

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2426 of 2017

Arising Out of PS. Case No.-415 Year-2002 Thana- HAJIPUR SADAR District- Vaishali

Gayan Prakash Son of Dwarika Ray, resident of Village and Post Office-
Balwa Kuwari, Police Station- Sadar Hajipur, District- Vaishali.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 2466 of 2017

Arising Out of PS. Case No.-415 Year-2002 Thana- HAJIPUR SADAR District- Vaishali

1. AJAY RAY @ AJAJY KUMAR RAY, Son of Dwarika Ray,
2. Anita Devi, Wife of Ajay Ray,
3. Dwarika Ray @ Dwarika Prasad Ray, Son of Late Munar Ray, All resident of Village- Dharmgachhi, Balwa Kuwari, Police Station- Sadar Hajipur, District- Vaishali at Hajipur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 2426 of 2017)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Mukund Mohan Jha, Advocate
Mr. Aquaib Khan, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 2466 of 2017)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate
Mr. Mukund Mohan Jha, Advocate
Mr. Aquaib Khan, Advocate

For the Respondent/s : Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT

Date : 31-08-2023

1. As both the criminal appeals have arisen out of
the same judgment of conviction, hence both the appeals are



being decided together by a common judgment.

2. Since the appellant no.3 in Cr. Appeal (SJ) No.2466 of 2017, namely, Dwarika Ray @ Dwarika Prasad Ray has died during the pendency of this appeal as appears from the report of the Superintendent of Police, Vaishali at Hajipur, hence the Cr. Appeal (SJ) No.2466 of 2017 stands abated to the extent of the said appellant and it will now survive only in respect of other appellants.

3. Heard the parties.

4. Both the appeals have been filed against the judgment of conviction dated 19.07.2017 and order of sentence dated 24.07.2017 passed by the learned Addl. District and Sessions Judge, IV, Vaishali at Hajipur in Sessions Trial Case No.52/2007 arising out of Hajipur Sadar P.S. Case No.415/2002, whereby and whereunder the appellants have been convicted for the offences punishable under Sections 304(B)/34 and 201/34 of IPC and sentenced to undergo rigorous imprisonment for 10 years for the offence punishable under Section 304(B)/34 of IPC and simple imprisonment for 3 years and a fine of Rs.5,000/- each for the offence punishable under Section 201/34 of



IPC and in default of payment of fine, they shall further undergo simple imprisonment for three months and both the sentences have been directed to run concurrently. `

5. The appellants stood charged for the offences punishable under Sections 304 (B) read with 34 and 201 read with 34 of Indian Penal Code (for short I.P.C.). The substance of the prosecution's case is that the informant's grand-daughter, namely, Mamta Devi was married to the appellant/Gayan Prakash just eight months before the alleged occurrence and at the time of marriage, sufficient gifts and dowry were given to the in-laws of the victim and after the marriage, the victim went to her *Sasural* and started residing there but after some time, the appellants started complaining about non-fulfilment of demand of Hero Honda motorcycle and a gold chain which were promised to be given, hence the accused persons started pressurizing the victim to demand the said things from her *Naihar*. After that, the informant went to *Sasural* of the victim and tried to convince the appellants and assured them to fulfill their demand and brought the victim back to her *Naihar*. It was further alleged by the informant that the



appellant/Gayan Prakash (husband of the victim) took the victim with him from her *Naihar* just two and half months before the occurrence and at that time, the gold chain, as demanded, was given but the demand of motorcycle could not be fulfilled, so the accused persons again started torturing the victim and when the informant got the information of the said behaviour and cruelty of the accused persons given to the victim, he went to the *Sasural* of the victim with co-villagers and brought her back and thereafter took the victim to Patna where she was treated for head injury and the victim told him that she was badly assaulted by the accused persons by means of *lathi*, *danda* on account of non-fulfilment of their demand of motorcycle. It was further alleged by the informant that on 26.10.2002, an unknown person gave him the information on telephone that the appellants had killed the victim by giving poison to her and concealed the dead body also and then he went to *Sasural* of the victim (Mamta Devi) with co-villagers and found the appellants being absconding and he did not find the body of the victim and noticed the foul smell of poison emanating from the room in which the



victim used to reside.

6. The informant filed written FIR with above allegations and on that basis, Hajipur Sadar P.S. Case No.415 of 2002 was registered under Sections 304B, 201 read with 34 of IPC and under Section 3/4 of Dowry Prohibition Act. After the completion of investigation, the police submitted chargesheet under the same offences of the FIR. Thereafter, the accused/appellants were charged for the offences punishable under Sections 304 (B) read with 34 and 201 read with 34 of IPC. During trial, in oral evidence, the prosecution examined fourteen witnesses and proved and exhibited the following documents:-

Ext.1- The signature of the informant on written FIR;

Ext.2- Post-mortem report;

Ext.3- An endorsement over the written FIR;

Ext.4 - The signature of Station House Officer (SHO) of P.S. concern over the formal FIR.

7. During trial, three photographs of the deceased including the photograph of her dead body were also produced which were marked as X, X/1 and X/2.



8. After the completion of the prosecution's evidence, the statements of the appellants were recorded under Section 313 of Cr.P.C. and the main circumstances appearing against them were explained to them, to which they denied the said circumstances and claimed themselves to be innocent. In defence, the appellants produced three witnesses and examined them as DW.1, DW2 and DW 3 and in documentary evidence, they produced, proved and exhibited three documents which are as under:-

Ext. A- A prescription of medical treatment of the deceased;

Ext. B- A certificate dated 28.10.2002 issued by Mukhiya; and

Ext. C- A photograph of marriage of the victim and appellant/Gayan Prakash which was marked as X.

9. Learned counsel appearing for the appellants has argued that there was no demand of any type of dowry before the victim's marriage, at the time of *Tilak* ceremony and at the time of marriage by the appellants and with regard to the demand of dowry, no evidence was given by the prosecution, so there was no reason for the appellants to



start the demand of a motorcycle and a gold chain from the victim after she started residing at her *Sasural* and the prosecution failed to disclose the specific period and time when the appellants demanded the motorcycle from the victim or her parental family members and in this regard, the allegation made by the informant remained quite vague. Further argument is that as per the evidence of informant in respect of the alleged demand, a *Panchayti* meeting was held in between both the parties but neither any documentary evidence nor any oral evidence was given to prove the same and the prosecution failed to prove the demand of motorcycle and a gold chain allegedly made by the appellants from the victim. It has been further argued that in fact the deceased died due to diarrhea and in this regard the doctor, who treated the deceased for the said disease, was examined as DW 2 and the medical prescription concerned to the said treatment was also produced and proved by the said doctor which was marked as Ext.A and when the victim's condition became critical, she was referred to PMCH, Patna and on the way, she died. Thereafter the family members of the deceased were



informed about the demise of the victim and after that the funeral of the deceased was performed. It has been further argued that the dead body of another lady, namely, Rajkali Devi, wife of one Shiv Chandra Ray, which was found at railway platform in decomposed condition some days after the death of the victim, was claimed by the informant to be of the victim of the present matter and he identified the said dead body as being the victim by seeing the photographs and clothes of the dead body but the said identification is completely unbelievable and during trial, PWs.3, 8 and 10 deposed that the dead body of the said lady had been buried, so in such a situation, DNA test on the dead body could have been conducted by the concerned police officials but they did not make any effort to do so and the identification by the informant merely by seeing the photographs of the said body was not sufficient to prove the body to be of the victim. It has been further submitted that in respect of the recovery of the dead body of a lady, which was claimed to be of the victim, GRP Muzaffarpur P.S. Case No. 117 of 2002 was registered but the relevant documents concerned to the said case, such as inquest report of the dead body and



seizure memo of the clothes found on the body were not produced and proved by the prosecution in the trial of the appellants and the clothes which are stated to have been found on the body of the said lady, which was later claimed by the informant to be of the victim of the present matter, were also not produced by the prosecution before the trial court and these facts are sufficient to show that the prosecution failed to prove the recovered dead body of a lady to be of the victim of the present matter. It has been further argued that from the evidence of the prosecution witnesses, it does not appear that the victim was subjected to cruelty soon before her death by the appellants, so the main ingredient to attract the offence punishable under Section 304 B of IPC is lacking in present matter. It has been further submitted that the learned trial court did not explain all the circumstances to the appellants appearing against them from the prosecution evidences while recording their statements under Section 313 of Cr.P.C. and merely on this ground, the appellants are entitled to be acquitted.

10. Learned APP appearing for the State has



vehemently opposed the appeals and submitted that the victim was killed just eight months after her marriage and the defences taken by the appellants are not reliable and believable as on the body of the victim, ante-mortem injuries were found and informant rightly identified the dead body of the lady as being the victim and the prosecution succeeded in proving the main ingredients of Section 304(B) of IPC to constitute the offence of dowry death against the appellants and the factum of the recovery of the dead body at railway station, which is 50 kilometers away from the victim's *sasural*, is sufficient to prove that the appellants concealed the victim's dead body, so the alleged offence punishable under Section 201 of IPC attracts in the present matter and the appellants have been rightly convicted for the said offence.

11. Heard both the sides and perused the evidence available on the case record of the trial court.

12. In respect of the offence of dowry death, it is very difficult for the prosecution to bring an eye-witness of the commission of such offence, as in most of the cases of dowry death, the victim is killed within the walls of her



sasural's house and the persons who reside near the *Sasural* of a victim as neighbours can be deemed to be important witnesses but on account of such persons being interested in the husband and in-laws of the victim owing to being their co-villagers and neighbours, so they can be deemed to be interested witnesses, so in my opinion, the most important witnesses in such offence are the parental relatives of the victim. In the present matter, the victim, who happened to be grand-daughter of the informant, was married to the appellant/Gayan Prakash just eight months before the commission of the alleged occurrence and according to the informant's evidence, the husband and other appellants started torturing the victim for the demand of motorcycle and a gold chain and on account of non-fulfilment of the said demand, the victim was assaulted by them which resulted in head injury to the victim for which she was treated at PMCH, Patna. Though in respect of the said treatment of the victim at PMCH, Patna, the informant could not produce any documentary evidence but he stated in the cross-examination that the relevant documents concerned to the victim's treatment at PMCH might be with



the appellant/ Dwarika Ray. As the informant comes from village background and appears to be a rustic person, so it cannot be expected from him to keep the documents concerned to the victim's medical treatment in his safe custody and moreover the other material witnesses of the prosecution supported the alleged physical assault committed by the appellants with the victim which resulted in head injury to the victim. As per the allegation, the informant fulfilled the appellants' demand of a gold chain and gave it to appellant/Gayan Prakash and in this regard, the prosecution produced and examined PW 1, who runs a jewellery shop and he deposed that about six months after the marriage of the victim, the victim's mother told him that the accused persons were demanding a gold chain and a motorcycle from the victim and she asked him to make a gold chain and then he made the gold chain and handed it over to the victim's family and at that time, the appellant/Gayan Prakash was present at the house of the victim's parents. The evidence of this witness completely corroborates with the factum of fulfilment of the demand of gold chain by the informant to the appellant/Gayan Prakash.



13. The evidence of PWs.2 to PW.10, PW.13 and PW.14 fully goes in favour of the prosecution's allegation and all these witnesses fully supported the allegation that the appellants started torturing the victim for the demand of a gold chain and a motorcycle after her marriage and on account of that torture, the demand of gold chain was fulfilled by the informant. The accused persons did not get success in eliciting any fact in the cross-examination of the said witnesses to doubt the truthfulness of the allegations levelled by the said witnesses and all the witnesses remained firm to their stand in the cross-examination also and their evidence is sufficient to prove that all the appellants equally indulged in demanding a motorcycle and a gold chain from the victim and subjected her to torture as she failed to fulfill their demand of the motorcycle. Though the prosecution did not produce any independent witness to prove the said demand but I find no reason to disbelieve the testimony of the examined prosecution witnesses as in matrimonial offences, a victim lady normally tells such type of dowry demand to her parental family members who can be deemed to be reliable persons to prove such demand.



14. During trial, the appellants mainly took the defence that the victim died due to diarrhea and when her condition deteriorated she was taken by her in-laws including her husband to a local private hospital from where she was referred to PMCH, Patna but on the way, she died. Though in this regard, the appellants produced and examined the doctor concerned as DW.2, who is stated to have treated the victim for the disease of diarrhea and also exhibited the medical prescription of the said treatment as Ext.A. But I find the said defence to be not reliable as firstly, the appellants produced doctor's prescription only in respect of the said disease of the victim but any other documents, such as, medical test report, receipt of medicines etc., were not produced and secondly, the said doctor accepted in the cross-examination that there was no endorsement of any serial number on the prescription of the victim (Ext.A). The most important thing is that the factum of death of the victim was not informed to the police by the appellants and the said fact was accepted by DW 1 in his cross-examination and according to the evidence of the defence witnesses, the victim's body was cremated in



hurried manner and at the time of cremation, the appellants/Gayan Prakash, Dwarika Ray, his villagers, DW1 and some others were present which clearly goes to show that the parental family members of the victim did not attend the funeral which is sufficient to create a serious doubt in the said defence of the appellants.

15. Accordingly, I find no force in the appellants' the defence as to the victim having been died on account of diarrhea and thereafter she was cremated after informing the informant and her parental family members who also participated in that funeral. As per prosecution, the victim's dead body was recovered at *Kurni* railway station just some days after the commission of the alleged occurrence and as the body was in decomposed condition, so soon after the postmortem, it was cremated by railway police but before that, photographs of the body were taken and when the informant got the information of recovery of a dead body, he approached the police and identified the said body as being body of the victim after seeing the photographs of the dead body and her clothes.

16. It has been further argued by learned counsel



for the appellants that the police did not make any effort to fish out the body from the graveyard to take DNA sample to ensure the body being the body of the victim of the present matter.

17. I find no substance in the said contention, as firstly, the dead body was in decomposing condition when it was recovered and secondly, the prosecution witnesses simply used the term “*Dafnana*” and the said term is sometimes used by the rustic villagers in respect of their ritual of funeral/cremation of a dead body irrespective of whether it belongs to a Hindu or any other religion and moreover the clothes, which were found on the recovered body, were produced before the informant and the same were identified by him as being of the victim and he also identified the body by seeing her photographs hence I am of the view that the identification made by the informant was sufficient to prove the recovered dead body as being of the body of the victim of the present matter. Accordingly, I find no force in the above contention of the appellants’ counsel.

18. As per evidence of PW 11, who conducted postmortem examination over the recovered dead body,



abrasions were found on the chin, neck, face and back of the body and according to his opinion, the deceased died due to asphyxia as a result of strangulation. According to his opinion, injury no.1 described in the postmortem report was due to the alleged strangulation. The injuries found on the body of the deceased discussed in her postmortem examination report clearly suggest that she was subjected to physical cruelty soon before her death and the accused persons strangled her to death.

19. It has been argued by learned counsel for the appellants that against the appellants/Ajay Ray @ Ajay Kumar Ray and Anita Devi there is no specific allegation of dowry demand and cruelty and any of the prosecution witnesses did not reveal their specific role in demanding the alleged motorcycle and gold chain from the victim and in committing the alleged cruelty to her and they have been convicted by the trial court mainly on the basis of general and omnibus allegation which is not proper as per the settled principles of law.

20. I find no substance in the said argument as all the prosecution witnesses alleged that the said appellants



also indulged in making the demand of dowry from the victim and the appellants did not get success in eliciting any fact from the prosecution witnesses during their cross-examination to show that the appellants had separate affairs from the victim's husband and the evidence of Investigating Officer (PW 12), who inspected the place of occurrence, also does not go to show that the appellants were living separately from the husband of the victim. Hence, mainly on account of the main allegations being general and omnibus against them, they cannot be deemed to be innocent.

21. It has been further argued by learned counsel for the appellants that all the circumstances appearing against the appellants, from the prosecution evidences, were not put to them while recording their statements under Section 313 of Cr.P.C., so mainly on this ground the judgment impugned is not sustainable in the eyes of law.

22. In the light of the said contention, I have perused the statements of the appellants recorded under Section 313 of Cr.P.C., though their statements were recorded in a very brief manner but two main circumstances



relating to demand of motorcycle and physical assault committed by them with the victim soon before her death were put to them by the trial court, so not putting the other circumstances appearing against them from the prosecution's evidences did not prejudice them seriously. Moreover, the appellants did not raise the issue of non-explanation of all the circumstances appearing against them from the prosecution witnesses before the convicting trial court nor in this regard any ground has been made by them in their memo of appeal which is sufficient to show that on account of non-explanation of the circumstances appearing against them from the prosecution evidence, none of them felt prejudiced. Hence, I find no force in the said contention.

23. In the light of the above discussed facts and evidences available on the case record of the trial court, I am of the considered view that the prosecution succeeded to prove that all the appellants used to torture the victim for demand of a motorcycle and finally they assaulted her brutally and also subjected her to physical assault soon before her death and killed her by strangulation on account



of non-fulfilment of their demand of a motorcycle by the victim and also concealed the dead body by throwing it near a railway station, hence the necessary elements to constitute the offences punishable under Sections 304(B) and 201 of IPC attract in the present matter and the trial court rightly convicted the appellants for the said offences.

24. So far as the quantum of punishment of imprisonment awarded upon the appellants for the offence punishable under Section 304(B) read with 34 is concerned, having taken into account the circumstances relating to their family background and their liability of their family, I am of the view that sentence of 10 years of rigorous imprisonment awarded upon the appellants appears to be at higher end and if the sentence is reduced to the period of custody undergone by the appellant/Gayan Prakash, then it will be sufficient to meet the ends of justice and the punishment of imprisonment for seven years to other appellants for the offence punishable under Section 304(B)/34 of the IPC will be sufficient to meet the ends of justice. Accordingly, the punishment of 10 years of rigorous imprisonment awarded upon the appellant/Gayan Prakash



for the offence punishable under Section 304(B) read with 34 of IPC is hereby reduced to the period of custody undergone by the said appellant till the date of communication of this judgment to the jail authority concerned and as the punishment of imprisonment for 3 years awarded under Section 201/34 of IPC upon the said appellant has completed, hence the appellant/Gayan Prakash in Cr. Appeal (SJ) No.2426 of 2017 is directed to be released forthwith as per above direction, if his custody is not required in any other case.

25. The punishment of 10 years of rigorous imprisonment awarded upon appellants/Ajay Ray @ Ajay Kumar Ray and Anita Devi for the offence punishable under Section 304(B)/34 of IPC is hereby reduced to the period of 7 years but their punishment for the offence under Section 201/34 of IPC awarded by trial court will remain unchanged.

26. As both the appellants, namely, Ajay Ray @ Ajay Kumar Ray and Anita Devi in Cr. Appeal (SJ) No.2466 of 2017 are on bail and their present custody period till date is less than 7 years, hence their bail bonds



are hereby cancelled and they are directed to surrender before the convicting trial court within 15 days from the date of communication of this judgment to the trial court and serve the remaining part of their 7 years rigorous imprisonment for the offence punishable under Section 304(B)/34 of IPC.

27. It is clarified that the punishment of fine will remain unchanged and the appellant/Gayan Prakash shall be released after the payment of fine and if he does not pay the fine amount then he shall have to undergo three months of simple imprisonment as per the sentence of the trial court and the appellants/Ajay Ray @ Ajay Kumar Ray and Anita Devi shall have to undergo the said period of three months of simple imprisonment in addition to the period of seven years of rigorous imprisonment awarded upon them after modification in the sentence awarded by the convicting trial court for the offence punishable under Section 304(B)/34 of IPC, if they default in the payment of fine amount.

28. In result, both the appeals stand dismissed with modification in the quantum of sentence of imprisonment, as mentioned above, for the offence



punishable under Section 304(B) read with 34 of IPC
awarded by the trial court upon the appellants.

29. Let the records of these appeals be returned
to the Trial Court forthwith.

30. Let a copy of the judgment be communicated
to the Superintendent of the concerned jail for record and
compliance.

31. Interlocutory application/s, if any, also stand
disposed of accordingly.

(Shailendra Singh, J)

Sanjay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.09.2023
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