

BIBI PARWANA KHATOON @ PARWANA KHATOON
AND ANOTHER

v.

STATE OF BIHAR

(Criminal Appeal No. 888 of 2017)

MAY 04, 2017

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

Penal Code, 1860 – s.304B r/w s.34 – Death by burning – Accused were husband, father-in-law, mother-in-law, sister-in-law and her husband – During trial, mother-in-law died – Trial court found all the remaining four accused guilty u/s.304B r/w s.34 – High Court allowed the appeal of father-in-law of the deceased but maintained the conviction and sentence against other three – Appeal by sister-in-law and her husband – Held: It was sufficiently shown on the record that the appellants used to live in a different village – Courts below did not discuss as to why the testimony of the witnesses as to the fact that married sister-in-law and her husband used to live in a different village was not believed – The public documents put on record read with the oral testimony adduced before the trial court, created serious doubt in the prosecution story, so far it related to the appellants – Appellants acquitted of charge of offence punishable u/s.304B r/w s.34.

Allowing the appeal, the Court

HELD: 1. The trial court mentioned the name of defence witnesses but did not discuss as to why their testimony as to the fact that married sister-in-law (of the deceased) and her husband used to live in village Sabutar was not believed. The High Court also committed the same error. Apart from that, in support of their plea, there were three documents filed on behalf of the appellants, which were copies of public documents, to show their residence at village Sabutar in District Purnea. All these public documents read with the oral testimony adduced before the trial court, created serious doubt in the prosecution story, so far it related against the appellants.[Para 11][931-B-C, E-F]

2. Both the courts below erred in law in holding that the

A **charge under Section 304B read with Section 34 IPC stood proved as against the appellants. It cannot be said that it was proved beyond reasonable doubt that the appellants, who were sister-in-law and brother-in-law of the deceased, tortured the victim for any demand of dowry. In the present case based on circumstantial evidence, it cannot be said that appellants had any common intention with the husband of the deceased in commission of the crime. It was sufficiently shown on the record that they used to live in a different village. They are acquitted of charge of offence punishable under Section 304B read with Section 34 IPC. [Paras 13, 14][931-G-H; 932-A-B]**

C **CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 888 of 2017.**

From the Judgment and Order dated 09.02.2016 of the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 48 of 2014.

D Gaurav Agrawal, Abhikalp Pratap Singh, Advs. for the Appellants.
Shivam Singh, Aditya Raina (for Gopal Singh), Advs. for the Respondent.

The Judgment of the Court was delivered by

E **PRAFULLA C. PANT, J. 1. Leave granted.**

F 2. The appellants, who are sister-in-law and brother-in-law of the deceased, have challenged the judgment and order dated 09.12.2016 passed by the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 48 of 2014 whereby said Court has dismissed the criminal appeal affirming their conviction and sentence under Section 304B read with Section 34 of Indian Penal Code (IPC) recorded by the Ad hoc Additional District Judge, Purnea in Sessions Trial No. 1219 of 2010 (with Sessions Trial No. 617 of 2011).

G 3. Prosecution story, in brief, is that Tamkinat Ara @ Bulbul got married to Md. Parwez Alam on 30.09.2009 and she used to live in her in-laws' house. The prosecution case is that after her marriage deceased used to live with Md. Parwez Alam (husband), Abdul Gaffar (father-in-law), Baitun Nisha (mother-in-law), Bibi Parwana Khatoon (sister of husband) and her husband Md. Hasan (both appellants). It is alleged by the informant Md. Faisal PW-5 (brother of the deceased) that the

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deceased was killed by setting her on fire by all the above accused. On receiving telephonic information on 30.05.2010 from father-in-law of the deceased, PW-5 Md. Faisal went to see his sister and found that she had died of burn injuries. On the basis of First Information Report given by Md. Faisal Crime Case No. 184 of 2010 was registered relating to offence punishable under Section 304B read with Section 34 IPC against all the five accused at Police Station Khajanchi Hat, Madhubani. PW-7 Arti Kumari Jaiswal, Station House Officer, started investigation. Dead body of the deceased was sealed and sent for post mortem examination. PW-6 Dr. Umesh Kumar of Sadar Hospital, Purnea, conducted post mortem examination on the dead body of Tamkinat Ara and found following ante mortem injuries: -

- “(i) Rigor mortis present in all four limbs and trunk
- (ii) Tongue was protruded between teeth
- (iii) Burned (burnt) blood clot from/in ear opening
- (iv) 100% burn of five degree with smell. Key oil and roasted smell, line of redness along burn area absent, vesication and sign of inflammation was absent, formation of granulation tissue absent, indicating post mortem burnt.”

The Medical Officer opined that the deceased died of asphyxia due to strangulation.

4. Later, investigation was taken over by PW-8 Lal Babu Prasad who submitted charge sheet against all the five accused. Accused Baitun Nisha (mother-in-law of the deceased) died during the course of trial, as such, case as against her stood abated and the trial court proceeded against remaining four accused.

5. After framing charge against the accused, the trial court recorded the evidence of PW-1 Syed Masuf Ahmad, PW-2 Md. Azam Rad, PW-3 Samim Akhtar, PW-4 Taleba Kauser (brother of the deceased), PW-5 Md. Faisal (brother of the deceased and informant), PW-6 Dr. Umesh Kumar (who conducted post mortem examination), PW-7 Arti Kumari Jaiswal (who started investigation) and PW-8 Lal Babu Prasad (who concluded the investigation).

6. The prosecution evidence appears to have been put to the accused under Section 313 of Criminal Procedure Code whereafter, on

A behalf of the accused, defence evidence was adduced, and DW-1 Md. Mozammil Hussain, DW-2 Md. Shamim, DW-3 Manish Kumar Srivastava, DW-4 Raghunandan Yadav, DW-5 Rahul Kumar, DW-6 Mukesh Kumar, DW-7 Nakir Yadav, DW-8 Dhani Yadav, DW-9 Md. Jasir and DW-10 Sanni Yadav, were got examined.

B 7. The trial court, after hearing the parties, found all the four accused guilty of offence punishable under Section 304B read with Section 34 IPC, and convicted them accordingly. Md. Parwez Alam (husband of the deceased) was sentenced to rigorous imprisonment for ten years, and each one of the remaining three convicts was sentenced to seven years rigorous imprisonment.

C 8. Aggrieved by the judgment and order dated 19.11.2013/ 26.11.2013, passed by the trial court in Sessions Trial No. 1219 of 2010 (with Sessions Trial No. 617 of 2011), whereby the accused were convicted and sentenced, as above, three appeals were filed before the High Court. Criminal Appeal (SJ) No. 59 of 2014 was filed by Md. D Parwez Alam (husband of the deceased), Criminal Appeal (SJ) No. 20 of 2014 was filed by Abdul Gaffar (father-in-law of the deceased) and Criminal Appeal (SJ) No. 48 of 2014 was filed by present appellants Bibi Parwana Khatoon and Md. Hasan. The High Court, after hearing the parties, allowed the appeal of father-in-law of the deceased but E maintained the conviction and sentence recorded against other three. Hence, this appeal through special leave by sister-in-law Parwana Khatoon and brother-in-law Md. Hasan.

F 9. Our attention is drawn on behalf of the appellants to the testimony of the defence witnesses relating to the fact that they were not residing in Kali Prasad Tola, and it is argued that the courts below have failed to appreciate the same. It is also pointed out that there is no special role assigned to the appellants in the First Information Report.

G 10. DW-1 Md. Mozammil Hussain, cousin of husband of the deceased, has stated that Parwana Khatoon and Md. Hasan used to live in village Sabutar, and on the day of the incident they were not in village Kali Prasad Tola, Madhubani, i.e. the place where the deceased and her husband used to live. DW-4 Raghunandan Yadav, who is resident of Kali Prasad Tola, has also stated that the present appellants used to live in village Sabutar (Purnea). This witness belongs to village Sabutar. DW-7 Nakir Yadav also corroborated the fact that Parwana and her

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husband Hasan used to live in Sabutar. This fact is further corroborated by DW-8 Dhani Yadav, DW-9 Md. Jasir and DW-10 Sanni Yadav, all neighbours of the deceased and her husband. A

11. We have gone through the judgment and order passed by the trial court (copy Annexure P-9) in which the trial court has mentioned the name of defence witnesses but not discussed as to why their testimony as to the fact that married sister-in-law (of the deceased) and her husband used to live in village Sabutar, is not believed. The High Court has also committed the same error. B

12. Apart from the above, in support of their plea, there are three documents filed on behalf of the appellants, which are copies of public documents, to show that they are residents of village Sabutar in District Purnea. Copy of the Residence Certificate is Annexure A-1, which shows that Sub Divisional Officer, Sadar, Purnea, has certified on 31.10.2008 that Hasan Raja (appellant No. 2) used to live in village Sabutar, P.S. K. Nagar, District Purnea. Another document (Annexure A-2) is copy of PAN issued by Income-tax Department of Government of India, which appears to have been sent on the address of the account holder Parwana Khatoon (appellant No. 1) on her address of Sabutar, Purnea, Pin Code 854205. Not only this, copy of service book (Annexure A-3) of appellant No. 1 Parwana Khatoon shows that she was Panchayat teacher in primary school, K. Nagar (Purnea). This document also shows that address of appellant No. 1 is village Sabutar, P.O. Kajha, Police Station K. Nagar, District Purnea. All these public documents read with the oral testimony adduced before the trial court, create serious doubt in the prosecution story, so far it relates as against the present appellants. (We are not commenting on the evidence as against the husband of the deceased.) C D E F

13. In view of the above discussion of oral and documentary evidence, we find that both the courts below have erred in law in holding that the charge under Section 304B read with Section 34 IPC stood proved as against the present appellants. In our opinion, in view of the evidence discussed above, it cannot be said that it is proved beyond reasonable doubt that the present appellants, who are sister-in-law and brother-in-law of the deceased, tortured the victim for any demand of dowry. In our opinion, in the present case which is based on circumstantial evidence it cannot be said that appellants had any common intention with the husband of the deceased in commission of the crime. It is G H

A sufficiently shown on the record that they used to live in a different village. Therefore, we are inclined to allow the present appeal.

14. Accordingly, this appeal is allowed, and conviction and sentence recorded as against the present appellants Bibi Parwana Khatoon @ Parwana Khatoon and Md. Hasan @ Hasan Raja is set aside. They are acquitted of charge of offence punishable under Section 304B read with Section 34 IPC. They are in jail. They shall be released forthwith if not required in connection with any other crime.

Devika Gujral

Appeal allowed.