

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.43 of 2007

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Ran Vijay Gond Son of Sugreev Gond, Resident of Village- Kritpura, P.S.
Koilwar, District- Bhojpur

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Vipul Sinha, *Amicus curiae*
For the Respondent/s : Mr. A.M.P. Mehta, APP

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 03-04-2024

Heard Mr. Vipul Sinha, learned Amicus curiae on behalf of the appellant and Mr. A.M.P Mehta, learned APP appearing for the state.

2. This appeal has been preferred by the appellant being aggrieved and dissatisfied with the judgment of conviction and order of sentence passed by learned Additional Sessions Judge, F.T.C. No.-II, Ara at Bhojpur, dated 15.11.2006 in Sessions Trial No. 178 of 2003, whereby and whereunder the appellant/convict was convicted u/s 304(B) & 201 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The appellant has been sentenced to undergo rigorous imprisonment for ten years for the offence punishable u/s 304(B) of the I.P.C., and further undergo rigorous



imprisonment for three years and fine of Rs. 3,000/- for the offence u/s 201 of the I.P.C. and in default of payment of fine, he has further been sentenced to undergo rigorous imprisonment for two months. Although no separate sentence has been awarded for the offence u/s 3/4 of the Dowry Prohibition Act. All the sentences were directed to run concurrently.

3. Notably, the charge leveled against the other trial facing accused persons namely, Sugriv Gond, Raj Narayan Gond and Parvati Devi had not been established against them and they are acquitted by learned trial court.

4. The prosecution case, according to the F.I.R. is that the informant (P.W.-4) Rajendra Prasad Gond has given written information on 13.8.2001 alleging therein that his daughter was married with the appellant in the year of 2000 and at that time some gifts were also given. After marriage, informant's daughter went to her *sasural* where, the appellant and his family members demanded cash of Rs. 10,000/- along with a motorcycle as dowry and also threatened to kill her on non-fulfillment of the same. The informant had already gave him a bicycle but he was unable to pay the demand of cash. After some times, the informant came to know about death of



his daughter then he reached at her *sasural*. He came to know from persons of locality of the accused that daughter of the informant has been committed murder last night and the dead body has been cremated.

5. On the basis of aforesaid written application of the informant (P.W.-4), police registered a formal FIR on 13.8.2001 as Koelwar P.S. Case No. 103 of 2001 for the offences punishable under sections 498(A), 341, 304(B), 201, 504/34 of the Indian Penal Code. After completion of investigation, investigating officer submitted charge-sheet against the appellant/convict. On the basis of charge sheet and materials available on record, cognizance for the offence was taken u/s 304(B)/34, 201 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act and the case was committed to the court of Sessions for its disposal.

6. The defense of the appellant/convict totally denied from the charges leveled against him and pleaded for his innocence.

7. The point to be considered in this appeal before this Court is whether the prosecution has been able to convict the appellant/accused beyond the shadow of reasonable doubt or not.



8. To establish its case before the learned trial court, altogether eleven witnesses had been examined on behalf of the prosecution, namely, PW-1 Uma Kant Gond, PW-2 Manoj Kumar Gond, PW-3 Durga Devi, PW-4 Rajendra Prasad Gond (the informant), PW-5 Ram Suresh Ram, PW-6 Moharram Mian, PW-7 Ram Nivash Paswan, PW-8 Ramesh Ram, PW-9 Hari Narayan Paswan, PW-10, Keshri Lal and PW-11 Tarkeshwar Prasad.

9. P.W.-1 Umakant Gond is nephew of the informant who deposed in his evidence that before the alleged occurrence, when the deceased returned from her in-laws house, she said that the accused/convict along with his family members was demanding dowry of Rs. 10,000/- and a motorcycle and also threatening to kill her on non-fulfillment of the said demand. On recall, this witnesses also deposed vide para-12 of his evidence that no one had made any demand of dowry from him.

9. P.W.-2 Manoj Kumar Gond (brother of the deceased), P.W.-3 Durga Devi (mother of the deceased) and P.W.-4 Rajendra Prasad Gond (the informant) have deposed in their evidence that deceased Sobha Devi was married to the appellant Ran Vijay Gond in the year of 2000 thereafter he



along with his family members started cruelty and demanded Rs. 10,000/- and a motorcycle as dowry. They further deposed in their evidence that after receiving information about the death of deceased Shobha Devi, they reached her in-laws house, but the accused persons had already cremated her dead body. On recall, these witnesses deposed in their evidence that no one had made any demand of dowry from them. P.W.-3 specifically deposed in her evidence after her recall that deceased had not said about any dowry demand and this case has been lodged at the instigation of villagers.

10. P.W.-5 Ram Suresh Ram and P.W.-6 Moharram Mian deposed in their evidence that the deceased Sobha Devi was married to appellant Ranvijay Gond but she committed suicide in her in-laws house within one year of her marriage. P.W.-7 Ram Nivash Paswan, P.W.-8 Ramesh Ram, P.W.-9 Hari Narayan Paswan deposed in their evidence that the marriage of the deceased was solemnized with the appellant Ran Vijay Gond but she had committed suicide herself. They had not deposed regarding demand of dowry. P.W.-7 exclusively deposed that he saw the dead body of the deceased Sobha Devi and the last rites and cremation of the dead body was performed by members of her in-laws.



11. PW-10, Keshri Lal and PW-11 Tarkeshwar Prasad are witnesses of formal nature who have identified the writing of the police officer.

12. Mr. Vipul Sinha, learned counsel is appointed as *Amicus Curiae* for assisting the Court in this appeal who submitted that the impugned judgment of conviction and order of sentence passed by the trial court is bad in law as well as facts and circumstances of the case. None of the prosecution witnesses have said that the deceased was tortured by the appellant for demand of dowry. No direct evidence has been brought on record to establish the said offense against the appellant. Section 304B of the Indian Penal Code has not been made out against the appellant because there is no consistent evidence to show the offense of torturing the deceased before her death. The demand of dowry or torturing the deceased has not been proved by the prosecution. It is also submitted that in this case, the Investigating Officer was not examined by the prosecution and due to his non-examination, the defense heavily caused prejudice to restrain to the defense to make question in respect of contradictions deposed by the Prosecution witnesses.

13. *In contra*, Mr. A.M.P. Mehta, learned APP



appearing on behalf of the state has submitted that the impugned judgment of conviction and order of sentence is fit and proper and based on circumstantial evidence and the offence under section 304B of the Indian Penal Code has been proved by the prosecution witnesses. There may be minor contradictions in the prosecution evidence which could not be fatal to the prosecution case. The prosecution has succeeded to prove this case beyond reasonable doubt against the appellant. The judgment of conviction and order of sentence is fit to be sustainable.

14. I have gone through the entire oral and documentary evidence adduced by the prosecution witnesses. After careful consideration of all evidence available on record, it appears that P.W.1- Umakant Gond, nephew of the informant has deposed in his cross examination that none had demanded dowry. P.W.-2 Manoj Kumar Gond, brother of the deceased deposed that none has demanded dowry from him. P.W.-3 Durga Devi, mother of the deceased on recall, has deposed that her daughter/ deceased Shobha Devi had never said about torturing for dowry demand by the appellant and others. P.W.-4 Rajendra Prasad Gond (informant) deposed in his cross examination that none have demanded dowry and he as well as his relatives are very poor. He further deposed that at the



instigation of the people, this case has been filed. P.W.-5, P.W.-6, P.W.-7 are villagers of the appellant who are said to be hearsay witnesses. P.W.-9 Hari Naryan Paswan deposed vide para-4, 5 of his evidence that the appellant had not demanded dowry from the deceased rather she had committed suicide herself by hanging with a clothe so it is established that there is no direct evidence against the appellant regarding death of the deceased caused due to non-fulfillment of dowry demand.

15. 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 presumption under section 113-B of the Evidence Act will operate. Such presumption is rebuttable and the onus to rebut shifts on the accused. There is nothing to show that soon



before death, there was any demand of torture by the appellant which is necessary ingredient to bring the accused under section 304-B of the India Penal Code. It is evident from the discussion 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 person to rebut the presumption under the law. Since ingredient of Section 304-B is absent on the record, in my view, the appellant cannot be convicted under section 304-B of the Indian Penal Code. The Court below did not consider the aforesaid aspect of the matter. In view of of the aforesaid finding, the evidence on record which remains to be considered is only circumstantial evidence. It appears from the prosecution evidence as discussed above, no one deposed in respect of exact time of dowry demand made by the appellant and others from the deceased and her parents. No evidence has been brought on record to show that anyone saw the appellant committing the crime. P.W.-2, 3 & 4 who happen to be brother, mother and father of the deceased, had not deposed in



respect of day, time and date of demand of dowry. Only on the basis of surmise and conjecture, they deposed in respect of demand of dowry which is not believable or reliable. It is established that the circumstantial evidence which has been brought on record, as discussed above, is not sufficient to come a conclusion that the appellant had committed dowry death. It is well established rule of law that in case of circumstantial evidence, chain must be completed to establish the guilt of the accused. In the instance case, there is no such circumstantial evidence/chain of circumstances to establish the guilt of the appellant. The prosecution has failed to establish its case beyond the shadow of all reasonable doubts and the appellant is entitled to get the benefits of doubt.

16. Thus, on consideration, as discussed above, I am of the view that the prosecution has failed to establish its case and as such the conviction of the appellant cannot be upheld. The impugned judgment of conviction and order of sentence dated 15.11.2006 passed by learned Additional Sessions Judge, F.T.C. No.-II, Ara at Bhojpur, in connection with Sessions Trial No. 178 of 2003, arising out of Koelwar P.S. Case No. 103 of 2001 is hereby set aside.

17. The appellant Ran Vijay Gond, who is on bail is



acquitted by giving benefits of doubt and he is discharged from the liabilities of the bail bonds.

18. Accordingly, the appeal stands allowed.

19. Mr. Vipul Sinha, learned Amicus Curiae was appointed to represent the appellant/accused. I put on record the words of appreciation for able assistance rendered by him in arriving this Court at the proper conclusion in deciding the instant appeal. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha.

(Sunil Kumar Panwar, J)

Amandeep/-

AFR/NAFR	NAFR
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