

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.2461 of 2017

Arising Out of PS.Case No. -12 Year- 2012 Thana -NABINAGAR District- AURANGABAD

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1. Ravindra Yadav, S/o Balkesh Yadav, Resident of Village- Nonia Bigha, P.S.-
Nabinagar, District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2054 of 2017

Arising Out of PS.Case No. -12 Year- 2012 Thana -NABINAGAR District- AURANGABAD

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1. Jitendra Yadav S/o Balkesh Yadav, Resident of Village- Nonia Bigha, P.S.-
Nabinagar, District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 2076 of 2017

Arising Out of PS.Case No. -12 Year- 2012 Thana -NABINAGAR District- AURANGABAD

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1. Balkesh Yadav S/o Late Ganpati Yadav, R/o Village- Nonia Bigha, P.S.-
Nabinagar, District- Aurangabad.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.2461 of 2017)

For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. B. Shankar, Adv.
Mr. M.K. Singh, Adv.
Mr. Jharkhandi Upadhyay, Adv.

For the State : Mr. Binod Bihari Singh, APP

(In CR. APP (SJ) No.2054 of 2017)

For the Appellant/s : Mr. Mr. Krishna Prasad Singh, Sr. Adv.
Mr. B. Shankar, Adv.
Mr. M.K. Singh, Adv.
Mr. Jharkhandi Upadhyay, Adv.

For the State : Mr. Abhay Kumar, APP

(In CR. APP (SJ) No.2076 of 2017)



For the Appellant/s : Mr. Krishna Prasad Singh, Sr. Adv.
Mr. B. Shankar, Adv.
Mr. M.K. Singh, Adv.
Mr. Jharkhandi Upadhyay, Adv.
For the State : Mr. Z. Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT
Date: 11-04-2018

All the appeals have been heard together and a common judgment is being passed.

2. The appellants, viz. Ravindra Yadav, Jitendra Yadav and Balkesh Yadav, have been convicted under Sections 304(B) and 120(B) of the Indian Penal Code by the judgment dated 29.06.2017 passed by the learned Additional Sessions Judge I, Aurangabad in S.Tr. No. 306 of 2012/10 of 2017 and by order dated 30.06.2017, they have been sentenced to undergo S.I. for seven years for the offence under Section 304(B) of the Indian Penal Code. Since, substantive sentence has been imposed upon the appellants under Section 304(B) of the Indian Penal Code, no separate sentence was imposed for the offence under Section 120(B) of the Indian Penal Code.

3. The appellants have been made accused of committing murder of one Renu Devi, wife of appellant Ravindra Yadav for non-fulfillment of demand of dowry within seven years of her marriage.

4. The prosecution case is based upon the fardbeyan of Vinay Kumar, brother of the deceased, who has been examined as



P.W.10 at the trial. He has alleged that on 18.01.2012, one Ashok Yadav (P.W.8) informed him on telephone that his brother-in-law/appellant Ravindra Yadav has met with an accident and that he was found injured in a field whereas his sister was traceless. Later, Ashok Yadav (P.W. 8) again informed him that the dead body of his sister Renu Devi was lying in the field.

5. The sister of the aforesaid witness and the appellant/ Ravindra Yadav had left from his house on 18.01.2012 on a motorcycle for going to the matrimonial home of the deceased. While leaving, the appellant Ravindra Yadav was stated to be in anger. Earlier also, demand of T.V. and other articles were made by the appellant Ravindra Yadav. Non-fulfillment of the aforesaid demand, it was alleged, led to the ill-treatment of the deceased. It was therefore, alleged that as part of conspiracy, the sister of the informant (P.W. 10) was taken from her house and then, later, killed. It has further been alleged that effort was made to give it an adroit appearance of an accident.

6. On the basis of the aforesaid fardbeyan statement, Nabinagar P.S. Case No. 12/2012 dated 19.01.2012 was instituted for investigation for offences under Sections 304(B), 120(B), 201 and 34 of the Indian Penal Code.

7. The police, after investigation, submitted charge-



sheet; whereupon cognizance was taken and the case was committed to the court of sessions for trial.

8. The learned trial court, after examining 15 witnesses on behalf of the prosecution and one on behalf of the defence, convicted and sentenced the appellants as aforesaid.

9. In order to appreciate the case of the appellants, it would first be necessary to determine as to how the deceased died.

10. Dr. Anup Kumar Sinha, the medical officer, who conducted the autopsy of the deceased, has been examined as P.W.

11. He has deposed before the trial court that on 19.01.2012, he along with two other members of the medical board, which was constituted for the purpose, conducted autopsy on the dead body of the deceased. He found ante-mortem ligature mark on the neck which ran horizontally from left to right side of the neck. Blood was also found to be escaping from both the ears and extravasation of blood was also found in the subcutaneous tissues beneath the ligature mark. The larynx and trachea were found to be congested. The ring of the trachea was found to be fractured. In the opinion of P.W.11, the death was caused by strangulation resulting in asphyxia and consequent cardio respiratory failure. The death was assessed to have taken place 20 hours before the post-mortem examination. This was observed on the basis of the rigor mortis which was present in the dead body. No



injury was found in the private parts and therefore, the vaginal swab was neither taken nor sent for any pathologically examination.

11. From the evidence of P.W. 11, it stands established that the deceased died a homicidal death. The injuries suffered by the deceased leading to her death do not appear to have been caused because of an accident. The death is only on account of asphyxia caused by strangulation, which is evident from the horizontal spread of the ligature mark on the neck. The extravasation of blood in the subcutaneous tissues beneath the ligature mark further confirms that there was no other reason for death except strangulation.

12. In this context, it would be relevant to see and appreciate the evidence of P.W. 10/informant, who is the brother of the deceased.

13. Vinay Kumar/P.W. 10 has supported the prosecution version and has stated that the behaviour of the appellants towards the deceased was not good from the beginning. He has reiterated the demand made by the accused persons for T.V., Cooler, Washing Machine etc. He has further affirmed the fact that Ashok Yadav (P.W.8) informed him on telephone that his sister had been killed. On 19.01.2012, he along with others went to Nabinagar Police Station, where he found the dead body of his sister. He has deposed before the trial court that he saw the ligature mark on the neck of the deceased.



At the police station, the Officer In-charge told the aforesaid witness that the appellant/Ravindra Yadav, who is admitted in the clinic of Dr. Sunil Bose, be also visited. On such suggestion, P.W. 10 went to the clinic of Dr. Sunil Bose and found the appellant Ravindra Yadav moving around in the premises. The F.I.R. thereafter was lodged in the clinic of the aforesaid Dr. Sunil Bose. In his examination, no information could be elicited from him which could make the prosecution case doubtful.

14. From the deposition of P.W. 11, it stands established again that the appellant Ravindra Yadav, who is the husband of the deceased, did not suffer any serious injury on his person. He was found by the informant moving around in the premises of the clinic of Dr. Sunil Bose.

15. In this connection, it would be relevant to see the statement made by aforesaid Ravindra Yadav under Section 313 of the Cr.P.C. But for merely stating that he had met with an accident, he has not tried to explain as to how he met with an accident and under what circumstances the deceased died and he only suffered minor injuries. He has also not explained the reason why he and the deceased were found at two different places. The nature of ante-mortem injuries over the dead body did not appear at all to have been caused in any accident. No explanation has been offered by the



appellant/Ravindra Yadav for the ante-mortem injuries found on the body of the deceased.

16. In this connection, it would be relevant to go through the evidence of the uncle, father and the other brother of the deceased, who have been examined as P.W.1, P.W. 2 and P.W. 7 respectively.

17. Sheo Kumar Yadav (P.W. 1), who is the uncle of the deceased, has stated before the trial court that the deceased was married to the appellant/Ravindra Yadav in the year 2009. The appellants were not satisfied with the gift and dowry items, which were given at the time of marriage. He has affirmed the allegation of the persistent demand of Rs. 1 lakh and Washing Machine by the accused persons/appellants. On 18.01.2012, at about 3:30 P.M., the appellant/Ravindra Yadav is said to have taken the deceased from her father's house and proceeded towards his home. Later, he learnt that the dead body of the deceased was found near Nabinagar railway crossing. The information regarding the same was given by one Ashok Yadav (P.W.8) to the informant (P.W.10) and Sushil Yadav (P.W. 7). The aforesaid witness has also claimed to have seen the body of the deceased in Nabinagar Police Station and he could identify the marks of violence on the body. He has further stated that the appellant Ravindra Yadav had been admitted in the clinic of Dr. Sunil Bose for simple injuries.



18. Similar statement has been made by Birbal Yadav (P.W. 2), who is the father of the deceased. He has supported the prosecution version of demand of dowry and ill-treatment of the deceased because of non-fulfillment of the aforesaid demand. He has clearly stated that the deceased was not happy with the behaviour of her husband and had shown some reluctance to go to her matrimonial home.

19. Similarly Sushil Kumar, another brother of the deceased, who has been examined as P.W. 7, has also affirmed the allegation of torture and demand of dowry. From their deposition what comes to the fore is that the appellant/Ravindra Yadav was not treating the deceased well and it was precisely for that ill-treatment and apathetic approach of the appellant Ravindra Yadav that the deceased was reluctant to go to her matrimonial home. She had been prosecuting her studies in a college, which was in a way accepted by the accused persons. Thus, the allegation of demand of dowry and resultant bad behaviour towards the deceased because of non-fulfillment of the same has been attributed to all the accused persons in a general manner. But so far as the appellant/Ravindra Yadav is concerned, it has specifically been stated that his behaviour was far from being cordial with his wife.

20. Ashok Yadav (P.W. 8) has confirmed the fact that on



18.01.2012, one Dharmendra Kumar, one of the brothers of the appellant/Ravindra Yadav, had called him to enquire about Ravindra Yadav and his wife who had not returned home. On such request by Dharmendra Yadav, P.W. 8 along with Anil Yadav and one of the accused persons Kalendra Yadav and others proceeded towards Nabinagar railway crossing and found the motorcycle of Ravindra Yadav lying abandoned. Two to three steps farther, appellant/Ravindra Yadav was seen lying on the ground in an injured condition. He was taken to Nabinagar Hospital on a three wheeler. He has further deposed that the dead body of the deceased was found lying at some distance in a wheat field situated by the side of the road on which the accident had taken place. While the dead body of the deceased was being searched for, local Sarpanch, viz. Yadav Pandey, came who promised to inform the police. However, aforesaid P.W. 8 has not supported the prosecution version of demand of dowry or any physical or mental torture to the deceased. He has also clarified before the trial court that he never informed P.W. 10 about the occurrence; rather P.W. 10 had himself solicited information regarding his sister and brother-in-law on telephone. He has also stated that the appellant Balkesh Yadav, at the relevant time, was at Kalyanpur in district Rohtas where he was employed.

21. The other witnesses offered on behalf of the



prosecution are hearsay and formal witnesses.

22. Manoj Kumar Singh, P.W. 15, who is the Investigating Officer, has proved the *fardebayan*, formal F.I.R. and the inquest report. He had recorded the statement of the witnesses during the course of investigation. He, however, does not claim to have gone to the clinic of Dr. Sunil Bose at Dehri but had sent some other police officer, who informed him that the appellant/Ravindra Yadav was admitted in the clinic of Dr. Sunil Bose. He also did not get the injuries on the person of the appellant/Ravindra Yadav examined by the doctor. In fact, it has been found by P.W. 15 that the doctors, attending the appellant/Ravindra Yadav, had told that he had not received any injury.

23. Thus, so far as the allegation regarding demand of dowry and consequent torture to the deceased, it is only directed against the appellant Ravindra Yadav (Cr. Appeal (SJ) No. 2461/2017) and not against appellant Balkesh Yadav (Cr. Appeal (SJ) No. 2076/2017) and appellant Jitendra Yadav (Cr. Appeal (SJ) No. 2054/2017). To bring home the charges under Section 304(B) of the Indian Penal Code, it is of utmost importance that the death should have been caused of a woman within seven years of marriage and that soon before her death, the deceased should be shown to have been subjected to cruelty or harassment by her husband or other relatives of



the husband in connection with any demand for dowry. The evidence with respect to torture, soon before the death, is complete so far as the appellant Ravindra Yadav is concerned.

24. In this connection, it would be fruitful to again refer to the deposition of the father of the deceased who has been examined as P.W. 2 and who has categorically deposed before the trial court that while the deceased was staying with him, she had expressed that her husband's (appellant Ravindra Yadav) behaviour was not good and therefore, she was reluctant to go to her matrimonial home. Apart from that, there is only a general and omnibus allegation without any specific details about the participation of the other appellants, viz. Jitendra Yadav and Balkesh Yadav in torturing or troubling the deceased before her death. There is no evidence whatsoever that in the conspiracy to kill the deceased, the appellants Balkesh Yadav and Jitendra Yadav had taken any part. In fact, from the deposition of P.W. 8, it is quite clear that the family members of the appellant/Ravindra Yadav did not know as to what had happened to the appellant and his wife, who had proceeded towards his home from the house of P.W. 2.

25. In this context, as has been seen earlier, no explanation having been offered by the appellant/Ravindra Yadav also makes it certain that the death of the deceased was not because of any



accident. The theory of death by accident as propounded by the defence is not acceptable for two reasons; firstly, it has not been brought on record or explained by the defence as to how the accident took place and secondly, it is not explicable as to how the appellant/Ravindra Yadav escaped unhurt whereas the deceased died in the accident while coming to her matrimonial home on the motorcycle which was being driven by the appellant/Ravindra Yadav. The ante-mortem injuries on the body of the deceased clearly establishes that the death was because of strangulation and nothing else. But where was the deceased strangled is not known. What is certain is that the death did not take place in the house of Balkesh Yadav and Jitendra Yadav.

26. Thus, there being no evidence with respect to the appellants/Balkesh Yadav and Jitendra Yadav, who are father-in-law and brother-in-law of the deceased respectively, regarding there having conspired to kill the deceased or having participated in ill-treatment to the deceased, their conviction under Section 304(B) of the Indian Penal Code cannot be sustained.

27. As such, the appeals of the appellants Balkesh Yadav and Jitendra Yadav are allowed.

28. Appellant Balkesh Yadav is on bail. He is discharged from the liability of the bail bonds.



29. Appellant Jitendra Yadav is in jail. He is directed to be released from jail forthwith if not wanted in any other case.

30. So far as the case of Ravindra Yadav is concerned, the evidence conclusively and unerringly points towards his having killed the deceased. As such, his appeal is dismissed.

31. All the appeal are disposed of accordingly.

32. 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	13.04.2018
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