

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.383 of 2006

1. Rudal Singh, son of Sri Parma Singh, resident of Village-Tarachak, P.S.-Azimabad, District-Bhojpur
2. Jai Nandan Singh, son of Sri Parma Singh, resident of Village-Tarachak, P.S.-Azimabad, District-Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ravindra Kumar
For the Respondent/s	:	Mr. M. Dayal, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 03-04-2024

Heard Mr. Ravindra Kumar, learned counsel for the appellant and Mr. M. Dayal, learned A.P.P for the State.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 24.05.2006 passed by learned Additional Sessions Judge, F.T.C-II, Ara, Bhojpur in connection with Sessions Trial No. 262 of 2002, arising out of Ajimabad P.S. Case No. 37 of 2000, whereby and whereunder the appellants were found guilty and convicted for the



offences punishable under Sections 304(B), 201 read with Section 34 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for a period of ten years for the offence punishable under Section 304(B)/34 of the I.P.C and further rigorous imprisonment for a period of two years under Section 201/34 of the I.P.C. Both the sentences were directed to run concurrently. Notably two accused namely Parma Singh and Raj Kumari Devi were acquitted due to non-establishment of the charge.

3. The prosecution case as per the F.I.R is that the informant Komal Singh has stated in the written information that he has married her daughter Sunaina Devi five years back with the appellant Rudal Singh. The daughter of the Informant had no issue out of the wedlock. It is alleged that on 18.11.2000 in the evening about 7 P.M. the informant got information from Ram Raksha Singh that his daughter Sunaina Devi has been murdered by her husband and her other in-laws family



members on 17.11.2000 in the night by burning her and her husband along with her in-laws had cremated her dead body at the bank of the river. The informant thereafter went to the matrimonial house of her daughter and found that the appellants and other family members had fled away from the place of occurrence.

4. On the basis of the aforesaid *fardbeyan* of the informant Ajimabad P.S. case No-37 of 2000 was registered against the appellants and others under Sections 304(B), 201, 34 of the Indian Penal Code.

5. After completion of the investigation, charge-sheet was submitted and thereafter learned Chief Judicial Magistrate, Bhojpur at Ara took cognizance of the offences punishable under Sections 304(B), 201 read with Section 34 of the Indian Penal Code against the accused appellants. Thereafter, the case was committed to the Court of Sessions for trial.

6. During the course of trial, altogether fifteen witnesses were examined on behalf of the prosecution.



7. P.W.-1 namely Ram Kishun Singh in his examination-in-chief has stated that in the said night of occurrence, the victim felt some pain in her stomach and she was brought to the hospital where she was declared dead. This witness has been declared hostile by the side of prosecution.

8. P.W.-2 Nandu Singh in his examination-in-chief has stated that he is the neighbour of the appellants. This witness has stated that in the night at 9 P.M on 17.11.2000 the wife of appellant Rudal Singh died. This witness has further said that he has not heard the sound of weeping of any person in the house of appellant Rudal Singh. The appellants and other family members cremated the dead body of the victim at the bank of river sone.

9. P.W. 3 Bhikhari Yadav, P.W. 4 Nanda Choudhary, P.W. 5 Rajeshwar Singh, P.W. 6 Bhagirath Sah and P.W. 8 Ram Rakshya Singh did not support the



case of the prosecution and they have been declared hostile by the prosecution.

10. P.W. 7 Nagdeo Paswan has stated in his examination-in-chief that he has seen that the dead body was being cremated while he was returning after attending the call of nature.

11. P.W. 9 Ram Awadh Singh has been tendered by the side of the prosecution as he has said nothing in the examination-in-chief.

12. P.W. 12 Vishwanath Prasad, P.W. 14 Gorakh Singh and P.W. 15 Manki Prasad are the witnesses of formal nature.

13. P.W.-13 Sashi Bhushan Kumar is the Investigating Officer of this case who has stated in his examination-in-chief that he went to the place of occurrence and gave description of place of occurrence in paragraph no-4 of his deposition that the place of occurrence is the residential house of accused/appellant Parma Singh and the occurrence took place inside the



house in a room situated in the south east corner. He inspected the room and found the wall and roof of the room having smokes and the presence of black spot smoke was there. He has further deposed that inside the house, he found Wooden plung damaged with fire and also photograph and other frame present there had been seized in the presence of independent witnesses. He has signed the seizure list which has been marked as Ext-5. P.W. 13 has also stated that he has made efforts to search the dead body of the victim lady and in course of that he went to the bank of river sone and found there a cremation place showing sign of the recent cremation took place there and from that place, he had recovered red bangles pieces and one human skull in somehow burnt condition and seized the skull and sent it to the Forensic Science Laboratory Patna for examination. The said report has been marked as Ext-6. This witness has also recorded the statement of informant Komal Singh on second time and recorded the statement of other



witnesses namely Ram Kishun Singh, Bhikhari Yadav, Nandu Singh, Raman Lal, Bhagirath Sah, Nanda Choudhay, Nagdeo Paswan, Rajeshwar Singh, Ram Raksha Singh, Raj Kumar Sharma and completed investigation and submitted charge-sheet against the accused persons respectively.

14. Learned counsel appearing on behalf of the appellants has submitted that appellants are innocent and they have falsely been implicated in this case since they happens to be the husband and brother-in-law of the victim. The prosecution claims demand of dowry and torture for non-fulfillment of the dowry demand but they have failed to produce any evidence with regard to any torture or demand of dowry prior to the date of occurrence. The informant claims that soon after the marriage, his daughter was tortured for non-fulfillment of dowry demand but he had not filed any complaint regarding the torture and demand of dowry before any authority nor any *panchayati* was held in this regard



which suggests that a concocted story was implanted to falsely implicate the appellants in this case. Moreover, all the witnesses are hearsay and they did not claim to have seen the occurrence. The informant of this case has not been examined by the Trial Court since before initiation of the trial proceeding, he died. The Investigating Officer (P.W. 13) had made contradictory statement during the trial as in para 4 of his evidence he has stated that he did not find any sign of burning at the place of occurrence on 19.11.2000 at the time of inspection but in para 5 he has stated that he found palang at the place of occurrence with sign of burning on head side and some photographs. The seizure of pieces of bangles from cremation ghat by the side of the river sone and skull is of no legal value and there is no evidence to connect the burnt skull and bangles to be that of the deceased which was seized from the public cremation ghat where large number of bodies were regularly brought from the neighbouring villages. The prosecution has also failed to



prove that the deceased died within seven years of her marriage as the date of marriage has not been mentioned in the F.I.R.

15. From perusal of the records and on going through the evidences, it appears that none of the prosecution witnesses have seen the occurrence and most of the witnesses are related to the informant and are highly interested witnesses. The prosecution has not brought on record any proof with regard to the torture and demand of dowry prior to the death of the deceased. Whatever have been stated by the witnesses in their examination-in-chief was not contradicted in absence of evidence of the informant as the informant died before initiation of the trial court proceeding. It is also pertinent to mention here that in order to establish the offence under Section 304(B) of the Indian Penal Code, the prosecution is obliged to prove that death of a woman is caused by burns or bodily injury or occurs otherwise than normal circumstances and such death occurs within



seven years of her marriage and if it is shown that soon before the death she was subjected to cruelty or harassment by her husband or any relative of her husband, such harassment and cruelty must be in connection with any demand of dowry. If the prosecution proves the aforesaid circumstances then the presumption under Section 113-B of the Evidence Act will operate. Such presumption is rebuttable and the onus to rebut shifts on the accused persons. It is evident that there is nothing on record to show that soon before the death, there was any demand or torture by the appellants which is a necessary ingredient to bring the accused under Section 304-B of the Indian Penal Code. Section 304-B of the Indian Penal Code clearly says that in case of abnormal death, if it is shown that soon before the death, she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry, such death can be called dowry death. It is evident from the discussions made that



necessary ingredient has not been established by the prosecution to bring the case within the ambit of Section 304-B of the Indian Penal Code. If the prosecution fails to establish the aforesaid ingredient then presumption under Section 113-B of the Evidence Act does not apply and in such case the burden does not shift to the accused persons to rebut the presumption under the law. Since the ingredient of Section 304-B is absent on the record, in my view, the appellants cannot be convicted under Section 304-B of the Indian Penal Code. Thus, it is evident that the circumstantial evidence which has been brought on record, as discussed above, is not sufficient to come to a conclusion that the appellants committed dowry death due to non-fulfillment of dowry demand. It is well established rule of law that in case of circumstantial evidence, chain must be complete to establish the guilt of the accused persons. Hence, the prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellants are



entitled to get the benefits of doubt.

16. In that view of the matter, the judgment of conviction and order of sentence dated 24.05.2006 passed by learned Additional Sessions Judge, F.T.C-II, Ara, Bhojpur in connection with Sessions Trial No. 262 of 2002, arising out of Ajimabad P.S. Case No. 37 of 2000 is set aside.

17. The appellants are acquitted of all the charges after getting the benefits of doubt.

18. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

19. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

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