

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.231 of 2015

Arising Out of PS.Case No. -12 Year- 2013 Thana -ASARGANJ District- MUNGER

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Santosh Sharma Son of Late Sikandar Sharma resident of village- Marwari Tola
Asarganj P.S. Asarganj, District Munger

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Rajesh Kumar, Adv.

Mr. G.C. Jha, Adv.

Mr. G.M. Thakur, Adv.

Mr. Kumar Gautam, Adv.

For the State : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 26-03-2018

Appellant, Santosh Sharma has been found guilty for an offence punishable under Section 304B of the IPC, 4 of the Dowry Prohibition Act and sentenced to undergo R.I. for ten years as well as to pay fine appertaining to Rs.5000/- in default thereof, to undergo R.I. for three months, additionally, under Section 304B of the IPC and R.I. for six months as well as to pay fine appertaining to Rs.2000/- and in default thereof, to undergo R.I. for one month under Section 4 of the Dowry Prohibition Act with a further direction to run the sentences concurrently, with a further direction that the period of custody having been undergone during course of trial will be subject to set off vide judgment of conviction dated 26.03.2015 and order of sentence dated 30.03.2015 passed by Ad-hoc Additional Sessions Judge, VIIIth, Munger in Sessions Trial no.526 of 2013/103 of 2013.

2. Prakash Sharma, PW.3 filed written report on



01.04.2013 disclosing therein that his daughter Rubi Devi aged about 22 years was married with Santosh Sharma, son of Late Sikandar Sharma of village-Asarganj Marbari Tola on 10-05-2009. One year after the marriage, his son-in-law, Santosh Sharma demanded rupees fifty thousand in cash and a motorcycle and for that, he was constantly threatening that in case motorcycle is not provided, he will kill Rubi. Because of the fact that he happens to be poor so, he could not fulfilled the demand of his son-in-law as a result of which today i.e. 01-04-2013 he came to know that his daughter has been murdered by way of hanging whereupon he along with his family members rushed to the place of his daughter and found dead body of his daughter lying over a chowki. None of her sasuralwala was present. So he alleged that his daughter has been murdered by Santosh Sharma, Pankaj, Sagar.

3. On the basis of the aforesaid written report Asarganj P.S. Case No.12 of 2013 was registered followed with investigation as well as submission of charge sheet against appellant Santosh Sharma only whereupon, trial commenced and concluded in a manner, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement of accused/appellant recorded under Section 313 Cr.P.C. is of complete denial of the occurrence. In support thereof also adduced two DWs.

5. In order to substantiate its case prosecution had examined altogether five PWs who are PW.1 Balmiki Sharma, PW.2 Prakash Sharma, PW.3 Rakesh Kumar, PW.4 Dr. Vijay Kumar, PW.5-Somra Munda, Investigating Officer as well as had also



exhibited Ext.1-Signature of informant over written report, Ext.1/1-Endorsement over written report, Ext.2-P.M. Report, Ext.3-Formal FIR, Ext.4-Inquest Report, Ext.4/1-Signature of Balmiki Sharma over inquest report, Ext.4/2-Signature of Prakash Sharma over inquest report.

6. On the other hand, defence had also examined two DWs, DW.1-Girijanand Sharma and DW.2-Ravikant Sharma.

7. While challenging the judgment impugned, it has been submitted by the learned counsel for the appellant that the finding recorded by the learned lower court happens to be contrary to the spirit of law and on account thereof, fit to be set aside. In order to substantiate such plea, it has submitted that only three material witnesses have been examined that means to say, PW.1, PW.2 and PW.3 who have not supported the case of the prosecution over demand of dowry along with torture having inflicted over the deceased on that very pretext. That being so, the evidence having adduced on behalf of prosecution happens to be deficient on that very score as a result of which major limb of Section 304B of the IPC is not at all found substantiated whereupon, the conviction and sentence relating to Section 4 of the Dowry Prohibition Act as well as under Section 304B of the IPC is not at all found duly proved. In likewise manner, it has also been submitted that the learned lower court while convicting the appellant for an offence punishable under Section 304B of the IPC as well as Section 4 of the Dowry Prohibition Act disbelieved and rejected the prosecution version relating to Section 302 of the IPC as well as Section 3 of the Dowry Prohibition Act and the said finding of the learned lower court is not at all found under challenge at the behest of prosecution and so, the court would



not be, more particularly exercising its appellant power would be in a position to record adverse to the interest of the appellant. Consequent thereupon, the judgment impugned is fit to be set aside. Also relied upon (2006) 1 SCC 463, AIR 2010 SC 512, 2018 (1) PLJR 425, Cr. Appeal No.790 of 2017 arising out of SLP (Crl.) No(s).1165/2017.

8. Learned Additional Public Prosecutor while supporting the finding recorded by the learned lower court has submitted that witness may lie but not the circumstances. From the evidence of the doctor PW.4, it is apparent that deceased had died on account of strangulation, within seven years of marriage, and further, there happens to be conclusive evidence that there was demand of dowry at the end of the appellant and for that, she was subjected to torture soon before her death. As such, judgment impugned is fit to be confirmed.

9. Before coming to ocular evidence, it looks prudent to go through the evidence of PW.4, doctor who had conducted postmortem over the dead body of deceased Rubi Devi on 02.04.2013 at about 11:55 AM and found the following ante-mortem injuries:-

- I.** A ligature mark present over upper part of neck directed upward obliquely with gap over occipital region of size $\frac{1}{4}$ " width
- II.** Froth coming out from mouth and nose with neck stressed.
- III.** On dissection of the ligature mark, found dry and glistening with tissues congested found on the neck, the ligature mark.
- IV.** Tracheal mucosa was found congested. Thoracic abdominal cavity, both lungs congested. Heart right full, left empty all so



lid abdominal viscera were congested, stomach contains semi digested food. Death due to asphyxia as a result of above mentioned injury caused by hanging. Time elapsed since death within 24 hours.

10. During cross-examination, nothing relevant has been extracted more particularly whether nature of ante-mortem injury suggest it to be suicidal or homicidal. In the aforesaid background, now the ocular evidences are to be seen.

11. PW.1 is the brother of the deceased who had deposed that Rubi Devi was his sister who was married with Santosh Sharma on 10-05-2009. After marriage, his sister began to reside at her Sasural where, during course of her stay her mother-in-law Asha Devi, husband Santosh Sharma, Debar Pankaj and Sagar were threatening that you will have to procure rupees fifty thousand as well as a motorcycle otherwise, she will be hanged. As, they have not fulfilled on account thereof, they had murdered his sister on 01.04.2013. They got intimation on the same day at about 12-01 PM whereupon he along with his father Prakash Sharma and his cousin brother Rakesh Sharma, villagers Brahamdeo @ Mahesh rushed to the Sasural of his sister where they saw dead body of his sister over Chowki. Her face was covered with Sari. They removed Sari and saw her face. They have seen sign of string over 1/4th part of her neck. Bichiya was in her leg. None of the family members of her Sasuralwala was present. Identified the accused. During cross-examination he had stated at para-3 that they have not made complaint to any authority regarding exacerbate act over the deceased relating to demand. Then there happens to be disclosure with regard to family status of the Sasurwala of deceased and further



disclosed that they were doing job and were transmitting money to their house. In para-5 he had stated that all the brothers have come before 01-04-2013 on the eve of holi. Her sister was issueless. He had shown ignorance with regard to the fact that his sister was insisting to reside with her husband at the place where he was working. Then had denied the suggestion that his sister was insisting upon to go along with her husband. In para-6 he had stated that he reached at the place on motorcycle. In para-7 he had stated that he received information regarding death of his sister on mobile. Information was given by his Fufa Brahamdev Sharma. He had further stated that he is not remembering the mobile number of his Fufa. His Fufa had informed from Asarganj. He informed to his father and not to him. He denied the suggestion that his brother-in-law had informed regarding the occurrence from his house. In para-8 he had stated that he had not seen the occurrence. Then had denied the suggestion that no such type of occurrence had ever taken place. Accused has been wrongly prosecuted on wrong and incorrect allegation.

12. PW.2 is the informant who had deposed that he happens to be informant of Asarganj P.S. Case No.12 of 2013. Deceased happened to be his daughter. She was married with Santosh in the year 2009. After marriage, they were continuing cordial relationship. On 01-04-2013 he rushed to Sasural of his daughter after getting information where dead body of his daughter was lying over a chowki. He came to know that his daughter was insisting upon to go to Delhi along with her husband Santosh Sharma who was saying that after Ramnawmi he will took her away but she committed suicide by hanging herself. He had further stated



that he had placed written report before the police. (exhibited his signature). Identified the accused. During cross-examination at para-3 he had stated that he had not seen the occurrence, who scribe the written report and what was incorporated therein, non had read to him. He had further stated that after marriage, his daughter was enjoying happy marital life along with her husband. There was no demand of dowry nor his daughter was ever tortured on that very pretext. He had further stated that his son-in-law has got no hand in the alleged occurrence. He had further stated at para-5 that his son-in-law had informed regarding the incident. Police had recorded his statement. He had further stated that his son Balmiki had deposed at the instance of others as well as on account of being emotionally charged. In para-6 he had further stated that he had deposed out of free will.

13. PW.3 Rakeh Kumar Sharma, happens to be nephew of PW.2. He had deposed that his uncle informed him regarding the incident of death of Rubi Kumari whereupon they have gone to the place of rubi Kumari where they found her dead. Her dead body was lying. He is unable to say who caused murder or how she died. Police had not recorded his statement. Then thereafter, he was declared hostile and his attention has been drawn towards his previous statement. During cross-examination at para-3 he had stated that Santosh and his sister were spending their conjugal life in cordial atmosphere. Neither there was demand of dowry at their end nor she was ever tortured.

14. PW.5 is the I.O. He accordingly exhibited the formal FIR, endorsement over the written report. He had also exhibited inquest report having in pen of Rakesh Kumar, Officer-in-charge.



After entrustment of investigation, he had recorded further statement of the informant, statement of other witnesses. Inspected the place of occurrence which happens to be house of the accused wherein dead body was found having mark over her neck. Disclosed the boundary of the house of the accused. The aforesaid house was jointly occupied by the accused along with his brother, sent the dead body for postmortem. Procured the postmortem report, arrested the accused and then thereafter, completing the investigation submitted charge sheet.

15. During cross-examination at para-14 he had stated that case was registered against four accused but, charge sheet was submitted against only one. He had not recorded statement of Mahesh Sharma who was scribe of the written report. Then there happens to be contradiction relating to witness Balmiki Sharma. Under para-16 to the effect who had not stated before him that accused was threatening to kill the deceased by hanging. Then had denied the suggestion that his investigation happens to be cryptic.

16. DW.1 happens to be Girijanand Sharma who had stated that on 01-04-2013 while he was at his house. There was rumour that wife of Santosh has committed suicide whereupon, so many persons including the accused got down the deceased. He had further stated that at the time when occurrence took place, Santosh had gone to market. He had further stated that wife of Santosh was insisting upon to stay with Santosh whereupon, she committed suicide. During course of cross-examination he had stated that he had not talked with the family members of the Sasurawala of Santosh. DW.2 Ravi Kant Sharma had claimed to have gone inside the room where deceased was hanging. They got down the dead



body. Naiharwala of deceased came, police also came and took away the dead body for postmortem.

17. It is duty of the prosecution to substantiate its case. So, it was incumbent upon the prosecution to have explained whether deceased committed suicide or it was a case of homicide. The doctor had not opined strangulation rather, hanging which means in ordinary sense suicide. Be that as it may, it will cover the death otherwise than normal circumstance. That being so, death within seven years of marriage is found proved and in likewise manner, otherwise than normal circumstances. The other ingredients relating to Section 304B, that is demand of dowry as well as torture soon before her death by husband or relative of husband on that very pretext are to be seen which from the evidence, save and except PW.1 none substantiated. When the evidence of PW.1 is gone through, it is evident that apart from suffering from vagueness, it is found duly impaled by the evidence of his father PW.2 as well as brother PW.3. If the evidences of witnesses are taken together, it is apparent that prosecution version appears to be hypaethral.

18. Though the appellant has been acquitted for an offence punishable under Section 302 IPC but to test whether finding happens to be in accordance with law and for that when the evidences have been properly scrutinized, it is evident that death of deceased had taken place at her Sasural, due to hanging. From the evidence of PW.5, Investigating Officer, it is apparent that the house where dead body was found, was jointly occupied and further, there happens to be lacking of evidence that appellant alone was along with deceased at the relevant time.



19. Giving anxious consideration to the materials available on the record, it is manifest that the prosecution has failed to substantiate its case. Consequent thereupon, the finding recorded by the learned lower court did not attract concurrence. Hence, set aside. Appeal is allowed. Appellant is on bail hence is discharged from its liability.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/ NAFR	A.F.R.
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