

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.1284 of 2016

Arising Out of P.S. Case No. -25 Year- 2005 Thana -JANTA
BAZAR District- SARAN

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1. Dinanath Tiwari, S/o Dharmnath Tiwari

2. Kamla Devi, W/o Dinanath Tiwari

3. Ravi Kant Tiwari, S/o Dinanath Tiwari

4. Hari Bans Tiwari, S/o Dinanath Tiwari

All are residents of Vill.-Kateya, P.S.-Janta Bazar, District-Saran at
Chapra.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ajay Kr. Thakur, Adv.

Ms. Swati Sinha, Adv.

For the State : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date: 08-05-2018

The appellants stand convicted for the offences punishable under Sections 498(A)/34, 304(B)/34 and 201/34 of the Indian Penal Code (*in short the **I.P.C.***) by judgment dated 12.04.2016, passed by the learned 5th Addl. District & Sessions Judge, Saran at Chapra in Sessions Trial No. 100 of 2006 and by order dated 16.04.2016, all the appellants have



been sentenced to undergo rigorous imprisonment for 3 years each for the offences under Sections 498(A)/34 and 201/34 of the I.P.C. and to pay a fine of Rs. 2,000/- for each of the offences and in default of payment of fine to further suffer simple imprisonment for 6 months each. For the offence under Section 304(B)/34 of the I.P.C., the appellant No. 2/Kamla Devi has been sentenced to undergo rigorous imprisonment for 7 years, whereas the other appellants have been directed to suffer imprisonment for 10 years.

2. The appellants are said to have killed Soni Devi, wife of appellant No. 4/Hari Bans Tiwari, for non-fulfilment of dowry demand.

3. The case of the prosecution is based on the First Information Report lodged by the father of the deceased, viz. Vidya Kant Pandey (P.W. 4). He has alleged that he had married his daughter/Soni Devi with the appellant No. 4/Hari Bans Tiwari in the year 2003 in accordance with the Hindu religious rites. Right after the marriage, there was a demand of a motorcycle and a gold chain and non-fulfilment of the same led to the mental and physical torture of his daughter. It has further been alleged by P.W. 4 that on coming to know about the aforesaid ill-treatment by the accused persons, about 6 months ago, his son/Rajan Kumar Pandey (P.W. 5) had gone to the matrimonial home of the deceased, where he



was told by the appellants that the deceased would not be allowed to visit her parental home if the motorcycle and the gold chain are not given. About this, P.W. 4 was informed after he came back from his place of work. Thereafter, he alleges to have gone to the matrimonial home of the deceased again to intercede with them. He made a promise before them that no sooner would he arrange for funds, he shall fulfil the demand. However, such promise of the informant did not make any impact and the deceased was not sent back to her parental home. Later, the informant was told on telephone by the deceased that she is being tortured for non-fulfilment of the demand of motorcycle and chain.

4. On 24.04.2005, at about 9:30 A.M., the informant was intimated that his daughter/Soni Devi had to be operated upon at Ekma. On such information, the informant (P.W. 4) and his son (P.W. 5), instead of going to any hospital at Ekma, visited the matrimonial home of the deceased. There, it has been alleged, one of the accused persons who also put on trial, viz. Ritu Devi (since acquitted) told him that his daughter has been done to death by the accused persons at the instance of her husband/Hari Bans Tiwari (appellant No. 4), who works in Gujarat in a shoe factory. In order to screen the offence with the help of the villagers, the dead-body was cremated in a nearby burning



ground. The informant also went to the burning ground and found the ashes of the dead-body.

5. On the basis of the aforesaid *fardbeyan* statement, Janta Bazar P.S. Case No. 25 of 2005, dated 24.04.2005, was instituted against the appellants for the offences punishable under Sections 304(B), 201 and 120(B)/34 of the I.P.C. and Section 3/4 of the Dowry Prohibition Act, 1961. The police, after investigation submitted charge-sheet, whereafter cognizance was taken and the case was committed to the Court of Sessions for trial. The learned Trial Court, after examining six witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellants as aforesaid.

6. Mr. Ajay Thakur, learned Advocate appearing for the appellants, has submitted that the prosecution has miserably failed to bring home charges under Section 304(B) of the I.P.C. or for that matter under Section 498(A) of the I.P.C. In support of the aforesaid assertion, it has been argued that the evidence with respect to either demand of dowry or killing of the deceased is absolutely discrepant. The case of the prosecution, it has been argued, is that at about six months ago, the son of the informant (P.W. 5) had visited the matrimonial home of the deceased, where he was told about the dowry demand and the consequences which the



family of the informant would suffer if such demand is not fulfilled. Assuming but not admitting that such statement was made six months ago, the case would not fall within the category of dowry death as the deceased cannot be said to have been tortured soon before her death. It has further been submitted that the allegation of the deceased having telephonically and by letters informed the family members about ill-treatment and torture, is also not believable as no evidence has been put forth with respect to the aforesaid communication. Evidence, it has been suggested, has come during the course of the trial that there was no telephone in the matrimonial home of the deceased and no letter, intimating such ill-treatment and torture, was ever brought on record.

7. So far as the allegation under Section 304(B) of the I.P.C. is concerned, the evidence, it has been argued, is completely lacking with respect to killing of the deceased. On the contrary, it has been suggested that evidence reflects that the deceased died of some ailment in her stomach for which she was to be treated and after her death, the family members of the deceased participated in the cremation. But for reasons which are inexplicable, later, the present case was lodged against the appellants. Apart from this, it has vehemently been argued that admittedly the husband of the



deceased, viz. Hari Bansh Tiwari (appellant No. 4) was not present at the time of the occurrence and was away to Gujarat to earn his livelihood. Under such circumstances, it has been argued that the conviction and sentence of the appellants is unwarranted and is not sustainable in the eyes of law.

8. It appears from the records that P.Ws. 1 and 3, who are the seizure-list witnesses, have not supported the prosecution version and have been declared hostile.

9. Shobha Kant Pandey, who is the uncle of the deceased and the brother of the informant, has been examined as P.W. 2. In his deposition, he has repeated the story narrated by the informant (P.W. 4) in the First Information Report and has stated that the deceased was killed because of non-fulfilment of dowry of demand. He has reiterated the stand of the prosecution that the appellant No. 1/Dina Nath Tiwari had sent a message through a person that the deceased had to be operated for gallbladder. However, on such information, he along with the father and brother of the deceased did not visit any hospital at Ekma, but went to the matrimonial home of the deceased. There, he found that the police had already arrived and the appellants had run away from the house. Only appellant No. 2/Kamla Devi and the accused/Ritu Devi were present, who were arrested by



the police. Accused/Ritu Devi, it has been deposed by P.W. 2, told the witnesses that all the accused persons had killed the deceased and had cremated her in an orchard, which is also used as a burning ground. However, the aforesaid witness, in his cross-examination, has stated that at the time of marriage, there was no dispute with regard to demand of dowry. After the marriage also, the deceased never came to her parental home. This was sought to be explained by P.W. 2 that because of the resistance of the accused persons including the appellants in sending the deceased to her parental home for non-fulfilment of dowry demand. The aforesaid witness, though claims to be in possession of letters written by the deceased regarding her ill-treatment, but the same were never brought on record. He has specifically stated that the deceased did not suffer from any stomach ailment and only because they knew that wrong information was given by the accused persons, they did not go to Ekma where operation had to performed, but he, along with others had visited the matrimonial home of the deceased. However, the aforesaid witness has admitted that both, the husband and the brother-in-law of the deceased, worked in Gujarat. He, but, did not inquire whether the husband of the deceased was available in the village on that day. He has denied the suggestion that only because he happens to be the uncle of



the deceased, therefore, he has deposed against the accused persons.

10. Vidya Kant Pandey, who has been examined as P.W. 4, is the informant of this case and the father of deceased. He has supported the prosecution version. However, in paragraph 3 of his examination-in-chief, he has stated that he learnt from the officer-in-charge of the concerned police station and the villagers that his daughter was being treated for stomach ailment. He, along with his son and brother, had gone to the matrimonial home of the deceased where he learnt that the deceased has been killed. He has supported the prosecution version regarding collection of bone pieces and other incriminating materials from the burning ground. He has also stated that there was no telephone facility in the matrimonial home of the deceased and he had never complained before any authority regarding ill-treatment to his daughter. He has also admitted that his *Samdhi*, viz. appellant No. 1/Dina Nath Tiwari, had informed him that his daughter's health condition is bad, but no details were provided to him as to where was she being treated. In fact, he was asked to come to the matrimonial home of the deceased and that is why he, along with others, had visited the matrimonial home and not to any hospital at Ekma. The aforesaid witness has categorically admitted that his son-in-



law, viz. appellant No. 4/Hari Bans Tiwari and his own son worked at Gujarat. On the day of the occurrence, the son-in-law of P.W. 4 was not available in his village home, but was away in Gujarat. However, appellant No. 4/Ravi Kant Tiwari, the younger brother of the husband of the deceased, was present in the village, but had run away from his home. He has denied the suggestion that his daughter was suffering from any stomach ailment which led to her death.

11. Similar statement has been made by Ranjan Kumar Pandey (P.W. 5), who is the brother of the deceased. He has testified to the fact that when he had visited the matrimonial home of the deceased about 6 months ago, he was made known that in case the motorcycle and the gold chain are not given to the accused persons it shall not portend well for the deceased or her family members. However, such information was not given to any authority.

12. The Investigating Officer of this case, viz. Krishna Prakash has been examined as P.W. 6, who has only stated that he had investigated the case and had found that there was a burning ground near the house of the appellants. He has also testified to the fact that some incriminating materials were found in the burning ground, which was connected with the burning of the deceased. However, the seized articles, though, were sent for forensic examination,



but the report had not been received by him.

13. On behalf of the defence, D.W. 1/Sri Nath Tiwari has stated that he is the neighbour of the appellants and on 23.04.2005, the deceased had suffered intense colic pain and was taken to the Patna Nursing Home at Ekma of Dr. S. Kumar. He, thereafter, came back from the nursing home, but the family members of the appellants continued to stay in the clinic. No treatment had, however, begun in his presence.

14. Niraj Kumar Upadhyay (D.W. 2) and Ram Babu Gupta (D.W. 3) have proved the ultrasound report of Baba Scan Centre, Bhagwan Bazar and the medical receipts of Shivam Medical Hall, Ekma, thereby testifying about the prior illness of the deceased and that she was subjected to medication. Dr. S. Kumar also has been examined as D.W. 4, who has stated that the deceased had stone in the gallbladder. The aforesaid witness has only proved his prescription (Ext.-C). However, he has not stated about the condition of the patient (deceased), when she was brought to his clinic/nursing home.

15. From the deposition of the witnesses and the material evidence on record, what becomes clear and certain is that right from the beginning of the marriage of the deceased/Soni Devi with the appellant No. 4/Hari Bans



Tiwari, there was a demand of a motorcycle and a gold chain. This fact gets established from the deposition of P.Ws. 2, 4 and 5, who have testified to the fact that because of non-fulfilment of dowry, the deceased was ill-treated mentally and physically. P.W. 5 had personally heard the demand of dowry and the threatening given to him about what would befall to the deceased if such demand is not met. Similarly, P.W. 4 had also gone to the matrimonial home of the deceased to intercede with the accused persons and had also promised that no sooner his financial situation would improve, he would fulfill the demand. However, despite such promises and the efforts at intercession, the deceased was never sent back to her parental home. This fact also stands established and buttressed by the deposition of P.W. 2, who is the uncle of the deceased and has stated that ever since the deceased was married in the house of the appellants, she was not permitted to come to her parental home.

16. Thus, for all practical purposes, the offence under Section 498(A) of the I.P.C., which is torture for non-fulfilment of dowry, is made out against all the appellants. There is nor reason for this Court to disbelieve the witnesses with regard to the demand of dowry. The submissions made on behalf of the appellants that there was no complaint of any kind in the past before any authority, regarding ill-



treatment and torture and non-production of any epistolary message by the deceased to the appellants about such ill-treatment and torture, are not the grounds on which the consistent ocular testimony of the witnesses can be discarded as incorrect or exaggerated. The specific defence of the appellants that the deceased died during the course of treatment could not be proved by them. All that the defence witnesses have stated before the learned Trial Court and proved is that the deceased had stone in the gallbladder; none of the witnesses have made any statement with regard to the condition of the deceased at the time of her treatment. Under what circumstance, the deceased died is not known. Where did the death take place, also remains a mystery. There is no *postmortem* of the deceased for the deceased was stealthily cremated in the night. Even, the investigation in this case does not throw any light over the facts. The Investigating Officer of this case has not stated anything about his having inquired from the neighbourhood.

17. In such circumstances, if the deceased was in the house of the appellants, it was incumbent upon them to explain as to how did she die. There is no explanation whatsoever on behalf of the appellants. The explanation which is sought to be given is her medical condition which led to her death. However, as stated earlier, the defence



witnesses do not throw any light either about the cause of the death of the deceased or the condition under which the death was caused. The fact that the deceased was cremated in the absence of the appellants, especially when the informant (P.W. 4) was sent information that the deceased was undergoing treatment, speaks volumes about the cremation being done under stealth. The only inference, therefore, is that the deceased did not die her natural death or because of any illness or during the treatment for the aforesaid illness.

18. Section 106 of the Indian Evidence Act, 1872

(in short the **Act**) reads as follows:-

106. Burden of proving fact especially within knowledge.— When any fact is especially within the knowledge of any person, the burden of proving that intention is upon him.

If any fact is especially known to an accused, the burden of proving the same is upon him and not doing so justifiably, leads to an adverse inference.

19. Section 113(B) of the Act also provides for a presumption of causing dowry death, in case it is found that soon before her death, the deceased had been subjected by the accused persons to cruelty or harassment for, or in connection with, any demand for dowry.

20. However, for the aforesaid purposes, the



prosecution will have, first, to prove that the death took place within seven years of the marriage of the deceased and that soon before her death, she was subjected to such torture for non-fulfilment of the dowry demand. Then only, such a presumption could be drawn.

21. In the aforesaid case, what has caught the attention of this Court is that on similar set of circumstances, co-accused/Ritu Devi, one of the sister-in-laws of the deceased, has been acquitted for the paucity of any evidence of her participating in torture of the deceased. Similarly, there is no evidence with respect to torture of the deceased against appellant No. 2/Kamla Devi, who is the mother-in-law of the deceased. No separate treatment could therefore be given to her without any plausible reason.

22. So far as appellant No. 4/Hari Bans Tiwari is concerned, admittedly, he was not present in the village on that day when the deceased met her end. P.W. 4, in his First Information Report and in his deposition before the Trial Court has categorically stated that on the day of the occurrence, the husband of the deceased (Hari Bans Tiwari/appellant No. 4) was away in Gujarat. The uncle of the deceased has also testified to the fact that the husband of the deceased worked at Gujarat.

23. In that view of the matter, appellant No.



2/Kamla Devi and appellant No. 4/Hari Bans Tiwari cannot at all be convicted for the offence under Section 304(B)/34 of the I.P.C.

24. Thus, their conviction under Sections 498(A)/34 and 201/34 of the I.P.C. is sustained. However, their conviction under Section 304(B)/34 of the I.P.C. is set-aside. They are acquitted of the aforesaid charge.

25. So far as the other appellants are concerned, viz. appellant No. 1/Dina Nath Tiwari and appellant No. 3/Ravi Kant Tiwari, their conviction under Sections 498(A)/34, 201/34 and 304(B)/34 of the I.P.C. is sustained and upheld.

26. However, considering the circumstances of the case, this Court is of the view that the sentence of the appellants aforementioned for the offence punishable under Section 304(B)/34 of the I.P.C. be reduced to a period of 7 years. The sentence under the other sections of the I.P.C. is sustained.

27. All the appellants, thus, stand convicted and sentenced for the offences punishable under Sections 498(A)/34 and 201/34 of the I.P.C. The appellant No. 2/Kamla Devi and appellant No. 4/Hari Bans Tiwari are acquitted of the charge under Section 304(B)/34 of the I.P.C. Appellant No. 1/Dina Nath Tiwari and appellant No. 3/Ravi



Kant Tiwari are convicted for the offence punishable under Section 304(B)/34 of the I.P.C., but their sentence is reduced to rigorous imprisonment for 7 years.

28. Thus, the appeal is disposed of accordingly.

(Ashutosh Kumar, J)

Praveen-II/-

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