

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.1595 of 2017

Arising Out of PS. Case No.-24 Year-2013 Thana- KATEYA District- Gopalganj

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1. Hari Ram Son of Late Fulena Ram,
 2. Balkesiya Devi, Wife of Hari Ram, Both Residents of Village-Jaipur, Police Station- kateya, District, Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Mohammad Sufyan, Advocate.

For the Respondent/s : Mr. Binod Bihari Singh APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL JUDGMENT

Date : 25-01-2018

The appellants have been convicted under Sections 304B/34 of the Indian Penal Code by judgment dated 21.02.2017 passed by the learned 5th Additional Sessions Judge, Gopalganj in Sessions Trial No. 453 of 2013 and by order dated 22.02.2017, they have been sentenced to undergo rigorous imprisonment for seven years , to pay a fine of Rs. 10,000/- each and in default of payment of fine, to further suffer simple imprisonment for six months.

2. The appellants are the parents-in-law of deceased Suman Devi. The prosecution case rests on the '*Fardbeyan*' statement of Sohili Devi , who has been examined as PW-5. In the F.I.R., she has alleged that she had married her daughter Suman Devi (deceased) in the year 2009 in accordance with the



Hindu religious rites. After the marriage, the deceased was taken to her matrimonial home for sometime. The deceased lived well in her matrimonial home but after 4-6 months only, she was being tortured for additional dowry. It has been alleged by PW-5 that the appellants wanted gold chain from the parents of the deceased. Non- fulfillment of such demand led to mental and physical torture. She has also stated that whenever the deceased came to her parental home she used to talk about such ill-treatment being meted out to her. On 05.03.2013, at about 6 P.M. in the evening, somebody informed the brother-in-law of PW-5 that the deceased is ill and there is no chance of her survival. On such information, she along with villagers went to the matrimonial home of the deceased, only to find her dead body kept on a cot at the door of the house. Neither the appellants nor any member of the family were present. In the room, which was occupied by the deceased, articles were strewn all around and broken pieces of bangles were also found. She, therefore, alleged that because of non-fulfillment of the demand of dowry, the deceased has been killed at the instance of the appellants.

3. Be it noted that the husband of the deceased has not been made accused. From the F.I.R., it appears that the husband



of the deceased worked outside the village and was not present at the time of the occurrence.

4. In order to appreciate the prosecution case, it would first be necessary to ascertain as to what could have been the cause of the death of the deceased.

5. Dr. Shashi Kumar Gupta, who has been examined as PW-7 has conducted the postmortem examination on the deceased. He has deposed that on external examination, he found rigor mortis in all the limbs of the deceased. A ligature mark (1/2" of width) was found at the upper part of the neck all around except to the left of the mandible. On internal dissection, the vital organs were found to be congested. Ecchymosis was found above and below the ligature mark on the neck. Trachea was also found congested with blood and clot and laryngial cartilages was found to be broken. The time of the death, in the opinion of PW-7, was within 24 hours of the postmortem examination. The cause of the death has been stated to be asphyxia due to strangulation.

6. On cross-examination, PW-7 has stated that from the nature of the ligature mark on the person of the deceased, it could not be a case of death by hanging. Very categorically, it has been deposed by PW-7 that if an attempt is made by the



deceased to hang from the ceiling for causing suicide, it would not cause such kind of ligature mark which is found in cases of strangulation. Thus, from the deposition of PW-7, it stands established that the deceased died a homicidal death.

7. Since nobody claims to have seen the occurrence, viz. the act of killing of the deceased, this Court would be required to go through the relevant part of the depositions of other witnesses, on whose testimony the appellants have been convicted.

8. At the trial, the mother of the deceased viz. PW-5 has stated that the villagers of the appellants had informed her brother-in-law that the deceased had died. On such information, she along with her sons and daughter went to the matrimonial home of the deceased. There she found the dead body of the deceased lying on a cot. There was ligature mark on her neck. The articles in the room were found to be scattered all around. The aforesaid witness claims to have informed the police about the occurrence and has also deposed that the appellants demanded gold chain and the deceased was killed because of non-fulfillment of such demand. Though, in her cross-examination, PW-5 has stated that prior to the death of the deceased, neither the deceased nor anybody of her family had



filed any case against the appellants for demanding dowry and torturing the deceased for the same. She has further stated in cross-examination that the appellant No.1 is a labourer. Similar statements have been made by Babita Kumari who is the sister of the deceased (PW-1), Rahul Kumar, brother of the deceased (PW3) and Sonu Kumar another brother of the deceased (PW4). Surprisingly and curiously, all the aforesaid three witnesses, referred to above, have stated that the marriage of the deceased with the son of the appellants had been performed in a cordial atmosphere and when the aforesaid witnesses had visited the matrimonial home of the deceased, they were treated rather well by the family members of the deceased.

9. Mr. Sufiyan, learned Advocate for the appellants has, on the strength of the aforesaid deposition of the witnesses, argued that for application of the mischief of Section 304 B of the I.P.C., it is required to be established that 'soon before her death', the deceased was subjected to torture for non- fulfillment of dowry. Except for the statement in the F.I.R. that regularly, the deceased was being troubled and harassed for making available a gold chain, no other material was collected from the deposition of the relevant witnesses who were examined by the prosecution. In the absence of the proof of torture of the



deceased 'soon before her death', it has been argued, the appellants, could not have been convicted and sentenced for the offence under Section 304 B of the I.P.C.

10. Learned counsel for the State, however, has submitted that though, there is no definite proof for demand of gold chain but the deceased had died within 07 years of her marriage and the dead body was found in the house/hut of the appellants. Learned counsel for the State has further argued that non-explanation of the cause of the death on the part of the appellants made it obvious that the deceased was killed and that also at the instance of the appellants. He has also drawn the attention of this Court to the fact that under provisions of Section 106 of the Indian Evidence Act, 1872, only the appellants could have explained as to how the deceased died; more so when the death had taken place inside the house of the appellants. It has further been argued that, admittedly, nobody else was staying in the house except the appellants and the deceased and, in such view of the matter, there could be no other conclusion but the guilt of the appellants.

11. Learned counsel for the appellants, while assailing the judgment and order of conviction, has also drawn the attention of this Court to the fact that Suresh Ram (PW2), who is distantly



related to the deceased has deposed before the Trial Court that the deceased kept a mobile phone with her but the same was not present with her at the time of her death. Learned counsel for the appellants, though in vain, tried to impress upon this Court that if there was any attempt on the part of the appellants to kill the deceased, she could have informed about the same to her family members. It has further been argued that two of the independent witnesses, have not supported the prosecution version and have been declared hostile. Lastly, it has been argued on behalf of the appellants that the Trial Court did not accord any importance/attention to the deposition of the witnesses adduced on behalf of the defence. The four defence witnesses have stated that at the time of the occurrence, appellants had gone out for work. Their statements cannot be relied upon for the reasons that none of those persons have stated about the cause of death of the deceased and those persons have not even been examined by the police during investigation.

12. In this case, I.O. has not been examined, but from the records, it appears that his non-examination has not caused any prejudice to the appellants.

13. Finding no other way, this Court is constrained to



sustain the conviction and sentence of the appellants.

14. For the reasons aforestated, the appeal is dismissed.

(Ashutosh Kumar, J)

shyambihari/-

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