

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.662 of 2013

Arising Out of PS. Case No.-147 Year-2010 Thana- BHABHUA District- Kaimur (Bhabua)

Sudarshan Singh @ Kachahari Singh, S/o- Komal Singh, Resident of Village-
Semiriya, P.S.- Sonhan, District- Kaimur (Bhabua).

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Sri Animesh Kumar Mishra, Amicus Curiae
For the Respondent/s : Sri Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

Date : 11-07-2019

1. The sole appellant has preferred the present appeal under Section 374(2) of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] against judgment of his conviction and sentence. The appellant vide judgment dated- 22.05.2013 was convicted for the offence under Section 304B & 201 of the Indian Penal Code, 1860 [hereinafter referred to as the “I.P.C.”] and by order dated: 28.05.2013 he has been sentenced to undergo imprisonment for life under Section 304B of the I.P.C. and under Section 201 of the I.P.C. he has been directed to undergo rigorous imprisonment for two years. Both the sentences were directed



to run concurrently. The judgment of conviction and sentence was passed by Sri Harindra Nath, learned Adhoc Additional District & Sessions Judge, Kaimur, Bhabhua [hereinafter referred to as the “trial judge”] in S.Tr. No. 344 /135 of 2010/2012 {arising out of Bhabua (Sonhan) P.S. Case No. 147 of 2010}.

2. The case was initiated on the basis of *fardbyan* of Babu Lal Singh - P.W. 11 [brother of the deceased]. *Fardbyan* was recorded on 09.04.2010 at 10.30 A.M. by Sub Inspector of Police Nawal Kishor Singh (P.W. 12) at village- Shemiriya within Police Station: Sonhan, District: Bhabhua. In *fardbyan* the informant (P.W. 11) disclosed that his younger sister, namely -Umarawati Devi, aged about 22 years, D/o late Biltan Singh, resident of village- Pora, P.S.- Chenari, district - Rohtas was married with Sudarshan Singh @ Kachahari Singh (appellant) in the year 2006. In marriage gifts were provided as per capability of the informant. Subsequently, in the year 2009 *gauna* had taken place and thereafter, his sister went to her in-law's house and started living there. One week after *gauna* when informant went there and met his sister, his sister told that her husband Sudarshan Singh @ Kachahari Singh



(appellant), his father -in-law: Komal Singh, elder brother of her husband- Sugreev Singh and his wife - Munni Devi, all residents of- Shemariya were administering torture and threatening her for bringing motorcycle from her parental house. She was threatened that if motorcycle and golden chain are not provided, she would be killed. The informant further stated that whenever he had gone to the village of her sister and met her, she repeated regarding the aforesaid demand and torture. On the date of recording of *fardbyan* at 6.30 A.M. (in morning) a call was received on mobile of his wife- Kaushalya Devi (not examined) whereby it was informed that sister of informant was done to death and accused persons were trying to disappear the dead body. The informant with Ram Gati Singh (P.W. 7), Ram Badan Singh (P.W. 9) and Lal Mohar Singh (P.W. 8) all residents of village- Pora, P.S. - Chenari, district- Rohtas went to Shemariya and saw that besides Northern side of the village on road on Eastern side the accused persons were burning dead body of his sister- Umrawati Devi which was kept on pyre. The informant when asked accused persons not to burn the dead body, accused persons started abusing and with a view to assault him they



chased and finally informant with aforesaid witnesses arrived in Sonhan Police Station. He disclosed that information was given to Police Station at 8.30 A.M. from where Police along with armed forces reached the village - Shemariya. Till then the accused persons after burning the dead body into ashes had already fled away. The informant claimed that accused persons due to non -fulfillment of demand of dowry, after administering torture, by way of pressing neck of his sister, had killed her and they had surreptitiously disappeared the evidence. The said *fardbyan* was read by him and after finding it correct the informant (P.W. 11) put his signature at the bottom of the *fardbyan*. As a witness to *fardbyan* one Ram Badan Singh (P.W. 9) also put his signature. On the basis of the aforesaid *fardbyan* on 09.04.2010 at 13.30 Hours (1.30 P.M.) a formal F.I.R. vide Bhabhua (Sonhan) P.S. Case No. 147 of 2010 was registered for the offence under Section 304(B)/201/34 of the I.P.C. against:-

- (1) Sudarshan Singh @ Kachahri Singh (appellant),
- (2) Komal Singh (father of appellant),
- (3) Sugreev Singh (brother of appellant),
- (4) Munni Devi, wife of elder brother of appellant i.e. accused no. 3 -Sugreev Singh.

However, on perusal of the record it is evident that formal F.I.R. was received in the court on 11.04.2010.



3. After the case was instituted the Investigating Officer investigated the case, inspected the premises in which deceased was residing i.e. house of appellant. Then Police visited the 2nd place of occurrence where deceased was cremated. The witnesses were examined and finally Police finding the case true on 31.07.2010 submitted charge sheet against only appellant- Sudarshan Singh @ Kachahari Singh keeping investigation pending against F.I.R. named accused / Komal Singh, whereas two F.I.R. named accused persons, namely: Sugreev Singh and Munni Devi were found to be innocent and they were not forwarded as accused in the charge sheet. After submission of charge sheet, on 03.08.2010 learned Chief Judicial Magistrate, Kaimur at Bhabhua took cognizance of offence. Thereafter, on 24.08.2010 the case was committed to the Court of Sessions. After commitment, on 16.09.2010 charge under Section 304(B) / 201/34 of the I.P.C. was framed against the sole appellant.

4. The prosecution to establish its case examined altogether 12 witnesses. Out of 12 witnesses, P.W. 7 -Ram Gati Singh (uncle of informant), P.W. 8 - Lal Mohar Singh (*gotiya* of informant), P.W. 9 - Ram Badan Singh (in relation



uncle of informant) all residents of the village of the informant, P.W. 10 - Guru Charan Singh @ Guru Dayal Singh (brother -in-law of informant / husband of sister of informant] and resident of village - Chandui Kutiya, Police Station- Kudra and P.W. 11 - Babu Lal Singh (brother of deceased and informant) deposed as if after getting information regarding death of the deceased they visited the place of occurrence and all the aforesaid witnesses have supported the prosecution case. P.W. 1- Lal Ji Singh, who was nephew of deceased, P.W. 2 - Bir Bahadur Singh, P.W. 3 -Ram Naresh Singh , P.W. 4- Tej Bahadur Singh, P.W. 5 -Smt. Vimla Devi, P.W. 6- Vijay Bahadur Singh, all residents of the appellant's village i.e. village- Semiriya, P.S.- Sonhan did not support the prosecution case, and as such, they were declared hostile. On attention being drawn, most of the witnesses who were declared hostile, in sum and substance had asserted that deceased died due to ailment. The Police Officer i.e. Sub Inspector of Police namely: Nawal Kishor Singh who had recorded *fardbyan* of the informant, is the Investigating Officer of the case and after completion of investigation he



had submitted charge sheet and this witness had proved number of documents.

5. After completion of prosecution evidence, on 21.02.2013 circumstances and evidences which were brought on record against the appellant were explained to him and his statement under Section 313 of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the "Cr.P.C."] was recorded in which appellant summarily took three pleas:- (1) deceased died due to ailment since she was suffering pain in her abdomen, (2) after death the informant was informed through mobile, (3) informant and other some of the villagers / relatives of the informant participated in cremation of the deceased and (4) it was claimed by the appellant in his statement recorded under Section 313 of the Cr.P.C. that after cremation the informant was pressurizing the appellant to transfer 02 bighas of land in favour of the informant and due to non- fulfillment of the demand of informant, the informant at belated stage, had lodged the present case. After recording statement of appellant under Section 313 of the Cr.P.C., two defence witnesses were examined to disapprove the prosecution case, who are: Tejpati Singh and Rambali Singh



i.e. D.W. 1 and D.W. 2 respectively. Both the defence witnesses claimed that deceased died due to ailment and information regarding death was given to informant's side and informant and others participated in cremation of the deceased.

6. Sri Animesh Kumar Mishra, learned Amicus Curiae after placing entire evidence i.e. both oral and documentary evidence, has argued that the learned trial judge without any cogent material on record has incorrectly passed judgment of conviction, particularly conviction under Section 304B of the I.P.C. even after noticing the fact that it was a case of natural death, which was intimated to the informant and informant's side had participated in cremation. As per Sri Mishra, learned Amicus Curiae, falsity of prosecution case is evident from the fact that informant in his *fardbyan* as well as in his evidence had stated that information on mobile phone of his wife namely: Kaushalya Devi was received whereby intimation was given that informant's sister was done to death due to non-fulfillment of demand of dowry and the accused persons were trying to disappear evidence, however, to the reasons best known to prosecution, Kaushalya Devi has not



come forward to support prosecution case, rather her evidence was withheld by prosecution. He further submits that informant has stated that after getting call on mobile his wife send the said mobile phone to the informant however till then call had already dropped. In normal course, in such situation, it was expected that informant would have called back on the same number to verify as to whether information was correct or not and also verify who was the person who had given information, however, all the witnesses are silent on this very point. He further submits that informant and other witnesses have said that after getting information they arranged a vehicle and thereafter they proceeded to village- Semiriya, i.e. the house of appellant. It is evident that village of the informant was about 18-20 K.M. away from the village- Semiriya and as such, there was every possibility of consumption of much time in arrival at the place of occurrence. The informant deposed that he along with three witnesses hiring a vehicle rushed to the village and saw on arrival that dead body was put on pyre and it was being covered by woods and cow dung cake. The informant in his evidence stated that he tried to remove wood and cow dung



cake to see the face on which objection was raised by the accused persons, altercation took place and they chased the informant and other witnesses, whereupon informant and witnesses fled away from that place and rushed to Police Station and he gave information to Police. Thereafter, Police with armed forces rushed to the place where dead body was burned. While the informant, witnesses and Police with Force arrived there, dead body had already turned into ashes. Police thereafter collected ashes and part of bones and seized it. Thereafter, his *fardbyan* was recorded.

7. According to learned Amicus Curiae it is case of prosecution that informant and other witnesses had arrived at the place where dead body was lying at 8.30 A.M. It has come in evidence that from that place their arrival to Sonhan Police Station consumed 1 ½ hours. They also admitted that they stayed in Police Station for more than an hour and only thereafter, Police rushed to the place of occurrence. In that view of the matter, in any event, they would not had arrived at the 2nd place of occurrence where dead body was being burnt earlier than 12.00 O' Clock, however to the reasons best



known to prosecution, in the case *fardbyan* was shown to be recorded at 10.30 A.M. on the same day in village -Shemiriya.

8. It has also been argued that the informant was examined as P.W. 11 and after being discharged suddenly he came out with a case as if deceased while she was alive and was being tortured had sent a letter to her mother. The letter in which she had described regarding demand of dowry and threatening for killing her. The said letter was shown to be traced by the informant after 1 ½ years of death of his mother, who died subsequent to death of informant's sister. A plea was taken that the said letter was locked in a box of mother of informant, which was broken after 1 ½ years of death of mother of informant and then the said letter was found. This was the reason that though after examination and cross-examination P.W. 11- Babu Lal Singh (informant) was discharged on 20.9.2012, he was re-called and his re-examination was done on 10.04.2013 i.e. almost 6 months after he was discharged. During re-examination P.W. 11 has introduced the so-called letter written by the deceased and same was marked as Ext. 3. He submits that introduction of such type of evidence makes it clear that informant was



adamant to get judgment of conviction and sentence against the appellant by hook or crook, otherwise, there was no reason to place any reliance on such so -called letter. It has also been argued that most of the witnesses who were resident of Semiriya and who were actual witness regarding natural death of the deceased since had not supported the false case, they were declared hostile. In the case during the trial at least six witnesses were declared hostile by prosecution. This also creates serious doubt on prosecution case. It has also been argued that prosecution during its entire evidence has not brought on record any cogent evidence to show that just prior to the occurrence deceased was administered torture due to non -fulfillment of demand of dowry and in absence of such material, there was no reason for the learned trial judge to pass judgment of conviction and sentence. Accordingly, it has been argued that impugned judgment of conviction and sentence is liable to be set aside.

9. Sri Ajay Mishra, learned Additional Public Prosecutor submits that the case is squarely covered under Section 304B of the I.P.C. He submits that it is consistent case of prosecution that marriage of deceased with appellant was



solemnized in the year 2006. Though marriage was solemnized in the year 2006, *gauna* had occurred in the year 2009 and only after *gauna* the deceased started living with the appellant in village- Semiriya after 2009. While the deceased went to Semiriya i.e. in her in-law's house, the appellant, his father, his elder brother and wife of his elder brother started to put pressure on the deceased to bring motorcycle and golden chain from her parental house. She was being tortured and also threatened for her elimination. According to Sri Mishra, learned A.P.P., P.W. 7 to P.W. 10 are consistent on this evidence. Besides this, it has been argued that immediately after getting information regarding elimination of the deceased, informant hired a vehicle and along with P.Ws. 7, 8 & 9 rushed to the in -law's house of sister of informant and they saw that accused persons were trying to dispose of the dead body of deceased which was prevented, however the informant and other prosecution witnesses were threatened. Only then the informant rushed to Police Station and Police along with armed forces arrived there however, till then, dead body had already turned into ashes and this was the reason that Police seized ashes and some pieces of bones from the



place of occurrence. It has been reiterated that occurrence had occurred within seven years of marriage that too due to non-fulfillment of demand of dowry and it has come that the deceased was tortured.

10. Besides hearing learned counsel for the parties, we have minutely examined entire evidence on record. After examining the entire evidence *prima facie* we are of opinion that prosecution was not able to establish its case beyond all reasonable doubts. Even though informant and prosecution witnesses have come out with a case that marriage of deceased with appellant was solemnized in the year 2006, it is defence case that marriage of deceased with appellant was solemnized about 12-13 years back. This fact has been asserted by the appellant in his statement recorded under Section 313 of the Cr.P.C. Besides appellant, two defence witnesses i.e. D.W. 1 (Tejpati Singh) and D.W. 2 (Rambali Singh) are categorical on the point that marriage was solemnized 12-13 years back. Of-course no document has been brought on record from defence side which was necessary, but fact remains that prosecution has also not been able to establish this fact that marriage was actually solemnized in the year 2006. Orally prosecution



witnesses have said regarding this fact, but such fact has not been got properly verified by the Investigating Officer. The I.O. - P.W. 12 (Nawal Kishor Singh) in paragraph 21 of his cross-examination has categorically stated that during investigation he never visited the village- Pora where said marriage was shown to be solemnized. The Investigating Officer has also admitted that he had not tried to get any information as to on which date marriage of deceased with appellant was solemnized. In a case of application of offence under Section 304B of the I.P.C., which is applicable only in a case of marriage held within seven years from the date of occurrence, it is onerous duty on the part of the prosecution to establish the date or at least the year of marriage. If there is only oral evidence, in that event, the Investigating Officer is burdened with the responsibility to verify the truthfulness of the stand of prosecution regarding the date or year of marriage. In the present case the Investigating Officer in his evidence is clear on the point that he had not bothered to verify the actual date of marriage of deceased with the appellant, whereas, in the case it was stand of defence that marriage was solemnized 12-13 years back. In that view of



the matter it would be difficult to come to a definite conclusion that death had occurred within seven years of marriage.

11. In the present case of -course informant- P.W. 11 has reiterated the fact which he had disclosed in *fardbyan* which has been noted by this court in preceding paragraphs, the evidence of P.W. 8 creates serious doubt on the prosecution case. The informant - P.W. 11 and P.W. 9 (Ram Badan Singh) in their evidences have stated that when they reached the village i.e. the 2nd place of occurrence they saw that dead body was being covered with wood and cow dung cake, but in evidence of P.W. 8 - Lal Mohar Singh regarding whose presence the informant has certified, he has stated that while they reached they saw that accused persons were moving / carrying the dead body for its cremation. It is not a case that prosecution had asked any question to this witness as to whether such fact was stated by him during investigation or not. Similarly, P.W. 7 -Ram Gati Singh who is non else but uncle of the deceased in his evidence has stated that while he along with informant and others reached the 2nd place of occurrence, they saw that dead body was in flame. It is



consistent case of prosecution that after getting information P.Ws. 7 , 8 , 9 along with informant in one vehicle had rushed to the place of occurrence, however, all the aforesaid witnesses had taken three different stand. One witness is saying that while they reached, they saw that dead body was burning. Another witness states that while they reached they saw that accused persons were moving /carrying dead body for cremation and informant has come out with a case that while he reached he saw that dead body was lying and accused persons were covering dead body with woods and cow dung cake. In such quality of prosecution evidence considering the defence certainly prosecution case may not be approved. The appellant in his statement recorded under Section 313 of the Cr.P.C. is very much categorical that:- (i) his marriage with deceased was solemnized 12-13 years back; (ii) deceased died due to ailment i.e. sudden pain in her abdomen, (iii) information regarding death through telephone was given to informant's side, (iv) informant and other witnesses participated in cremation; and (v) appellant has stated that after the occurrence informant / P.W. 11 pressurized the appellant to transfer 02 bighas of land in his favour and



since it was not fulfilled, a false case was instituted. Same stand has been taken by D.W. 1 and D.W. 2. Of- course it is true that in a criminal trial no such importance is required to be given to evidence of defence witnesses, but in peculiar facts and circumstances of the present case some aid can be taken from the evidence of D.W. 1 and D.W. 2. Besides this, prosecution witnesses have stated that at the time of marriage no demand of dowry was made. Even the witnesses while went to the in- law's house of the deceased they were provided proper food and respect. During the trial prosecution has not been able to establish the case as if just prior to the occurrence whether deceased was administered torture due to non-fulfillment of dowry or not. This fact has not been established beyond all reasonable doubts.

12. Moreover, during the trial introduction of Ext. 3 i.e. the so- called letter which was said to be written by the deceased and addressed to her mother also creates serious doubt on the prosecution case. Had it been a case that deceased two months prior to the occurrence i.e. in the month of February, 2010 had sent letter to her mother describing regarding demand of dowry, administering torture and



threatening regarding her elimination, in normal course , after getting such information the mother would have asked her other family members, at least to informant, her son, to go and enquire from the deceased. In any event, it was not expected that mother of the deceased would had kept such letter locked in her box which was said to be opened 1 ½ years after her death. On the date of occurrence the mother of the deceased was alive and it is case of prosecution that she died about 1 ½ years back from the date of evidence of P.W. 11 which was recorded on 17.09.2012. Introduction of Ext. 3 i.e. the so-called letter written by the deceased and addressed to her mother raises suspicion regarding the conduct of the informant in view of facts and circumstances which we have discussed hereinabove.

13. The prosecution case further comes into cloud of doubt on examination of the evidence of the Investigating Officer - P.W. 12. It is case of prosecution that after noticing that accused persons were adamant to dispose of dead body by burning, the informant and other witnesses rushed to Police Station and gave information to Police and then Police with armed forces arrived at the place of occurrence, whereas P.W.



12 / the Investigating Officer in his evidence has stated that while he was in Police Station he received information regarding the occurrence. After recording Station Diary Entry in the morning at 9.00 A.M. he left for the place of occurrence for conducting investigation. The evidence of Investigating Officer either belies the story of prosecution case or if we place reliance on the evidence of prosecution witnesses, the evidence of Investigating Officer as well as entire investigation comes into cloud of doubt, otherwise also, it is difficult to come to conclusion that once it was case of informant that they after getting information regarding the occurrence rushed to the place where dead body was lying at 8.30 A.M. and they went to Police Station which consumed 1 ½ hours and thereafter, they stayed in Police Station for an hour, there was no reason for the Investigating Officer to state that he got information regarding the occurrence and he recorded Station Diary Entry and at 9.00 A.M. in the morning he rushed to the place of occurrence. All those things appears to be unbelievable.

14. In view of the facts and circumstances as we have discussed hereinabove, the court is of opinion that:-



(1) Prosecution has not been able to establish the case that marriage of deceased with appellant was solemnized within seven years from the date of occurrence.

(2) The conduct of the informant that he after getting information over mobile of his wife without verifying the caller or verifying the fact regarding the occurrence which was conveyed to his wife- Kaushalya Devi who has not been examined, how he suddenly rushed to the place of occurrence. In such situation, it was necessary for the prosecution to produce Kaushalya Devi as prosecution witness, otherwise, the evidence of informant to the extent that he got information regarding elimination of his sister by the appellant which had come through the mouth of his wife- Kaushalya Devi may not be termed even as hearsay evidence since the person who conveyed the fact to the informant has not come forward to depose as whether she conveyed this fact or not.

(3) There is no cogent evidence on record that deceased just prior to her death was administered torture due to non fulfillment of demand of dowry save and except vague oral evidence which has come during the trial.



(4) There is apparent inconsistency in the evidence of prosecution witnesses on the point regarding first noticing the dead body of the deceased. In the evidence witnesses are of three types. One witness is saying that while they reached they saw that accused persons were moving/ carrying the dead body for cremation. Another witness says that dead body was burning and third type of witness said that dead body was lying and accused persons were covering the dead body by wood and cow dung cakes.

15. In view of the aforesaid facts and circumstances, it would be difficult to approve the judgment of conviction and sentence particularly for the offence under Section 304B/ 201 / 34 of the I.P.C., and as such, there is no reason to approve the judgment of conviction and sentence. Accordingly, judgment of conviction dated- 22.05.2013 and sentence dated: 28.05.2013 passed by Sri Harindra Nath, learned Adhoc Addl. District & Sessions Judge, Kaimur, Bhabua in S. Tr. No. 344 / 135 of 2010 / 2012 { arising out of Bhabua (Sonhan) P.S. Case No. 147 of 2010 , G.R. No. 569 of 2010} is hereby set aside and the appeal is allowed. Since appeal has been allowed and judgment of conviction and



sentence has been set aside and appellant- Sudarshan Singh @ Kachahari Singh is in custody, it is hereby directed to release him forthwith, if not wanted in any other case. The Appeal is allowed.

16. Let a copy of the first and last page of this judgment be handed over to learned Amicus Curiae Sri Animesh Kumar Mishra and the learned Amicus Curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

praful/-

AFR/NAFR	AFR
CAV DATE	N/A
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