

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.942 of 2006

Brij Bihari Singh, Son Of Late Ram Nath Singh
Mahendra Singh, Son Of Late Ram Nath /singh
Both Resident Of Village- Bhediya, P.S. Ara Muffasil, Bhojpur

... .. Appellant/S

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Vipul Sinha (*Amicus Curiae*)
For the Respondent/s : Mr. A.M.P. Mehta, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 23-04-2024

Heard Mr. Vipul Sinha, learned Amicus Curiae on
behalf of the appellants and Mr. A.M.P. Mehta, learned
A.P.P for the State.

2. The present appeal has been filed against
the judgment of conviction and order of sentence dated
15.11.2006 passed by learned Additional Sessions
Judge, F.T.C-II, Ara, Bhojpur, in connection with
Sessions Trial No. 108 of 1997, arising out of Ara
Muffasil P.S. Case No. 122 of 1993, whereby and
whereunder the appellants were found guilty and
convicted for the offence punishable under Section

498(A) and they were sentenced to undergo rigorous imprisonment for a period of three years and fine of Rs. 3,000/- each and in default of payment of fine they have been further sentence to undergo rigorous imprisonment for two months.

3. Notably, co-accused Raj Kumari Devi was declared absconder and her case was separated.

4. The prosecution case as per the F.I.R is that the informant Satrudhan Kumar Singh has stated in the written information that he has married his sister Dil Kumari Devi five-six years back with Harendra Singh. It is alleged that on 05.10.1993 accused persons, namely, Brij Bihari Singh, Mahendra Singh and Raj Kumari Devi committed murder of informant's sister for non fulfillment of dowry demand of T.V and motorcycle and cremated the dead body in order to conceal the evidence.

5. On the basis of the aforesaid *fardebayan* of the informant Ara Muffasil P.S. case No. 122 of 1993

was registered against the appellants and one Raj Kumari Devi under Sections 498(A), 304(B), 201 and Section 3/4 of Dowry Prohibition Act.

6. After completion of the investigation, charge-sheet was submitted under Sections 498(A), 304(B) and 201 of Indian Penal Code and thereafter cognizance has been taken against the appellants. Thereafter, the case was committed to the Court of Sessions for trial.

7. Trial court has explained the charges to both the accused persons to which they pleaded not guilty and claimed to be tried.

8. The point of consideration in this appeal is whether the prosecution is able to prove the charges levelled against the appellants beyond reasonable doubt or not.

9. To substantiate the charges levelled against the accused person, altogether five witnesses were examined on behalf of the prosecution.

10. P.W.-1 namely Satrudhan Singh, who is informant of this case has deposed that he has solemnized the marriage of his sister with Harendra Singh and after six-seven years, his sister died at her matrimonial home. Vide para 4 of his deposition, he specifically deposed that the co-villagers of his sister's in-laws have informed him about the death of his sister. Vide para 10 of his deposition, he deposed that his sister has not made any complaint against the appellants, namely, Brij Bihari Singh, Mahendra Singh, in any respect. Harendra Singh (husband of his sister) had good terms with his sister. Vide para 13 of his deposition, he has deposed about getting knowledge about the appellants/accused persons had no complicity in the alleged offence. Due to this, he compromised with the accused persons and in this respect a compromise petition was filed before learned trial court on 13th of September, 2006, upon which the informant put his signature. The compromise was made with his consent.

11. P.W.-2 Radha Kishun Singh has not supported the prosecution case and he is not acquainted with the reason of death of informant's sister (Dil Kumari Devi).

12. P.W. 3 Jagarnath Singh has deposed that he has no knowledge about the matter of the occurrence and he did not support the case of the prosecution and he has been declared hostile by the prosecution. Vide para 8, this witness has deposed that the wife of Harendra Singh died due to illness.

13. P.W. 4 Sudarshan Singh has deposed that deceased was being treated well by their in-laws. Vide para 8 of his deposition, he has deposed that deceased has died due to illness.

14. P.W. 5 Murat Ram is a formal witness who has proved formal F.I.R. as Ext. 2.

15. Learned *Amicus Curiae*, appearing on behalf of the appellants has raised manifold contention and submitted that appellants are innocent and they have

falsely been implicated in this case since they happens to be in-law of the victim/deceased. 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. It is further submitted that the entire proceeding leading to present appeal conducted by the trial court is without jurisdiction and trial court has completely failed to appreciate the entire evidence made by the prosecution and it has convicted the appellants on the basis of assumption and not on the basis of material available on record. It is further submitted that investigating officer has not been examined in this case and due to non examination of the I.O., the prejudice has been caused to the defence because the accused/appellants have been deprived of his valuable rights to weigh the credibility of the witnesses.

16. In contra, learned A.P.P. on behalf of the

State submitted that the judgment of conviction and order of sentence is based on consistent and cogent evidence. There is no need for interference. It is mentioned in First Information Report that accused persons/appellants used to assault the deceased (Dil Kumari Devi) and pressurize her for fulfillment of dowry demand of T.V. and motorcycle.

17. I have gone through the entire prosecution oral and documentary evidence and rival submission made on behalf of the Amicus Curiae, appearing on behalf of the appellants counsel as well as A.P.P. It would be proper to mention here that this case relates to commission of dowry death by the in-laws of the deceased. The husband of deceased, namely, Harendra Singh, has not been made accused in this case. The offence in respect of dowry death as well as demand of dowry and commission of cruelty by in-laws of the deceased, the cardinal point of proving by the prosecution is whether the demand of dowry made just

before the death of the deceased/victim. From perusal of the entire prosecution evidence, this fact has not been proved by the prosecution evidence. P.W. 1, who is the informant of this case, has not whispered about the complicity of the accused persons. He has not deposed that the accused persons have demanded dowry just before the death of the deceased. Other witnesses ie. P.W 2 to P.W. 4 have also not whispered about the demand of dowry. The prosecution case has been registered on the basis of surmise and conjuncture. There is no cogent and consistent evidence to prove the charges levelled against the accused/appellants. In this case, the conviction has not been made u/s 304(B) of the Indian Penal Code. Accused/appellants have only been convicted under Section 498(A) of Indian Penal Code. There is no any independent witness or eye witness to prove the charges levelled against the accused persons. The evidence deposed by P.W. 1 (informant) is based only on hearsay.

18. After considering the entire evidence which are adduced on behalf of the prosecution, I am of this view that the prosecution fails to prove the charges levelled against the accused/ appellants and there is no evidence to prove the charge under Section 498(A) of the Indian Penal Code in which the learned trial Court has convicted the accused persons/appellants. I find much force and contention which was raised on behalf of appellants that deceased has died due to illness. No-one has killed her and the witnesses have not whispered about the demand of dowry of torture for the demand of dowry. 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.

19. In that view of the matter, the judgment of conviction and order of sentence dated 15.11.2006 passed by learned Additional Sessions Judge, F.T.C-II, Ara in connection with in connection with Sessions Trial No. 108 of 1997, arising out of Ara Muffasil P.S. Case

No. 122 of 1993 is set aside.

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

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

22. Accordingly, the appeal stands allowed.

23. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/ 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 a sum of Rs. 6,000/- (rupees six thousand only) to Mr. Vipul Sinha, towards his professional fee.

(Sunil Kumar Panwar, J)

Nirajkrs/-

AFR/NAFR	NAFR
CAV DATE	NA
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