

(2018) 05 PAT CK 0073
In the Patna High Court
Case No : Criminal Appeal (SJ) No.556 of 2015

Musani Devi	Vs	APPELLANT
The State of Bihar		RESPONDENT

Date of Decision : 17-05-2018

Acts Referred:

Indian Penal Code, 1860 — Section 304B
Code of Criminal Procedure, 1973 — Section 217, 313

Citation : (2018) 05 PAT CK 0073

Hon'ble Judges : ADITYA KUMAR TRIVEDI

Bench : Single Bench

Advocate : Sameer Ranjan, Z. Hoda

Final Decision : Allowed

Judgement

1. Appellant Musani Devi has been found guilty for an offence punishable under Section 304B of the I.P.C. and sentenced to undergo R. I. for seven

years vide judgment of conviction dated 28.07.2015 and order of sentence dated 29.07.2015 passed by the 1st Additional Sessions Judge, Benipur,

Darbhanga in Sessions Trial No.223 of 2007.

2. Bachcha Jha (PW-2), uncle of deceased Meena Devi gave his fard-bayan on 01.06.2006 at about 8.25 a.m. at the place of sasural of deceased

Meena Devi (his niece) alleging inter alia that Meena Devi was married with Jagarnath Jha, son of Yogeshwar Jha about five years ago and her

Duragman effected after three years. She remained at her sasural for a year and during course thereof, her mother-in-law frequently indulged in feud

with his niece and in the aforesaid background, she was severely tortured. On being informed, he along with his brother Lal Jha (father of the

deceased) had gone there and took away the deceased to their place where she

stayed for two years. On the eve of Chaiti Durga Puja, Musani Devi came and persuaded her (Meena) to come to her sasural, whereupon deceased shown inclination over which her Dewar Binod Jha came and took her away about 15 days ago. Even thereafter, she had again been subjected to torture. They received information that her mother-in-law Musani Devi, father-in-law Yogeshwar Jha, husband Jagarnath Jha, brother-in-law (Dewar) Binod Jha not only subjected her to torture rather she was occasionally, physically assaulted. Today, i.e. 01.06.2006 at about 7.30 a.m., they received information that his niece has been murdered by her sasuralwala in the evening of 31.05.2006 by way of sprinkling kerosene oil and lighting fire, whereupon he along with his brother and others rushed and after coming to the place, he had seen dead body of his niece kept over Osara of the house. All the members of her sasuralwala were absent. It has also been disclosed that his brother, father of the deceased is presently at Kolkata.

3. After institution of Ghanshyampur P.S. Case No.75 of 2006, investigation commenced and concluded by way of submission of chargesheet, facilitating the trial, which ultimately concluded in a manner, subject matter of instant appeal. It is to be noted that as is evident from the L.C. Record that husband Jagarnath Jha, her father-in-law Yogeshwar Jha and her brother-in-law Binod Jha were not sent up for trial, which was conceded by the learned lower Court while taking cognizance of an offence vide order dated 21.05.2007.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been pleaded that victim was married with an idiot, whereupon she was suffering from depression whereunder she was committed suicide. However, nothing has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether fourteen prosecution witnesses, out of whom, PW-1, Gunanand Jha, PW-2, Bachcha Jha, PW-3, Mohan Jha, PW-4, Yugeswar Jha, PW-5, Dr. Ramanand Chaudhary, PW-6, Mod Narayan Jha, PW-7, Sitaram Jha, PW-8, Rajendra Jha, PW-9, Tilleshwar Jha, PW-10, Vivekanand Jha, PW-11, Anil Jha, PW-12, Prakash Kumar Jha, PW-13, Awadhesh Prasad Singh and PW-14, Mudrika Prasad. Prosecution had also exhibited documents as Exhibit-1, signature of informant over fard-bayan, Exhibit-2, inquest report,

Exhibit-2/1, signature of police official over the same, Exhibit-3, requisition of post mortem, Exhibit-4, signature of witnesses over inquest report,

Exhibit-5, formal F.I.R. As stated above, nothing has been adduced in defence.

6. Because of the fact that serious infirmities have been found having been committed by the learned trial Court during course of conduction of trial,

on account thereof, the merit of the case is not at all taken into consideration and further, discussed. Therefore, the illegality having been committed by

the learned lower Court during conduction of trial, are highlighted and the appeal is adjudicated thereupon.

7. It is evident from the fard-bayan as well as from the evidence of PW-1, brother of the informant and PW-2, informant that there happens to be no

disclosure with regard to demand of dowry and further, the deceased was tortured soon before her death relating to saturation of demand of dowry.

Section 304B of the I.P.C. has four limbs, which the prosecution is required to properly acknowledge:-

A) Death should be within seven years of marriage.

B) On account of burnt or bodily injury or otherwise than normal circumstance.

C) There should be demand of dowry and soon before her death, she was subjected to torture.

D) By the husband or relative of her husband.

8. From the evidence available on the record, it is apparent that other limbs found duly satisfied that means to say, death within seven years of

marriage and the death happens to be on account of burn injury. So far demand of dowry as well as soon before her death, the deceased Meena Devi

was tortured on that very score is a circumstance which has to be seen and as stated hereinabove, the same is found lacking in the fard-bayan and is

in likewise manner, in the deposition of PW-1 as well as PW-2. Then there happens to be evidence of brother of the deceased Prakash Kumar Jha

(PW-12) by way of flounce had stated that there was demand of Rs.50,000/- in lieu of dowry by the husband, mother-in-law, father-in-law and

brother-in-law, which during course of cross-examination had not been challenged at the end of the appellant.

9. Be that as it may, the Honâ??ble Apex Court had occasion to perceive the fault at the end of the investigating authority, by the trial Court and

even by the Appellate Court accepting each and every case to be a case of dowry

death, whenever a lady dies at a sasural within seven years of marriage irrespective of paucity of evidence, contrary to it, suggesting it a case of murder and not of dowry death enabling the accused to be

acquitted. In the aforesaid background, the Honâ??ble Apex Court in Rajvir alias Raju and another vs. State of Haryana reported in (2010) 15 SCC

116 had directed the trial Courts situated all over India in following manner:-

Â??7. We further direct all trial Courts in India to ordinarily add Section 302 to the charge of section 304B, so that death sentences can be imposed

in such heinous and barbaric crimes against women. Copy of this order be sent to Registrar Generals/Registrars of all High Courts, which will

circulate it to all trial Courts.â??

10. The aforesaid view has been subjected to consideration in Jasvinder Saini & others v. State (Government of NCT of Delhi) reported in (2013) 7

SCC 256, wherein it has been held:-

Â??14. Be that as it may the common thread running through both the orders is that this Court had in Rajbir's case (2010)15 SCC 116 directed the

addition of a charge under Section 302 IPC to every case in which the accused are charged with Section 304 -B. That was not, in our opinion, the true

purport of the order passed by this Court. The direction was not meant to be followed mechanically and without due regard to the nature of the

evidence available in the case. All that this Court meant to say was that in a case where a charge alleging dowry death is framed, a charge under

Section 302 can also be framed if the evidence otherwise permits. No other meaning could be deduced from the order of this Court.

15. It is common ground that a charge under Section 304B IPC is not a substitute for a charge of murder punishable under Section 302. As in the case

of murder in every case under Section 304B also there is a death involved. The question whether it is murder punishable under Section 302 IPC or a

dowry death punishable under Section 304B IPC depends upon the fact situation and the evidence in the case. If there is evidence whether direct or

circumstantial to prima facie support a charge under Section 302 IPC the trial Court can and indeed ought to frame a charge of murder punishable

under Section 302 IPC, which would then be the main charge and not an alternative charge as is erroneously assumed in some quarters. If the main

charge of murder is not proved against the accused at the trial, the Court can

look into the evidence to determine whether the alternative charge of dowry death punishable under Section 304B is established. The ingredients constituting the two offences are different, thereby demanding appreciation of evidence from the perspective relevant to such ingredients. The trial Court in that view of the matter acted mechanically for it framed an additional charge under Section 302 IPC without adverting to the evidence adduced in the case and simply on the basis of the direction issued in Rajbir's case (supra). The High Court no doubt made a half hearted attempt to justify the framing of the charge independent of the directions in Rajbir's case (supra), but it would have been more appropriate to remit the matter back to the trial Court for fresh orders rather than lending support to it in the manner done by the High Court.

16. In the light of what we have said above, the order passed by the trial Court and so also that passed by the High Court are clearly untenable and shall have to be set aside. That would not, however, prevent the trial Court from re-examining the question of framing a charge under Section 302 IPC against the appellant and passing an appropriate order if upon a prima facie appraisal of the evidence adduced before it, the trial Court comes to the conclusion that there is any room for doing so. The trial Court would in that regard keep in view the decision of this Court in Hasanbhai Valibhai Qureshi v. State of Gujarat and Ors. (2004) 5 SCC 347 where this Court has recognized the principle that in cases where "the trial Court [upon] a consideration of broad probabilities of the case based upon total effect of the evidence and documents produced, is satisfied that any addition or alteration of the charge is necessary, it is free to do so".

17. Reference may also be made to the decisions of this Court in Ishwarchand Amichand Govadia and Ors. v. State of Maharashtra and Anr. (2006) 10 SCC 322 and the decision of the Calcutta High Court in Rajendra Singh Sethia v. State and Ors. 1989 Cri.L.J. 255 and that delivered by the Allahabad High Court in Shiv Nandan and Ors. v. State of U.P. 2005 Cri. L.J 3047 which too are to the same effect. In any such fresh exercise which the trial Court may undertake, it shall remain uninfluenced by the observations made by the High Court on merits of the case including those touching the probative value of the autopsy surgeon's opinion.

11. The aforesaid view has been reiterated in Vijay Pal Singh and others vs.

State of Uttarakhand reported in (2014)15 SCC 163. On that very score,

I have occasion to discuss in detail and decide the issue in Lalan Kumar vs. State of Bihar in Cr. Appeal (S.J.) No.151 of 2015 reported in 2017 (3)

P.L.J.R. 281, in Amar Nath Mahto vs. State of Bihar reported in 2017(3) B.B.C.J.202. So, I do not want to repeat all the judgments whichever been

referred in those two judgments along with others. Same kind of infirmity is found persisting in the instant appeal, whereupon the judgment impugned

did not justify its prevalence.

12. Accordingly, the same is set aside. Appeal is allowed. Matter is remitted back to the learned lower Court to commence afresh after having the

amended charge in terms of Section 216 of the Cr.P.C. and if so prayed, an opportunity may have at the end of the appellant in accordance with

Section 217 of the Cr.P.C. to cross-examine the witness by recalling them. Appellant is on bail, hence her bail bond is hereby cancelled directing her

to surrender before the learned lower Court within four weeks failing which the learned lower Court will proceed against her in accordance with law.

Furthermore, in case a prayer for bail is made on behalf of appellant, then in that circumstance, the learned lower Court will consider the same in

accordance with law.