IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.851 of 2014

Arising Out of PS. Case No.-77 Year-2011 Thana- SAHIYARA District- Sitamarhi

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Baidyanath Pathak, Son of Sri Yamuna Kant Pathak, Resident of Village-Bathnaha, P.S.-Bathnaha, Distt.-Sitamarhi.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

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Indian Penal Code 1860 – Sections 302 and 340-B

Dowry Prohibiton Act, 1961 – Section 4

The appellant-husband was charged u/s-302,304 of the IPC and section 4 of the Dowry Prohibition Act, but was acquitted of section 304B and 4 of the Dowry Provision Act, 1961 and was convicted only under Section 302 of the IPC, and sentenced to life, to pay a fine of Rs. 50,000/- and in default of payment of fine to further suffer R.I for one(1) year for the offence u/s-302 of the IPC.

The deceased-wife died in her further's house. In the F.I.R., father of the deceased alleged dowry demand.

Held that the evidence of hotile witnesses may be accepted to the extent their verison is found to be dependable on careful scrutiny.

Rajesh yadav & Anr. vs. State of U.P.; reported in(2022)12 SCC 200; and C. Muniappan & ors. vs. State of T.N.;reported in (2010)9 SCC 567 were relied on.

The appellant was present in the house of the deceased at the night of the death. --- **The injuries on the person of the deceased, ante-mortem, lead us to believe that the appellant never intended to kill her. But he would surely be presumed to have had the knowledge that any force exerted on the neck of the deceased might result in death, which may not be murder, but definately culpable homicide not amounting to murder.**

The conviction of the appellant II was altered to one u/s-304 part-II of the IPC, and sentenced to the term already suffered.

[Para 2, 20, 21, 30, 31, 41, and 46]

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Appearance :
For the Appellant/s : Mr. Ajay Kumar Thakur, Advocate
For the Respondent/s : Mr. Abhimanyu Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE NANI TAGIA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 23-01-2024

1. We have heard Mr. Ajay Kumar Thakur, the learned Advocate for the sole appellant, who is the husband of the deceased and Mr. Abhimanyu Sharma, the learned APP.

2. The appellant has been charged under Sections 302 and 304B of the IPC and Section 4 of the Dowry Prohibition Act but *vide* judgment dated 12.08.2014 passed by the learned 1st Additional Sessions Judge, Sitamarhi in Sessions Trial No. 431 of

12 / 52 of 2013, arising out of Sahiyara P.S. Case No. 77 of 2011, the appellant has been acquitted of the charges under Section 304B of the IPC and Section 4 of the Dowry Prohibition Act but has been convicted under Section 302 of the IPC. By order dated 21.08.2014, he has been sentenced to undergo imprisonment for life, to pay a fine of Rs. 50,000/- and in default of payment of fine, to further suffer R.I. for one year for the offence under Section 302 of the IPC.

3. The deceased died in her father's house. The appellant was arrested on the same day by the villagers and family members of the deceased and handed over to the police. However, he was produced before the Court two days later, the explanation being that on one day, there was a strike of drivers plying the vehicles on road.

4. The deceased and the appellant had come to the house of the informant (P.W. 8), who is the father of the deceased, on the occasion of the marriage of his

son. The son of the informant was married on 05.12.2011. The occurrence took place on the fourth day of the marriage when some festivities were still continuing.

5. According to the FIR lodged by P.W. 8, the marital life of his daughter was going through the usual rough and tumble of the domestic life. There were demands of gold chain and motorcycle and ill-treatment of the deceased in her matrimonial home.

6. According to the allegation in the *fardbeyan* of P.W. 8, the demand still persisted and the appellant was not ready to take back his wife (deceased) to his workplace at Patna unless the demand of gold chain and motorcycle was met.

7. The deceased and the appellant had fought for the whole night and only when smoke billowed out of the room in which the couple were sleeping, did the informant get alarmed and got the door forced open. The deceased lay motionless and it appeared that she

was also put on fire. The appellant, according to the FIR, was arrested and handed over to the police.

8. Hence the case

9. During the trial, none of the witnesses have supported the prosecution version except for P.Ws. 1, 2 and 3 who too were declared hostile but they have stated that they had learnt that the deceased had fought with the appellant for the whole of the night on the issue of her being taken by the appellant to his workplace at Patna, which he was not willing to.

10. In this context, it would be profitable to first examine the nature of injuries suffered by the deceased which led to her death.

11. The post-mortem examination was conducted on the same day by Dr. Uday Shankar Priyadarshi (P.W. 9) and two others who formed a medical team. There was no external injury on the person of the deceased but on dissection of the neck, an ecchymosis was found on the tracheal muscles. The

trachea was found to be congested. There were also evidence of minor singeing which had affected the scalp and the hair of the deceased. However, the burn injuries noticed by the medical team during post-mortem examination was decisively found to be post-mortem and not ante-mortem.

12. On being questioned, P.W. 9 admitted that in the case of hanging, the trachea would be depressed.

13. We find that such a question and the corresponding answer of P.W. 9 is not of any help at all in resolving the mystery as to how the deceased died.

14. If the deceased would have died of hanging, there would certainly have been contusions and mark of ligature on the neck. If she were strangulated with force to death, there would have been ligature mark regardless of whether direct pressure was exerted on her neck or it was softened by any soft cloth which might have been used in the occurrence. Because of the

injuries suffered by the deceased, we have started entertaining doubt whether the deceased was strangulated for the purposes of killing her.

15. For us to infer that she was strangulated for the purposes of killing her, there is complete absence of any external injury or ligature mark or contusion on the skin and the observation of the Doctor of mild ecchymosis at a subcutaneous level only reflects that the deceased was not strangulated for the purposes of killing. The deceased but definitely died of asphyxia and resultant cardiac respiratory failure.

16. What must have happened?

17. Why was she put on fire?

18. These questions could have been answered by the witnesses who were present in the house.

19. Unfortunately, they have turned volte-face and have been declared hostile.

20. In this context, it would be relevant to

point out that the expression "hostile witness" does not find mention in the Indian Evidence Act, 1872. It only means testimony of a witness turning to depose in favour of the opposite party. A witness may confirm the prosecution version in the examination-in-chief, but later, in cross-examination, may change his view in favour of the opposite side. There could be cases, where a witness would not support the prosecution case even in examination-in-chief. With respect to the first category, the Court is not denuded of its power to make an appropriate assessment of the evidence rendered by such a witness [refer to ***Rajesh Yadav and Anr. vs. State of U.P. (2022) 12 SCC 200***].

21. In ***C. Muniappan and Ors. v. State of T.N. (2010) 9 SCC 567***, the Supreme Court has held that a witness cannot be rejected in toto merely because the prosecution chose to declared him hostile and cross-examined him. The evidence of such witness may be accepted to the extent their version is found to

be dependable on careful scrutiny thereof [also refer to ***Bhagwan Singh v. State of Haryana (1976) 1 SCC 389, Rabindra Kumar Dey v. State of Orissa (1976) 4 SCC 233, State of U.P. v. Ramesh Prasad Misra and Anr., (1996) 10 SCC 360***].

22. Have they sided with the accused persons for their ultimate understanding that there was no intention to cause death?

23. Nothing is known and the fact scenario leaves much space to speculate.

24. Thus with all the witnesses having gone hostile, we have carefully examined the deposition of the I.O., *viz*, Baidyanath Singh (P.W. 10). He has affirmed before the Trial Court that the appellant was handed over to the police by the father of the deceased as also other family members and villagers. This had happened some times on 09.12.2011. However, the appellant has been produced in Court on 11.12.2011 only.

25. Taking clue from this fact, Mr. Thakur

has suggested that perhaps the deceased was not present in the house and was arrested from somewhere else and brought over to the police station. This hypothesis does not fit in the scheme of the prosecution story the way it has unfolded over the period of investigation and Trial.

26. But similarly, there is another mystery which needs to be resolved. If the appellant strangulated the deceased in the night because of her insistence to accompany him to his workplace which he was not willing, where was the reason and how did he manage to put her on fire for the burn injuries that were observed during the post-mortem?

27. The death had taken place before the deceased was put on fire.

28. Had the appellant put her on fire, there would have been some attempts by the family members to douse the fire. There is, unfortunately, no evidence with respect to that.

29. The Investigator reached the house of the deceased and found that the deceased had already been covered with a yellow cloth and put in the *verandah* of the house. There is no evidence, not even the statement in the FIR, that the fire was doused and, therefore, there was no more burning but only minor singeing, affecting the only scalp and the hair of the deceased.

30. With complete deficit of evidence with respect to the deceased having been put on fire and the fire then extinguished with the result that the deceased did not burn completely and which burn injuries were found to be post-mortem, one can only presume that perhaps some attempts have been made to provide a cover for either the deceased having committed suicide or the action of the appellant in applying force, which accidentally proved fatal, or something else which remains obscure.

31. As noted above, the fact that deceased

died in her parental home and the appellant was confined and then handed over to the police by his in-laws, completely establishes the fact that on the day of the death of the deceased, the appellant was present in her house. Mere delay of two days in presenting the appellant to the Court would not lead to any other inference except that the police did not work according to the rules and the book. That there was a mild ecchymosis at a subcutaneous level over the neck further confirms that the appellant had never intended to kill the deceased. He was in the house of the deceased which had many guests because of the continued festivity after the marriage of the son of the informant. The injuries on the person of the deceased, ante-mortem, leads us to believe that the appellant never intended to kill her. But he would surely be presumed to have had the knowledge that any force exerted on the neck of the deceased might result in death, which may not be murder but definitely culpable homicide not

amounting to murder.

32. We, thus, discount all the stories propounded by the defence. Linking the circumstances, we have come to a definite finding that some force was exerted on the deceased when she was uncompromisingly insistent of her accompanying the appellant to his place of work, which he was not willing to acceded to.

33. This might have resulted in her death.

34. This was no accident but something which occurred about which the appellant would not have contemplated.

35. We, thus, find justification for the Trial Court in not convicting the appellant for the offences under Section 304B of the IPC and Section 4 of the Dowry Prohibition Act as there is no evidence of any torture for non-fulfilment demand of dowry even though such was the projection in the *fardbeyan* of the father of the deceased.

36. However, for the reasons stated above, we find that the Trial Court perhaps did not consider the aspects, which have been highlighted by us, for him to have recorded the conviction under Section 302 of the IPC.

37. The intention to kill is one of the major ingredients for an offence to be counted as murder. Intention is difficult to perceive as only the offender knows what his intentions are. Nonetheless, the entire circumstances are required to be put in a judicial colander for establishing the specific intention for causing the death of the deceased.

38. We have given our reasons for doubting the requisite mens-rea of the appellant for killing his wife.

39. The couple had been blessed with a son who was also in the same house when the deceased had died.

40. These facts compel us to convert the

conviction of the appellant from Section 302 of the IPC to one under Section 304 Part II of the IPC; for he must be presumed to have had the knowledge that any force applied to a woman of whatever physiognomy, might result in death or cause such injury which would end in death.

41. The conviction of the appellant is thus altered to one under Section 304 Part II of the IPC.

42. Now to the most beefy aspect of sentencing.

43. It appears from the case records that the appellant was in jail during the entire period of investigation and Trial and was released on bail only after his conviction on 07.09.2015. He thus has spent about four years in jail. There has been no adverse report about his conduct in jail. There is also nothing on record which would demonstrate that he is beyond reformation. On the contrary, Mr. Thakur, the learned Advocate for the appellant has stated that the son of the

deceased is being well looked after in the family of the appellant.

44. We have also given our anxious consideration over the possibilities under which all the witnesses including the father of the deceased had not supported the prosecution case during Trial. Either the father of the deceased was an emotion-less person who might have traded with the appellant for some benefit; or he would have known that the appellant never intended to cause death; or that he only wanted to secure the well being and happiness of his grand-son.

45. In two of the latter situations, the appellant needs to be dealt with leniently.

46. For the reasons afore-noted, we deem it appropriate and believe that the interest of justice would be met if the sentence of the appellant is reduced to the period of custody which he has already undergone.

47. We order accordingly.

48. The appeal stands disposed off in the light of what has been discussed above.

49. The appellant is on bail. He is acquitted of the charge. He is discharged of the liabilities under his bail bonds.

50. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

51. The records of this case be returned to the Trial Court forthwith.

52. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

Sauravkrsinha/
Krishna-

AFR/NAFR	AFR
CAV DATE	NA
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