

(2014) 02 PAT CK 0010

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 181 of 2002

Ganauri Yadav and Kaushal Yadav

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-02-2014

Acts Referred:

Evidence Act, 1872 — Section 113B

Penal Code, 1860 (IPC) — Section 201, 304B, 498(A)

Citation : (2014) 02 PAT CK 0010

Hon'ble Judges : Akhilesh Chandra, J

Bench : Single Bench

Advocate : Kameshwar Prasad Sinha and Mr. Ram Nath Saran, for the Appellant; Sujit Kumar Singh, Additional Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Akhilesh Chandra, J.—Heard learned counsels appearing on behalf of the parties. Both the appellants abovenamed respectively being father-in-law and husband of deceased daughter of the informant have preferred this appeal against their conviction for the offence punishable under Sections 304B, 498(A) and 201 of the Indian Penal Code and respectively sentence to undergo rigorous imprisonment for ten and two years each, however, all the sentences are to run concurrently, as awarded on 20th Day of February, 2002 by learned 2nd Additional Sessions Judge (F.T.C.), Patna, in Sessions Trial Nos. 684 of 1992/65 of 2001 arising out of Phulwari Sharif (Gaurichak) P.S. Case No. 389 of 1991.

2. The appellants and other family members were put on trial for same offence but others have been acquitted and these two appellants were found guilty and have been convicted and sentenced in the manner aforesaid.

3. The prosecution case in short as reveals from the written application (Ext. 2) of P.W. 3, namely, Deolagan Rai, dated 30th November, 1991, is that the marriage of his daughter, namely, Devanti Devi (deceased) was performed roughly four years ago with appellant No. 2, namely, Kaushal Yadav, and the

second marriage (Duragaman) was performed in the year 1990 and at that time there was a demand of one cow and a golden chain by appellant No. 2 and his family members but since the informant was not in a position to fulfill such demands, he did not. Thereafter, in the month of Kartik at the occasion of Chhath the deceased came to informant's place and subsequently appellant No. 1, namely, Ganauri Yadav, came to take her back and at that occasion also on the question of not coming of appellant No. 2, he informed about his annoyance for non-fulfillment of the demands (cow and golden chain). A few days, thereafter, the informant visited the place of the appellants on 28.11.1991 but found them alongwith others sitting and initially they informed that the deceased has left their place two or three days ago but on further query made from the villagers he could know that she was done to death by poisoning on 25th November, 1991 and also the body was disposed of.

4. In order to substantiate the charges, the prosecution has examining altogether eight prosecution witnesses besides producing following documentary evidence:--

(i) Ext. 1:- Signature of Deolagan Rai on the Fardbeyan.

(ii) Ext. 2:- Written report.

(iii) Ext. 3:- FIR.

(iv) Ext. 4:- Case diary.

Out of total eight prosecution witnesses, P.W. 8, namely, Ram Nagina Rai, is a formal witness, proved Exts. 2, 3 & 4. P.W. 6, namely, Sri Dinanath Rai, and P.W. 7, namely, Shiv Narayan Yadav, since said nothing about prosecution case, have declared hostile. P.W. 4, namely, Ram Ratan Yadav, and P.W. 5, namely, Dwarika Rai, have been tendered for cross-examination, wherein, also there is nothing worth consideration.

5. Out of remaining three prosecution witnesses, P.W. 1, namely, Jageshwar Rai, is the full brother of the informant, stated the prosecution case and in his one line cross-examination there is nothing to disbelieve him. P.W. 2, namely, Ramna Yadav, has also stated the prosecution version. He is brother-in-law (Sadhu) of the informant and on the occasion of Chhath he had also been there at the house of the informant where he could know about such demands and going back of deceased to her Sasural with appellant No. 1. P.W. 3, namely, Deolagan Rai, is the informant of this case and has stated the prosecution version and denied the suggestions that she (deceased) died in spite of possible treatment provided to her for complain of stomach pain (appendicitis etc.).

6. On the other hand, the defence has also produced Ext. A, the prescription of the doctor, namely, L.P. Jha, issued on 24.11.1991 prescribing some medicines and requirement of surgery. It is proved by formal witness D.W. 5, namely, Surendra Singh, an Advocate's clerk. D.W. 1, namely, Jai Narayan, D.W. 2, namely, Mangru Ram and D.W. 4, namely, Suresh Rai, are the persons coming to

state that the deceased on such complain of stomach pain was brought to the doctor for treatment and, thereafter, returned to home and again situation aggravated and while she was being taken to there, she died. D.W. 3, namely, Dinanath Thakur, apart from stating the above, has also states that he is the person went to inform the prosecution side about death of the deceased and at this point his statement remains uncontroverted.

7. It is contended by learned counsel appearing on behalf of the appellants that the prosecution is conspicuously silent about any sort of torture and cruelty shown to the deceased, so long, she was alive and, in absence thereof, the conviction of the appellants for the offences punishable under Sections 304B, 498(A) and 201 of the Indian Penal Code is not at all sustainable. On the other hand, learned Additional Public Prosecutor appearing on behalf of the State tried his level best to support the findings of the trial court.

8. It is relevant to go through the provisions as contemplated u/s 304B of the Indian Penal Code as well as u/s 113B of the Indian Evidence Act, which reads as such:--

[304B. Dowry death.--(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

[113-B. Presumption as to dowry death.--When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.]

9. The above provisions requires the deceased being subjected to any sort of cruelty and torture for or in connection with any such demand and that too within a period of seven years of her marriage, but in the instant case, undisputedly, the death of the deceased took place well within a period of seven years of her marriage and the prosecution witnesses are almost consistent about the demand of a cow and a golden chain at the time of second marriage (Duragaman) and also at the time of her coming back to Sasural with appellant No. 1, but, at the same time, neither in Ext. 2 nor in the entire evidence of P.W. 3 (informant) or the two remaining witnesses, there is even whisper of any complain made by the deceased regarding any sort of torture or cruelty shown to her in spite of the fact that P.W. 3 in his cross-examination has accepted that he

was regular visitor of the place of the appellants and it is not the prosecution case that at any occasion he was denied meeting with his daughter, i.e., the deceased. Having regard to the facts and circumstances, it can very well be said that the prosecution has not been able to establish the charge after removing the clouds casted against his case; consequently, the appellants deserve the benefit. Accordingly, in the result, the judgment of conviction and order of sentence, as recorded by the trial court, is set-aside and the appeal is hereby allowed. Both the appellants abovenamed are set free from the liabilities of the bail-bonds furnished on their behalf.