

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No. 865 of 2012

Arising Out of PS. Case No.-38 Year-2009 Thana- Raj Nagar District- Madhubani

Bind Kumar Paswan son of Ram Lalit Paswan, resident of Village-
Shahaspur, P.S. - Rajnagar, District- Madhubani.

... .. Appellant

Versus

The State of Bihar

... .. Respondent

Appearance :

For the Appellant : Mr. D.N. Jha, Adv.
Mr. Abhay Kumar, Adv.

For the Respondent : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 29-10-2018

The sole appellant, who has been convicted and sentenced in Sessions Trial No. 381 of 2009, has preferred the present appeal under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C.') against the judgment of his conviction and sentence. The appellant by judgment dated 31-07-2012 was convicted for commission of offence under Section 304 (B) of the Indian Penal Code, 1860 (hereinafter referred to as 'I.P.C.') and by order dated 01-08-2012, the appellant was sentenced under Section 304(B)



of the I.P.C. to undergo rigorous imprisonment for life. The judgment of conviction and sentence was passed by Mr. Shahid Khan, learned Adhoc Additional Sessions Judge - II, Madhubani (hereinafter referred to as 'Trial Judge') in Sessions Trial No. 381 of 2009.

2. Short fact of the case is that on 22-02-2009 at 10:30 AM, Sri K. Choudhary, Sub-Inspector of Police of Raj Nagar Police Station recorded *fardbeyan* of Yogendra Paswan (P.W.17). The *fardbeyan* was recorded at the door of the appellant (Bind Paswan) at village - Sahaspur. In the *fardbeyan*, the informant disclosed that on 21-02-2009, his wife Rampari Devi (not examined) had gone to meet her daughter namely Nirmala Devi (deceased), wife of Bind Kumar Paswan (appellant), which was situated in the village – Sahaspur, Police Station- Raj Nagar, District- Madhubani. In the village, she met her daughter and at about 3:00 PM her समधन (*samdhan*) i.e. mother of husband of her daughter arrived there and after some discussion, in respect of dowry by way of bicycle and money (i) Bind Paswan (appellant), (ii) Ram Lalit Paswan (son of late Moti Paswan), (iii) Ramlagan Paswan (son of Sundar Paswan), (iv) Phulo Devi (wife of Ramlagan Paswan), (v) Anil Kumar



Paswan (son of Ramlagan Paswan), (vi) Sunil Paswan (son of Ramlagan Paswan), all resident of village Sahaspur, P.S. Raj Nagar, District- Madhubani started quarreling. Thereafter, on the same date in the evening i.e. on 21-02-2009, his wife returned back and narrated all those facts to the informant. On 22-02-2009 at about 09:00 in the morning, while he was at his residence, Balram Paswan (P.W.11) resident of village – Sahaspur (Madhubani) telephonically informed him that his daughter Nirmala Devi was done to death by tying rope in her neck. After getting such information, the informant reached to the place of occurrence. The informant disclosed that his daughter was married three years back with the appellant. He saw that dead body was lying on the bed. The informant claimed that all the seven accused persons, due to non-fulfillment of demand of dowry, had killed his daughter by tying rope in her neck. She was done to death in the night of 21-22 February, 2009. The said *fardbeyan* was read over to him and after finding it correct, he put his signature on the *fardbeyan*. As a witness to the *fardbeyan*, Balram Paswan (P.W.11) also put his signature.



3. On the basis of said *fardbeyan*, on 22-02-2009 at 03:00 PM, a formal F.I.R., vide Raj Nagar P.S. Case No. 38 of 2009, was registered under Section 304(B)/34 of the I.P.C. against following seven persons:

1. Bind Paswan (husband of the deceased and appellant)
2. Sajan Devi (mother-in-law of the deceased)
3. Ramlalit Paswan (father-in-law of the deceased)
4. Ramlagan Paswan (son of Sunar Paswan)
5. Phulo Devi (wife of Ramlagan Paswan)
6. Anil Kumar Paswan (son of Ramlagan Paswan)
7. Sunil Kumar Paswan (son of Ramlagan Paswan)

4. After registering F.I.R., the police investigated the case and after finding the case true against the appellant, on 14-05-2009, chargesheet was submitted against him keeping investigation pending against two accused namely Sajan Devi and Ramlalit Paswan. However, other four F.I.R. named accused persons were exonerated, since nothing was found showing their involvement in the case. Thereafter, on 12-06-2009, supplementary chargesheet was submitted against remaining two accused namely Sajan Devi and Ramlalit Paswan and thereafter, on 12-10-2009, the learned Chief Judicial Magistrate, Madhubani took cognizance of the offence. After completion of the formalities, under Section 207 of the Cr.P.C., on 16-12-2009, the case was committed to the court of sessions



and as such, it was numbered as Sessions Trial No. 381 of 2009. In the case, on 05-01-2010, charge under Section 304(B)/34 of the I.P.C. was jointly framed against three chargesheeted accused namely Bind Paswan (appellant), Ramlalit Paswan and Sajan Devi.

5. During the trial, to prove its case on behalf of the prosecution, altogether 18 (eighteen) witnesses were examined. Out of eighteen witnesses, P.W.11 Balram Paswan was the mausa (husband of the mother's sister) of the deceased, who was residing in the same village i.e. village of the appellant, where deceased was residing with her husband. P.W.14 Bihari Paswan was cousin brother of the deceased and P.W.15 Shiv Kumar Paswan was own brother of the deceased. P.W.17 is the informant and father of the deceased, whereas P.W.13 Bhola Paswan was the uncle of the deceased. P.W.12 Kapileshwar Paswan is the formal witness, who stood as witness to the seizure list prepared in respect of seizure of the rope found at the place of occurrence. P.W.18 Dr. Pramod Kumar Sah on the relevant date was posted as Medical Officer, Sadar Hospital, Madhubani and he conducted *post-mortem* examination on the



dead body of the deceased, whereas P.W.16 Nawal Kishor Singh is the investigating officer of the case.

6. After completion of the prosecution evidence, on 03-05-2012, evidences and circumstances brought on record during the trial were explained to the appellant and his statement under Section 313 of the Cr.P.C. was recorded. After the trial, while appellant was held guilty for offence under Section 304 (B) of the I.P.C., other two accused, who were put on trial along with appellant, were acquitted by the learned Trial Judge.

7. Sri Dharendra Nath Jha, learned counsel assisted by Sri Abhay Kumar, learned counsel for the appellant, after placing entire evidence, has argued that the prosecution has not been able to establish its case beyond all reasonable doubt. He has argued that in the case, star witness was informant (father of the deceased), who was examined as P.W.17. While examining the fact disclosed in the *fardbeyan* vis-a-vis his deposition during the trial, it is evident that there is apparent inconsistency, which creates serious doubt on the prosecution case. He submits that in the *fardbeyan*, the informant (P.W.17) had disclosed that one day prior to the occurrence i.e. 21-02-2009, his wife had



gone to meet his deceased daughter, in whose presence, altercation had taken place regarding demand of dowry, however during the trial, the informant, who was examined as P.W.17, deposed, as if, his wife had gone to meet her daughter (deceased) about 15-20 days back. According to learned counsel for the appellant, this creates serious doubt on the prosecution case.

8. Learned counsel for the appellant has further argued that the prosecution case appears to be suspicious due to the reason that though the informant (P.W.17) in his *fardbeyan* as well as in his evidence stated that on 22-02-2009 in the morning at about 09:00 AM, he was telephonically informed by P.W.11 Balram Paswan regarding killing of his daughter in the village, PW.15 Shiv Kumar Paswan (son of informant and brother of the deceased) had deposed that in the night of the occurrence i.e. 21-02-2009 itself, his mausa (husband of the mother's sister) had telephonically informed regarding death of his sister. He further submits that in the *post-mortem* examination P.W.18 Dr. Pramod Kumar Sah had noticed that time since death was within 24 hrs. He submits that in the case, *post-mortem* on the dead body of the deceased was held on 23-02-2009 at 08:15



AM and as such, in view of *post-mortem* report, death had occurred on or after 08:15 AM on 22-02-2009, whereas prosecution has consistently come out with a case that death had occurred in the night. According to learned counsel for the appellant, the discrepancy in the timing of death also creates doubt on the prosecution case. He further submits that had it been a case of dowry death, there was no reason for the appellant and his family members to participate in the cremation of the deceased, whereas P.W.15 in his evidence has stated that cremation was done in presence of all the accused persons. Sri Jha has further argued that in this case, the prosecution has purposely withheld the evidence of the mother of the deceased, whereas right from the beginning, it was case of the prosecution that prior to the occurrence, mother of the deceased had gone to the house of the deceased i.e. house of the appellant, where altercation had taken place and immediately thereafter, in the night, the deceased was done to death. He submits that non-examination of the mother of the deceased also suggests that the death has not occurred in the manner, as has been alleged by the prosecution. Sri Jha has further argued that on the basis of evidence, it appears that the daughter of the informant



(deceased) was issueless and she was running under depression and this was the reason that suggestion was given to the witness that she has committed suicide by way of hanging. He submits that during the *post-mortem* examination, save and except blackening mark on the neck of the deceased, no other injury was found on the person of the deceased. Accordingly, it has been argued that prosecution has not been able to establish its case beyond all reasonable doubt.

9. Sri Jha, learned counsel for the appellant has argued that appellant is in his early age and on the date of conviction and sentence, which was passed in the year 2012, he was only 27 years old. He submits that the appellant is in custody since 23-02-2009 and he has already spent about 10 years in custody. Accordingly, it was submitted that if this Court is not inclined to interfere with the judgment of conviction, then the sentence may be reduced to the period already undergone. He submits that Section 304 (B) of the I.P.C. prescribes minimum sentence of seven years imprisonment and appellant has already served his sentence almost for ten years.

10. Sri Ajay Mishra, learned Addl. Public Prosecutor opposing the appeal has argued that the learned Trial Judge, by



assigning detailed reason and examining entire evidence, has rightly passed the judgment of conviction and sentence. He submits that it is not in dispute that marriage of the deceased with the appellant was solemnized within seven years. He submits that it is consistent case of the prosecution that marriage of the deceased with the appellant was solemnized about three years back. Evidence has also come that for initial two years, गौना (*gauna*) had not taken place and thereafter, since prior to one year of the occurrence, she was residing with her husband in her in-laws house. It has also been argued that daughter of the informant (deceased) died in an unnatural situation and on the neck of the deceased, there was blackening mark. The doctor, who conducted post-mortem examination, had noticed that death of deceased has occurred due to Asphyxia and the doctor had also found ligature mark on the neck of the deceased.

11. Sri Mishra, learned Addl. Public Prosecutor further submits that the prosecution has also been able to establish that prior to death, the deceased was tortured for demand of dowry and right from the marriage, she was regularly tortured for non-fulfillment of demand of dowry. In this case, it is admitted that



the dead body was found on the bed inside the house of the appellant and taking aid of Section 113B of the Indian Evidence Act, 1872, in dowry death, there is no reason to come to a different conclusion than to hold the appellant guilty in view of facts and circumstances, which has come during the trial. He submits that it is true that during the trial, right from P.W.1 to P.W.9 were declared hostile, but at the same time, it is also a truth that those witnesses were resident of village of the appellant and this was the reason that those witnesses, though during investigation had stated that deceased was done to death due to non-fulfillment of demand of dowry, during the trial, they turned hostile. In the case, the informant has very specifically deposed that right from the marriage, which was solemnized three years back, there was demand of dowry, which was not fulfilled and on the date of occurrence, the deceased was residing with her husband in her in-laws house and dead body was found in the premises of the appellant. Considering the fact that witnesses have stated regarding torture due to non-fulfillment of demand and also the fact that dead body was found in the house of the appellant and while police arrived, the appellant and all his family members were absconding, this



suggests that the appellant with his family members had committed the crime and as such, the learned Trial Judge has rightly passed the judgment of conviction and sentence, which requires no interference.

12. Besides hearing learned counsel for the parties, we have also examined entire evidence on record and after going through the same, we are of the considered opinion that the learned Trial Judge has committed no error in passing judgment of conviction and sentence. Before proceeding, it would be necessary to examine the evidence of informant (Yogendra Paswan), who was examined as P.W.17.

13. The informant is the father of the deceased. During his evidence, he has proved his signature on the *fardbeyan*, which was marked as Ext.1. In his evidence, he has almost deposed as to what was stated by him in the *fardbeyan*, however; some discrepancy has occurred in his evidence, particularly on the point that in the *fardbeyan*, he stated that one day prior to the occurrence his wife had gone to the house of the appellant & deceased, where altercation had taken place, however; during the trial, he stated that about 15-20 days back his wife had gone to the house of the appellant and in her



presence, altercation had taken place regarding demand of dowry. It is true that some discrepancy has occurred, but such discrepancy is not enough to thoroughly ignore the evidence of P.W.17. Considering the fact that in the case, charge was framed under Section 304(B) of the I.P.C. and dead body, which was due to unnatural death, was found in the house of the appellant, the marriage of deceased was solemnized three years back from the date of occurrence and as such, all the circumstances point out the case against the appellant. This witness was thoroughly cross-examined, but on going through the same, we do not find any sufficient material to examine his evidence with doubt.

14. P.W.11 Balram Paswan is the resident of the same village, where the deceased was residing with her husband and in-laws. This witness in his evidence has stated that in the village after getting information regarding killing of daughter of the informant, he immediately telephonically informed the informant. The distance of the village of the appellant with the village of the informant was about 15 km and as such, immediately the informant with others arrived at the place of occurrence and in presence of this witness (P.W.11), *fardbeyan* of P.W.17 was recorded. As a witness to the *fardbeyan*, P.W.11



put his signature, which was marked as Ext.1. This witness is also witness to the seizure list, which was prepared regarding seizure of a rope of about 5 feet, which was found in the room, where dead body was found. On the seizure list, he put his signature and his signature was marked as Ext.2. This witness also proved the signature of one another witness namely Kapileshwar Paswan, who has been examined as P.W.12. The signature of Kapileshwar Paswan on the seizure list was marked as Ext.2/A.

15. P.W.12 Kapileshwar Paswan has stated that in the room of Nirmala Devi, a rope was found and seizure list was prepared and he had put his signature, which was already got exhibited.

16. P.W.13 Bhola Paswan is the uncle of the deceased and own brother of the informant. This witness has also deposed that his niece was married with appellant Bind Paswan about 4 years back. He further stated that there was demand of Rs. 20,000/- and also a bicycle. Due to non-fulfillment of such demand, the deceased was regularly being tortured. In his cross-examination in paragraph – 4 he stated that Nirmala (deceased) after marriage on one or two occasion had come to her parents’



house. In the same paragraph, he further stated that father-in-law and husband of Nirmala after विदागीरी (*widagiri*) had taken the deceased to their house. He further stated that Nirmala Devi (deceased) was never seen sad on the point that she was issueless.

17. P.W.14 Bihari Paswan was the cousin brother of the deceased. He too stated that marriage of his cousin sister was solemnized about 4 years back with the appellant. He clarified that she was killed due to non-fulfillment of demand of dowry of Rs. 20,000/- as well as bicycle. He stated that dead body was found in the village Shahaspur and beside the dead body, there was a rope. All the accused persons had fled away after the occurrence. This witness was also cross-examined at length, but nothing could be extracted to create any doubt on his evidence.

18. P.W.15 Shiv Kumar Paswan (own brother of the deceased) in his evidence had deposed that the marriage of his sister Nirmala was solemnized with Bind Paswan (appellant) about three years back. He stated that sister was at her ससुराल (*sasural*) i.e. in-laws' house. He stated that one day prior to the occurrence, his mother Rampari Devi had gone to the in-laws



house of Nirmala (deceased) and she was informed by the deceased regarding demand of Rs. 20,000/- as well as bicycle, which was explained by her mother. In paragraph – 2 of his evidence, he stated that he had seen the mark of rope on the neck of the deceased. He further stated that while he reached the house of Nirmala, all the in-laws were not present there. In paragraph – 7, he stated that cremation of deceased was done in the village of in-laws of deceased, however; श्राद्ध (*shradh*) was done in her parents' house.

19. P.W.18 Dr. Pramod Kumar Sah on 23-02-2009 was posted as Medical Officer at Sadar Hospital, Madhubani and on the same date at 8:15 AM, he conducted *post-mortem* on the dead body of the deceased (Nirmala Devi), whose dead body was identified by constable of Raj Nagar Police Station. In the *post-mortem* examination, he found following ante-mortem injuries:-

“(i) Ligature mark in the upper part of neck which is circle in completely in back. Base of ligature mark was brown in colour parchment surface.

On dissection:

Soft tissue under ligature mark ecoymosed.

- Right chamber of heart full and left chamber empty.
- All viscera organs are congested namely lung, liver, spleen, kidney.
- Stomach contained undigested food materials.
- Intestine contained gases and feacal matters.



- Uterus non-gravid.
- Urinary bladder empty.
- Brain and meninges congested.
- Time since death- within 24 hours.

Opinion – Death was due to Asphyxia caused by hanging.”

He proved the post-mortem report, which was marked as Ext.4. On examination of the evidence of the doctor, it is evident that ligature mark was found on the neck of the deceased and as such, it was not a case of natural death, rather, as per the information given by the doctor, the death had occurred due to Asphyxia. The prosecution has categorically established that beside the dead body, one rope was also found, regarding which, seizure list was prepared. This suggests that she was done to death by tying rope in her neck.

20. The investigating officer Nawal Kishore Singh (P.W.16) on 22-02-2009 was posted as Sub-Inspector of Police and deputed at Raj Nagar Police Station. On the same date, he was entrusted with the investigation of the present case. In his evidence, he stated that he inspected the place of occurrence, which is a room of 10 x 10 ft. in village Shahaspur. The said room was of appellant & deceased. At the same place, where dead body was found, one rope was also there. Accordingly, a seizure list was prepared, which was marked as Ext.2. He



examined number of witnesses including P.W.1 to P.W.9, who have been declared hostile and he stated that all the witnesses during investigation had supported the prosecution case that deceased was done to death due to non-fulfillment of demand of dowry of Rs. 20,000/- as well as bicycle. He proved the *fardbeyan*, which was recorded at the place of occurrence, and it was marked as Ext.1/1. In paragraph – 6 of his cross-examination, the investigating officer has stated that none of the witnesses during their statement had stated that the deceased had committed suicide. Meaning thereby that none of the witnesses have come out with a case that it was case of suicide, rather it was a case of dowry death. This witness too was cross-examined, but nothing could be extracted to examine his evidence with doubt.

21. On examination of entire evidence, we are of the considered opinion that the learned Trial Judge has committed no error in passing the judgment of conviction. The prosecution during the trial has established its case that death of daughter of the informant (P.W.17) had occurred within 7 years from the marriage, which was unnatural, and occurred in the house of the appellant. The prosecution has also established that before the



occurrence, the deceased was regularly being tortured due to non-fulfillment of demand of Rs. 20,000/- (twenty thousand) as well as bicycle and as such, we are of the opinion that there is no reason to interfere with the judgment of conviction. So far as alternative submission of learned counsel for the appellant on the point of sentence is concerned, we are of the opinion that considering the poor background of the appellant as well as his early age (i.e. 27 years on the date of conviction), if we do not consider such prayer, certainly we may not do just and proper justice. The appellant in the present case is in custody for about 9 years & 9 months. Section 304(B) of the I.P.C. prescribes minimum sentence of 7 years imprisonment. In view of peculiar facts of the case, it would be appropriate to approve the judgment of conviction and reduce the sentence of the appellant to the period already undergone, which is much more than the minimum sentence i.e. 7 years.

22. Accordingly, the judgment of conviction dated 31-07-2012 passed in Sessions Trial No. 381 of 2009 (arising out of Raj Nagar P.S. Case No. 38 of 2009) by Mr. Shahid Khan, learned Adhoc Additional Sessions Judge-II, Madhubani is hereby approved and sentence, which has been imposed as



rigorous imprisonment for life, is reduced to the period already undergone by the appellant.

23. Since the appellant is in custody and sentence has already been reduced to the period already undergone, it is directed to release him forthwith, if not wanted in any other case.

24. The appeal stands dismissed against conviction and disposed of by way of modifying the sentence, as indicated hereinabove.

(Rakesh Kumar, J.)

(Arvind Srivastava, J.)

Anay

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	03.11.2018
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