

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.202 of 2006

Subodh Kumar Singh, son of Late Udai Narayan Singh, resident of Village-
Bhaghmara, P.S.-Manihari, District-Katihar

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Bhola Prasad, Advocate Mr. Indrajeet Kumar, Advocate
For the State	:	Mr. A.M.P Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 23-07-2024

Heard the parties.

2. The present appeal has been filed against the judgment of conviction dated 09.03.2006 and order of sentence dated 18.03.2006 passed by learned Additional District & Sessions Judge, Fast Track court no. III, Katihar in connection with Sessions Trial No. 237 of 2004, arising out of Manihari P.S. Case No. 63 of 2003 registered under Sections 498(A), 306, 120(B) of the Indian Penal Code and while awarding the sentence, learned Trial Court directed the appellant



to undergo rigorous imprisonment for three years for the offence punishable under Section 498(A) of the Indian Penal Code. The learned Trial Court further sentenced the appellant to undergo rigorous imprisonment for five years for committing the offence under Section 306 of the Indian Penal Code. Both the sentences were directed to run concurrently.

3. The case of the prosecution is that the informant (P.W. 10) Jitendra Singh has submitted a written complaint to the Officer-in-charge of Manihari P.S. alleging therein that his sister namely Arti Devi (deceased) was married with the appellant/Subodh Kumar Singh 8 years ago and she was living at her *Sasural*. When she came back to her parent's house, she told to the informant and others that her in-laws were demanding motorcycle and torturing and an asking the victim deceased told them that the appellant has illicit relationship with one Rajni Singh and always used to reside there and on her (Rajni Singh)



instigation, the appellant used to abuse and assault. It is further alleged that the informant and his family members did not heard the aforesaid complaint of victim and she went to her in-laws house by saying that she will manage all the things, but on 25.05.2003, the informant (P.W. 10) heard on the telephonic message from another sister Asha Devi (P.W. 8) that the deceased Arati Devi consumed poison and died. The informant thereafter reached at the matrimonial house of the deceased and took the deceased to the hospital where she was declared dead.

4. On the basis of the aforesaid *fardbeyan* of the informant, Manihari P.S. Case No. 63 of 2003 was registered against the accused appellant and after completion of the investigation, charge-sheet was submitted and thereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

5. During the course of trial, altogether eleven witnesses were examined on behalf of the



prosecution.

6. P.W. 1, Md. Belal, P.W. 3 Dukh Narain Mandal, P.W. 4, Nakul Singh, P.W. 5, Subal Kumar Singh, P.W. 6, Arjun Singh, P.W. 7, Rajesh Kumar Sah, P.W. 8 Shekhar Kumar Singh and P.W. 11 Chuchni Parihar have not supported the case of the prosecution and they have been declared hostile.

7. P.W. 2 is a formal witness who has proved the signature of F.I.R which has been marked as Ext-1.

8. P.W. 9 Asha Devi is the sister of the deceased who has stated in her examination-in-chief that her sister namely Arati Singh (deceased) was married with Subodh Singh (appellant). The in-laws of the deceased thereafter started demanding Motor Cycle, *Palung* etc. This witness has also deposed in Para (2) that there was illicit relation between Subodh Singh(appellant) and Mona, wife of Bhupendra Singh. The deceased Arati Singh had written a letter in this regard to her. In Para (3), P.W. 9 has deposed that her



sister (deceased) died on 23.05.2003 due to taking poison by her. She has further stated that her sister was compelled to take poison. In Para(6), this witness has clearly stated that she can file the letters of her deceased sister Arati Devi. She has further deposed that there was a quarrel between wife and husband in her presence. This witness has further stated that Subodh Singh(appellant) used to sleep in the house of Bhupendra Singh.

9. P.W. 10 Jitendra Singh is the informant of this case who has stated in his examination-in-chief that Arati Singh (deceased) was married with the appellant/Subodh Singh. After marriage, the appellant started demanding Motor Cycle. In Para (3) this witness has stated that he was informed that her sister died as she (Arati Devi) had taken Poison. In Para (4) this witness (P.W. 10) has clearly stated that he had given all the letters of deceased to *Darogaji*. In Para (10), this P.W. 10 has stated that he was informed



about the above occurrence after two-three days.

10. Learned counsel appearing on behalf of the appellant has submitted that appellant is innocent and he has falsely been implicated in this case since he happens to be the husband 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 sister 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 appellant in this case. It is the case of the prosecution that on 23.05.2003, the informant got an information that his sister (victim) was consumed poison but F.I.R was lodged on



26.05.2003 which suggests that a concocted story has been implanted in between the date of occurrence and registration of the F.I.R. The prosecution has examined eleven witnesses, but except P.W. 9 and 10, all other witnesses have not supported the prosecution case and they have been declared hostile. The P.W. 9 claims that victim had written letters to her regarding torture, assault by her in-laws and illicit relationship of her husband but during trial, she had not produced those letters to prove the case of the prosecution. The informant claims that he went at the P.O and took the victim to the hospital where she was declared dead by the doctor but no postmortem report was exhibited by the informant. Moreover, in this case the Investigating Officer has not been produced by the prosecution. Hence, in the absence of examination of the Investigating Officer, the place of occurrence was not proved.

11. *In contra*, learned A.P.P appearing on



behalf of the State has submitted that the judgment of conviction and order of sentence to the convict/appellant is based on consistent oral and documentary evidences. The appellant is husband of the victim and torture was inflicted for non-fulfillment of dowry demand. The appellant being husband was fully responsible for abatement of suicide of the victim. There is no need of any interference with the judgment of conviction and order of sentence of the Court below. The present appeal has no force and is fit to be dismissed and the judgment of conviction and order of sentence as against the appellant is fit to be sustained.

12. I have gone through the entire case records, available evidence adduced on behalf of the prosecution during trial and considering the submissions raised on behalf of the learned counsel for the appellant, it appears that none of the prosecution witnesses have seen the occurrence and most of the witnesses have been declared hostile. There is an



inordinate delay in lodging the F.I.R. There is also contradiction in the evidence of P.W. 9 and P.W. 10 mainly on the point of demand of dowry and illicit relationship between the appellant and Mona, wife of Bhupendra Singh. The prosecution has also not exhibited the postmortem report. 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. The Investigating Officer has not been examined in this case. Whatever have been stated by the witnesses in their examination-in-chief was not contradicted in absence of evidence of Investigating Officer. The right of bringing on record the contradictions in the statement of witnesses made before the Investigating Officer is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not reliable



witness. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has definitely prejudiced the appellant since the appellant lost opportunity to cross-examine the Investigating Officer on point of seized materials, visit of I.O. at the place of occurrence and contradictions in the statement of prosecution witnesses before the Investigating Officer.

13. Now for proving the charge under Section 306 IPC, it is incumbent upon the prosecution to establish (a) that the victim of the offence committed suicide (b) that the accused abetted the commission of suicide (c) That the abatement attracts the ingredients under Section 107 IPC.

14. Section 107, IPC defines the offence of abatement and it is constituted by any of the following (a) instigation to commit the offence; or (b) engaging in conspiracy to commit it; or (c) intentionally aiding a person to commit it.



15. The abatement involves a mental process of instigating a person or intentionally aiding a person in doing of a thing. Without a positive act on the part of the accused to instigate or aid in committing suicide, conviction cannot be sustained. In order to convict a person under Section 306 IPC, there has to be a clear *mens rea* to commit the offence. It also requires an active act or direct act which led the deceased to commit suicide seeing no option and this act must have been intended to push the deceased into such a position that he/she committed suicide.

16. In the present case, the prosecution has failed to brought on record any proof which suggests that prior to the date of occurrence, there was any demand of dowry, torture or any *Panchayati* was held in this regard. The prosecution has also not exhibited the postmortem report which may prove this fact that victim had committed suicide nor the letters which P.W. 9 claims that it was sent by the victim, have been



brought on record to prove the case of the prosecution in which letter, the victim claims torture, assault, demand of dowry or illicit relationship of her husband/appellant,.

17. 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 appellant abetted to the deceased for committing suicide. 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 appellant is entitled to get the benefits of doubt.

18. In that view of the matter, the judgment of conviction dated 09.03.2006 and order of sentence dated 18.03.2006 passed by learned Additional District & Sessions Judge, Fast Track court no. III, Katihar in connection with Sessions Trial No. 237 of 2004, arising



out of Manihari P.S. Case No. 63 of 2003 is set aside.

19. The appellant is acquitted of all the charges after getting the benefits of doubt.

20. The appellant is all along on bail. He is discharged from the liabilities of the bail bonds.

21. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

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AFR/NAFR	NAFR
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