

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1456 of 2017

Arising Out of PS. Case No.-122 Year-2013 Thana- KUCHAIKOTE District- Gopalganj

Rajesh Ram, S/o Late Bishwanath Ram, Resident of Village Baghauch,
Police Station- Kuchaikote, District- Gopalganj.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Ranjeet Kumar Pandey-Advocate
For the Respondent/s : Mr. Sujit Kumar Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

02-04-2019

Appellant Rajesh Ram has been found guilty for an offence punishable under Section 304B/34 of the I.P.C. and sentenced to undergo R.I. for seven years vide judgment of conviction dated 24.03.2017 and order of sentence dated 27.03.2017 passed by the Additional Sessions Judge-1st, Gopalganj in Sessions Trial No.165 of 2016.

2. On the fard-bayan of Luxmina Devi (PW-4), Kuchaikot P. S. Case No.122 of 2013 was registered against the appellant wherein she had alleged that in the morning of 22.05.2013, she received telephonic information from sasural of her daughter Dhanauti to the effect that she became swooned, whereupon she rushed to the sasural of her daughter Dhanauti Devi lying at village-Baghauch where she saw her daughter dead out of burn. Dead body was lying on the ground in a room.



From the villagers, she came to know that after sprinkling kerosene oil, her son-in-law Rajesh Ram lit fire as a result of which, she died. She further disclosed that her son-in-law was frequently demanding the dowry and for that, her daughter was being harassed. At an earlier occasion, she had given ornaments, which her son-in-law sold away and handed over money to other woman with whom, he was carrying extra marital relationship.

3. After registration of the case, investigation proceeded and concluded by way of submission of chargesheet, facilitating the trial, meeting with the ultimate result, subject matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that deceased died of an accidental fire, also controverted the allegation of demand of dowry as well as harassment having on that very score.

5. Altogether eight PWs have been examined on behalf of prosecution, who are PW-1, Dharm Nath Ram, PW-2, Shiva Bachan Ram, PW-3, Rukmina Devi, PW-4, Luxmina Devi, PW-5, Dr. Sanjeev Kumar, PW-6, Arjun Ram, PW-7,



Shiva Shankar Ram and PW-8 Nathuni Choubey. Side by side, has also exhibited, Exhibit-1, signature of the PW-2 over the fard-bayan, Exhibit-2, signature of PW-2 over inquest report and Exhibit-3, post mortem report. Nothing has been adduced in defence.

6. Manifold argument has been made on behalf of learned counsel for the appellant while assailing the judgment impugned. The first and foremost argument is that prosecution suffers from inherent lacuna and on account thereof, the judgment impugned would not survive. To justify the same, it has been submitted A) I.O. has not been examined. That being so, the objecting finding relating to the place of occurrence could not come on the record. By such activity, interest of the appellant is found prejudiced, because of the fact that there happens to be consistent suggestion to the prosecution witnesses that deceased died of accidental fire. So, on the score of non-examination of the I.O. alone, appellant is entitled for acquittal, B) prosecution could not succeed in substantiating the ingredients so required for an offence punishable under Section 304B of the I.P.C., C) Irrespective of the fact that PW-6, PW-7 and PW-8, co-villagers of the appellant have been declared hostile, but during course of cross-examination, they have



supported the defence version and so, the cumulative effect did not justify the prevalence of the judgment impugned. Hence, appeal be allowed by setting aside the finding recorded by the learned lower Court.

7. Controverting the submission having been made, it has been submitted at the end of the learned Additional Public Prosecutor that irrespective of the fact that there happens to be non-examination of the I.O. even then, the prosecution has succeeded in substantiating its case, whereupon the judgment of conviction and sentence recorded by the learned lower Court is fit to be confirmed.

8. Apart from the fact that death has not been controverted by burn. PW-5, the doctor, who conducted post mortem over the dead body of Dhanauti Devi on 22.05.2013 found the following:-

i) Rigor mortis was present in all four limbs. Upper limbs in pugilistic posture.

ii) Near hundred percentage of total body surface area mixed degree burn sparing perineum.

iii) Mouth-open, Tongue-Protruding.

iv) Eyes-closed, Ears & Nose-NAD.

On Dissection:-

1. *Head & neck- Skull intact. Brain congested.*



No internal bleeding. Tracheal rings intact.

2. *Thorax-bony cage-intact. Lungs-congested.*

Both chambers of heart-empty.

3. *Abdomen-All organs congested and intact.*

Stomach-distended with gases. Intestine-

contained faces and gasses. Uterus-Non

grabib normal size. Urinary bladder empty.

Time of death-within 24 hours.

*Cause of death-Due to shock as a result of
extensive burn injury.*

During cross-examination, defence has got an answer from the doctor as it was dry burn injury. Such type of injury may be an accidental.

9. It is needless to say that PW-6, PW-7 and PW-8 are co-villagers of the appellant and in usual phenomenon, they have shown their conduct led their declaration being hostile. Although, learned counsel for the appellant has given much stress upon their cross-examination, which suggest otherwise in the background of the fact that PW-6 has stated that he does not know about the occurrence while in cross-examination, he has stated that when police had gone, the door was closed from inside. Both happen to be contradictory to each other and likewise status to happens to be of PW-7 as well as PW-8. PW-8 had gone to such extent whereunder he had stated during cross-



examination that while deceased was sleeping, fire caught accidentally.

10. Coming to evidence of remaining witnesses that means to say, PW-1, who happens to be the father of the deceased, PW-2, the brother of the deceased, PW-3, Mausi of the deceased and PW-4, mother of the deceased, it is apparent that all consistently deposed that Gauna was effected after two and half years of marriage. After staying for one and half years at her sasural, this occurrence took place. There also happens to be proper disclosure at their end that accused was persistently demanding of Rs.50,000/- as well as ornaments and for that, she was being tortured.

11. PW-4, the informant had deposed that even on the precedent night, deceased had informed her to pay Rs.5,000/- to her husband otherwise she will not be sparked followed with this incident. The most deficient part at the end of the appellant is that during cross-examination, failed to challenge that means to say, none of the witnesses has been cross-examined, tested on that score, more particularly demand of dowry, in tune of ornaments as well as Rs.50,000/- cash, the tenure since before her death and in likewise manner, as is evident, failed to discharge the obligation in tune of Section



113B of the Evidence Act.

12. In ***Gian Chand & others vs. State of Haryana*** reported in 2013(4) P.L.J.R. 7 (S.C.), it has been held:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for



the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

13. Now, coming to ingredients for attracting constitution of Section 304B I.P.C.:-

- I) There should be death within seven years of marriage.*
- II) By burn, bodily injury or otherwise than normal circumstance.*
- III) Demand of dowry*
- IV) Soon before her death, deceased was subjected to cruelty on that score.*



IV) By husband or relative of the husband.

14. Because of the fact that appellant failed to challenge the allegation/ averments having been made on behalf of PW-1, PW-2, PW-3, PW-4 over demand of ornaments as well as cash appertaining to Rs.50,000/- and even on preceding night an information at the end of the deceased requesting her mother (PW-4) to pay Rs.5,000/- to the appellant/ husband, otherwise she will not be allowed to remain alive, will tantamount to an admission and that being so, the learned lower Court rightly concluded and held the appellant guilty for an offence punishable under Section 304B of the I.P.C. So far sentence is concerned, learned lower Court has already taken a lenient view by prescribing R.I. for seven years.

15. Thus, instant appeal sans merit and is accordingly, dismissed. Appellant is under custody, which he will remain till saturation of the period of sentence.

(Aditya Kumar Trivedi, J)

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AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	07.04.2019
Transmission Date	07.04.2019

