

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.287 of 2017

Arising Out of PS. Case No.-50 Year-2014 Thana- AHIYAPUR District- Muzaffarpur

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Dashrath Sah, Son of Shankar Sah, Resident of Village-Singhara, P.S.-Mahua,
District Vaishali.

... .. Appellant/s

Versus

1. The State Of Bihar
2. Rajesh Kumar, Son of Pramod Sah.
3. Sumitra Devi, W/o Pramod Sah.
Both Resident of Anand Bihar Colony, Muradpur Dullah, P.S.-Ahiyapur,
District-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	M/s Surendra Kishore Thakur Y. Madhavi, Advocates
For the State	:	Mr. Shivesh Chandra Mishra, APP
For the Respondent Nos. 2 and 3	:	Mr. Sanjay Kumar @ S.K., Advocate

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

and

HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH

ORAL JUDGMENT

**(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA)**

Date : 22-07-2019

Heard Ms. Y. Madhavi, learned counsel appearing
for the appellant as well as Sri Sanjay Kumar, learned counsel
appearing for respondent Nos. 2 and 3 and also Mr. S.C.
Mishra, learned Additional Public Prosecutor for the State on
the point of admission.

2. This criminal appeal has been preferred against
the judgment of acquittal dated 17.12.2016 passed by learned 2nd



Additional Sessions Judge, Muzaffarpur, in Sessions Trial No. 404/14 / Sessions Trail No. 922/14, by which and whereunder learned 2nd Additional Sessions Judge acquitted the respondent Nos. 2 and 3 from the charges framed against them for the offences punishable under Sections 304B/34 and 302/34 of the Indian Penal Code.

3. Ahiyapur P.S. Case No. 250 of 2014 for the offence punishable under Section 304B/34 of the Indian Penal Code was registered against respondent Nos. 2 and 3 as well as co-accused Pramod Sah on the basis of *fard-e-beyan* of appellant, who was informant of the aforesaid Ahiyapur P.S. Case No. 250/2014. The appellant-informant claimed in his *fard-e-beyan* that on 30.1.2014, his younger brother, Bharat Sah, along with one Sone Lal Sah had gone to the matrimonial home of his daughter, namely, Hina Kumari, who narrated to them about the torture meted out to her by her in-laws. Appellant-informant, further, claimed that in-laws of his daughter demanded cash in dowry from his elder brother and when he expressed his inability to fulfill the demand of in-laws of his daughter, the in-laws of his daughter abused and ousted him from the house and they also threatened to kill the informant's daughter. The informant-appellant, further, claimed that the



aforesaid demand was made by respondent No. 2, Rajesh Kumar, who happens to be the husband of his daughter. Informant, further, claimed that the respondent No. 3 and father-in-law of informant's daughter asked his brother to replace Alto car by Bolero vehicle. However, informant, further, claimed that on 30.1.2014 at about 9:00 P.M., he got a telephonic message from Prem Kumar Sah that his daughter was killed and having got the aforesaid information, he went to the matrimonial home of his daughter and found the dead body of his daughter lying on bed.

4. The police after investigation submitted charge-sheet against the respondent Nos. 2 and 3. Subsequently, the respondent Nos. 2 and 3 were put on trial and, accordingly, they stood charged for the offences punishable under Sections 304B/34 of the Indian Penal Code as well as 302/34 of the Indian Penal Code. They denied the charges and claimed to be tried.

5. In course of trial, prosecution examined altogether seven prosecution witnesses including appellant as P.W. 4 and also got exhibited several documents.

6. The respondent Nos. 2 and 3 were examined under Section 313 of the Cr.P.C. in which they, specifically,



stated that the appellant had taken Rs. Five lacs from them and, as a matter of fact, the appellant was pressurizing his daughter to fetch more money from her in-laws and that was the reason the deceased being fed up with the conduct and behaviour of her father committed suicide.

7. Learned trial court after evaluating the evidences available on record came to conclusion that the prosecution could not succeed to prove all the ingredients of Section 304B of the Indian Penal Code. Learned trial court also came to conclusion that deceased committed suicide. Furthermore, the learned trial court found in deposition of P.W. 4 (informant-appellant) that informant-appellant had taken Rs. Three lacs from respondent Nos. 2 and 3 and on that basis, the learned trial court found substance in the stand of the defence. Furthermore, the learned trial court observed that there was cordial relation between the deceased and her in-laws as the deceased was got admitted in I.A. and B.A. courses by her in-laws and on that basis the learned trial court came to conclusion that the respondent Nos. 2 and 3 as well as other co-accused had love and affection with the deceased and, therefore, the allegation of torture by respondent Nos. 2 and 3 was found doubtful by the learned trial court.



8. Learned counsel Ms. Y. Madhavi appearing for appellant assailed the impugned judgment of acquittal arguing that the learned trial court wrongly shifted the burden of proof upon the prosecution. She submitted that the prosecution successfully proved all the ingredients of Section 304B of Indian Penal Code and, therefore, it was the duty of defence to prove as to how the deceased died. She, further, submitted that the postmortem report of deceased goes to show that her death was unnatural and, therefore, even if it assumed that deceased committed suicide, then it was the duty of defence to prove as to why deceased committed suicide. In support of her contention, she referred decisions delivered by Apex Court in **Appeal (Crl.) 431 of 1997 (Yashoda and another Vs. State of Madhya Pradesh, Appeal (crl.) 907 of 1998 (Shamnsaheb M. Multtani Vs. State of Karnataka)** and another decision delivered by this High Court in **Criminal appeal (DB) No. 21 of 1994 (Shambhu Nath Das Vs. State of Bihar)** and one decision rendered by Allahabad High Court in **Criminal Appeal No. 624 of 1997 (Kamlesh Singh and others Vs. State of U.P.)**.

9. On the other hand, learned counsel appearing for respondent Nos. 2 and 3 refuted the above stated



submissions of learned counsel of the appellant. He submitted that the prosecution could not succeed to prove all the ingredients of Section 304B of the Indian Penal Code and the learned trial court rightly passed the impugned judgment of acquittal. He submitted that before seeking attraction of Section 113(a) as well as Section 113(b) of the Evidence Act, the prosecution is duty bound to prove that prior to death, deceased was subjected to cruelty by husband or relative of the husband but in the present case except oral statements, there was no material before the trial court to show that deceased was subjected to cruelty soon before her death. Learned counsel of respondent Nos. 2 and 3 further submitted that the *fard-e-beyan* of appellant goes to show that he had never mentioned the factum of torture in his *fard-e-beyan* and only stated that for one occasion when his younger brother had gone to matrimonial home of the deceased, deceased narrated to him about her torture. Learned counsel of respondent Nos. 2 and 3 also submitted that the learned trial court had taken into consideration all the materials available on the record and on the basis of circumstances emerged out from depositions of prosecution witnesses, came to conclusion that prosecution failed to prove its case beyond all shadow of reasonable doubts



and, therefore, there is no need to interfere into the impugned judgment of acquittal.

10. Having heard the rival contentions of both the parties, we went through the records. We are of the view that this criminal appeal can be disposed of on admission stage itself.

11. The perusal of *fard-e-beyan* of informant goes to show that the informant had not disclosed the date or year of marriage of his daughter but in spite of that police registered the case under Section 304B of the Indian Penal Code. However, in course of investigation as well as before trial court, the informant claimed that the marriage of his daughter had taken place on 24.2.2012 with respondent No. 2, namely, Rajesh Kumar, and she died in other than normal circumstance within two years of her marriage. Furthermore, we find that the informant did not disclose the factum of torture of his daughter except on one occasion that is, too, when his brother went to the in-laws' house of the deceased.

12. The respondent Nos. 2 and 3 took defence before the trial court that the informant had himself taken huge money from respondent Nos. 2 and 3 and the informant was pressurising his daughter to fetch more money from respondent



Nos. 2 and 3 and being fed up with the aforesaid conduct of the informant, deceased committed suicide.

13. The Doctor proved the postmortem report of the deceased and, specifically, stated in his cross-examination that the deceased committed suicide as the injury found on the person of the deceased was of suicidal nature.

14. The informant was examined before the trial court as P.W. 4 and he admitted in paragraph 14 of his cross-examination that the respondent Nos. 2 and 3 had transferred Rs. Three lacs in the account of his wife Laxmi Devi on 16.11.2013. The aforesaid fact, *prima facie*, corroborates the claim of respondent Nos. 2 and 3 and the learned trial court relied upon the above stated statements of P.W. 4. Furthermore, it has also come in prosecution evidence that the deceased got admitted in I.A. and B.A. courses by her in-laws, therefore, taking note of all the aforesaid circumstances, the learned trial court passed the judgment of acquittal, which does not need interference by this Court.

15. It is well settled principle of law that on the same set of evidence if two views are possible, the view of the trial court shall prevail unless the view taken by the trial court is perverse, absurd or without consideration of the prosecution



evidence.

16. In the present case, we find that there is no absurdity or perversity in the view taken by the learned trial court and, therefore, in the aforesaid circumstance, in our view , this appeal is devoid of merit and is liable to be dismissed.

17. Accordingly, this criminal stands dismissed on admission stage itself.

(Hemant Kumar Srivastava, J)

(Prabhat Kumar Singh, J)

Spd/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	29.07.2019
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