

(2016) 04 PAT CK 0052

In the Patna High Court

Case No : Criminal Appeal (SJ) Nos. 445 and 361 of 2013

Akhilesh Seth and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 13-04-2016

Acts Referred:

Evidence Act, 1872 — Section 145
Penal Code, 1860 (IPC) — Section 201, Section 304B, Section 304-B, Section 34,
Section 498A

Citation : (2016) 04 PAT CK 0052

Hon'ble Judges : Gopal Prasad, J.

Bench : Single Bench

Advocate : B.P. Pandey, Sr. Advocate, Rajesh Kumar Pathak, Pramod Kumar and Nirbhay Prashant, Advocates, for the Appellant; Binod Bihari Singh and Abha Singh, A.P.Ps., for the Respondent

Final Decision : Allowed

Judgement

Gopal Prasad, J.—1. These two appeals have been heard together and are being disposed of by this common judgment as both the appeals arise out of the same judgment of conviction dated 16.04.2013 and order of sentence dated 22.04.2013 passed in Sessions Trial No. 263 of 2010/196 of 2010 arising out of Kudhni P.S. Case No. - 06 of 2009 District - Bhabhua (Kaimur) by Shri Satishchandra Rai, Ad hoc learned 2nd Additional Sessions Judge, Bhabhua by which the appellants have been convicted under Sections 304-B, 498A, and 201/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years under Section 304-B of the Indian Penal Code, two years under Section 498A of the Indian Penal Code with a fine of Rs. 1,000/- each and two years under Section 201/34 of the Indian Penal Code with a fine of Rs. 1,000/- each and in default of payment of fine to undergo simple imprisonment for three months. However, it has been ordered that all the sentences shall run concurrently.

2. The prosecution case, as alleged in the written report of the informant Banshidhar Sonar (P.W.12), son of Late Ram Sigasan Sonar, Village Cochas, Police Station Cochas, District Rohtas, is that marriage of his daughter, namely, Chanda @ Anita Devi was solemnized about six years back with Akhilesh Seth (sole appellant in Cr. Appeal (SJ) No. 445 of 2013), son of Din Dayal Seth, Village Dumduma, Police Station Kudhni, District - Kaimur, according to Hindu rites and rituals. As soon as his daughter went to Sasural, her husband Akhilesh Seth, father-in-law Din Dayal Seth, mother-in-law, name not known, wife of Din Dayal Seth, aunt-in-law, name not know, wife of Late Dina Nath Seth, Bhainsur Mithilesh Seth, Dewar Dhanu Seth both are sons of Din Dayal Seth, Gotani, name not known, wife of Mithilesh Seth started demanding motorcycle, T.V. and Rs. 50,000/- cash whereas at the time of marriage the informant gave clothes, jewelries, cash, cow, utensils etc. as a gift. The further case is that all the accused persons subjected her to cruelty due to non-fulfilment of the demand by not providing food on various days and burning her body by hot iron rod. The further case is that when the daughter of the informant informed about the occurrence then the informant went to Dumduma and asked her father-in-law (Samadhi) and his family members not to permeate cruelty for non-fulfilment of the demand and assured that when he would get money then he would fulfil their demands, but the in-laws continued to subject her to cruelty and on the last night on 07.06.2009 at about 11:00 P.M. they burnt his daughter by sprinkling kerosene oil and set her on fire and disposed of her dead body clandestinely. The further case is that on receiving information when the informant came to village Dumduma then he learnt from the villagers that his daughter was done to death due to non-fulfilment of the demand of dowry by sprinkling kerosene oil by the in-laws and the dead body was disposed of in the night itself and hence, he claimed that his daughter was done to death by the above named accused persons due to non-fulfilment of the demand of dowry and they disposed of her dead body to erase the evidence.

3. On the written report of Banshidhar Sonar (P.W.12) First Information Report was lodged on 08.06.2009 at 10:20 A.M. After endorsement on the written report by the Station House Officer, Kudhni, Basant Baitha (P.W.13) took up the investigation. During investigation, the Investigating Officer recorded the further statement of the informant and also recorded the statement of the wife of the informant and proceeded to the place of occurrence. The place of occurrence is the house of Din Dayal Seth and in front of his house there was a Sahan which was covered from three sides and in the middle there was an iron gate and to the south of the courtyard, northeast room and in the middle there is a room in which the victim was living. On the roof of the house of the accused, there were two rooms in the southern side where the occurrence is alleged to have taken place and in those rooms he found the smell of kerosene oil. He also found the burnt clothes in the room and two old laba which were also burnt and five covers of laba which were also burnt at several places and seized the said laba and has proved the seizure list marked as Ext.5. The police, after investigation, submitted

charge-sheet on which cognizance was taken, case was committed to the Court of Session and after framing of charge trial proceeded. During trial 15 witnesses were examined by the prosecution.

4. P.W.1 Samulla Sah in his evidence deposed that wife of Akhilesh Seth died due to illness and has been declared hostile. P.W. 2 Uma Shankar Rai, son of Basistha Rai in his evidence sated that he did not know about the occurrence and has been declared hostile. P.W.3 Uma Shankar Rai, son of Kesab Prasad Rai in his evidence stated that daughter-in-law of Din Dayal was ill and she died due to illness and was the wife of Akhilesh Seth and has been declared hostile. P.W.4 Chandrashekhar Rai in his evidence stated that he did not know anything about the occurrence and has been declared hostile. P.W.5 Ras Bihari Chouhan in his evidence stated that there was no demand of dowry and the victim died during her treatment and his evidence was not recorded and has been declared hostile. P.W.6 Awadh Bihari Rai in his evidence stated that he did not know anything about the occurrence and did not state anything before the police and has been declared hostile. P.W.7 Jitendra Prasad Rai is a formal witness who has formally proved his signature on the seizure list, but stated in his cross-examination that he put his signature at Kudhni Police Station on the plain paper. P.W.8 Munna Rai and P.W.9 Sushila Devi in their evidences stated that they did not know anything about the occurrence and have been declared hostile by the prosecution. P.W.10 Parma Rai deposed that wife of Akhilesh Seth was ill and she was taken for treatment before the doctor where she died and has been declared hostile. P.W.11 Savitri Devi is the mother of the deceased and P.W.12 Banshidhar Sonar is the informant of this case and both have supported the prosecution case. P.W.13 Basant Baitha is the Investigating Officer of this case. P.W.14 Mehadi Sah is the Choukidar who produced seized articles in the Court on the direction of the Officer-in-Charge of Kudhni Police Station and brought the burnt ashes (Laba) and covers which have been marked as material Exts.1, 2 and Exts.3, 9, 5, 6, 7, 8 and proved the same. P.W.15 Muneshwar Seth came to depose that he along with the informant (P.W.12) and his wife (P.W.11) went to Dumduma from where they went to Kudhni Police Station and there on the statement of the informant (Banshidhar Seth Sonar) P.W.15 wrote a written report, read it over on which Banshidhar Sonar (P.W.12) put his signature and proved the written report on the basis of which First Information Report was lodged in his pen marked as Ext.7.

5. The defence has also adduced two witnesses who were D.W.1 Satyendra Kumar Rai and D.W.2 Bhola Choubey. D.W.1 deposed that Din Dayal Seth took his daughter-in-law to Varanasi for treatment then he heard that she died in the way of Varanasi hence, the evidence of this witness is not relevant as hit by hearsay.

6. D.W.2 in his evidence stated that marriage of Akhilesh Seth was solemnized 12 years back. The wife of Akhilesh Seth was to be ill and took her for treatment where she died. However, this witness in cross-examination has stated that he

could not say the date and day of the marriage and he was not present at the time the wife of Akhilesh Seth died. He has also taken her for treatment and he could not say the date and time of the occurrence. He even could not say what happened in the house of Akhilesh Seth on the day of occurrence and he has no personal knowledge and hence, his evidence is not worthy of credence to be reliable and even probabalize his evidence.

7. The trial Court taking into consideration the evidence of the witnesses convicted and sentenced the appellants as mentioned above.

8. Learned counsel for the appellants has challenged the judgment of conviction and order of sentence recorded by the learned trial court on the ground that the prosecution has not been able to prove the charges levelled against the appellants beyond all reasonable doubts. It has been contended that P.Ws.1 to 10 have deposed either that they have no knowledge about the occurrence or that the victim died due to illness and all the witnesses i.e. P.Ws.1 to 10 except P.W.7 who was the formal witness, have been declared hostile by the prosecution as they have not been able to prove the charges and hence, their evidences are not worthy for consideration. It has further been contented that the witnesses who came to support the prosecution case are P.Ws.11, 12 and 15. P.W.13 is the Investigating Officer, P.W.14 is the Chaukidar who brought the material exhibit partly burnt laba alleged to have been recovered from the house of accused persons. It has also been contented that P.W.15 has come to depose that he recorded the statement at the instance of the informant (Banshidhar Seth Sonar P.W.12) on the basis of which the First Information Report was lodged on which he put his signature. It has further been contended that Savitri Devi (P.W.11) has stated that she also put her signature on the written report which was written by P.W.15 Muneshwar Seth and she also put her signature before the police. It has further been contended that the written report, on the basis of which the First Information Report was drawn, does not bear the signature of P.W.11 the wife of the informant and hence, the initial version, on which the First Information Report was lodged, has been suppressed or changed. It has further been contended that a suggestion has been given that the petition on which P.W.11 put her signature was a document in which there was nothing against the accused persons, but it was written that her daughter was suffering from the illness of abdominal pain and was being treated at Varanasi and she died. It has further been contended that there is no reliable and trustworthy evidence regarding the fact of subjecting cruelty or the fact whether soon before the death the victim was subjected to cruelty and hence, the ingredients for offence under Section 304-B of the Indian Penal Code are missing to record a conviction.

9. Learned counsel for the State contended that there was demand of dowry and subjecting cruelty against the appellants and on account of non-fulfilment of the same, the death of the victim was done within seven years of the marriage and hence, the ingredients for the offence under Section 304-B of the Indian Penal Code are established to record a conviction against the appellants.

10. However, on the respective submissions of the parties, I proceed to consider the evidence of the witnesses.

11. However, 15 witnesses were examined in this case. P.Ws.1 to 10 have been declared hostile and their evidences are not worthy of credence. The only material witnesses are P.Ws.11, 12 and 15. P.W.13 is the Investigating Officer and P.W.14 is a formal witness who has brought laba from the police station to the Court and the said laba has been marked as material Exts.1 and 2.

12. However, the prosecution case, in the written report, on the basis of which First Information Report was lodged, is that the victim was married with the appellant Akhilesh Seth about six years back and there was demand of motorcycle, T.V. and Rs. 50,000/- and victim was subjected to cruelty by not providing food and assault by hot iron rod and in this regard information was given to the informant by his daughter and he came to Dumduma and requested the accused persons not to permeate the cruelty, but all the accused persons subjected her to cruelty and on 07.06.2009 they got the victim burnt to death by sprinkling kerosene oil. However, P.W.11, who is the mother of the victim, has stated in her evidence that her daughter was married about six years back with Akhilesh Seth and at the time of marriage gifts were given and her daughter went to Sasural at Dumduma. She has further stated in her evidence that after some day of keeping her well in the Sasural there was demand of Rs. 50,000/-, T.V. and motorcycle and stated that the husband, Dewar, Gotani, father-in-law and mother-in-law got the victim injured by hot iron rod on which her daughter made a cry which the neighbour heard. She has further stated that her daughter informed her by telephone that she has got injured by hot iron rod. She has further stated that on this information she along with her husband, Muneshwar Seth and Bhola Choubey went to her Sasural. She has further stated that they got them understand that she has three daughters but she would arrange the money and thereafter they took her daughter to her house. She has further stated that the leg of her daughter was badly injured and she was unable to walk. The mother of the victim further stated that the victim remained at her house for about one month and thereafter husband of the victim came and took her after Bidai and taking her for the second time after a month she was done to death. However, the evidence of this witness that the information was given on telephone by her daughter suffers from a development to the case as stated in the written report because the written report does not mention about any information received on the telephone from the daughter of the informant. The story has been developed in her evidence that she came to the house of the victim on getting information along with her husband, Muneshwar Seth and Bhola Choubey and took the victim to her house. There is no such case in the First Information Report that P.Ws.11 and 12 took the victim to her Naihara rather the case made out in the First Information Report that they came and asked his Samadhi not to subject her to cruelty, but they continued to subject her to cruelty. However, the story developed in her evidence was to the effect that the victim was taken to the house of the informant and after one month of

living her at her Naihara, (father place), the victim was taken by Akhilesh Seth and after taking to her Sasural she was done to death. The further evidence of this witness is that some persons were talking at the bus stand amongst themselves which was heard by informant that daughter has been done to death by burn injury and then she along with her husband, Muneshwar Seth, Bhola Choubey went to the Sasural of the victim and then saw one of the daughters of Devanti sitting out side the house, and the house was locked and on inquiry she disclosed where they had gone somehow after taking the dead body and then informant went to the house of the Mukhiya Jee Dal Singar Rai who asked him to go and file case in the Court. However, all the evidences about the fact that she heard about the burning and the disclosure of Devanti are all hit by hearsay and the evidence of this witness that she received information form her daughter on telephone is a development to the prosecution case at the stage of investigation and trial and further the story developed that the victim was taken to Naihara is also a development to what has been stated in the First Information Report. However, this witness stated in para 8 of her cross-examination that the written report has been filed regarding the occurrence on which she put her signature. She has further stated in para 13 of her deposition that on petition on which she put her signature was written by Muneshwar Seth and she also put her signature before the police.

13. P.W.15 Muneshwar Seth came to depose that on receiving information about the brunt of the victim he along with Banshidhar Seth and his wife went to the house of the accused persons then saw the door of Din Dayal Seth was locked. The daughter of Din Dayal Seth disclosed that his Bhabhi has been burnt and the accused persons went for her treatment and when they asked from the villagers then they said that the victim has been burnt. However, this evidence about the fact that on the disclosure of the daughter of Din Dayal Seth and learning about the occurrence from the co-villagers, is hit by hearsay. However, he has further stated that he went to Kudhni Police Station at about 10:00 A.M. and there on the disclosure of Banshidhar Sonar (P.W.12) he drafted a petition on which Banshidhar Seth put his signature and has proved the said report in his writing marked as Ext.7. However, the said Ext.7 does not bear the signature of P.W.11 the wife of the informant who claims that she also put her signature on the said petition and the suggestion has been given that the paper on which she put her signature bears the implication of the accused persons. P.W. 12 the informant stated about the demand and subjecting cruelty and there was demand of Rs. 50,000/-, T.V. and motorcycle and the victim was subjected to cruelty for non-fulfilment of the demand. He has stated that his daughter disclosed on telephone about the demand and subjecting cruelty and then they went from Kochas to Dumduma along with his wife and Banshidhar Sonar to make them understand not permeated to cruelty and has deposed that after her treatment Akhilesh Seth and his brother-in-law came for Bidai and after one month the victim was done to death by sprinkling kerosene oil. In his further evidence he has stated that he had been to Kochas Chouk for purchasing vegetables and there a vehicle came

from Dumduma and the people were talking that the daughter of Banshidhar Sonar has been done to death by burning then he and his wife and Bhuneshwar Sonar went to the Sasural of his daughter and then a girl was sitting at the Darwaza and on inquiry she disclosed that the victim has been burnt and the accused persons have taken away. However, all these witnesses deposed about the learning of the occurrence from the people at Dumduma and on the disclosure by the girl about the death of the victim by burning are all hit by hearsay and not admissible in evidence. So far the story developed that the victim disclosed on telephone regarding the dowry suffers from development as no such fact has been mentioned in the written report on the basis of which First Information Report was lodged. On the other hand, there is neither any disclosure nor is there any evidence nor the victim went to the Naihara nor the informant took her to Naihara. However, in cross-examination he has stated that he disclosed to Daroga Jee about the information given by his daughter on telephone. The attention of this witness has been drawn to record contradiction but not strictly as provided under Section 145 of the Evidence Act to record a contradiction. However, the Investigating Officer has stated in his evidence that Bansidhar Sonar has not stated before him in his evidence regarding the information given by the daughter on telephone. Hence, the evidence adduced by P.Ws.11 and 12 that they got information that their daughter informed about subjecting cruelty by assault causing the injury by rod on telephone and the fact that she has been subjected to cruelty by hot iron rod are hit by hearsay and a development by the prosecution as this fact has not been mentioned in the written report written by Muneshwar Seth at the dictation of Banshidhar Sonar in presence of his wife P.W. 11 and the wife of the informant also put her signature on the report written. However, if this Court goes into the evidence of P.Ws.11 to 15 it is found that they learnt about the occurrence from her daughter and thereafter the victim continued to be subjected to cruelty which has been developed. The prosecution case in the fardbeyan is that they received information when some people were talking amongst themselves at the Kochas Chouk and then he went to the house of the accused persons along with the wife of the informant and P.W.15 Muneshwar Seth and there the villagers as well as a girl Devanti Devi disclosed about subjecting cruelty and death of the victim by burning but neither any villager nor Devanti Devi have come to support the prosecution case hence, the evidence of this part of the prosecution case or the prosecution witness P.Ws.11, 12 and 15 is hit by hearsay and is not admissible in evidence. So far the prosecution case that P.Ws. 11 and 12 learnt about subjecting cruelty from her daughter on telephone does not find mention in the First Information Report. There is no case of prosecution in the fardbeyan on the basis of which First Information Report lodged mentioned that they went to the Sasural of the victim and then they brought the victim to the Naihara and this part of the evidence that the informant learnt about the occurrence on telephone disclosed by the victim is a development to the prosecution case at the stage of trial which stands contradicted from the First Information Report itself as in the First Information Report there is no case of the prosecution case that they learnt

about the occurrence by telephone by the victim and further story that the victim was brought to the Naihara also found missing. This part of the evidence is a development to the prosecution case and hence, this part of the evidence regarding the fact that the informant learnt about the occurrence on telephone is suffered from infirmity and the prosecution case is that the victim was brought to the Naihara and then she was taken by the husband and brother-in-law one month prior to the occurrence is also a development. However, if the prosecution fails to the extent that the informant learnt from the victim then there is no evidence regarding the fact that the victim was subjected to cruelty for non-fulfilment of the demand much less there is no evidence soon before the death the victim was subjected to cruelty. The case of the defence is that there was no demand as she was suffering from abdominal pain and mental disorder for which she was treated and died her natural death hence, so far the evidence regarding the allegation that the victim was burnt and the dead body was disposed of there is no evidence except the evidence that the Investigating Officer found the smell of kerosene oil and seized five labas. There is no witness in the village, who came to depose that the victim was burnt. Neither a single witness has come, nor the Investigating Officer could be able to adduce any evidence or collect any evidence that the victim was done to death by a burn injury and there is no evidence at all that anyone ever seen the victim in burnt stage except the evidence of the informant and his wife that they learnt that some persons were talking at Kochas Chouk about the death of the victim by burn injury. Neither the names of said persons from whom he heard have been disclosed nor such persons deposed that they saw and hence, neither any reference of the burn of the victim has been brought in evidence and hence, fraudulently from the evidence of P.Ws.11, 12, 13 and 15 it is apparent that neither the prosecution has been able to establish by cogent, reliable and unimpeachable evidence that the victim was done to death or in suspicious circumstance nor they have able to prove that the victim died out of the burn injury. There is no cogent material to show that she was subjected to cruelty for non-fulfilment of the demand which is development. Soon before the death of the victim they went there and brought the victim to the Naihara and then got her treated and sent her back but neither there is any document for the treatment of the victim of the burn injury by hot iron rod nor any doctor has been examined to corroborate which is a development at the stage of the trial when such story is found missing in the First Information Report that the victim was taken to the Naihara after injury by hot iron rod nor any document relating to treatment of the victim injury caused by hot iron rod has been proved to believe the prosecution case hence, the ingredients for the offence under Section 304B of the Indian Penal Code are missing.

14. It is pertinent to mention here that in order to seek conviction under Section 304-B of the Indian Penal Code the prosecution is required to prove that the death of woman is caused or occurs otherwise than under normal circumstances and further the death occurs within seven years of her marriage and the

deceased was subjected to cruelty by her husband or relatives and further such cruelty or harassment should be in connection with demand of dowry and further the cruelty and harassment should have been subjected soon before her death and when the above mentioned ingredients are established then a presumption can be drawn under Section 113B of the Indian Penal Code. However, the ingredients as mentioned above has not been established and the evidence regarding the demand and subjecting cruelty suffers from various infirmities to hold that the prosecution has been able to prove those ingredients beyond reasonable doubts and hence, the presumption under Section 113B of the Indian Penal Code cannot be drawn to hold that the prosecution has been able to prove the charges under Section 304-B of the Indian Penal Code against the appellants beyond all reasonable doubts and hence, I find and hold that the prosecution has not been able to prove the charges for the offence under Section 304-B of the Indian Penal Code to record conviction.

15. Hence, having regard to the aforesaid fact that the prosecution has not been able to prove the charges levelled against the appellants beyond all reasonable doubts, the judgment of conviction dated 16.04.2013 and order of sentence dated 22.04.2013 passed in Sessions Trial No. 263 of 2010/196 of 2010 arising out of Kudhni P.S. Case No. - 06 of 2009 District - Bhabhua (Kaimur) by Shri Satishchandra Rai, Ad hoc learned 2nd Additional Sessions Judge, Bhabhua are hereby set aside and both the appeals are allowed. Since the appellant, namely, Akhilesh Seth, in Cr. Appeal (SJ) No. 445 of 2013, is in jail, he is directed to be released forthwith if not required to be detained in any other case. Since all the appellants, in Cr. Appeal (SJ) No. 361 of 2013, are on bail, they are directed to be discharged from the liabilities of their respective bail bonds.