

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.222 of 2016

Arising Out of PS.Case No. -165 Year- 2012 Thana -UDAKISHANGANJ District- MADHEPURA

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1. Pramod Sharma Son of Hardeo Sharma, Resident of Village - Navtol Tola
Arajpur Basa, P.S. - Uda Kishunganj, District - Madhepura.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Bikramdeo Singh, Sr. Adv.
Mr. Pawan Kumar, Adv.

For the Respondent/s : Ms. Abha Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT

Date: 13-03-2018

Heard the learned counsels for the parties.

2. Pramod Sharma/appellant has been convicted under Sections 304B, 201 and 342 of the Indian Penal Code by the judgment dated 08.03.2016 passed by the learned 1st Additional Sessions Judge, Madhepura in S.Tr. No. 144/2013 and by order dated 15.03.2016, he has been sentenced to undergo R.I. for 8 years for the offence under Section 304B of the Indian Penal Code, R.I. for 4 years for the offence under Section 201 of the Indian Penal Code, to pay a fine of Rs. 5,000/- and in default of payment of fine, to further undergo S.I. for one year and R.I. for six months for the offence under Section 342 of the Indian Penal Code; the sentences however having been ordered to run concurrently.



3. The appellant is said to have killed his wife, viz. Phool Kumari, within a short span of time of her marriage with him.

4. The case of the prosecution rests on the written report of the father of the deceased, viz. Ram Charitra Sharma, who has been examined as P.W. 8 at the trial. In his written report, aforesaid Ram Charitra Sharma has stated that his daughter, Phool Kumari, was married about ten months ago with the appellant in accordance with Hindu Religious Rites. After the marriage, the deceased started residing in her matrimonial home. Initially, she was treated well in her matrimonial home but later, she was subjected to mental and physical torture for non-payment of demand made by the appellant and other in-laws. The demand of the in-laws and the appellant could not be met by the informant/P.W. 8 because of his poor financial condition. About two weeks before lodging of the F.I.R., his daughter had come to her parental home and had told him about the torture and assault by the appellant and others in her matrimonial home. On 05.12.2012, the daughter of the informant went back to her matrimonial home. On 07.12.2012 at about 10 O'clock in the day, the appellant informed the wife of P.W. 8 that her daughter is seriously ill and is having intense pain in her stomach. It was also communicated to the wife of P.W. 8 that the deceased was bleeding heavily. On such information, P.W.8, his wife, who has not been



examined and his son, viz. Nathan Sharma (P.W. 6) went to the matrimonial home of his daughter. There he found the dead body of his daughter. On seeing the dead body and on being informed secretly, he learnt that the deceased had been killed and that she did not die a natural death. This was evident from looking at the dead body. It appeared to P.W. 8 that the deceased had been strangled and had also been assaulted in her chest. When the informant and his family members wanted to come out of the house to inform the police, they were confined inside the house by the accused persons and were forced to remain inside the house. Hurriedly, it has been alleged, the dead body was cremated in the late night of 07.12.2012. The aforesaid P.W. 8 could any how inform his home on telephone about the occurrence and also asked for 5 to 10 persons so that he and his family members could be released from the clutches of the accused persons. Any how, it has been stated by the P.W. 8, he, his wife and his son were released on 08.12.2012, i.e. next day of the occurrence. While they were being released, a threatening was doled out to them that in case of any report with the police, he along with his family would suffer dire consequences.

5. On the basis of the aforesaid written report, Udakishunganj P.S. Case No. 165/2012 dated 11.12.2012 was instituted for the offence under Section 304B/34 of the Indian Penal



Code.

6. The police after investigation submitted charge-sheet against the appellant, whereupon cognizance was taken against him and the case was committed to the court of Sessions for trial.

7. The trial court initially framed charge under Section 304B of the Indian Penal Code by order dated 07.06.2013 but later, by order dated 20.01.2015, other charges, viz. Sections 302, 342 and 201 of the Indian Penal Code were also added.

8. The Trial Court, after examining 8 witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellant as aforesaid.

9. Mr. Bikramdeo Singh, learned counsel appearing for the appellant has assailed the judgment and order of conviction by urging that the judgment of guilt arrived at by the trial court is against the weight of overwhelming evidence. He has submitted that there is no material on record for convicting and sentencing the appellant under Sections 304B, 201 and 342 of the Indian Penal Code. Except for P.Ws. 6 and 8, who are the brother and father of the deceased respectively, all other witnesses have deposed that the deceased died because of illness and while being taken to the hospital. One of the witnesses, viz. P.W. 1, who is the co-villager of the appellant has stated that the deceased died because of stomach pain. He (P.W. 1)



has been declared hostile. Neither the Investigating Officer has been examined at the trial nor any post-mortem of the deceased was held, which could have proved the allegations against the appellant.

10. In order to test the contention of the appellant, it would be profitable to refer to the deposition of the brother and father of the deceased who, as has been stated earlier, have been examined as P.Ws. 6 and 8 at the trial respectively.

11. Nathan Sharma, brother of the deceased (P.W.6) has stated before the trial court that the deceased was never assaulted in his presence. The day the deceased was killed, he along with his father and mother had visited her matrimonial home, which is about 2kms away from the local police station. On seeing the dead body, it has been stated by the P.W. 6, the local Mukhiya was informed about the occurrence. The matter was reported to the local police station also. When aforesaid P.W. 6 had gone to inform the police, nobody was present near the dead body. After about two days, 5 to 6 co-villagers of P.W. 6 arrived in the village of the appellant. Thereafter, those co-villagers of P.W. 6 went to the police station. From the police station, the Officer In-charge had come to the home of the appellant. He was shown the injuries on the person of the deceased.

12. In para 12 of the cross-examination, P.W. 6 has stated that about four days prior to her being killed, she had visited the



parental home along with the appellant and everything appeared to be hunky-dory.

13. Learned counsel appearing for the appellant has therefore stated that the deposition of P.W. 6 is in teeth of the narration made by P.W. 8 (father of the deceased) in his written report. That apart, it has been submitted that if the villagers had gone to the police station and the Officer In-charge of the police station had come to the house of the appellant and had seen the dead body, then there was no reason for the dead body not to have been sent for post-mortem examination. It has also been submitted that the basic prosecution version is rendered doubtful, in as much as according to P.W. 6, the deceased was cremated on the day, she was killed, but the case regarding the death of the deceased was lodged on 11.12.2012. This completely demolishes the prosecution case and renders the prosecution version highly doubtful.

14. Ram Charitra Sharma (P.W. 8), the informant as well the father of the deceased has deposed before the trial court that he had married his daughter to the appellant. Four days prior to the death, the deceased had come to her parental home and had told him that she was not being treated well for non-payment of the money, which was demanded by the accused persons, including the appellant. He has admitted in his cross-examination that his wife was



telephonically informed about the deteriorating health of the deceased. On such information, he along with P.W. 6 and his wife had gone to the matrimonial home of the deceased, only to find her dead body. He, though, has repeated the story of he along with his family members having been confined in the house of the appellant but the later part of the deposition makes his statement highly doubtful. He has deposed that when he was confined to a room in the house of the appellant, he saw from a pigeon hole that about 4 to 5 persons were carrying the dead body of the deceased for the purposes of disposing it off. On the next day, he alleges to have informed his villagers through his son's mobile telephone. After that, Basudeo Sharma, Debo Sharma, Lilawati Devi and Mullo Devi had come to the house of the appellant and had got him and his family members released from the clutches of the accused persons, including the appellant. It was thereafter that he gave information to the police station. The aforesaid facts were not stated by the P.W. 8 in his written report. Even though, it was lodged about three days later after his being released from the house of the appellant.

15. Learned counsel for the appellant, in this context, has also stated that neither the aforesaid villagers, who had come to the house of the appellant on the call of P.W. 8, have been examined nor any explanation has been offered. Even the mother of the



deceased, who had visited the house of the appellant, has not been examined at the trial.

16. The whole story becomes doubtful when it is alleged/deposed by P.Ws. 6 and 8 that the deceased was cremated while both of them along with the mother of the deceased were confined in the house of the appellant. If what has been stated by P.Ws. 6 and 8 is correct, the case should have been lodged only on 8th of December, 2012 when they were released from the house of the appellant. The other independent witnesses have not supported the prosecution version. There is no evidence as to the cause of death of the deceased. Even the demand of money and consequent torture, prior to the death of the deceased, has not been established. This is for the reason that P.W. 6 has categorically stated that four days prior to the deceased having been killed, she had come along with her husband (the appellant) to her parental home and everything appeared to P.W. 6 to be all right. If the deceased would have been tortured prior to her death, she would not have been accompanied to her home by the appellant,

17. Thus, there being no evidence against the appellant, this Court is left with no other alternative but to set aside the judgment and order of conviction.

18. Accordingly, the appeal is allowed.



19. The appellant is in custody. He is directed to be released from jail forthwith if not wanted in any other case.

20. A copy of the judgment be sent to the Superintendent of the concerned jail for information, compliance and record.

(Ashutosh Kumar, J.)

Rakhi

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	16.03.2018
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