

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.774 of 2017

Arising Out of PS.Case No. -202 Year- 2014 Thana -HILSA District- NALANDA
(BIHARSHARIFF)

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Chandan Kumar, S/o Ramjee Jamadar @ Chhote Jamadar, resident of Village-
Balwaper, P.S.- Chiksaura, District- Nalanda.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Sunil Prasad, Advocate

For the State : Mr. Parmeshwar Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date: 09-02-2018

The appellant Chandan Kumar has been convicted for the offences under Sections 304(B), 201/34 of the Indian Penal Code by judgment dated 21st of January, 2017 passed by the learned 2nd Additional District & Sessions Judge, Hilsa at Nalanda in Sessions Trial No. 151 of 2015, arising out of Hilsa (Chiksaura) P.S. Case No. 202 of 2014 and by order dated 28th of January, 2017, he has been sentenced to undergo rigorous imprisonment for seven years for the offence under Section 304(B) of the Indian Penal Code and rigorous imprisonment for three years and fine of rupees two thousands and in default of payment of fine, to further suffers simple imprisonment for three months for the offence under Sections 201/34 of the Indian Penal Code.

2. The appellant is the husband of the



deceased Rajni Devi.

3. The prosecution case is based on the fardbeyan statement of Sikandar Bind, who is the father of the deceased and has been examined as P.W. 3 at the trial. He has stated in his fardbeyan statement that he had married his daughter Rajni Devi with the appellant about three years ago. On 31.05.2014, his son was telephonically informed by someone from the village/matrimonial home of the deceased that the deceased had been killed. This information was provided to him by his son, on which, he along with other family members went to the matrimonial home of the deceased and found the same locked. Because of the night, he could get no information and, therefore, he along with other family members went to the neighbouring village and stayed at his relative's house. On the next day, he came back to the matrimonial home of the deceased and after frantic search, the dead body was found thrown in the maize field. The dead body was brought to the house of the appellant and thereafter the police was informed. It was, therefore, alleged by P.W. 3 that because of non-payment of money and other articles, the deceased has been done to death. On the basis of the aforesaid fardbeyan statement, a case vide Hilsa (Chiksaura) P.S. Case No. 202 of 2014 dated 01.06.2014 was instituted for the offences under Sections 304(B), 201/34 of



the Indian Penal Code.

4. The police, after investigation submitted charge-sheet under Sections 304(B) and 201/34 of the Indian Penal Code against the appellant and his parents viz. Chhote Bind @ Ramji Jamadar and Bathunia Devi @ Lakhi Devi, on which, cognizance was taken and the case was committed to the Court of Sessions for trial.

5. The Trial Court, after examining six witnesses on behalf of the prosecution and one on behalf of the defence convicted the appellant as aforesaid but acquitted his parents of all the charges.

6. The main plank of argument on behalf of the appellant is that the witnesses at the trial have made discrepant statements with respect to demand of dowry and consequent torture and that the doctor who conducted the postmortem could not ascertain the cause of death of the deceased. Viscera though had been sent for forensic examination but no report was there on record. Thus, it has been argued that in the absence of any cogent evidence with respect to demand of dowry soon before the death of the deceased and the cause of death not having been ascertained, the conviction of the appellant under Section 304(B) and 201/34 of the Indian Penal Code was highly inappropriate and, therefore, not



sustainable in the eyes of law.

7. In order to appreciate the contention of the appellant, it would be necessary first to examine the deposition of the informant/P.W. 3.

8. While supporting the initial prosecution version, P.W. 3 has deposed that after the marriage of the deceased with the appellant, she started living in her matrimonial home. For about three months, the deceased was kept well but later, the appellant and his parents started harassing the deceased for bringing additional dowry. It has been deposed by him that one Pano Bind, who is directly related to him, informed his son that the deceased has been done to death. On such information, he went to the village home of the deceased but it was late in the night. Finding no clue about his daughter and seeing the house of the accused persons locked, he along with his two sons and wife, who had also accompanied him, went to the house of Pano Bind in the neighbouring village. On the next day, when he came back to the village home of the deceased, he was informed by the villagers that the dead body of the deceased was lying in the maize field which was very close to the house of the appellant. The aforesaid witness has claimed to have gone to the maize field and seen the dead body which was thereafter brought by his family members to the house



of the appellant and only thereafter the police was informed. In cross examination, P.W. 3 has reiterated his statement that the deceased was, for some time, happy in her matrimonial home but later she was troubled for not bringing additional dowry. He has also stated that the deceased had gone along with her husband/appellant outside the village home where also she was tortured and assaulted. Later, the deceased was brought back by the appellant and only within fortnight of her having been brought to her matrimonial home, she was killed. When did the deceased arrive from Haryana along with her husband/appellant also was not known to P.W. 3. For the first time, he learnt about the death of his daughter through one Pano Bind, his nephew. What is of relevance in his deposition is that when he went to the matrimonial home of the deceased, he found the door locked. He had met many villagers there who only informed him that the dead body was thrown in the maize field. Thereafter, the dead body was brought to the house of the appellant. Thus, from his deposition, it stands established that the deceased was married within seven years of her death and the death did not appear to be under normal circumstances.

9. Dr. Anjani Kumar (P.W. 5) has conducted the postmortem examination of the deceased and he has deposed that he found four abrasions on different parts on the body of the



deceased. On dissection of abdomen, it was found by P.W. 5 that the stomach was filled with dark coloured blackish fluid with pungent smell. The abdominal insides were sent for viscera examination. In his opinion, the cause of death of the deceased could not be ascertained. However, on being cross examined, he has categorically stated that the injuries (ante-mortem) which was found on the person of the deceased was not possible only with a fall and that the nails and the lips of the deceased which had turned blue indicated that the deceased might have been administered poison. The time of death was assessed to be 36 hours from the date and time of the postmortem examination. The postmortem was conducted at 2:15 P.M. Thus, the evidence of P.W. 5 clearly makes out that the deceased died a homicidal death and the death was around one and half days before lodging of the F.I.R.

10. From the deposition of the aforesaid two witnesses viz. P.Ws. 3 and 5, it stands established that the deceased did not die a natural death but was killed.

11. Now, it requires to be seen whether the witnesses have spoken about the deceased being troubled or harassed soon before her death.

12. The mother of the deceased viz. Kosmi Devi has been examined as P.W. 1. She has also supported the



prosecution version. She has stated that she had accompanied her husband (P.W. 3) to the matrimonial home of the deceased on information that the deceased had been done to death and had found that there was no one present in the house and the house was locked. In her cross examination, she has stated that after six months of the marriage, she had visited her daughter in her matrimonial home when she had complained against her husband and his family members. However, no case was registered on such complaint.

13. Similar statement with respect to the deceased being ill treated prior to her death has been made by Abhay Kumar who is maternal uncle of the deceased and Pintu Kumar who is brother of the deceased and who have been examined as P.W. 2 and 4 respectively. The aforesaid two witnesses have also testified to the fact that the dead body was found in the maize field and they had brought the dead body to the house of the appellant.

14. Rakesh Kumar (P.W. 6) is the Investigating Officer of this case who has supported the prosecution case. He had sent the dead body for postmortem examination and had obtained postmortem report.

15. Thus, from the conspectus of the



evidence on record, it stands established that the deceased was troubled and harassed before her death and her death was under unnatural circumstances. That the death was homicidal is also established from the deposition of the witnesses. The suggestion given to the witnesses that the deceased died because of snake-bite is denied by the witnesses and has not been supported by any other circumstances.

16. In the statement of the appellant recorded under Section 313 Cr. P.C, an absolutely unsustainable version has been given that the deceased died of eating a medicine. What medicine, has not been stated by him in his statement and no proof also has been adduced to support that the deceased died because of consumption of any medicine.

17. The dead body of the deceased was found thrown in the maize field. The appellant being the husband had the information as to what had happened and it was upon him to have explained as to how the deceased died or how her dead body was thrown in an abandoned condition in the maize field. Section 106 of the Evidence Act clearly enjoins that if any fact is specially within the knowledge of any person, the onus probandi is of him to prove that fact.

18. Since the appellant is husband of the



deceased, he cannot get away from the aforesaid responsibility.

19. For there being no other evidence with respect to demand of dowry and consequent torture by the other accused persons, they have been rightly acquitted by the Trial Court.

20. Thus, this Court finds no good reason to interfere with the judgment and order of conviction and sentence.

21. The appeal is therefore dismissed.

(Ashutosh Kumar, J)

Shageer/-

AFR/NAFR	NAFR
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