

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.190 of 2017

Arising Out of PS. Case No.-169 Year-2012 Thana- RAXAUL District- East Champaran

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Bhaiya Ram @ Ram Prasad, S/o Late Vishwanath Prasad, R/o Jokiyari, P.S.
Raxaul, District- East Champaran.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Ms. Vaishnavi Singh, Advocate

For the Respondent/s : Ms. Kumari Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 08-04-2024

The appellant, who is the husband of the deceased, has been convicted under Sections 302, 304B and 201 of the Indian Penal Code as well as Section 4 of the Dowry Prohibition Act, 1961 *vide* judgment dated 16.12.2016 passed by the learned Additional Sessions



Judge-II, Motihari, East Champaran, in Sessions Trial No. 76 of 2015 / 67 of 2015, arising out of Raxaul P.S. Case No. 169 of 2012. By order dated 19.12.2016, he has been sentenced to undergo imprisonment for life under Section 304B of the IPC; R.I. for two years, to pay a fine of Rs. 3,000/- and in default of payment of fine, to further suffer imprisonment for three months under Section 201 of the IPC and R.I. for one year, to pay a fine of Rs. 3,000/- and in default of payment of fine, to further suffer imprisonment for three months under Section 4 of the Dowry Prohibition Act, 1961.

2. The sentences have been ordered to run concurrently.

3. No separate sentence has been awarded under Section 302 of the IPC, which was an alternative charge.

4. The appellant, however, has been acquitted of the charge under Section 316 of the IPC and Section



3 of the Dowry Prohibition Act, 1961.

5. We have heard Ms. Vaishnavi Singh, the learned Advocate for the appellant and Ms. Kumari Shashi Bala Verma, the learned APP for the State.

6. The FIR has been lodged by the mother of the deceased, viz., Sushila Devi (P.W. 9) on 25.07.2012 alleging that her daughter (deceased) was married to the appellant on 21.05.2011. Right from the beginning of the marriage, there was a demand for a four-wheeler as part of dowry and for which the deceased was always tortured. The deceased had told her on telephone about ill-treatment to her and then P.W. 9 had tried to reason out with the appellant and others that she would try and arrange for a car after she retires and gets her gratuity money.

7. Nonetheless, the ill-treatment never abated.

8. Vexed by the behaviour of the appellant and others, she brought her daughter back to her home.



The appellant, after some time forcibly took her away. This had happened on 28.02.2012. No complaint was made by her thinking that with the passage of time, relationship between the spouses might improve.

9. On 24.07.2012, the deceased called her at about 4 o'clock in the evening and told her that the appellant and two other family members had assaulted her brutally and that she should be brought back home or else she would be killed.

10. P.W. 9, along with her husband (P.W. 4) and son (P.W. 5), went to the matrimonial home of the deceased but found that the house was locked and nobody was present there. She learnt that her daughter had been killed by strangulating her and the dead-body has been cremated near the bamboo clump of the village.

11. On the basis of the afore-noted written report lodged by P.W. 9, a case was lodged *vide* Raxaul



P.S. Case No. 169 of 2012 dated 25.07.2012 under Sections 304B, 201, 316 and 34 of the IPC. The FIR was lodged under Section 316 of the IPC also as according to P.W. 9, the deceased was carrying a pregnancy of four months.

12. The police, after investigation, submitted charge-sheet only against the appellant and charge under Section 302 of the IPC additionally was also laid upon the appellant.

13. The Trial Court, after having examined eleven witnesses on behalf of the prosecution and four on behalf of the defence, convicted and sentenced the appellant as aforesaid.

14. On behalf of the appellant, it has been argued that there is no eyewitness to the occurrence and the Trial Court has convicted only for the reason of the deceased having been stealthily and hurriedly cremated after her death by perhaps employing the



provisions contained in Section 106 of the Indian Evidence Act, 1872.

15. It has further been submitted that except for bold assertion of P.Ws. 4, 5, 6 and 9, no other independent person has supported the prosecution version. P.Ws. 4, 5, 6 and 9 are related witnesses and the appellant was never in their good books.

16. It has also been argued that the Trial Court has completely rejected the deposition of the four defence witnesses, which clearly suggested that the deceased had fallen ill and was brought to Dr. Raj Kumar for treatment, who had referred her to Motihari, but on way, she died. Later, the dead-body was taken back to Dr. Raj Kumar again when he had pronounced the deceased dead and had issued a certificate that the deceased had died of cardiac arrest.

17. The documents brought forth on record on behalf of the defence (Exhibits - A and B) have been



completely ignored by the Trial Court.

18. That apart, it has been argued that if the appellant had forcibly taken away the deceased from her matrimonial home, that act should have been complained of but the Trial Court completely ignored this aspect of the matter as also that the death took place after about five months of the deceased joining the appellant as his legally wedded wife.

19. Even if the relationship between the spouses was strained in the beginning, with the intervention of the Court, the dispute had been settled and the deceased had been residing in her matrimonial home. It is quite unfortunate that the deceased died but then the Trial Court has convicted the appellant for the offences under Sections 302 and 304B of the IPC, both together along with Section 201 of the IPC, on a set of evidence, which can at best be called to be conjectural.



20. As opposed to the afore-noted contentions, Ms. Kumari Shashi Bala Verma, the learned APP has submitted that right from the beginning, cruel treatment was meted out to the deceased. Not for no reason was she brought back to her parental home but then, she was again forcibly taken away by the appellant who had come to the house of P.W. 9 along with three-four of his associates.

21. The Trial Court rightly appreciated the thought of the mother that the situation would improve and therefore no complaint was made by the family members of the deceased. None of them knew that the appellant would so debase himself as to kill a helpless lady in her matrimonial home only for non-fulfillment of the additional dowry demand of a car.

22. The father, mother, brother and the sister of the deceased have testified to the fact that the deceased was ill-treated in her matrimonial home and that she had to be brought back to her parental home



for some time because of such cruel treatment. Admittedly, a case was filed by the deceased against the appellant while she was alive for showing cruelty to her.

23. The appellant also, perhaps, had filed a case against P.W. 9 and others for having taken away the deceased from her matrimonial home.

24. Both the cases had ended in settlement, but the torture continued and ultimately, the deceased was killed.

25. Some other persons, though connected with P.W. 9 and her family, but not very closely related, have also supported the prosecution case. The very fact that no information was provided to P.W. 9 or her family members about the death of the deceased and without awaiting their arrival, the dead-body was cremated stealthily confirms that the deceased did not die a natural death and that she was killed.

26. Because of the cremation of the dead-



body, the *post-mortem* examination could not be held and the appellant therefore cannot take advantage of the evidence being exiguous for castigating the judgment as being unfair to the appellant.

27. We have examined the records and had gone through the deposition of the witnesses in great detail.

28. Sushila Devi, the mother of the deceased, who has been examined as P.W. 9 has supported the prosecution case in its entirety. Her evidence could not be shaken during cross-examination. The factum of marriage of the deceased with the appellant on 21.05.2011; ill-treatment to the deceased right after the marriage; a case having been lodged by the deceased against her husband for cruelty and such case having been settled were confirmed by her. She distinctly remembered that on 24.07.2012, at about 01:30 in the day, the deceased had telephonically informed her that the appellant and two others had badly assaulted her for



non-fulfillment of the demand of car. Some times later, she again called her mother (P.W. 9) and told her that she was bleeding from her mouth because of the assault on her. On 25.07.2012, Raju Kumar Gupta (P.W. 3), who has been declared hostile, had informed her that the health condition of her daughter is very serious and that she (P.W. 9) should be immediately meet her. On such information, she along with husband/Vishwanath Prasad (P.W. 4) and her son/Munna Prasad (P.W. 5) left for the matrimonial home of the deceased, only to find that the door of the house of the appellant was locked and there was nobody around to receive them or to tell them about the deceased. Only later, she learnt that after killing the deceased, her body was cremated.

29. Thus, from the deposition of P.W. 9, it becomes very clear that shortly before the occurrence, she got the first hand information from her daughter about assault on her as a result of which she had bled from her mouth.



30. The deceased had died within two years of her marriage with the appellant.

31. Munna Prasad (P.W. 5) confirms the allegation. He had also visited the matrimonial home of the deceased along with his mother and father. He has told the Trial Court that the family was being run by P.W. 9 as she was in employment and the deceased always shared her woes with her mother. P.W. 5 had also told one Birendra Mishra, his companion at his work place, that he has received information that his sister has been tortured to death because of non-fulfillment of dowry. Birendra Mishra has been examined as P.W. 8, who has supported such accusation against the appellant.

32. Vishwanath Prasad, the father (P.W. 5), had also visited the matrimonial home of the deceased.

33. In fact, all three, namely, Vishwanath Prasad, Sushila Devi and Munna Prasad had gone to the



far end of the village where they saw the evidence of a fully burnt funeral pyre.

34. Md. Sajjad Gaddi (P.W. 10) had arrested the appellant and had charge-sheeted him after most of the investigations had been done. In fact, the entire investigation was carried out by Sashi Bhushan Singh (P.W. 11), who had found the articles in the room of the deceased not arranged, suggesting that something had happened in the room. He had also experienced, while at the house of the deceased, a miasma of kerosene oil.

35. Was there any attempt to burn the deceased? There is no evidence to that effect, but P.W. 11 had visited the place where the dead-body was burnt. The fire was still embering.

36. With this background, we have analyzed the deposition of defense witnesses.

37. Upendra Kumar Singh (D.W. 1) is the brother of the appellant, who has denied that the



deceased was killed. His house and the house of the appellant is separated by a makeshift partition. However, his not accompanying the deceased and the appellant to the Doctor makes his statement doubtful. He was only helping the appellant. His statement that P.W. 9, P.W. 5 and P.W. 4 were present at the time of cremation has not been supported by Sheo Shankar Prasad Yadav (D.W. 2), a co-villager, who has though confirmed that Sushila Devi (P.W. 9) had come to the matrimonial home of the deceased, but only Munna Prasad (P.W. 5) had gone to the place where the dead-body was burnt. In this context, the photograph shown to the Court, which had P.W. 9 also in the frame, was not accepted by the Trial Court as an evidence of the presence of P.W. 9 at the time of cremation, and rightly so.

38. We have already noted that Dr. Raj Kumar's (D.W. 3) version is not acceptable. There was no record of the treatment of the deceased in his clinic



which avowedly was destroyed. There were no inputs for him to opine that the death was because of cardiac arrest. Thus, Exhibits - A & B brought on record by the defense were rightly rejected by the Trial Court to be taken in defense of the appellant.

39. Basuruddin Mian (D.W. 4) had nothing special to share with the Trial Court.

40. Thus, there are few striking features on which the girder of the prosecution case has rested.

41. Shortly before the death of the deceased, she was tortured for a car. Some times before that, a case under Section 498-A IPC was lodged by the deceased while she still survived against the appellant, which had ended in compromise. The statement of of P.W. 9 and P.W. 5 that despite settlement of the matrimonial dispute, which had arisen in the early phase of marriage, the torture continued and, therefore, deceased had to be brought to her parental home.



Witnesses, in unison, have stated that appellant had forcibly taken away the deceased to her matrimonial home. Later, the deceased died and there is nothing on record to know as to the cause of death as the dead-body was burnt stealthily.

42. These set of facts present an open and shut case about the deceased having been murdered.

43. The argument raised by Ms. Vaishnavi Singh, the learned Advocate for the appellant, that the only source of information about the critical condition of the deceased or her death to P.W. 9 was through Raju Kumar Gupta (P.W. 3), who has not supported the prosecution case and has been declared hostile. There could be myriad reasons for his not supporting the prosecution case, even though he is related to the deceased and her family, but then, that by itself would not discredit the prosecution version.

44. P.Ws. 1, 2 and 3 though have been



declared hostile, but P.W. 11 has confirmed that they had given their statements that the deceased was tortured for car and later, she was killed.

45. Taking the entire evidence into account, we are in absolute agreement with the opinion of the Trial Court regarding the guilt of the appellant and the sentences imposed upon him under different counts. We put our imprimatur on the same.

46. The appeal is dismissed.

47. Interlocutory application/s, if any, also stands disposed off.

(Ashutosh Kumar, J)

(Khatim Reza, J)

Sauravkrsinha/
Praveen-II-

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