

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.53 of 2009

Arising Out of PS.Case No. -0 Year- null Thana -null District- SASARAM (ROHTAS)

[Against judgment of conviction and order of sentence dated 17.11.2008 and 02.12.2008 respectively passed by the Additional Sessions Judge, FTC No.4, Rohtas at Sasaram, in Sessions Trial No.381 of 2005/ Tr.No.241 of 2007 arising out of Akorhigola P.S. Case No.66 of 2004]

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Nezamuddin Ansari, son of Rahamuddin Snsari, resident of village-Budhuwa, P.S.- Akorhi Gola, District- Rohtas.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Siddharth Harsh, Advocate

For the Respondent/s : Mr. Bal Mukund Pd. Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

CAV JUDGMENT

Date: 01-11-2018

By judgment of conviction and order of sentence dated 17.11.2008 and 02.12.2008 respectively passed by the Additional Sessions Judge, FTC No.4, Rohtas at Sasaram, in Sessions Trial No.381 of 2005/Tr.No.241 of 2007 arising out of Akorhigola P.S. Case No.66 of 2004, the sole Appellant has been convicted for the offences under Section(s) 304-B and 201 Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years under Section 304-B Indian Penal Code and two years with fine of rupees three thousand under Section 201 Indian Penal Code. In case of default of payment of fine, the Appellant has to further undergo



simple imprisonment for three months. Both the sentences were ordered to run concurrently.

2. Prosecution case, as per written report submitted by the informant, father of the deceased, is that Julekha Khatoon (since deceased) was married with Nezamuddin Ansari in the year 1999. His daughter went with her husband after marriage and started residing with him. The husband started making demand of colour TV, which the Informant could not fulfill being the poor man. The Appellant used to assault his daughter for aforesaid demand. A *Panchayati* also took place and dispute was settled on condition that husband of the deceased shall return all the belongings given at the time of marriage along with *Dainmehar* of Rs.15,000/- and also to pay Rs.10,000/- in cash and maintenance amount Rs.3,000/- for the period of 3 months 13 days on 01.06.2001. After completing all these payments the husband will get execute a divorce paper. The daughter of the Informant started residing with her husband, Nezamuddin Ansari. The Appellant again started torturing the daughter of the Informant for which she always made complain. The Informant advised his daughter to live with her husband. The Informant got information that Appellant had taken his daughter to Ludhiana in the month of November, 2003, where he was residing to earn his livelihood. The Informant got information that Nezamuddin Ansari had come to his village on the



occasion of *Eid* festival. The Informant went to the house of the Appellant to meet his daughter where he was informed that his daughter has run away from Ludhiana in the month of November. The Appellant always used to send messages on telephone from Ludhiana to the Informant that his wife is quite well. The Informant proceeded for Ludhiana at the address where the Appellant used to reside in Mohalla Moti Nagar. The Informant did not find his daughter. The Informant learnt that in the month of November, 2003, the Appellant had come to Ludhiana and told local people that he is still bachelor. The Informant became suspicious on account of conduct of the Appellant that he has murdered his daughter for non-fulfillment of demand of dowry and did not inform the actual fact to the Informant after committing murder and has disposed off the dead body of his daughter.

3. The prosecution examined total 11 witnesses in the case. The prosecution has also filed documentary evidence in support of the case which have been marked as Ext.1 to Ext.13 as mentioned, in detail, in the impugned judgment.

4. Abdul Gaffar (PW 1), Ramjan Mian (PW 2), Md. Yasin Ansari (PW 3) have been declared hostile as they have not supported the case of prosecution.

5. Ayodhya Singh (PW 5) and Ganesh Chouhdary (PW 11) are formal witnesses, who have proved the exhibits as



mentioned in the impugned judgment.

6. Ram Jee Singh (PW 12) has given evidence that he does not have any personal knowledge of the case. He had put his signature on the written report dated 03.09.2003 at the instance of Officer-in-Charge.

7. Bhaiya Ram Singh (PW 13) has proved the signature of Officer-in-charge of Agrer on the seizure list marked Ext.12.

8. Samsun Ansari (PW 4) is mother of the deceased. She has stated that Julekha Khatoon was married with this appellant about 5-6 years back. She was murdered by this Appellant and her father-in-law for non fulfillment of demand of dowry in the form of Colour TV and golden chain. She enquired about her daughter from her father-in-law and mother-in-law and they had stated that the accused had taken her daughter outside where he resides to earn his livelihood. The Appellant after one year came to his house, but her daughter did not come with him. She enquired from the accused and he informed that his wife has escaped somewhere while she was in Ludhiana. She went to Ludhiana and enquired from local people, who told that her daughter had never come to Ludhiana with the Appellant. Thereafter, accused was brought to Akorhigola Police Station where he confessed that he has murdered the deceased. Later on, some belongings of her daughter such as Chappal, Payal,



Tabiz, blouse and knife were also recovered and the same were seized by Akorhigola Police Station. Her daughter had earlier instituted a case against the accused, which was compromised. This witness also identified produced articles in the Court and told that all the belongings were of her daughter such as Saari, Chappal, Pajeb etc. This witness also identified photograph of her daughter. Her daughter was residing at her in-laws house and she always used to complain that she was tortured in her in-laws' house. Dead body of daughter of this witness was found near bridge in village Mekar for which information was given to Agrer Police Station.

9. Nejabu Ansari (PW 6) is father of the deceased and the Informant of the case. He has stated that his daughter Julekha was married with Appellant Nezamuddin in the year 1999. She was tortured by the Appellant for demand of TV and other articles. A *Panchayati* took place in which Appellant had assured that he will keep his daughter properly. A case was instituted earlier by his daughter, which was compromised. The daughter started living in her in-laws house after compromise. He learnt that Appellant had taken his daughter to Ludhiana. He got information in 2004 that Appellant had returned from Ludhiana alone. This witness had gone to the house of Appellant and verified the matter from the father of this Appellant, who told that his daughter had fled away somewhere from Ludhiana. Thereafter, this witness went to



Ludhiana in Mohalla Motinagar on the address of the accused where he came to know that the accused was residing at Ludhiana as bachelor and he disclosed before the local people that he is still unmarried. The Appellant had stated that deceased had escaped somewhere. The Appellant was brought to Akorhigola Police Station from Ludhiana. Before the police, he stated that his wife jumped from running train. Thereafter, a case has been instituted by the Informant. Thereafter, some belongings and a dead body was found within the jurisdiction of Agrer Police Station and the dead body was identified with the help of photograph. He has also identified belongings of his daughter, which was found near her dead body. Thereafter, he came to know through the police that her daughter was murdered at Mekar bridge.

10. Imtiyaz Ansari (PW 7) is maternal uncle of the deceased. He has stated that his *Bhagini*, Julekha Khatoon, was married with accused Nezamuddin about seven years ago. The Appellant made demand of TV and used to assault her for non-fulfillment of aforesaid demand. A *Panchayati* also took place. He had also gone to the house of accused persons during life time of Julekha Khatoon. The in-laws did not inform the parents of the deceased after her death. Father of this Appellant had told that Appellant had taken Julekha Khatoon with him at his place of living. The Appellant came on the occasion of *Eid*, but daughter of



the Informant did not come with Appellant. Father of Julekha Khatoon had gone to Ludhiana to enquire about the matter, but he did not find his daughter. The Appellant told that Julekha had escaped somewhere from the train. Thereafter, Appellant was brought to the Police Station. Dead body of Julekha Khatoon was found within jurisdiction of Agrer Police Station along with her belongings such as Clothes, Chapal, etc. and her dead body was identified by the Informant and witnesses.

11. This witness was, however, not cross-examined by the defence as no body appeared on behalf of the Appellant to cross-examine the witness and he was discharged.

12. Dr. Ashwani Kumar Sinha (PW 8) conducted postmortem examination of dead body of deceased at Sadar Hospital, Sasaram. He stated in the postmortem report that he conducted postmortem of dead body of unknown lady aged about 30 years brought from Female Ward of Sadar Hospital, Sasaram and in course of postmortem he found ante mortem injuries on the person of the deceased as mentioned in postmortem report. Cause of death was due to haemorrhage and septicemia caused by ante mortem injuries. Time elapsed since death was 6 to 36 hours. Postmortem report has been marked as Ext.7.

13. Kamal Kishore Upadhaya (PW 9) is the Investigating Officer of the case. He has stated that charge of



investigation of this case was handed over to him on 27.12.2004. In course of investigation, he recorded statement of the Informant, Nejabu Ansari, and other witnesses, namely, Imtiyaz Ansari, Samsun Ansari, Abdul Gaffar and Md. Yasin Ansari. He investigated the place of occurrence situated at village Budua i.e. the house of Accused (Nezamuddin Ansari). Accused was brought before him by the Informant. He got separate information that a dead body of lady with identical description of deceased was found at Agrer Police Station. He proceeded with parents of the deceased. The Officer-in-Charge of Agrer P.S. had already instituted a case in this connection vide Case No.459 of 2003 on 03.09.2003. In that case, final form was also submitted by Agrer Police. The Agrer police also recovered some materials near from the dead body such as Saari, blood smeared knife, Hawaii Chappal, and blood smeared plastic rope. The Agrer police also prepared a seizure list in connection with articles recovered near the dead body. All the articles and photo of deceased and other articles were identified by the Informant as belongings of his daughter. Father of the deceased also produced a photograph during investigation and when photograph was compared with photograph of the dead body, it was found that recovered dead body was of the deceased. He had made entry in this respect in para 43 of the case diary. Both photographs were of the same person, which has been marked as Ext.9.



Thereafter, charge-sheet was submitted against the Appellant.

14. Ashok Kumar Paswan (PW 10) is Chaukidar of Agrer P.S. He has stated that in the morning of 31.08.2003, he got information that a lady, who is in injured condition, was lying under Mokar bridge near Kasiya More. When he reached there, he found that there were marks of sharp cutting injury on the body of the injured. A rope was also found around her neck. Said lady was brought to Sadar Hospital, Sasaram, where none of kith and kin of the lady became available. Said female died after 4-5 days in course of treatment. He informed the matter to the Police Officer of Agrer Police Station. He also put his signature on the *fard-e-beyan*, which has been marked as Ext.10.

In cross-examination, he has stated that he is not eye witness to the occurrence. He has got no personal knowledge of the case. Officer-in-Charge of Agrer Police Station also visited the lady at Hospital. This witness cannot say the identity of the said lady.

15. In this manner, from the aforesaid evidence, it is apparent that there is no eye witness to the occurrence. Dead body was found under Mokar bridge near Kasiya More by Chaukidar (PW 10). There was mark of sharp cut injury over the body of the injured lady. She was brought to Sadar Hospital, Sasaram, where none of the kith and kin of the lady was available. The said lady



died after 4-5 days in course of treatment.

16. The Investigating Officer (PW 9) has stated in his evidence that accused was brought before him by the Informant at the Police Station. He recorded statement of the Informant, Nejabu Ansari, in course of investigation along with other witnesses. He got separate information that a dead body of lady with identical description of deceased was found at Agrer Police Station. He proceeded with parents of the deceased. The Officer-in-Charge Agrer had already instituted a case in this connection vide Case No.459 of 2003 on 03.09.2003 and, in that case, final form was also submitted by Agrer Police. The Agrer police also recovered some materials near from the dead body such as Sari, blood smeared knife, Hawaii Chappal, and blood smeared plastic rope. The Agrer police also prepared a seizure list in connection with articles recovered near the dead body of the deceased. All the articles and photo of deceased and other articles were identified by the Informant as belongings of his daughter. Father of the deceased also produced a photograph during investigation and when photograph was compared with photograph of the dead body, it was found that recovered dead body was of the deceased.

17. Dr. Ashwani Kumar Sinha (PW 8) has conducted postmortem examination of dead body on 03.09.2003. He has stated in his evidence that he conducted postmortem of dead body of



unknown lady aged about 30 years brought from Female Ward of Sadar Hospital, Sasaram, and in course of postmortem he found ante mortem injuries on the person of the deceased. Time elapsed since death was 6 to 36 hours. He has mentioned the age of the deceased as 30 years only on the basis of appearance.

18. In this manner, from the evidence of the witnesses, it appears that on recovery of a dead body of a female under Mokar bridge, same has been identified by the Informant and his other relatives on the basis of articles recovered from near the dead body and photograph of the deceased.

19. Three prosecution witnesses, namely, Samsun Ansari (PW 4), Nejabu Ansari (PW6) and Imtiyaz Ansari (PW 7), who are mother, father and maternal uncle of the deceased, have all stated in their evidence that Appellant told that Julekha Khatoon (since deceased) had run away from Ludhiana. They went to Ludhiana to make enquiry where they were told that she did not come to Ludhiana. The Appellant was residing in Ludhiana alone and had told local people that he is bachelor. All these three witnesses are not the eye witness of the occurrence. They have stated in their evidence that girl was tortured for demand of TV, but no any specific day and date has been mentioned by them in their evidence when the girl was tortured and when she had made any complaint about the torture committed by Appellant.



20. In the First Information Report, there is no mention of specific day and date when torture was committed by the Appellant. The Court below has convicted the Appellant on the ground that Appellant never informed the police about missing of his wife, which was not his natural conduct. The Trial Court has held that due to such conduct of husband presumption would be that he was responsible for her murder. Such strong circumstance against the husband and presumption leads to conclusion that cause of death was due to non fulfillment of demand of dowry.

21. This Court finds that such reasoning given by the Trial Court is not based on any cogent and reliable evidence brought on record by the prosecution. From the evidence of prosecution witnesses, as mentioned above, this Court finds that there is no cogent and reliable evidence on behalf of the prosecution to support the case that deceased was tortured for demand of dowry and due to non fulfillment of aforesaid demand she was done to death.

22. It is fact that in terms of provision of Section 113 B of the Indian Evidence Act, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.



23. In order to seek conviction under Section 304-B Indian Penal Code, against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within seven years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

24. In the instant case, prosecution has not brought on record any such cogent or reliable evidence to substantiate the aforesaid ingredients for the offence under Section(s) 304-B Indian Penal Code. Therefore, merely on the presumption of dowry death under Section 113-B of the Indian Evidence Act, in absence of any cogent or reliable evidence produced by the prosecution, the Appellant cannot be convicted for the aforesaid offence.

25. In view of such, this Court is of the view that impugned judgment of conviction and sentence is not based on reliable and cogent evidence and is not in accordance with law.

26. Therefore, impugned judgment of conviction and order of sentence dated 17.11.2008 and 02.12.2008 respectively



passed by the Additional Sessions Judge, FTC No.4, Rohtas at Sasaram, in Sessions Trial No.381 of 2005/Tr.No.241 of 2007 arising out of Akorhigola P.S. Case No.66 of 2004 is hereby set aside.

27. The Appellant is acquitted of the charges levelled against him. He is discharged from the liabilities of his bail bond.

28. This Criminal Appeal is, accordingly, **allowed.**

(Sanjay Priya, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	02-08-2018
Uploading Date	08-11-2018
Transmission Date	08-11-2018

