

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.805 of 2006

SATISH YADAV son of Ramishwar Yadav, Resident of Village- Kirpa Bigha,
P.S. Rajgir, Distt. Nalanda.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 879 of 2006

1. Ram Iswar Yadav @ Iswar Yadav, son of Late Bhagwat Yadav

2. Shambhu Yadav, son of Ram Iswar Yadav, both residents of village Kirpa
Bigha, P.S. Rajgir, Nalanda

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 805 of 2006)

For the Appellant/s : Mr. Vipul Sinha, Amicus Curiae

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

(In CRIMINAL APPEAL (SJ) No. 879 of 2006)

For the Appellant/s : Mr.Vipul Sinha, Amicus Curiae

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

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT

Date : 12.-07-2024

Heard Mr. Vipul Sinha, learned Amicus Curiae

appearing for the appellants as well as Mr. A.M.P. Mehta,
learned Additional Public Prosecutor for the State.

2. Both these appeals have been heard together
and are being disposed off by passing this common order.
These appeals have been preferred by the appellants



challenging the judgment of conviction and order of sentence dated 22nd September, 2006 passed by a common order by Sri. Prem Darshan Singh, Additional Sessions Judge (FTC-No. 3), Nalanda in Sessions Trial No. 298 of 2004 arising out of Rajgir (Silao) P.S. Case No. 128 of 2001, whereby and whereunder appellants were found guilty and convicted for the offences punishable under Section 304(B), 498A and 201 of the Indian Penal Code. All the accused were sentenced to undergo rigorous imprisonment for ten years for the offence u/s 304(B) of the IPC, 3 years R.I. for the offence u/s 498A IPC and and three years R.I for the offence u/s 201 IPC. All the three sentences were directed to run concurrently.

3. On the basis of information given by informant (Awadesh Kumar), brother of the deceased, an FIR was registered on 28.3.2001 as Rajgir P.S. Case No. 128 of 2001 under Sections 304(B), 498A and 201/34 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act against six accused persons including the appellants.

4. As per prosecution story, Geeta Devi (deceased), sister of the informant was married to the



appellant Satish Yadav @ Tunna 5-6 years before. In the Falgun month of year 2000 her *Duragaman* was performed. After Duragaman, she was residing at her matrimonial home. Soon after her marriage, her father-in-law, mother-in-law, sister-in-law, brother-in-law and husband started to demand colour T.V. and a motorcycle as additional dowry. Sister of the informant informed about the additional demand of T.V. and motorcycle to the informant when he used to visit her sasural. It is further alleged that appellants with other family members threatened the informant's sister that she would be killed by them if demand of dowry were not fulfilled. On 28.3.2001, Rambalak Yadav came to his house and informed him about murder of his sister by the sasural members on 27.3.2001 at her matrimonial home. After getting information about killing of her sister at her matrimonial home, he rushed there and found that no one was at the home and floor of the house was coated with mud. Informant has strong apprehension that accused persons have killed his sister and disappeared her dead body to wipe off the evidence.

5. After completing the investigation,



Investigating Officer has submitted chargesheet against the six accused persons on 19.10.2001. Thereafter cognizance was taken on 7.11.2001 and accused persons were summoned for trial. The case was committed to the court of Sessions for trial and disposal.

6. The case of three female accused persons, namely, Panchmani Devi, Kiran Devi and Indu Devi was splitted by the the trial court on 19.5.2004.

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

8. To substantiate the charges leveled against the accused person, altogether twelve witness were examined by the prosecution. P.W.-1, Bhutali Pandey, P.W.-2 Bhonu Chaudhary, P.W.-3 Shiv Shankar Yadav, P.W.-4 Subodh Kumar, P.W.-5 Awdhesh Kumar, P.W.-6 Rajendra Yadav @ Karu Yadav, P.W.-7 Rajendra Prasad, P.W.-8 Ajay Kumar, P.W.-9 Suresh Pd. Yadav, P.W.-10 Krishnadev Singh, P.W.-11 Kedar Singh and P.W.-12 Brijnandan Prasad.

9. Out of twelve prosecution witnesses, seven prosecution witnesses i.e. P.W.-1, P.W.-2, P.W.-3, P.W.-6,



P.W.-7 and P.W.-11 turned hostile. P.W.-8 and P.W.-9 are seizurelist witnesses and they do not supported the prosecution case in cross-examination. P.W.-10 and P.W.-12 are formal witness. P.W. 4 and P.W.-5 are said to have proved the prosecution case. Investigating Officer was not examined by the prosecution.

10. P.W.-4 Subodh Kumar is nephew of the deceased and is a interested witness. He deposed in his deposition that in the year 1996 marriage of deceased was performed with accused Satish Yadav. He stated that her fuaa (deceased) was being tortured at her matrimonial home by the hands of sasural members due to non-fulfillment of Hero-honda motorcycle. She was done to death at her sasural on 27.3.2001 and he got information on next day by Rambalak Yadav. On getting information he went to the place of occurrence and found that box which was kept earlier in the room of her fuaa, was available there and floor of the room was coated with mud. Accused persons have disappeared the dead body of her *fuaa* with a view to wipe off the evidence. In para-1 of his cross-examination, he stated that deceased was about 28 years old at the time of



her death. He denied the suggestion made by defence that she died because she was issueless and due to over-dose of medicine she lost her mental balance.

11. P.W.-5 Subodh Kumar is informant of the case and he deposed in his deposition that in the year 1995-96 marriage of his sister (deceased) was performed with Satish Yadav. In the year 2000 her *duragaman* was happened. Informant went to meet his sister to her sasural 2-3 times before the occurrence. Her sister told him that sasural members used to demand Hero-honda motorcycle and color T.V.. She also disclosed to informant about life threatening given by the accused persons in case of non-fulfillment of demand. Informant clearly stated to her sister's father-in-law that whatever he had to give, he has already given and now he has nothing to give. On 28.3.2001 Rambalak Yadav has given information to him about the occurrence. On getting information, he went to her matrimonial home with his co-villagers, namely, Ranjeet Yadav, Ramswaroop Yadav and Subodh (P.W.-4) and found there that no one was present at the house and floor of the house was coated with mud. Accused persons have



disappeared her sister's deadbody after killing her. In para-1 of his cross-examination he has stated that he is the sole witness of demanding dowry by her in-laws. He has not given prior information or complain about the dowry demand. She was not suffering from any ailment. In this regard a panchayati was held in which Ramswaroop Yadav, Ramjee Yadav and Dr. Rameshwar Prasad were present. Defence side had suggested him that his sister was suffering from mental ailment and she left her house to which he denied.

12. P.W.-6 Rajendra Pd. Yadav @ Karu Yadav has not supported the prosecution case in his deposition. He deposed that deceased was mental and her marriage was performed 10 years ago and she went to her parents house. At the time of occurrence, she was residing at the house of her father and not to her matrimonial house. Defence Witness Sukhdeo Yadav also supported the version of P.W.-6.

13. P.W.-7 Rajendra Yadav in his deposition denied about the knowledge of the occurrence. He deposed that deceased fled away from her matrimonial home due to



her mental ailment and her treatment was going on at Ranchi. He has been declared hostile by the prosecution.

14. P.W.-8 Ajay Kumar and P.W.-9 Suresh Prasad Yadav are seizure list witnesses and they deposed that seizure list was not prepared in their presence. In their cross-examination, they have stated that they had made theirs signatures on plain paper at the instance of the police.

15. D.W.1 Sukhdeo Yadav was examined as defence witness. He has stated that deceased is traceless since 5-6 years. Deceased was issueless and for this reason she was mentally sick and left her matrimonial home.

16. Learned counsel appearing on behalf of the appellants has submitted that entire proceedings 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. Although twelve witnesses have been examined in this case, out of them eight witnesses have turned hostile. Prosecution has failed to prove that prior to death of Geeta Devi, demand of color T.V. and Hero-honda motorcycle was made by sasural members or she was subjected to cruelty or



harassment at her matrimonial home. Allegedly, deceased was done to death at her matrimonial home but her dead body was neither recovered nor sent for postmortem examination. In fact, Geeta Devi is traceless since long and only on the basis of suspicion, accused persons were convicted u/s 304(B) of the IPC. P.W.-5 (informant) has stated in his deposition that when he had visited to sasural of his sister, she disclosed him that she was being tortured by the hands of sasural members for non-fulfillment of motorcycle and color T.V. but still he had not registered any FIR or complaint against them, which creates doubt in authenticity of the prosecution case. There is not a single eye-witness of the occurrence to support the prosecution story. Rambalak Yadav, was a material witness of this case, who firstly informed the matter to the informant about murder of Geeta Devi, has not been examined by the prosecution. Investigating Officer of this case was also not examined by the prosecution, making the entire case and prosecution story completely weak and defense cause prejudiced.

17. Learned trial court had completely failed to



appreciate the entire evidence made by the prosecution during trial by not considering the essential ingredients of section 304(B) IPC as no witness has deposed that soon before the death of Geeta Devi, any demand of dowry was made by the appellants. Neither dead body of informant's sister was recovered nor postmortem was conducted to prove the allegation of killing by the sasural members at her matrimonial home, making the entire case doubtful. Moreover, appellants remained in judicial custody for more than five years. Prosecution story is completely weak and as such, the order passed by learned trial court is bad, illegal and perverse in the eye of law. The impugned judgment of conviction and order of sentence is fit to be set aside.

18. Learned APP appearing for the state argued that impugned judgment in question is based on cogent and consistent evidence. Deceased was married to the appellant in the year 1996 and within seven years of marriage, she was done to death by sasural members at her matrimonial home. P.W.-4 and P.W. 5 deposed in their deposition that demand of T.V. and motorcycle was made by her in-laws, thus, all the ingredients of Section 304(B) IPC is proved.



FIR is fully corroborated by the deposition of P.W.-5 (informant). The defense failed to discredit the evidence of the prosecution witnesses. He further submitted that the prosecution has been able to prove its case beyond all reasonable doubts, and therefore, learned trial court has rightly convicted the appellants. It has been contended that minor contradictions and variations in the testimony of the witnesses cannot be a ground to discard their evidence as a whole. Therefore, the judgment and order assailed in this appeal requires no interference and appeal is liable to be dismissed.

19. I have gone through the entire evidence adduced on behalf of the prosecution and defense and rival submissions of the learned Amicus Curiae who assisted the Court as well as A.P.P. in order to establish the offence under Section 304(B) of Indian Penal Code, the prosecution is obliged to prove that death of a woman is caused by burn or bodily injury or otherwise then under 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. Way of harassment is also not been narrated by anyone in their evidence. I.O. who investigated the matters, has not been examined. If the prosecution proves the aforesaid circumstances then presumption under Section 113-(B) of the Evidence Act will operate. In the light of the aforesaid provisions, I proceed to examine the evidence on record.

20. It is evident that there is nothing to show that soon before the death there was any demand or torture by the appellants which is necessary ingredient to implicate the accused under Section 304(B) of Indian Penal Code. Section 304(B) of Indian Penal code clearly says that in case of abnormal death, 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 in connection with demand of dowry, such death can only be called dowry death. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused persons u/s 304B of the IPC. 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 Indian Penal Code. If the prosecution fails to establish the aforesaid ingredients then presumption under Section 113-(B) of the Evidence Act does not apply and in such case burden does not shift to the accused persons to revert the presumption under the law. Since ingredients of Section 304(B) is absent on record, in my view the appellants cannot be convicted under Section 304(B) of Indian Penal Code. The trial Court did not consider the aforesaid aspect of the matter in view of the aforesaid findings, the evidence on record which remains to be considered is only circumstantial evidence.

21. This case relates to circumstances because, in this case, there is no direct evidence in proving the prosecution case. No one seen the occurrence committed by the convicts/appellants. It is well established rule of law that the circumstantial evidence which has been brought on record, as discussed above, is not sufficient to come to a conclusion that the appellants had committed dowry death. In case of circumstantial evidence, chain must be completed



to establish the guilt of the accused. In the instant case, there is no such circumstantial evidence/chain of circumstances to establish the guilt of the appellants. In this case no one is the eye witness of the occurrence as well as I.O. was not examined, who conducted the investigation. Neither any piece of evidence was collected from the place of occurrence nor dead body of informant's sister was recovered. Save and except, interested witness i.e. P.W. 4 and P.W. 5, most of the witnesses not supported the prosecution case and they turned hostile. In this case there is no eye witness and the demand of dowry has not been proved as discussed above. 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.

22. Thus, on consideration, as discussed above, I am of the opinion that the prosecution has failed to establish its case and as such the conviction of appellants cannot be upheld. Accordingly, these appeals are allowed. The judgment of conviction and order of sentence are hereby set aside.

23. The appellants are all along on bail are acquitted



by giving them the benefits of doubt. They are discharged from the liabilities of the bail bonds.

24. Accordingly, both the appeals stand allowed.

25. Mr. Vipul Sinha, learned *Amicus Curiae* was appointed to represent the appellants/convicts in Cr. Appeal (SJ) No. 879 of 2006 and Cr. Appeal (SJ) No. 805 of 2006. 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 appeals. The Patna High Court, Legal Services Committee is, hereby, directed to pay total Rs. 10,000/- (rupees ten thousand only) for both appeals to Mr. Vipul Sinha.

(Sunil Kumar Panwar, J)

sushma/-

AFR/NAFR	NAFR
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