to undergo RI for 7 year, under Section 201 IPC and sentenced to undergo RI for 3 years with a further direction to run the sentences concurrently, vide judgment of conviction dated 04.08.2015 and order of sentence dated 06.08.2015 passed by Additional Sessions Judge-VI, Saran at Chapra in Sessions Trial No. 831//2003.

2. For an occurrence allegedly committed in the night of 23.01.1997, Complaint Petition No. 03/1997 was filed by PW-1, Bindhayachal Tiwari, father of deceased, Asha Devi. On 14.02.1997 bearing Complaint Petition No. 03/1997 which was sent to the local police for registration and investigation of the case



whereupon Baniyapur PS Case No. 121/1997 was registered followed with an investigation. It is further evident that during course of investigation, these two appellants, namely, Ashok Kumar Pandey and Sunil Kumar Pandey have been apprehended whereupon, charge-sheet were submitted against them keeping the investigation pending against other accused.

3. As per prosecution story so detailed under complaint/written report which has been instituted against 10 accused persons including these appellants, containing an allegation that his daughter, Asha Devi was married with Anil Kumar Pandey in the year 1999 and at the time of Bidai, dowry was given according to his means. However, during course of stay at her Sasural by Asha Devi, she was subjected to torture for procurement of dowry. Times without number, she was ousted from her Sasural and for that, Panchayati was convened. Then it has been asserted that on 10.01.1997, she was brutally assaulted and then ousted with a warning that if she comes along with a motorcycle as well as Rs. 25,000/-, then only, she will be welcomed otherwise, she will not be allowed to stay, whereupon, Asha came to her place and for that, on 15.01.1997, there was a Panchayati whereunder accused persons were scolded by the Panches. Lastly, it was resolved that the accused persons will effect Bidai and then, will keep Asha Devi with full dignity and honour. In the



aforesaid background, on 18.01.1997, Bidai was effected and Asha Devi came to her Sasural. On 12.02.1997, when he had gone to the place of Asha, he had not found her whereupon, he inquired. None of the accused persons answered. Then he repeatedly asked for, whereupon accused, Bharat Pandey disclosed that Asha had gone to the place of some relative. He was not at all satisfied and so, again inquired with whom she had gone and where, over which, Bharat Pandey became enraged and said that as to why you are insisting. Then thereafter, he had gone to the village to inquire and during course thereof, came to know that in the night of 23.01.1997, the accused persons brutally assaulted Asha with Lathi and then, took her away over a Jeep bearing No. DL2C/4288 in an injured condition. Accused persons returned back but without Asha. So, he apprehended that his daughter has been murdered, on account of non fulfillment of demand of dowry.

4. Defence case, as is evident from the mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has also been pleaded that she was suffering from some sort of ailment and for that, she was treated by Dr. Rajiv Pandey who had referred the victim to Patna and while she was in a way to Patna along with others, died in the midst of way. Informant was informant who participated in funeral which took place



at Rivalganj Ghat. Participated during Shradh ceremony. Then thereafter, there was dispute amongst the informant as well as Bharat Pandey over ornaments and other items and for that, Bharat Pandey had instituted a case. Then thereafter, this case has been filed. Three DWs along with prescription, Ext-A, Ext-B, death report has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 3 PWs. who are, PW-1 Vindhayachal Tiwary, informant, PW.2- Smt. Swaro Devi and PW-3 Smt. Paramjit Tiwary as well as had also exhibited signature of PW-1 over written report as Ext.1.

6. On the other hand, three DWs have been examined, DW-1, Baban Pandey, DW-2, Arun Sukla, DW-3 Ranjet Pandey and had also exhibited, prescription Ext.A, and death report, Ext. B.

7. PW.1, during his examination-in-chief had stated that he had married his daughter Asha Devi with Anil Kumar Pandey about 3 years ago as per Hindu rites and rituals. His daughter is not alive as, she has been done to death by strangulation by Bharat Pandey, his wife Lalmuni Devi, Anil Kumar Pandey, Sharda Pandey, wife of Sharda Pandey, Shatrudhan Pandit, Ashok Pandey Manoranjan Pandey and wife of Ashok Pandey on account of non-



fulfillment of demand of dowry. They have had demanded motorcycle, cash, ornaments. Suresh Singh and Rajeshwar Singh (not examined) had informed him whereupon, they had gone to the place of Asha Devi where, they came to know that she has been done to death two days before. They have not found dead body. Then he had gone to the police station where Officer-in-charge threatened him. Lastly, he had filed complaint petition. During cross-examination at Para-2, he had stated that accused persons have also instituted a case against them and the same is also running in the same Court. In Para-3, he had admitted that he is being called as Netaji. He had further stated that he had filed this case against ten accused. Then had stated that charge sheet has been submitted against these two accused, while rest have been found innocent. Then had stated that Anil Kumar Pandey happens to be his son-in-law. Then had denied the suggestion that Anil Kumar Pandey happens to be an idiot. Then had stated that all the 10 accused persons were residing in the same house. Then had stated that after marriage, all of them got separated. Then had said that he happens to be leader of Congress Party. He had further stated that there was no demand from him. Demand was made from his daughter which was disclosed by her. Then had denied the suggestion that his daughter was pregnant and was under treatment of Doctor Rajiv Pandey. She died due to ailment which he vehemently denied.



8. PW.2 is the wife of PW.1, mother of Asha Devi, deceased. She had deposed that Asha *Sasuralwala* murdered her on account of non-fulfillment of demand of dowry. She had further deposed that Asha Devi, during course of her visit had disclosed the same. Then she said that she is unable to identify all the members of her *Sasuralwala*. During course of cross-examination, she had stated that her husband had informed regarding the occurrence. She had further denied the suggestion that on account of ailment, she died while was under treatment of Doctor Rajiv Pandey.

9. PW.3 is another daughter of PW.1 and PW.2 as well as Sister of deceased Asha Devi. She had stated that Asha Devi was married with Anil Kumar Pandey. She is now dead. She has been murdered by Ashok Pandey, Anil Kumar Pandey, Bharat Pandey, Sharda Pandey, Prabhu Pandey and Sunil Pandey on account of non-fulfilment of dowry. She came to know regarding occurrence from Rajeshwar Singh (not examined). During cross-examination she was elaborately cross-examined over her presence at her place before her marriage where she stayed for a night.

10. DW.1, DW.2 have been examined on the score of deceased being suffering from an ailment, was under treatment of Doctor Rajiv, who had referred her to Patna and during midst of way, she died. DW.3 has been examined over presence of informant



during course of funeral which took place at Rivalganj Ghat, also participated in Shradha and then thereafter, as the accused persons failed to fulfilled their demand, got this case filed.

11. In order to substantiate a case falling under Section 304B of the IPC, the prosecution is under obligation to prove (a) that death has occurred within 7 years of marriage (b) death should be on account of burnt or bodily injury or otherwise than normal circumstance (c) there was demand of dowry (d) and on that very pretext deceased was subjected to torture soon before her death (e) by her husband or relative of the husband. If all the ingredients are being fulfilled, then in that circumstance, presumption though rebuttable in terms of Section 113B of the Evidence Act would be attracted against the accused shifting the onus which the accused has to discharge.

12. From the evidence, it is apparent that both the appellants are not at all son-in-law of the prosecution party rather son-in-law happens to be Anil Kumar Pandey. From the evidence of PW.1, it is evident that just after marriage they got separated and so, influenced of appellants in day-to-day affair was not at all expected nor was probable on account of being separated. So, their activity should have been disclosed with specific instance as, they were not accountable for the deceased, like husband of the deceased. When the



evidence of all the three witnesses have been gone through, it is apparent that PW.1 had deposed in vagueness while status of PW.2 as well as PW.3 happen to be worse than PW.1 and so, save and except, death having been committed within 7 years of marriage, other ingredients relating to Section 304 B IPC against, these appellants are not at all found duly substantiated. Consequent thereupon, the judgment impugned does not find favour and is accordingly set aside. Appeal is allowed.

13. Since appellants are on bail, they are discharged from the liabilities of bail bonds.

(Aditya Kumar Trivedi, J)

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