

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4626 of 2019**

Arising Out of PS. Case No.-115 Year-2010 Thana- BIKRAMGANJ District- Rohtas

RISHI MUNI SINGH Son of Late Sukar Singh Resident of Village- Sikariya,
P.S.- Bikramganj, District- Rohtas. Appellant/s

Versus

The State of Bihar Respondent/s

Appearance :

For the Appellant/s : Mr. Bikram Deo Singh, Adv
: Mr.Sada Nand Roy, Adv
For the Respondent/s : Mr.Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

CAV JUDGMENT

Date : 29-09-2021

The sole appellant-Rishi Muni Singh has challenged his conviction by judgment dated 18.09.2019 passed in S.Tr.No. 228 of 2011 whereunder learned Additional Sessions Judge-12, Rohtas found the appellant guilty for offences under Sections 304B and 201 of the Penal Code. By the impugned order of sentence dated 20.09.2019, the appellant was awarded 10 years rigorous imprisonment alongwith fine of Rs.10,000/- for offence under Section 304B and two years rigorous imprisonment alongwith fine of Rs.2,000/- for offence under Section 201 of the Penal Code. The sentences are to run concurrently. However, in default of payment of fine of Rs.10,000/-, the appellant would undergo one year imprisonment and in default of payment of fine of Rs.2,000/-, the appellant was directed to undergo one month's imprisonment.

2. The trial arose out of Bikramganj P.S.Case No.115 of 2010 registered on the written report dated 16.06.2010 of



Rameshwar Prasad Singh(P.W.1). According to first information report, daughter of the informant referred as “A” was married with the appellant on 05.06.2010. On 06.06.2010, the daughter of the informant went to her Sasural alongwith the gift items given to the married couple, as per the capacity. However, the appellant from the time of marriage, alongwith his brother-Veer Bahadur Singh, Gorakh Singh and Kamlesh Singh, all sons of Late Sukar Singh of Village- Sikariya, P.S.- Bikramganj, District- Rohtas, started demanding a Hero Honda motorcycle. The informant expressed his inability but the accused persons remained adamant on their demand and told that if the demand would not be fulfilled within a week, “A” would be finished. On 10.06.2010, son of the informant, Dhananjay Singh (P.W. 2) went to the matrimonial house of “A” where “A” informed that besides the above referred male members of the family, Gotani-Chandrawati Devi also insisted for motorcycle as more dowry and had assaulted and tortured to “A”.

On 14.06.2010, on the mobile of informant, Veer Bahadur Singh informed that “A” has died. On hearing the news, the informant alongwith Dhananjay Singh and brother-in-law Surendra Singh (P.W.4) went to village-Sikariya but the dead body was already cremated. When the informant asked reason for



disposal of the dead body without arrival of the informant, all the accused persons became infuriated and started hurling abuses against the informant. On inquiry, the informant came to understand that the victim was done to death for non-fulfillment of dowry demand, under a criminal conspiracy of all the accused persons.

3. After completion of investigation, the police submitted chargesheet only against the appellant and others were not sent up as the police found them innocent.

4. During trial, prosecution examined altogether five witnesses. P.W.1-Rameshwar Prasad Singh, P.W.2-Dhananjay Singh, P.W.3-Kamta Ram, the investigating officer, P.W.4-Surendra Singh and P.W.5-Tulsi Singh. P.W.5 is a formal witness who has proved the signature of the informant on the protest petition vide Ext.-3.

The defence also examined four witnesses. D.W.1-Gopal Ji, D.W.2-Girija Singh and D.W.3-Shri Bhagwan are cited witnesses in the chargesheet submitted under Section 173 Cr.P.C. D.W.4-Sanjhari Kuer is a co-villager of the appellant.

5. Mr. Bikram Deo Singh, learned counsel for the appellant would submit that the prosecution has completely failed to prove that there was cruelty or torture to the deceased before her



death for non-fulfillment of dowry demand. There is deliberate delay of two days in lodging of the FIR, hence, chances of consultation and concoction cannot be ruled out. Learned counsel next contends that three of the defence witnesses are cited witnesses by the police and they have consistently deposed that since the victim was suffering from heart ailment and had disclosed in the matrimonial house that she was getting treatment from a Doctor at Varanasi and the witnesses had seen her taking medicines as well as their deposition that the victim died of illness while being carried to the hospital and the dead body was cremated only after arrival of her father and other family members. Thereafter, the informant started demanding refund of the gifted articles alongwith Rs.40,000/- . The gifted articles were returned but Rs.40,000/- could not be paid immediately. Hence, the FIR was lodged. Thus these witnesses consistently stated about a different story of the incident and there is nothing to disbelieve them. Therefore, two views are possible from the evidence on record which goes to create serious doubt on the prosecution version.

6. Mr. Sujit Kumar Singh, learned A.P.P. for the State contends that within few days of her marriage, the victim had died in her matrimonial house in unnatural circumstances. There is



allegation of demand of dowry and torture for the same and the prosecution witnesses have stated that the victim had disclosed them about the demand and torture. Hence, the prosecution has proved the ingredients of offence under Section 304B IPC. As such, presumption under Section 113B of the Evidence Act is attracted in the facts and circumstances of this case and the conviction requires no interference.

7. P.W.1, the informant of the case, deposed that "A" was married on 05.06.2010 with the appellant and she went to her Sasural on 06.06.2010 alongwith gift items given as per the capacity of the informant. However, co-accused Veer Bahadur Singh, Gorakh Singh, Kamlesh Singh and the appellant were demanding for a motorcycle as dowry. The witness expressed his incapacity and inability to fulfill the demand; On that the appellant had threatened that if the motorcycle would not be provided within a week, the deceased would be finished. On 10.06.2016, P.W.2 and P.W.4 went to the matrimonial house of the deceased. Initially, the accused persons did not allow them to meet the deceased but later on they met her. The deceased disclosed to P.W.2 and P.W.4 that husband and other family members tortures her and commits assault against her for non-fulfillment of demand of motorcycle. P.W.2 narrated this fact to the informant.



Thus P.W.1 is a hearsay witness about what he gathered from P.W.2 and P.W.4. According to P.W.2, "A" had disclosed that the appellant and Chandrawati Devi demanded motorcycle and they said that if the motorcycle would not be provided, it would lead to dire consequences. "A" also requested to ask the father to arrange a motorcycle otherwise they would kill her. Then P.W.2 conveyed this fact to his father.

8. P.W.2 does not say that P.W.4 was also alongwith him at the time of disclosure of the demand and torture by the deceased. According to P.W.4, on 14.06.2010, the informant reported to him that "A" was killed by Veer Bahadur Singh, Gorakh Singh, Kamlesh Singh and appellant Rishi Muni Singh. On 15.06.2010, this witness went to village-Sikariya, however, dead body was already disposed off before his arrival. Then the FIR was lodged.

P.W.4 does not say that on 10.06.2010, he had gone alongwith P.W.2 to the matrimonial house of the deceased where deceased had disclosed about demand and torture. The witness does not say that informant had told him that this was a case of dowry death as the victim was being tortured for non-fulfillment of demand nor this witness has deposed that at the time of



marriage or at any subsequent date there was any demand of dowry.

P.W.3- Kamta Ram is investigating officer of the case, who has supported the investigation done by him.

9. The testimony, of the three prosecution witnesses who are relations of the deceased of the incident, appears to be very shaky and doubtful regarding torture to the victim before her death by the appellant for non-fulfillment of demand. The victim was never tortured before any of these witnesses nor anyone of the vicinity has come forward to support the torture by the husband and other inlaws for non-fulfillment of dowry demand. Only material disclosure by the victim regarding demand of motorcycle and torture for the same. The sole testimony of P.W.2 on the point does not inspire confidence as P.W.1 had deposed that P.W.2 and P.W.4 both had gone to the matrimonial house of the deceased on 10.06.2010 i.e. day of disclosure by the deceased but P.W.2 does not say that P.W.4 was also alongwith him. P.W.4 also does not say that he was alongwith P.W.2. P.W.4 is not a hostile witness rather a relation of P.W.1. In the aforesaid circumstance, it would not be safe to rely on sole testimony of P.W.2-Dhananjay Singh on the point that the deceased had disclosed him about demand and torture before her death.



10. All the prosecution witnesses including the informant got information about death of "A" on 14.06.2010 itself i.e. the date of death. If it was a fact, that there was a persistent demand of motorcycle and torture for non-fulfillment of the demand, as well as disclosure by the deceased on 10.06.2010 that unless the motorcycle is provided, the family members would kill her, there was no reason to not to inform the police even after visiting village-Sikariya, the matrimonial village of the deceased which is at 1 ½ Km from police station at Bikramganj. P.W.1 deposed that he had visited village-Sikariya on 14.06.2010 itself. However, he did not report to the matter to the Bikramganj Police Station on 15.06.2010 rather according to P.W.1, he and others were enquiring about the reason of death of "A" by asking from different people. Thereafter on 15.06.2010 itself, they went to the house of middle man in the marriage negotiation of the deceased namely Girija Singh (D.W.2) but Girija Singh was not at his house. P.W.4 says that he had asked the informant why he did not lodge the case on 14.06.2010 itself then informant replied that he would go to the house of the accused persons and talk with them, thereafter would decide.

Normally, delay of few days in lodging the first information report of the incident of dowry death is ignorable for



simple reason that such offences are committed within fourwall of the house and it takes time that news of death reaches the parents of the victim. However, in this case, the informant got information of the death of his daughter on 14.06.2010 itself i.e. date of death. According to D.Ws, the informant came on 15.06.2010 alongwith other family members and these defence witnesses specifically asked the informant whether he would prefer postmortem of the deceased before cremation of the dead body. The informant declined as the deceased was under ailment. Thereafter, cremation was done in presence of the informant and others. Testimonies of the defence witnesses 1,2,3 and 4 are not shaky or unworthy of credence. They are consistent with their statement before the police under Section 161 Cr.P.C. All these defence witnesses have deposed that the deceased was suffering from heart ailment since before her marriage and she was getting medicines from a Doctor at Varanasi as disclosed by the deceased. The witnesses had seen the deceased getting medicines and on query she had disclosed that she was suffering from heart ailment. The witnesses have categorically stated that the dead body was cremated in presence of the informant and other family members.

The testimony of the D.Ws makes out a different cause of death of the daughter of the informant. These witnesses are not



family members of the appellant rather some of them are of different village and some of them stands on equality in relationship with the informant as well as the appellant.

11. To conclude (i) the uncorroborated testimony of P.W.2 that on 10.06.2010, the deceased had disclosed that she was being tortured by the appellant and others for non-fulfillment of dowry demand is not acceptable especially when P.W.1, the father of the deceased says that P.W.2 and the ‘Shala’ of the informant namely P.W.4 Surendra Singh both had gone together to the matrimonial house of the deceased on 10.06.2010, whereas Surendra Singh does not say like that. (ii) The delayed information, to the police without satisfactory explanation, leaves scope of deliberation and concoction especially when the informant says that he was making query from different corners regarding reason of death of his daughter. Coupled with the fact that the defence witnesses have deposed that the dead body was disposed off only after taking approval of the informant that it does not require postmortem examination and was cremated in presence of the informant and others. Thereafter the informant got the gifted items back and was insisting for Rs.40,000/- which could not be paid instantly, then the FIR was lodged was another factor to doubt the prosecution case. (iii) The defence witnesses have deposed that



the deceased was suffering from heart ailment, she was getting treatment from Varanasi and was usually taking medicines for that and on the fateful day, when her complications grew, she was being carried to the hospital and on the way she died, is a distinct story of death of the victim and unless this story is completely dispelled possibility of a natural or accidental death cannot be ruled out.

12. For the aforesaid reason, in my view, the prosecution has failed to prove the charges beyond reasonable doubts against the appellant.

13. Likewise, there is no witness who has seen the appellant screening the evidence of offence, hence, charge under Section 201 IPC does not stand proved.

14. In the result, this is a fit case for acquittal of the appellant. Accordingly, the impugned judgment and sentence is hereby set aside and this appeal is allowed. Let the appellant be set free at once.

(Birendra Kumar, J)

Nitesh/-

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