

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.420 of 2016

Arising Out of PS. Case No.-86 Year-2011 Thana- ISLAMPUR District- Nalanda

Rupchand Kewat s/o Late Sukhu Kewat r/o Village- Dharampur, P.S. Chandi,
Dist- Nalanda.

... .. Appellant/s

Versus

1. The State of Bihar
2. Indal Kewat son of Krishna Kewat
3. Krishna Kewat son of Late Keshav Kewat
4. Bachchia Devi @ Bachchi Devi w/o Krishna Kewat
Respondent nos. 2 to 4 are R/o village Dharampur, P.S. Chandi, Dist-
Nalanda

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 80 of 2016

Arising Out of PS. Case No.-86 Year-2011 Thana- ISLAMPUR District- Nalanda

1. Krishna Kewat son of Late Keshwar Kewat
2. Bachiya Devi @ Bachi Devi W/o Krishna Kewat
Both are resident of Village- Sundar Bigha, P.S. Islampur, District-
Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 167 of 2016

Arising Out of PS. Case No.-86 Year-2011 Thana- ISLAMPUR District- Nalanda

Indal Kewat Son of Krishna Kewat Resident of village- Suhndar Bigha, P.S.-
Islampur, District- Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 420 of 2016)



For the Appellant/s : Mr. Amrendra Kumar Sinha, Adv.
For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (SJ) No. 80 of 2016)
For the Appellant/s : Mr. Anil Kumar, Adv.
Mr. Tej Narayan Singh, Adv.
For the State : Mr. Abhimanyu Sharma, APP
(In CRIMINAL APPEAL (SJ) No. 167 of 2016)
For the Appellant/s : Mr. Anil Kumar, Adv.
Mr. Tej Narayan Singh
For the State : Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 24-07-2023

We have heard Mr. Anil Kumar for the appellants in Cr. App. (SJ) No. 80 of 2016 and Cr. App. (SJ) No. 167 of 2016. The Cr. App. (DB) No. 420 of 2016, which is for enhancement of sentence to the appellants, has been addressed by Mr. Amrendra Kumar Sinha, learned advocate. Mr. Abhimanyu Sharma, learned counsel for the State has appeared in all the three appeals.

2. Sunita Devi, wife of the appellant/Indal Kewat is alleged to have been killed sometimes on 25.05.2011. Her father Rupchand Kewat (P.W.7) lodged the F.I.R. alleging that on 26.05.2011, he learnt that his



daughter has been killed by strangulating her and her dead body has been disposed off. On such information, he immediately proceeded to the matrimonial home of his daughter but did not find any one of the appellants in the house. On suspicion because of such information having been received by him, he enquired from the neighborhood and learnt that about a day before i.e. on 25.05.2011, there had been a fight between his daughter (deceased) and his son-in-law/appellant/Indal Kewat whereafter the father-in-law, the mother-in-law and the husband of the deceased killed her and disposed off the dead body. He has also alleged in the F.I.R. that the deceased was always pestered and troubled for additional dowry about which she used to complain but, her hurt feelings were assuaged by P.W.7 who made her understand that with the passage of time, such behaviour of the husband and the in-laws would improve. He has therefore asserted that the deceased was first killed by strangulating her and then her dead



body was burnt.

3. On the basis of the aforementioned *fardbeyan* statements of P.W.7, Islampur P.S. Case No. 86 of 2011 dated 26.05.2011 was registered for investigation under Section 304(B), 201/34 of the Indian Penal Code.

4. The police after investigation had submitted charge-sheet whereupon cognizance was taken and the case was committed to the court of sessions for trial.

5. The learned Trial court, after having examined 12 witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellants under Section 304(B)/34 and 201/34 of the Indian Penal Code vide judgment dated 11.01.2016 passed in Sessions Trial No. 551 of 2011 by the 2nd Additional District and Sessions Judge, Hilsa at Nalanda and vide order dated 16.01.2016, the appellants were sentenced to undergo R.I. for 10 years and R.I. for 7 years for the offences under Sections 304(B) and 201/34 of the I.P.C. respectively along with a fine of Rs. 10,000/- each and



in default of payment of fine to further suffer R.I. for 3 years. The sentences were ordered to run concurrently.

6. Mr. Anil Kumar, learned advocate for the appellants who are the parents-in-law and husband of the deceased, has firstly stated that all the appellants after having served the sentence awarded to them have now come out of jail. However, he insists that he shall press the appeal on merits.

7. It would be relevant here to note that the Informant of this case/P.W.7 has also preferred an appeal vide Cr. App. (DB) No. 420 of 2016 under the proviso to Section 372 of the Cr.P.C. for enhancement of sentence.

8. Section 372 Cr.P.C. provides that no appeal shall lie from any judgment or order of a Criminal Court except as provided by this Code by any other law for the time being in force. The proviso to Section 372 Cr.P.C. further mandates that the victim shall have a right to prefer an appeal against any order passed by the Court



acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court.

9. A bare reading of the proviso would indicate that an appeal at the instance of the victim under Section 372 Cr.P.C. can only be filed under the three circumstances viz. in case of the Court acquitting the accused persons, or convicting for a lesser offence or for imposing inadequate compensation.

10. The appeal in the present case on behalf of P.W.7 has been preferred for enhancement of sentence which is not maintainable. For enhancement of sentence, the provision is Section 377 Cr.P.C. wherein the State Government could prefer an appeal against the sentence. On that score alone, the appeal preferred by P.W.7 viz. Rupchand Kewat fails and is dismissed.

11. We may however note that considering the pendency of the appeal referred to above which was



entertained by a Division Bench of this Court, the two appeals viz. Cr. App. (SJ) No. 167 of 2016 and Cr. App. (SJ) No. 80 of 2016 respectively, which ordinarily would have been listed before a single Judge of this Court according to Patna High Court Rules, have been entertained by us in the Division Bench as it was tagged along with Cr. App. (DB) No. 420 of 2016.

12. The Informant/P.W.7 during the trial has though supported the prosecution case but has not been able to bring forth positive evidence against the appellants regarding their having killed the deceased and disposing off the dead body.

13. The marriage of the deceased, according to him, had taken place in the year 2008 and the deceased used to complain about the bad behaviour and ill treatment to her in her marital home to P.W.7. He has however not disclosed to the Trial court the identity of the person who told him on 26.05.2011 that the deceased has been killed and her dead body has been



burnt.

14. Not disclosing the name of such person would not have otherwise assumed relevance but for the fact that it is the consistent case of the defence that the deceased was not killed and that necessary information regarding the death was given to the Informant but, the case was lodged on wrong advice or for some ulterior purposes.

15. What is striking to note is that after receiving the information on 26.05.2011 of the deceased being killed on 25.05.2011 only, the FIR was lodged. The police of Islampur Police Station went along with P.W.7 to the house of the appellants but, no one was found. No incriminating articles were also found in the house, the doors of which were left ajar.

16. An effort was made to find out the dead body and ultimately the dead body was found out on 27.05.2011 in presence of many persons, some of whom have been examined as P.Ws. 1, 2 & 3



respectively.

17. Mr. Anil Kumar has argued that such finding of the dead body and its identification to be that of Sunita is absolutely doubtful. He says so for the reason that there is nothing on record to indicate the clue to the police to go to the place from where the dead body was recovered. Nobody appears to have guided the police to the place from where a sack containing the dead body, purportedly of Sunita, was found. The sack in question containing the dead body of Sunita, was recovered from a ditch below a bridge. The legs and hands of the dead body were protruding out of the sack. The sack was alleged to have been opened at the place where it was recovered where the same was identified to be that of Sunita.

18. These set of information would have been properly collated into a definite piece of evidence with respect to the recovery of dead body, had the inquest report been brought on record.



19. It has been urged before us that the dead body according to the I.O./P.W.12 was sent straightway from the place of recovery to the Bihar Sharif Hospital for postmortem and all the witnesses, who have identified the dead body to be that of Sunita, claimed to have seen such dead body in Islampur Police Station. On this score alone, the tall claim of the prosecution that the dead body was definitely of Sunita as it was identified by the relatives, falls to the ground. The false claim of the prosecution further comes to the fore when the deposition of the Doctor/P.W.11 is analyzed.

20. The postmortem on the dead body was conducted on 28.05.2011 at about 08.20 AM. The Doctor/P.W.12 found the dead body to be totally decomposed and swollen. Rigor mortis was conspicuously absent. The tongue was protruding out and the abdomen was distended. Most of the skin from the body of the deceased had peeled off and there were maggots crawling on the surface of the dead body.



21. With this finding, it is difficult for us to accept that a dead body which was recovered from a sack, thrown in a ditch for some days could be identified by even the father or the relatives of the deceased. Had that not been so, the inquest report which is said to have been prepared by the I.O. would have been brought on record. There is no recovery memo of the dead body when admittedly some of the relatives of the deceased were present.

22. The findings of the Doctor about the tracheal cartilage being fractured thus would be of no avail to us in accepting his report that the death occurred due to asphyxia caused by strangulation.

23. With such decomposed body for the postmortem examination, the findings of the Doctor appear to us to be totally unacceptable. The ligature mark or the bruises over the body of the deceased could not be discovered by P.W.12 because of the skin having peeled off because of the decomposition.



24. There is yet another fact which strikes us rather strongly. Could that have been the dead body of a person killed only within a time span of five days. Bodies do not discompose to this condition in mere five days. We have nothing on record also to come to any conclusion whether the sack was beneath the mud or water, let alone the correctness of the findings of the Trial court that the identification of the deceased to be that of Sunita was foolproof for convicting the appellants for the offence under Section 304(B) of the I.P.C.

25. In this context, we have analyzed the deposition of the other witnesses, especially P.Ws. 1, 2 & 3 who are related to the Informant and the deceased.

26. P.W.1 (Bachu Prasad) is the cousin of P.W.7 who was informed by the P.W.7 to come to Islampur Police Station to lodge the case against the in-laws of the deceased. P.W.1 claims to have gone to the police station and then only he learnt about the occurrence. He again visited the house of the appellants



on the next day along with P.W.7 and the police party and claims to have overseen the process of recovery of the dead body from a ditch. However, in his entire deposition, he does not say that he had any inkling or idea about the deceased having been killed at the hands of the appellants.

27. In his cross-examination, he has admitted that though he had accompanied the police party to the place of recovery but his statement was not recorded then. This again assumes significance especially when he was in know of the facts which is the bedrock of the prosecution version. The deceased according to him was fairly literate whereas her husband was illiterate. P.W.1 has but denied the suggestion that the deceased had committed suicide because of her having failed in the matriculation examination.

28. Lalmuni Devi (P.W.2) and Bilash Kewat (P.W.3) who are husband and wife and related to P.W.7 and deceased, have only stated before the Court that



they had identified the dead body to be that of Sunita at Islampur Police Station.

29. Their deposition therefore cannot be believed for the purposes of relying upon the prosecution's claim of the dead body of Sunita having been recovered and put to postmortem examination.

30. Rest all other witnesses are hear-say who have fallen prey to the stray information to them that there was a fight between the husband and the wife in the night of 25.05.2011 for payment of additional dowry whereafter she was killed.

31. The entire fabric of prosecution story, according to us, is not believable. We say so for the reason that there could not have been any discord between the spouses regarding the educational qualification of the deceased. The family of the appellants knew that the daughter-in-law was more educated than the groom. If that would have been the reason, the occurrence would have been executed



sometimes earlier.

32. There is yet another reason to find fault with this proposition. Admittedly, all the witnesses have repeated that the deceased was made to write the examination while staying in her matrimonial home. Thus, it is quite logical to infer that the deceased was accepted in the family and her academic pursuits were not opposed to by the appellants.

33. The question which confronts us now is as to where is Sunita? The appellants have not made any effort to explain the absence of Sunita from her matrimonial home.

34. At this stage, learned counsel for the Informant as also the State have drawn our attention to the provisions contained in Section 106 of the Evidence Act viz. that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him, to assert that the parents-in-law and the husband of the deceased were the best persons to



explain the absence of the deceased from her matrimonial home.

35. Mr. Anil Kumar, learned counsel for the appellants however in response to the aforementioned arguments has submitted that the prosecution has first to stand on its own legs before finding fault with the defence or their obligation under Section 106 of the Evidence Act.

36. The consistent case of the defence has been that the deceased committed suicide, which fact was made known to the Informant and others but, a false case has been lodged against them.

37. Had this case not been false, the appellants would have taken care to hide themselves. Merely because they were not to be found in the house on 26.05.2011 when P.W.7 along with the police party had come to their house, is no evidence strong enough to indicate that they were fugitives with guilty mind.

38. The prosecution thus has miserably failed in



proving the case beyond all reasonable doubts. On top of it, the learned counsel for the appellants has submitted that whatever be the nature of evidence, the appellants have been singularly unfortunate to have served the entire sentence awarded to them, as these appeals were never taken up for hearing during the period when they were facing incarceration.

39. After giving thoughtful consideration over the facts of this case, we though have not come to any finding as to where was Sunita and why her absence was not explained but, there is no difficulty in rejecting the prosecution case that the dead body, which allegedly was recovered, packed in a sack, from a ditch, was that of Sunita. It is very difficult to accept the proposition of the prosecution that such maggot ridden decomposed dead body could be identified by anyone. The time fixed for death also does not fit in the scheme of the prosecution case. There would not be such decomposition within a period of five days. The deceased



is said to have been killed sometimes on 25.05.2011 if the witnesses are to be believed.

40. Thus on this score also, the prosecution case falters and, under such circumstances, it is difficult for us to affirm the judgment of conviction and order of sentence against the appellants.

41. For the reasons aforementioned, the appeals viz. Cr. App. (SJ) No. 167 of 2016 and Cr. App. (SJ) No. 80 of 2016 are allowed.

42. The the judgment of conviction and order of sentence are set aside.

43. Since the appellants have already served out the sentence awarded to them, there is no need to pass any further order.

44. As noted above, the appeal preferred under the proviso to Section 372 of the Cr.P.C. by Rupchand Kewat for enhancement is dismissed.

45. All the three appeals are disposed of accordingly.



46. The records of this case be sent to the court below forthwith.

47. We have been further informed that during the pendency of appeal, one of the appellants namely Bachiya Devi @ Bachi Devi (in Cr. App. (SJ) No. 80 of 2016) was released on bail after her sentence was suspended.

48. She is discharged of her liabilities under the bail bonds.

(Ashutosh Kumar, J)

(Vipul M. Pancholi, J)

rishi/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2023
Transmission Date	27.07.2023

