

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.370 of 2021

Arising Out of PS. Case No.-547 Year-2018 Thana- KISHANGANJ District- Kishanganj

Saquib Alam @ Sakib Alam, Son of Abdul Haque, Resident of Mahesh
Bathana Panchayat- Khari Mahingoan, P.S Amaur, District- Purnea.

... .. Appellant

Versus

1. The State of Bihar
2. Juber, S/O Hazari @ Razzaque Khan, R/O Pichhla, P.S. and District- Kishanganj.
3. Khatiza, W/O Juber, R/O Pichhala, P.S. and District- Kishanganj
4. Israr, S/O Auwal, R/O Manatoli Mahesh Bathana, P.S- Amaur, District- Purnea.
5. Praween Khatoon, D/O Late Tabibur Rahman, R/O Malhana Panchyat Pichhla, P.S. and District- Kishanganj.
6. Shahnaj, W/O Late Tbibur Rahman, R/O Malhana Panchyat Pichhala, P.S. and District- Kishanganj.

... .. Respondents

Appearance :

For the Appellant : Mr. Dilip Kumar Singh, Advocate
For the State : Mr. Abhimanyu Sharma, Addl PP

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

and

HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 23-02-2024

Heard Mr. Dilip Kumar Singh, learned counsel for the
appellant and Mr. Abhimanyu Sharma, learned Addl PP for the
State.

2. The appellant in this case is aggrieved by and
dissatisfied with the judgment dated 08th February, 2021 passed by
learned Sessions Judge, Kishanganj in Sessions Trial No. 37 of



2019 arising out of Kishanganj P.S. Case No. 547 of 2018, G.R. No. 1649 of 2018 (State Vs. Khatibur Rahman and Others).

Brief Facts of the Case

3. As per the prosecution story, the informant has alleged that her sister was subjected to cruelty by her husband Khatibur Rahman and his family members for fulfilling the demand of Rs.2,00,000/- and gold and silver ornaments. The informant alleges that on 22.08.2018, the demand of metal was fulfilled but the accused persons continued torturing his sister. On 29.08.2018, at about 06:30 A.M., the informant received a telephone call from the accused Khatibur Rahman and got the information of death of his sister. When the informant and his family members reached the matrimonial house of the deceased, he found that the dead body of her sister was kept in the verandah. The informant alleges that he had seen the mark of violence on her sister's face, black spot on her swollen eyes and sign of hand on her neck.

4. On the basis of the written complaint lodged by the informant (PW-6), a first information report giving rise to Kishanganj P.S. Case No. 547 of 2018 dated 29.08.2018 was registered for the offences alleged under Sections 304B, 34 of the Indian Penal Code (in short 'IPC'). The Investigating Officer (PW-



8) investigated the matter and submitted a chargesheet against accused nos. 1 to 6. On 18.01.2019, cognizance of the offences was taken and on 26.02.2019, the records were committed to the court of Sessions where charges under Sections 304B/34 and 302/34 IPC were framed against seven accused. In course of trial, one of the accused, namely, Tabibur Rahman (father-in-law of the deceased) died, hence, his name was expunged from the records.

5. On behalf of the prosecution, as many as eight witnesses were examined and some documentary evidences such as FIR and postmortem report etc. were exhibited. The defense examined four witnesses in this case.

6. The learned trial court having examined the prosecution evidences and the evidences adduced by the defense concluded that the prosecution had succeeded in proving the case that on or about 29.08.2018 at Malhana village at the house of the accused Khatibur Rahman (Accused No. 1), he had committed murder of his wife, hence, he was found guilty for committing offence punishable under Section 302 IPC. The learned trial court, however, held that the prosecution could not bring sufficient evidence to prove one of the main essential ingredients of the offence under Section 304B IPC that the death of the married deceased was within a period of seven years of her marriage, the



learned court held that the evidences fell short against rest accused Sahnaj, Parween, Israr, Juber and Khatiza Khatoon, so these five accused have been acquitted and not held guilty for committing any offence.

Submissions on behalf of the Appellant

7. Mr. Dilip Kumar Singh, learned counsel for the appellant submits that the present appeal has been filed against that part of the judgment by which accused nos. 2 to 6 who are respondent nos. 2 to 6 in the present appeal have been acquitted by the learned trial court. It is his submission that the prosecution witnesses are consistent in their approach as regards the place of occurrence, the date of occurrence and time and the manner of occurrence.

8. It is submitted that the deceased was married in the year 2012 whereas the death took place in her matrimonial house on 29.08.2019, therefore, the death having occurred within a period of seven years from the date of marriage, the case was well within the ambit of Section 304B IPC.

9. It is submitted that the prosecution witnesses have stated that on 28.08.2018 during night hour, on the asking of the mother of Mahjabi Khatoon (deceased), her youngest son Sabih Ahmad had made a telephone call to Khatibur Rahman (Accused



No. 1) and Khatibur Rahman had informed over telephone that Israr and the in-laws (mother-in-law and father-in-law) were quarreling with Mahjabi Khatoon and he was in the street, therefore, he can not make it possible to get Mahjabi Khatoon available for a talk.

10. Learned counsel submits that on the very next date i.e. on 29.08.2019 at about 07:00 A.M., accused no. 1 who happen to be the husband of Mahjabi Khatoon informed the father of Mahjabi Khatoon that she had died in her house at village Malhana. On this information, PW-1 Mukhtar @ Mukhtar Alam Ansari, PW-2 Rahib, PW-3 Md. Jakir, PW-4 Abdul Haque, PW-5 Mustak Ahmad and PW-6 Sakib Alam had gone to village Malhana where they found that the dead body of Mahjabi Khatoon was lying on the *verandah* house of her *sasural*.

11. Learned counsel submits that the prosecution witnesses are consistent in saying that when they visited the village Malhana, they were informed by the co-villagers that Mahjabi Khatoon had been killed by her *sasural* people who had hanged her dead body with a mango tree outside the house. It is submitted that the witnesses have also stated that Mahjabi Khatoon had been complaining that her mother-in-law and *nanad* were asking for a silver ornament. It is submitted that in the given



circumstance, where the prosecution witnesses have proved the case beyond all reasonable doubts, the learned trial court is not correct in saying that the evidences fell short against the accused nos. 2 to 6.

Submissions on behalf of the State

12. Mr. Abhimanyu Sharma, learned Additional PP for the State has supported the judgment under appeal. Learned Additional PP submits that on going through the analysis made by the learned trial court from paragraphs '22' to '30' of the impugned judgment, it would appear that the learned trial court has rightly concluded that in this case, the date of marriage within seven years of death has not been proved.

13. In this regard, the discussions made in paragraph '23' of the judgment would show that as per the prosecution case, the marriage was solemnized in the year 2012 and the prosecution witnesses deposed saying that the marriage had been performed in the year 2012 but PW-3 Md. Jakir has stated that marriage was solemnized about 7-8 years ago. As per cross-examination of PW-1 Mukhtar, the *nikah* was solemnized in the year 2010 and after *vidai*, the deceased went to her matrimonial home in the year 2012. As per cross-examination of PW-4, Abdul Haque, the deceased had gone to her matrimonial home in the year 2012 after



vidai which had taken place three years after the day of '*akad*' (*nikah*). Similarly, PW-5 has stated that the deceased had gone to her matrimonial home after *ruksadi* in the month of March, 2012 and prior to two years from the date of her *ruksadi*, the *nikah* was solemnized.

14. It is, thus, submitted that the death in this case had not taken place within seven years of the marriage and in this regard, the finding of the learned trial court does not suffer from any infirmity.

15. Learned Additional PP has further taken this Court through the materials available on the record in form of the deposition of the prosecution witnesses. It is submitted that the prosecution witnesses have admitted that the deceased had constructed her own house separately and she was living in her house with her husband.

16. Attention of this Court has been drawn towards the cross-examination of PW-2. He has stated that about 3-4 years ago, Khatibur Rahman had constructed his own house on the other side of the river where he was residing with his wife and children. This witness has gone to the new house of Khatibur Rahman once or twice. PW-4 has also stated in his cross-examination that his daughter and son-in-law had constructed their own house and for this reason, the mother of his son-in-law was angry.



17. Learned Additional PP further submits that the Doctor who has been examined as PW-7 has found that the cause of death is due to asphyxia and shock as a result of hanging. The Doctor found (i) bruise over right temporal mandibular region sized about 3cm x 2cm and (ii) a ligature mark $\frac{1}{2}$ cm wide running obliquely around neck between chin and thyroid cartilage interrupted in the right side of the neck.

18. Learned Additional PP submits that there is no sign of struggle or bodily injury to the deceased. The prosecution witnesses did not say before the Investigating Officer that who informed them that the dead body of Mahjabi Khatoon had been hanged with a mango tree and then it was taken down and kept in the *verandah* of the *sasural*. In this regard, the evidence of the Investigating Officer (PW-8) has been referred to. PW-8 has stated in his cross-examination that in course of investigation, he had taken statement of Mohsein and Master Shamim but they were not examined by the prosecution. PW-8 has stated that the prosecution witnesses had not told him that they had seen the dead body hanging with the mango tree or they had seen anyone taking down the dead body from the mango tree. PW-8 has also stated that the PW-1 Mukhtar @ Mukhtar Alam Ansari, PW-2 Rahib, PW-3 Md. Jakir, PW-4 Abdul Haque, PW-5 Mustak Ahmad, PW-6 Sakib



Alam had not told him as to who told them that the dead body of the deceased had been hanged with the mango tree. PW-8 had also stated that no witness told him that on 28.08.2018 on the asking of the mother of Mahzabi Khatoon, her youngest son Shabir Ahmad had made a telephone call to Khatibur Rahman.

19. Learned Additional PP submits that the learned trial court has reached to a just and proper conclusion on thoroughly analyzing the prosecution evidences.

Consideration

20. We have heard learned counsel for the appellant and learned Additional PP for the State and also perused the records. We find that the learned trial court has discussed the entire evidences on the record very carefully. The prosecution failed to prove the date of marriage, rather, the evidences are showing that the marriage had taken place some time in the year 2010, therefore, the death in this case had not occurred within a period of seven years. The learned trial court is, therefore, correct in saying that one of the essential ingredients required under Section 304B IPC is missing.

21. We further find that Respondent Nos. 2 to 6 in this case are the mother-in-law and married sister-in-laws and their husbands. In the entire prosecution evidence, no material at all has



come to say that these respondents had in any manner participated in the alleged occurrence. The prosecution case suffers from lack of evidence against Respondent Nos. 2 to 6. The Investigating Officer has admitted that in this case the prosecution witnesses did not say as to who told them that the dead body had been hanged with the mango tree after killing.

22. We are satisfied that the learned trial court has not committed any error.

23. This appeal has, thus, no merit. It is dismissed.

(Rajeev Ranjan Prasad, J)

(Shailendra Singh, J)

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