

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.474 of 2015

Arising Out of PS. Case No.-58 Year-2006 Thana- JALALPUR District- Saran

Kaushal Kumar Pandey @ Bablu Pandey, Son of Prahalad Pandey, resident of Village - Babura, P.S. - Barahara, District – Bhojpur, at present resident of Village - Sagaddi Bazar, P.S. - Jalalpur, District - Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

Criminal Appeal (SJ) No. 381 of 2015

Arising Out of PS. Case No.-58 Year-2006 Thana- JALALPUR District- Saran

1. Prahalad Pandey, Son of Late Radha Krishna Pandey,
2. Shashi Pandey, Son of Late Radha Krishna Pandey,
3. Gayatri Devi @ Chikan Devi, Wife of Prahalad Pandey.
All resident of Village - Babura, P.S. Barahara, District – Bhojpur, at
Present resident of village - Sagaddi Bazar, P.S. Jalalpur, District – Saran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In both the appeals)

For the Appellant/s : Mr. Amarnath Singh, Adv.
Mr. Uday Kumar, Adv.

For the Informant : Mr. Bindhyachal Singh, Adv.
Mr. Ram Binod Singh, Adv.

For the State : Mr. S.A. Ahmad, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

ORAL JUDGMENT & ORDER

Date : 02-01-2019

Both the appeals have been taken up



together for hearing and are being disposed of by this common judgment.

2. Heard Mr. Amarnath Singh, Advocate for the appellants, Mr. Bindhyachal Singh, Advocate for the informant (P.W. 2) and Mr. S.A. Ahmad, Advocate for the State.

3. The appellants have been convicted under Sections 304(B)/34 of the Indian Penal Code (*in short the I.P.C.*) by judgment dated 10.06.2015, passed by the learned Additional Sessions Judge-X, Saran at Chapra in Sessions Trial No. 737 of 2006, arising out of Jalalpur P.S. Case No. 58 of 2006, and by order dated 17.06.2015, they have been sentenced to undergo rigorous imprisonment for 10 years each with the stipulation that the custody period already undergone by them shall be set-off against the sentence of imprisonment in terms of Section 428 of the Code of Criminal Procedure.

4. The informant/Shambhu Nath Dixit (P.W. 2) lodged a First Information Report on 07.08.2006 alleging precisely therein, *inter alia*, that he had married his



daughter/Kanchan Mala Devi (deceased) with appellant/Kaushal Kumar Pandey @ Bablu Pandey (*Cr. Appeal (SJ) No. 474 of 2015*) on 28.05.2006 in accordance with Hindu religious rites. On 06.08.2006, the deceased/Kanchan Mala Devi had called up the informant/P.W. 2 and had intimated him that if motorcycle by way of dowry is not given to the accused persons/appellants, she might be killed on the same day. The informant/P.W. 2 is said to have told his daughter (deceased) that once he gets his salary for the last three months, which he had not been paid, he shall buy a motorcycle and shall give it to the accused persons/appellants. Thereafter, as it has been alleged in the First Information Report, the telephone line got disconnected. On the day of the occurrence, *i.e.*, on 07.08.2006, while he was going towards Sagaddi Bazar, he learnt that his daughter has been killed by the accused persons by strangulating her. On this information, the informant proceeded to the matrimonial home of the deceased where he met appellant No. 1/Prahalad Pandey



(*Cr. Appeal (SJ) No. 381 of 2015*), who closed the house from inside. However, the informant/P.W. 2 could manage to get inside the house and there he saw the dead-body of her daughter kept on a cot. There was a ligature mark visible from a distance on the neck. It was, therefore, alleged by the informant/P.W. 2 that his daughter has been done to death by means of strangulation for non-fulfillment of the dowry demand in the shape of motorcycle.

5. On the basis of the aforesaid *fardbeyan* statement made by the informant/P.W. 2, Jalalpur P.S. Case No. 58 of 2006, dated 07.08.2006, was registered for investigation under Sections 304(B)/34 of the I.P.C. The police, after investigation, submitted charge-sheet, whereupon cognizance was taken and the case was committed to the Court of *Sessions* for trial.

6. The Trial Court, after examining 10 witnesses on behalf of the prosecution and 2 witnesses on behalf of the defense, convicted the appellants under Sections 304(B)/34 of the I.P.C. and sentenced them to undergo rigorous imprisonment for 10 years each.



7. The appellant/Kaushal Kumar Pandey @ Bablu Pandey (*Cr. Appeal (SJ) No. 474 of 2015*) is the husband of the deceased, whereas appellant No. 1/Prahalad Pandey, appellant No. 2/Shashi Pandey and appellant No. 3/Gayatri Devi @ Chikan Devi (*Cr. Appeal (SJ) No. 381 of 2015*) are the father-in-law, the uncle-in-law and the mother-in-law of the deceased respectively.

8. The learned counsel for the appellants, Mr. Amarnath Singh, while assailing the judgment and order of conviction, has submitted that the factum of demand of motorcycle could not be proved beyond reasonable doubts, thereby making the conviction under Section 304(B) of the I.P.C. highly doubtful and thereby unwarranted. It has alternately been argued that assuming that the deceased died an unnatural death in the house of the appellants, despite the presumption under Section 113-B of the Indian Evidence Act, there is no evidence to connect the death with the dowry demand. There is no eye-witness to the occurrence and the conviction, it has been argued, is only based on the presumptions. It has further been argued that



the defense witnesses have testified to the fact that the deceased was not happy with her marriage with appellant/Kaushal Kumar Pandey @ Bablu Pandey, as she wanted to marry the younger brother of her brother-in-law. Thus, in the aforesaid background, with the prosecution having failed to prove the story of demand of dowry, no conviction could have been recorded under Section 304(B) of the I.P.C.

9. As opposed to the aforesaid arguments, Mr. Bindhyachal Singh, the learned Advocate for the informant, has submitted that all the witnesses, viz., the father, mother, brother and the independent witnesses of the locality have supported the allegation of demand of motorcycle and the death of the deceased by strangulation at the hands of the accused persons/appellants. Mr. Singh has further stressed on the fact that in a case of dowry death, it would be naive to expect any account of an eye-witness as more often than not, such offences are committed within the four corners of the house and nobody is provided access in the house at that time. It has further been argued



that the evidence of P.W. 8/the Doctor, who conducted the autopsy on the deceased, further clinches the issue that the deceased did not die a natural death; rather the death was homicidal. Since the ligature mark was continuous and that also over the lower portion of the neck, it is a foregone conclusion that the deceased was strangled and the version of the defense that she had committed suicide because of her unhappiness about her being married to appellant/Kaushal Kumar Pandey @ Bablu Pandey is not worthy of any credence.

10. In order to test the correctness of the arguments advanced on behalf of the respective parties, it would be necessary to refer to the evidence of the prosecution witnesses, though briefly.

11. The informant, who is the father of the deceased, has been examined as P.W. 2. He has deposed that he solemnized the marriage of his daughter (deceased) with appellant/Kaushal Kumar Pandey @ Bablu Pandey on 28.05.2006. The demand of motorcycle was made only at the time of "bidai". However, with the intervention of local



people, "bidai" was performed. Thereafter, it has been stated by P.W. 2 that after about 5 - 6 days of the marriage, he had gone to the matrimonial home of the deceased where the deceased told him that there is a persistent demand of motorcycle by the accused persons. The deceased also informed P.W. 2 that she is not being treated properly and is not being provided timely food in the house. When the informant met the accused persons, he too was misbehaved with.

12. On 06.08.2006, the daughter of the P.W. 2 called him on telephone and informed him that if a motorcycle is not given by the evening, she might be killed in that night only. P.W. 2 is then said to have told the deceased that no sooner will he get his salary for the last three months, he shall buy a motorcycle and would give it to the accused persons. On 07.08.2006, while the informant/P.W. 2 was going to Chapra through Sagaddi Bazar, some unknown persons intimated him that his daughter has been done to death by her in-laws. He went to the matrimonial home of the deceased where he met



appellant No. 1/Prahalad Pandey (*Cr. Appeal (SJ) No. 381 of 2015*), who made an attempt to close the main door of the house. The informant/P.W. 2 could anyhow enter the house of the accused persons, only to see his daughter lying dead on a cot. The police arrived at the matrimonial home of the deceased where P.W. 2 gave his statement.

13. P.W. 2, in his cross-examination, has categorically stated that the financial strength/condition of the accused persons is similar to his and that at the time of marriage, no demand of motorcycle was made. The demand was only raised at the time of "bidai".

14. The learned counsel appearing for the appellants has drawn the attention of this Court to the fact that P.W. 2 had not stated before the police that on 06.08.2006, the deceased had called up P.W. 2 to inform that if the motorcycle is not handed over to the accused persons on that day, she might be killed.

15. The aforesaid statement has been ratified by the Investigating Officer, who has been examined as P.W.
10.



16. The learned counsel for the appellants has also pointed out that if the story of persistent demand of motorcycle and consequent torture of the deceased were true, the same would surely have been narrated to P.W. 2 or other relatives of the deceased when she had visited her parental home for about a couple of times within a span of two months after her marriage with appellant/Kaushal Kumar Pandey/Bablu Pandey. What has also been strenuously harped upon is that the prosecution has completely failed to prove the story of demand especially in view of the fact that even the person on whose telephone set (PCO ?) the call of the deceased had come, has not been examined at the trial nor has anybody testified to the fact that on 06.08.2006, the deceased had a talk with P.W. 2 on telephone. Had this been correct, P.W. 2 would surely have stated about the aforesaid intimation by the deceased to him on 06.08.2006 to the police officer, who had recorded his *fardbeyan*, which is the basis of the present prosecution case. More or less, the statements of the same tenor has been made by the other prosecution witnesses, who are none else but the



mother, brother and the sister of the deceased.

17. It has, thus, been argued on behalf of the appellants that in the absence of the proof of the demand of dowry, the conviction under Sections 304(B)/34 of the I.P.C. is far fetched and not sustainable in the eyes of law. It has also been argued that only on the presumption, the appellants cannot be convicted and sentenced like what has been done in the present case.

18. The argument advanced on behalf of the informant is that with the deposition of P.W. 8, the Doctor, who found continuous ligature mark on the lower portion of the neck, there was no doubt that the deceased was killed by way of strangulation. In that event, it would be difficult to accept the defense version that the deceased, because of her unhappiness over her marriage with appellant/Kaushal Kumar Pandey @ Bablu Pandey, had committed suicide.

19. The death of the deceased by strangulation stands proved and confirmed with the *postmortem* report. However, in the absence of any evidence with respect to the participation of the appellants of



Cr. Appeal (SJ) No. 381 of 2015, it would be difficult to sustain their conviction under Sections 304(B)/34 of the I.P.C.

20. Hence, appellant No. 1/Prahalad Pandey, appellant No. 2/Shashi Pandey and appellant No. 3/Gayatri Devi @ Chikan Devi (*Cr. Appeal (SJ) No. 381 of 2015*) are acquitted of the charges.

21. Their conviction is set-aside and they are discharged from the liabilities of their bail bonds.

22. So far as appellant/Kaushal Kumar Pandey @ Bablu Pandey (*Cr. Appeal (SJ) No. 474 of 2015*) is concerned, he is the husband of the deceased and liable to explain as to how the deceased died in his house within two months of her marriage. There is no effort on the part of the appellant/Kaushal Kumar Pandey @ Bablu Pandey of explaining the cause of death and there is no evidence that he made any attempts of informing the informant/P.W. 2 or other relatives of the deceased about her death.

23. In that view of the matter, conviction of the appellant/Kaushal Kumar Pandey @ Bablu Pandey under



Sections 304(B)/34 of the I.P.C. is sustained and upheld.

24. Mr. Amarnath Singh, the learned counsel for the appellants has submitted that in the event of the conviction of appellant/Kaushal Kumar Pandey @ Bablu Pandey only on the basis of presumption under Section 113-B of the Indian Evidence Act, the imposition of sentence of 10 years is much too harsh. He has further submitted that at the time of marriage also, the appellant/Kaushal Kumar Pandey @ Bablu Pandey was of the same age as that of the deceased and there is no specific evidence of torture on the deceased by appellant/Kaushal Kumar Pandey @ Bablu Pandey.

25. This Court has also been informed that appellant/Kaushal Kumar Pandey @ Bablu Pandey has remained in jail from 17.07.2007 to 16.04.2010 during the period of trial and from 10.06.2015 - till date after his conviction in the case, thereby remaining in custody for over six (6) years.

26. Considering the case in its totality and taking the entire evidence on record, this Court is of the



view that interest of justice would be satisfied if the sentence imposed upon the appellant/Kaushal Kumar Pandey @ Bablu Pandey (*Cr. Appeal (SJ) No. 474 of 2015*) is reduced to the period of custody which he has already undergone. He is directed to be released from the jail forthwith.

27. The Cr. Appeal (SJ) No. 381 of 2015 stands allowed.

28. So far as Cr. Appeal (SJ) No. 474 of 2015 is concerned, with the aforesaid modification in the order of sentence, the same is partly allowed.

29. Let a copy of this judgment be transmitted to the Superintendent of the concerned jail for information, record and compliance.

(Ashutosh Kumar, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
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