

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1170 of 2019**

Arising Out of PS. Case No.-34 Year-2012 Thana- BALUA BAZAR District- Supaul

MURARI KUMAR SINGH Son of Late Sita Ram Singh Resident of Village -
Makanpur, P.S.- Barsaliganj, Distt.- Nawada.

... .. Appellant/s

Versus

1. THE STATE OF BIHAR Bihar
2. Dhiraj Kumar Son of Satendra Prasad Resident of Village - Narsingpur, P.S.-
Jaysampure More, Distt.- Sheikhpura.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma (Sr. Adv.)
	:	Mr. Anuj Kumar (Adv.)
	:	Ms. Priyanka Singh (Adv.)
For Respondent No. 2	:	Mr. Mukesh Kumar (Adv.)
For the State	:	Mr. Dilip Kumar Sinha (A.P.P.)

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-08-2023

1. Heard Mr. Yogesh Chandra Verma, the learned senior advocate for the appellant/informant who is aggrieved by the judgment of acquittal of respondent no. 2, who has been represented here by Sri Mukesh Kumar, the learned advocate. We have also heard Mr. Dilip Kumar Sinha, the learned A.P.P. for the State.
2. By way of the present appeal, the appellant has challenged the acquittal of respondent no. 2 by the



learned Additional Sessions Judge -1, Supaul vide judgment dated 20.07.2019 passed in Sessions Trial No. 101 of 2013 arising out of Balua Bazar P.S. Case No. 34/2012.

3. The respondent no. 2 is the husband of the deceased against whom charges were framed under Section 302 and 304B Indian Penal Code. The informant/appellant who has been examined as P.W. 4 had lodged the F.I.R. on 23.09.2012, alleging that he had married his daughter to the respondent no. 2 in the year 2006. Right since the marriage, he had been according all respect to the family of the appellant but on the exhortation of his parents and brother, the respondent no. 2 kept on demanding money every now and then. Uptill now, all the demands put up by respondent no. 2 had been fulfilled by him. About four days ago, the respondent no. 2 is said to have demanded a fridge. On 22.09.2012 as claimed by the appellant/informant, his daughter-in-law received a telephone call that the deceased had strangled



herself. On this information, the informant came to the conclusion that perhaps non-fulfillment of the demand of fridge has led to the deceased being killed by respondent no. 2. The respondent no. 2 had also threatened that it is very common in his village home to kill the wife and then marry again.

4. On the basis of the aforementioned report lodged by P.W. 4, Balua Bazar (Lalitgram) P.S. Case No. 34 of 2012 dated 23.09.2012 was registered for investigation for offences under section 304B, 120B and 34 of the IPC.
5. The police, however, on investigation found that no case under Section 304(B) of the IPC was made out but sent up the respondent no. 2 only from amongst the other accused persons, for trial for offence under Section 302/120B I.P.C. However, charges were framed against respondent no. 2 under both, Section 304B and 302 IPC.
6. The Trial Court after having examined eight witnesses on behalf of the prosecution and two on



behalf of the defence, acquitted the respondent no. 2 of all charges.

7. Mr. Yogesh Chandra Verma, the learned senior advocate for the appellant/informant has submitted that the Trial Court has adopted a very casual approach in dealing with the charge under Section 302 of the IPC. He has submitted that from the tenor of the judgment, it would appear that no attempt has been made by the Trial Court to assess the evidence in terms of Section 304B of the IPC under which section also charge was framed against respondent no. 2. With the charges under section 304B IPC, the provisions contained in Section 113B of Evidence Act would get triggered, which fact has been completely ignored by the Trial Court.

8. It has further been submitted that from the circumstances gathered through the deposition of witnesses, it would appear that soon before her death, the deceased was tortured by respondent no. 2 and others and even if the deceased committed suicide, the



respondent no. 2 was responsible for goading her to do that. These aspects of the matter, Mr. Verma grieves, have been completely overlooked. The medical testimony, it has been asserted, is in complete conformity with the ocular version even though nobody has seen the occurrence. The deceased had ante-mortem injury on her body in the shape of a continuous ligature mark below the chin and above the neck which may not be possible in the case of hanging. It has been urged that in cases of hanging the ligature mark is always irregular unlike the regular ligature in case of strangulation. It has also been argued that with the recovery of a plastic rope in the room where the deceased was killed, the offence under Section 304B/302 stands proved. That there were no other injuries on the person of the deceased is no ground to completely disbelieve the prosecution version.

9. Lastly, it has been submitted that the witnesses, namely 1, 2, 3 and 4 who are the siblings and the parents of the deceased respectively including the



appellant/informant have supported the prosecution case of the deceased being troubled for money by the respondent no. 2 and others. This aspect ought not to have been lightly brushed aside by the Trial Court. Apart from this, it has been argued that the learned Trial Court erred in assessing that the deceased died after seven years of her marriage. The family members, Mr. Verma argued, are the best persons to know the year of marriage of someone. Merely because two of the neighbours of respondent no. 2 had alleged that they had the knowledge that the deceased got married to respondent no. 2 in the year 2004 and not 2006, would not be a ground strong enough to disbelieve P.Ws. 1 to 4 regarding the year of marriage of the deceased with the respondent no. 2.

10. On these grounds, it has been urged that the judgment of acquittal deserves to be interfered with.

11. Mr. Mukesh Kumar, the learned advocate for the respondent no. 2, however, has submitted that the



Trial Court judgment requires no interference as all the evidence on record have been carefully analysed and the Trial Court has rightly come to the conclusion that the accusation is false.

12. In order to appreciate the contentions of the parties, we have carefully examined the deposition of the witnesses.

13. Murari Kumar, who is the brother of the deceased, has been examined as P.W. 1, who has though supported the prosecution case but has made certain statements which are not consistent with the regular prosecution version. Similar is the case with Sudama Devi (P.W. 2) who is the mother of the deceased and Indu Kumari who is the sister of the deceased (P.W. 3). The appellant/informant has, during his cross-examination, clearly stated that he had not stated before the police that there had been any demand over a period of 3 to 4 days before the deceased died. Thus, the very story of continuous demand, at regular intervals, of money from the



appellant/informant could not be proved. Had the relationship between the spouses been strained, the appellant/informant would not have waited for all these years to see his daughter tortured in her matrimonial home. There has been no rebuttal of the fact that the deceased did not bear any child out of the wedlock and was also being treated for some of the latent diseases which could have become terminal after sometime. This had made the deceased mentally unstable, who attempted to and was successful in ending her life.

14. We have examined the deposition of the doctor (P.W. 5) who had conducted the postmortem on the deceased. He had conducted the postmortem at 12:05 PM on 22.09.2012 and had found the face of the deceased congested. The upper eyelid was prominently swollen and the tongue had protruded out. There was a ligature mark on the upper portion of the neck with a width of 1 CM x 2½ CM. Subcutaneous vessels were also found to be prominently congested. The internals



of the other organs were, however, intact. The hyoid cartridges were found to be broken. Rigor mortis was present in mild form in the upper limbs. The cause of death was assessed to be cardio respiratory failure due to asphyxia caused by homicidal tourniquet application. He has explained the same in his cross-examination that tourniquet means any string. However, he has also, in the same breath, stated that no mark of assault was found by him on the neck or other part of her body. He has further tried to explain that in self hanging, there is always a possibility of the ligature mark being oblique and not regular.

15. From the postmortem report, we find that some assumptions were made by P.W. 5 without any strong basis. Normally, a tourniquet is a device which is used to apply pressure to a limb or extremity in order to stop the flow of the blood. The apparatus is more often than not in use in emergencies in surgery or in post-operative rehabilitation. No doubt, a simple tourniquet could be made from a stick and a rope but it is highly



ineffective for the purpose for which the same is used. According to the evidence available on record, only a small piece of plastic rope was found in the room which was seized. For asphyxia, because of tourniquet pressing of the neck, the rope had to be attached to some other mechanical device. Had it been the case, the other part of the device also would have been present in the room and seized by the police. It's application also would have been evident on the body of the deceased by way of ante-mortem injuries. The doctor has categorically asserted that there was no injury on any part of the body, much less on the neck of the deceased.

16. True it is that in cases of self hanging, the ligature mark is usually oblique. Experience has shown that in such hangings, the ligature is non-continuous and is present high up in the neck between the chin and the larynx. However, there are other secondary symptoms/indications to support such proposition that the death is by homicidal strangulation and not by self



hanging. In cases of hanging, it is almost a rarity that any abrasion or ecchymosis around the edges of the ligature mark would be found. In the present case, there is no abrasion or ecchymosis near the ligature mark, clearly suggesting that it is not a case of strangulation or smothering. There is no report of any injury to the muscles of the neck. The hyoid bone was though found to be fractured but the larynx and trachea were found to be intact.

17. We have also not found any reported dislocation of cervical vertebrae. As commented by the doctor (P.W. 5) he found no scratches, abrasion or bruises on any part of the body. However, we find that the doctor has not examined or has stated anything which would indicate that he looked for "emphysematous bullae" on the surface of the lungs. There are good possibilities of the presence of "emphysematous bullae" on the surface of the lungs in case of hanging, which is never the case when a person is strangled.



18. That apart, we have found that two of the independent witnesses namely Akhilesh Kumar Shukla (PW 6) and Satish Kumar Tiwary (PW 8) have denied that the deceased was ever ill-treated by respondent no. 2. The deceased and respondent no. 2 resided in an official accommodation provided by Gamon India Company where PWs 6 and 8 were also employed and resided in the neighbourhood of respondent no. 2. The deceased always put up the appearance of a happy woman. One of these witnesses has, however, stated that when the family members of the deceased came, they started alleging ill-treatment at the hands of respondent no. 2 which was hitherto unknown to both the prosecution witnesses.

19. In the same context, we have examined the deposition of two of the witnesses on behalf of the defence namely Amrendra Mishra (DW1) and Vashisht Narayan Singh (DW2).

20. Amrendra Mishra is also an employee of Gamon India who has categorically stated before the Trial



Court that the deceased never spoke about any ill-treatment to his wife or to him. She was always taken for treatment to Patna. He remembered that the deceased was taken for an excursion also to Jammu by respondent no. 2. The respondent no. 2 had sought help when the deceased had attempted and had committed suicide. It was at that time that P.W. 6 and 8 and the defence witnesses came to the house of respondent no. 2, but only to find the deceased having died of hanging.

21. Vashisht Narayan Singh, another defence witness, is the uncle of Respondent no. 2 who has also spoken about good relationship between the spouses.

22. Apart from this, Mr. Mukesh Kumar for the respondent no. 2 has also drawn the attention of this court to two other facts namely that immediately after the death of deceased, a U.D. case was registered by respondent no. 2. The appellant/informant perhaps lodged this case only on being angered at the denial of the respondent no. 2 and his other family members, of



returning the articles used by the deceased. In support of the aforementioned allegation, Mr. Mukesh has further pointed out that when the respondent no. 2 had gone to jail in connection with this case, the appellant/informant along with his associates had forcibly entered into his house and ransacked his belongings and also took away certain valuables stated to be that of the deceased. For this act of the appellant/informant, a complaint case was also lodged by respondent no. 2.

23. Thus, we find that there is no evidence on record with respect to any ill-treatment to the deceased prior to her having ended her life. The story of demand of refrigerator three days prior to the deceased having committed suicide also could not be proved. The Investigating Officer has been candid enough in admitting that he did not take out the CDR of the telephones of the deceased and her family members which could have been an evidence to prove that the deceased had talk with her family members shortly



before her death. That the deceased was not being ill-treated is further evident from the fact that till date i.e. till the time of death of the deceased, no complaint was ever lodged by her family members. The story of respondent no. 2 having stated in the family of the appellant that there is a usual practice of killing the wife and getting re-married is at best statement in the nature of brutum fulmen. Whether he ever made such statement is also doubtful.

24. The contention of Mr. Verma, the learned senior advocate for the appellant that the trial court did not at all look into the aspect of the accusation under Section 304B of the IPC, is not sustainable for the reason that even if the Trial Court had thought of employing the provisions contained in Section 113B of the Evidence Act, the prosecution had first to establish all the facts constituting the offence under Section 304B of the Indian Penal Code.



25. As noted above, we have found no evidence to conclude that shortly before her death, the deceased was ill-treated or tortured for dowry.
26. Thus, we do not find any reason to interfere with the judgment of acquittal of the respondent no. 2.
27. The appeal, thus, stands dismissed.

(Ashutosh Kumar, J)

(Alok Kumar Pandey, J)

Sunilkumar
amitkr/-

AFR/NAFR	AFR
CAV DATE	N/A
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