
(2023) 06 PAT CK 0025

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 1509, 1510 Of 2017

Tuntun Yadav

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 302, 304B
Code Of Criminal Procedure, 1973 — Section 313
Evidence Act, 1872 — Section 113B

Citation : (2023) 06 PAT CK 0025

Hon'ble Judges : Arvind Srivastava, J

Bench : Single Bench

Advocate : Anil Kumar, Abhay Kumar, A.M.P. Mehta

Final Decision : Dismissed

Judgement

1. These two appeal are directed against the judgment of conviction dated 15.03.2017 and the order of sentence dated 20.03.2017, passed by Sri Ram Lal Sharma, Additional District & Sessions Judge-I, Banka in Sessions Case No. 75 of 2015/ 91 of 2015, Tr. No. 583 of 2016, whereby and whereunder the appellants have been convicted for the offences under sections 304B/34, 201/34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 10 years for the offence under sections 304B/34 I.P.C. and 3 years for the offence under section 201/34 I.P.C. with fine of Rs. 10000/-. In default, they have further been directed to undergo simple imprisonment for 3 months. All the sentences have been directed to run concurrently.

2. The prosecution story, in brief, is that the marriage of the deceased sister of the informant had taken place in June, 2009 with Tuntun Yadav, the elder son of appellant Gobo Yadav. After marriage, his sister was blessed with a baby boy. But very recently the in-laws of his sister started demanding the money for a new motorcycle and also for a cow for feeding the milk to the child. His sister told her in-laws that his father is no more and his brother is very poor and he cannot give

the money. On this, her in-laws used to assault her and in this regard panchayati was also held. On 25.07.2014 the husband of the sister of the informant came and informed that his wife, in anger, leaving their child, has left the home. Then we all searched for her but could not find her. In the evening at 7 pm one Sumendra Yadav of village Gorda informed that one dead body is lying in the Gorda pokhar. On this the informant alongwith his family members and other villagers went there and found the dead body of his sister floating in the pond. Then he informed the police.

3. On the basis of the aforesaid statement of the informant, Jay Prakash Yadav, Bounsi P.S. Case No. 122 of 2014 was registered under section 304B, 201/34 of the Indian Penal Code against four accused persons namely, Godo Yadav, Kaushlya Devi, Tuntun Yadav and Bablu Yadav.

4. After investigation, charge sheet was submitted against the accused Gobo Yadav and Kaushlya Devi and the investigation continued against the remaining accused persons. After taking cognizance against them the case was committed to the Court of Sessions for trial in Sessions Case No. 75 of 2015. On 02.05.2015 charges were framed against both of them under sections 302/34, 304B, 201/34 of the Indian Penal Code.

After completion of the investigation against the remaining accused persons, supplementary charge-sheet was submitted against accused Tuntun Yadav under the aforesaid sections showing the accused Bablu Yadav as not sent up for trial. After taking cognizance the case was committed to the Court of sessions for trial in Sessions Case No. 91 of 2015 and charges were also framed against the accused Tuntun Yadav under the aforesaid sections.

By order dated 27.05.2015, both the trials were amalgamated and the case was fixed for evidence.

5. In support of its case, the prosecution has examined altogether 11 witnesses. P.W. 1 Pramod Yadav, P.W. 2 Chandu Yadav, P.W. 3, Madhusudan Turi, P.W. 4 Jai Prakash Yadav, P.W. 5 Kalachand Yadav, P.W. 6 Gopal Sah, P.W. 7 Sumendra Yadav, P.W. 8 Khageshwar Mahatha, P.W. 9 Joytish Kumar Das, P.W. 10 Dr. Sohel Anjum and P.W. 11 Ashok Singh.

6. The prosecution, in support of its case, produced following documentary evidence which has been marked as Exhibits :

Exhibit -1 Signature of witness Jai Prakash Yadav on the fardbeyan and the carbon copy of the Inquest Report.

Exhibit -1/1 Signature of witness Kalachan Yadav on the fardbeyan and the carbond copy of the Inquest Report.

Exhibit-2 Writing and signature of the investigating officer on the inquest report

Exhibit -3 Fardbeyan

Exhibit -4 Formal first information report

Exhibit -5 Post mortem examination report

Exhibit -6 & 6/1 Writing and signature of Jyotish Kumar Das in paragraph 338 and 342 of the case diary

Exhibit -7 F.S.L. Report.

7. The statement of the accused persons recorded under section 313 of the Code of Criminal Procedure is of complete denial.

8. The Defence, in support of its case, has examined two witnesses namely, Bindeshwari Yadav and Dahru Yadav.

9. After hearing the parties and perusing the record, the learned trial Court passed the impugned judgment of conviction and order of sentence as detailed in earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment of conviction and order of sentence, the convicts have preferred the present appeals.

11. The main ground on basis of which the judgment of conviction and order of sentence passed by the trial Court has been challenged in the present two appeals is that there is no eye witness to the alleged occurrence. There is no independent witness and the witnesses who are independent have all turned hostile. The witnesses who have supported the prosecution case are all interested witnesses. There are contradictions in the statement of the witnesses. Though in the first information report statement regarding Panchayati has been made, but no document has been filed in this regard by the prosecution.

12. On the other hand, learned counsel appearing for the State submitted that the trial court after discussing all the oral evidence as well as documentary evidence has come to a logical conclusion, and as such, both the appeals are fit to be dismissed.

13. Heard learned counsel for the parties and perused the record.

14. Before reaching to any conclusion, it would be necessary to firstly examine the evidence of prosecution witnesses.

15. Altogether 11 witnesses have been examined by the prosecution. Out of which 6 witnesses i.e. P.Ws. 1, 2, 3, 6, 7 and 8 have turned hostile. P.W. 4 and P.W. 5, who are the informant and his uncle, supports the prosecution case. P.W. 11 is a formal witness. P.W. 9 is the Investigating Officer and P.W. 10 is the doctor.

16. The informant (P.W. 4) in his evidence supports his statement made in the first information report. His clear evidence is that the death of his sister is unnatural. The dead body was found in the pond. There were injuries on the body of the deceased. The dead body was sent for post mortem. The occurrence

has taken place within seven years of marriage and demand of dowry was being made by all the accused persons.

17. The evidence of P.W. 5 is also the same that the marriage was solemnized in June, 2009 (within seven years of the occurrence). The dead body was taken out of the pond. There were mark of injuries on the body. He has deposed that 15 days prior to the occurrence his bhatiji (deceased) had come to Maiyka and had informed him (this witness) about the demand of dowry.

18. P.W. 10 is the doctor, who conducted the post mortem examination on the body of the deceased, found the following ante mortem injuries and sent the viscera for further examination :-

"i. swollen whole body with blisters & peeling of skin with visible subcutaneous veins.

ii. linen soiled with water

iii. conjunctiva congested with corneal haziness.

iv. frothing from nostrils.

v. bruise right eye.

vi. bruise ½ inch x 1 inch on left side of upper forehead.

vii. Abrasion 3 inch x ¼ inch on post auricular region of right eye.

viii. Abrasion ½ inch x ½ inch on left proximal grander toe."

19. P.W. 9, who is the Investigating Officer, in his evidence has stated that he recorded the statement of the informant, prepared the Inquest Report, sent the dead body for post mortem examination, inspected the place of occurrence, recorded the statement of all the witnesses and after completing the investigation submitted the charge-sheet.

20. So far as documentary evidence is concerned, the prosecution has very well proved the signature of informant on the fardbeyan (Exhibit-1), signature of witnesses on the Inquest Report (Exhibit-1/1), fardbeyan (Exhibit-3), Inquest Report (Exhibit-2), formal F.I.R. (Exhibit-4), post mortem examination report (Exhibit-5), parts of station diary (Exhibit- 6 and 6/1) and F.S.L. report (Exhibit-7).

21. It is relevant note here that two prosecution witnesses (P.Ws. No. 3 and 7), who have been declared hostile, have also given evidence that they had seen the dead body in the pond which makes it clear that the death was unnatural.

22. It is also worth mentioning that even both the defence witnesses also say about seeing the dead body in the pond, which means the death was unnatural. D.W. 2 has stated about the marriage to have take place about 6-7 years back.

D.W. 1 has stated about the marriage to have taken place about 10 years back

but he is unable to tell the date, month and year of the marriage.

23. The F.S.L. report (Exhibit-7_ makes it clear that the deceased had not consumed poison. Post mortem report also does not show that the death occurred due to drowning. Hence, it cannot be said that it was a case of suicide.

On the contrary, ante mortem injuries on the body of the deceased shows that the deceased was assaulted prior to her death.

24. The essential ingredients for constituting an offence under section 304B of the Indian Penal Code are as under :

"(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances and

(ii) is within seven years of her marriage and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry."

25. In the present case also, on basis of substantive and corroborative evidences it can be said that in the present case all the essential ingredients for constituting an offence under section 304B of the Indian Penal Code are present and the allegation under section 304B I.P.C. is proved against all the accused persons.

26. The essential ingredients of section 113 B of the Indian Evidence Act are as under :

"113B. 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 has 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."

27. The trial Court was of the clear view that since all the ingredients of section 304B I.P.C. are present and are very well proved, it will be presumed that the accused persons have committed the dowry death. The accused persons have also not been able to disprove this presumption.

28. So far as conviction under section 201 of the Indian Penal Code is concerned, no information was given to the police by the accused persons regarding the disappearance of the deceased and the reaching of the dead body to the pond in itself tells the entire story.

29. In view of the facts stated here-in-before, it can be said that the logical decision of the trial Court is based on facts, evidence (oral and documentary) and the law, and there is no scope for any interference. No force is found in the grounds taken in both the appeals and they are accordingly, dismissed