

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.448 of 2018**

Arising Out of PS. Case No.-243 Year-2003 Thana- SURYAGARHA District- Lakhisarai

Pankaj Kumar @ Vijay Pandit S/o Ram Prasad Pandit, R/o Village-
Chakamsakam, P.S.- Suryagarha, District- Lakhisarai.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Udbhav, Advocate

For the Respondent/s : Mr. A.M.P. Mehta, APP

**CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL JUDGMENT**

Date : 04-01-2024

1. Heard learned counsel for the appellant and
learned APP appearing for the State.

2. This appeal has been filed against the
judgment of conviction dated 05.01.2018 and order of
sentence dated 09.01.2018 passed by the learned
Additional Sessions Judge-cum-Fast Track Court No.1,
Lakhisarai, in connection with Sessions Trial Case No.
62 of 2005, arising out of Surajgarha P.S. Case No. 243



of 2003, G.R. No. 694 of 2003, whereby and whereunder the appellant has been convicted for the offence punishable under Section 306 of the Indian Penal Code (hereinafter referred to as 'IPC') and sentenced to undergo rigorous imprisonment for 5 years with a fine of Rs. 10,000/- (Rupees ten thousand only) for the said offence and in default of payment of fine, to further undergo rigorous imprisonment for a period of 3 months.

3. The appellant Pankaj Kumar @ Vijay Pandit was tried along with co-accused Ram Prasad Pandit and Badami Devi.

4. The accused persons including the appellant stood charged for the offences punishable under Section 304B of IPC and Section 3/4 of Dowry Prohibition Act (hereinafter referred to as 'DP' Act).

5. The accused persons namely, Ram Prasad Pandit and Badami Devi were acquitted of the offences for which they were charged. So far as the appellant is concerned, the trial court concluded that the prosecution failed to prove the charges under Section 304B of IPC and Section 3/4 of DP Act but succeeded in establishing



its case under Section 306 of IPC which is a lesser offence to the offence of Section 304B of IPC and accordingly, the appellant was convicted for the offence punishable under Section 306 of IPC.

6. Mr. Udbhav, learned counsel appearing for the appellant has argued that out of the material witnesses of the prosecution, PW-2 to PW-7 were declared hostile before the trial court and the appellant's conviction is completely based on the evidence of PW-1 and PW-8, who are stated to be father and mother of the deceased but there are serious contradictions among their statements regarding the relevant facts. It has been further argued that the prosecution failed to establish the cause of death of the victim and the Doctor concerned, who conducted the postmortem examination, did not find any external or internal injury over the body of the deceased, so he could not ascertain the cause of death of the deceased and eventually he sent the viscera of the deceased to Forensic Science Laboratory (hereinafter referred to as ('FSL') for ascertaining the cause of death but during trial, the prosecution failed to produce the viscera report of the



deceased. It has been further argued that so far as the offence under Section 306 of IPC is concerned, the offence cannot be deemed to have been proved as the trial court concluded that the prosecution failed to establish the offence of Section 304B of IPC, so on the same evidences, particularly in the circumstance of non-proving the cause of death, the offence punishable under Section 306 of IPC which is a lesser offence to the offence of Section 304 of IPC cannot be deemed to have been proved. Further submission is that the deceased died due to bursting of appendix and when her condition deteriorated she was taken to hospital by the appellant and his family members and in this regard the evidence of PW-1 and PW-8 is relevant and the FIR is ante-dated and some important persons who are stated to have accompanied the informant to the house of the appellant and to the hospital where the victim was being treated, were not produced and examined by the prosecution despite their specific names having been given in the FIR.

7. On the contrary, learned APP appearing for



the State has argued that the victim died an unnatural death within 7 years of her marriage and the appellant failed to establish his defence as to victim's death caused due to bursting of her appendix and from the evidence of PW-1 and PW-8, it is clearly evident that the appellant and his family members had been torturing the victim for the demand of motorcycle and jewellery since the time of her marriage and on account of the behaviour of the appellant, the victim became fed-up with her life and finally she committed suicide by consuming poison.

8. Heard both the sides and perused the evidences available on the case record of trial court and also gone through the statement of the convict.

9. In the present matter, the victim who happened to be the daughter of the informant, was married to the appellant just some months ago from the date of the alleged occurrence and as per allegation, the appellant started torturing his wife (victim) for the demand of motorcycle and jewellery just after some days of their marriage and regarding the appellant's demand, the victim always informed her parents, to which the



appellant and his father were told and explained by the victim's father that he was not able to fulfill their demand as he was an impecunious person and thereafter on 22.10.2003, he got the information that his daughter had been killed by administering poison to her.

10. In the instant matter, the prosecution witnesses no. 2 to 7 were declared hostile and they did not support the prosecution's case. For invoking the provisions and offence of Section 306 of IPC, the prosecution is bound to prove and establish that the deceased committed suicide and she had been subjected to cruelty within the meaning of Section 498A of IPC. Though the prosecution's important witnesses PW-1 and PW-8 deposed that the appellant had been harassing and torturing the victim for the demand of motorcycle and jewellery and in the FIR, it was alleged that the victim died of poisoning but from the perusal of Exhibit- 3, which is postmortem report of the deceased, it appears that any external sign of poisoning was not found by the Doctor concerned and neither external nor internal injury was found and therefore, the cause of death of the victim



could not be ascertained by the Doctor concerned and consequently, the viscera of the deceased was preserved and sent to FSL for chemical examination. The Doctor, who conducted the postmortem examination, was examined as PW-11 and he , supported the findings given by him in the postmortem report of the deceased. If the victim had been poisoned then definitely some signs such as changing the colour of nails, tongue and froth coming out from the mouth etc. must be present at the time of inspection of the dead body but no such sign was found by the Doctor while the victim's body was autopsied immediately on the same day of her death. When cause of death of one is not clear then in such a case, in order to ascertain the cause of death, forensic expert's opinion is taken and viscera of the deceased is sent to the FSL department and in this matter also, viscera of the deceased was sent to the FSL Department but during trial, the prosecution failed to produce the FSL report concerned to the chemical examination of the viscera of the deceased. So, in such situation this court finds that before the trial court, the prosecution failed to



establish the cause of death of the victim. Though, the victim died an unnatural death but she might have died due to some other reason other than the prosecution's allegation as to victim's death due to poisoning and the said circumstance goes against the prosecution in establishing the main ingredient of the offence of Section 306 of IPC regarding the factum of suicide by the victim.

11. Here, it is relevant to mention that the appellant has taken the defence that the deceased had been suffering from stomach pain for some period and when her condition deteriorated she was taken to a private clinic which was being run by Dr. Upendra Singh and during the course of treatment she died. Though, the appellant did not give cogent evidence to support his defence as to victim's death due to appendicitis problem but one thing is quite clear that the victim was taken to hospital by her in-laws for treatment and in this regard, the FIR itself and evidence of PW-8 is sufficient and the said circumstance goes in favour of the appellant.

12. From the above discussed facts, this court



forms the opinion that though the prosecution succeeded to prove an unnatural death of the victim within 7 years of her marriage and the evidence of prosecution's material witnesses PW-1 and PW-8 goes to show that the victim was being harassed and tortured by the appellant for the demand of motorcycle and jewellery but the prosecution miserably failed to establish that the victim committed suicide by taking poison or something else. If the victim had taken poison then there must have been some external sign of poisoning on her body when she was being examined by the Doctor concerned for the purpose of postmortem examination but no such sign was found and prosecution did not produce the FSL report of the viscera of the deceased so the cause of death of the victim could not have been proved by the prosecution. The facts of present case suggest that either victim might have committed suicide or died of some ailment or some other reason and the defence witnesses were cross-examined at length about the cause of death but they did not reveal any fact in their cross-examination to show that the victim consumed poison at the relevant time of



the occurrence. Hence, the factum of death of the victim due to suicide remained not proved before the trial court. Owing to the said reason, the prosecution is not entitled to get the benefit of the presumption under Section 113A of the Indian Evidence Act.

13. Accordingly, this court finds that the appellant is entitled to get the benefit of doubt and I find the judgment impugned convicting the appellant for the offence punishable under Section 306 of IPC to be not sustainable in eye of law, hence, the impugned judgment and order convicting and sentencing the appellant for the offence punishable under Section 306 of IPC stand set aside and the present appeal stands allowed.

14. As according to the submission made by the appellant's counsel, the appellant has been released from jail under the provisions of Special Remission, hence there is no need to pass any direction for his release from the jail.

15. Let the judgment's copy be sent to the trial court for needful.

16. Let the L.C.R. be sent back to the trial court



forthwith.

(Shailendra Singh, J)

Rajiv-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	10.01.2024
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