

(2011) 11 PAT CK 0111

Patna High Court

Case No: Criminal Appeal (SJ) No. 583 of 2007

Prakash Jha

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision: Nov. 14, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 220, 227, 228
- Penal Code, 1860 (IPC) - Section 302, 304, 304B, 34

Hon'ble Judges: Dharnidhar Jha, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Dharnidhar Jha, J.

The solitary appellant Prakash Jha was charged with committing offence under sections 304B/34 IPC by learned Presiding Officer, Fast Track Court V, Katihar for being tried in S.T. No. 315 of 2005 and by judgment dated 3rd May, 2007, was held guilty of committing the offence and was directed to suffer RI for seven years.

2. Some of the undisputed facts are that the deceased Chanda Devi, who happened to be the daughter of the informant Vijay Kant Mishra (P.W. 5), was married to the appellant three years prior to the date of occurrence and she had a daughter aged about 11 months. It was alleged that the accused was assaulting the deceased as she was not getting for them a cow, cash and a colour television in dowry. It is stated that after Chhath festival in the year 2004, this appellant came to the house of the informant (P.W. 5) where the deceased was then residing and took her after Bidai. Shambhu Kumar Mishra (P.W. 1) had gone to meet Chanda Devi at her sasural two three days prior to the occurrence and she had complained to P.W. 1 about the ill treatment by way of assaulting her.

3. On 11.12.2004 at about 11 A.M. the informant received a telephonic message regarding the death of his daughter and he along with his family members went to

the house of the appellant to find that the appellant had murdered Chanda Devi after having assaulted her and finally strangled her to death with the help of other family members, like, Raghunath Jha alias Tunna Jha, Laxmi Jha and Kare Jha, who were also demanding a television, cow and cash as dowry and used also to threaten that the consequences shall be bad if the demands were not met. The informant believed that the deceased had been murdered on that account.

4. On the basis of Ext. 6, the fardbeyan of P.W. 5 Vijay Kant Mishra, FIR of the case (Ext. 4) was drawn up and SI Ashok Kumar (P.W. 7) was directed to take up the investigation. Accordingly, P.W. 7 took up the investigation during which course he inspected the place of occurrence which was the house of the present appellant and found the dead body of Chanda Devi lying there. He, as such, held inquest upon the dead body and prepared the report (Ext.5) in presence of witnesses and sent the dead body for postmortem examination. He thereafter recorded the statement of witnesses and finding material sufficient, sent up the present appellant for trial, which ultimately ended in his conviction and sentence, as indicated earlier.

5. The defence of the appellant was of innocence and false implication.

6. In support of the charges, prosecution examined a total number of seven witnesses, out of whom, as just pointed out, P.W. 7 SI Ashok Kumar was the I.O. and P.W. 6 Narendra Prasad Saha had held postmortem examination on the dead body of Chanda Devi, aged 22 years and found a ligature mark, approximately 1/4" in width, encircling the neck in the middle. On dissection of the ligature mark, P.W. 6 found it hard and parched. The face was cyanosed and conjunctiva was congested, feacal matter was found around the anus and both the fists of the deceased were clenched. On dissection, the doctor found that the larynx and trachea were congested and contained frothy mucus. In the opinion of P.W. 6, the death of Chanda Devi had been caused by asphyxia as a result of strangulation within 48 hours of the holding of the postmortem examination. The report prepared by P.W. 6 Narendra Prasad Saha has been marked Ext. 3.

7. In addition to the postmortem examination report and the inquest report (Ext.5), the prosecution also produced a panchnama (Ext.2) which indicated that the present appellant had written an undertaking after having admitted his ill treating the deceased by being assaulted by him earlier and that he would conduct himself properly and would never act against the set norms and good behaviour and if he ever indulged in any illegal activities, he may be punished accordingly.

8. So far as the evidence of witnesses is concerned, P.W. 1 as just pointed out, was the son of P.W. 5, the informant of the case and he had, besides other things, stated that in spite of begetting a daughter out of the wedlock, the deceased was being harassed for not bringing a colour television, money and a cow and the family members of P.W. 1 learnt about the deceased being murdered as a result of which they all including his parents, cousin and uncle went to the house of the appellant to

find that the deceased had been murdered after being strangled to death. P.W. 1 has stated that he used to talk to his sister when she was in her sasural and she used to tell P.W. 1 about her harassment and ill treatment of being assaulted on account of not getting demanded television, cash and a cow.

9. Similar is the evidence of P.W. 2 Smt. Kanti Devi, the mother of the deceased and the informant P.W. 3. Likewise, P.W. 4 Arun Kumar Mishra, the uncle of the deceased has also stated about Chanda Devi was being ill treated and assaulted due to not bringing a television, a cow and some cash which was being demanded by present appellant and it so happened that Chanda had to go back to her father's house when there was some intervention of some Panch and Ext. 2, the Panchnama undertaking was recorded by the appellant in presence of Panch and then only Chanda Devi was brought back to his house and after a few days therefrom the news of Chanda being murdered was received by the above noted witnesses who came to the house of the appellant to find her dead body.

10. Thus, from the evidence of witnesses, there does not appear any doubt that the present appellant had not only demanded dowry constantly and persistently but had ill treated and tortured the deceased continuously and just prior to her death on account of the non-fulfillment of the demand made by the present appellant. Not only that, this also appears established by evidence of witnesses that Chanda Devi had been strangled and there were perceptible sign of the act present in the frontal part of her neck. I have already discussed the evidence of doctor (P.W.6) and that fully corroborates the manner of occurrence as has been narrated by the witnesses.

11. The witnesses appear honest and forthcoming inasmuch as most of them have stated that they did not really see the occurrence themselves but had learnt about the death of the deceased and the circumstances which had preceded the final act of the appellant. Not only that, the undertaking given by the appellant in the form of Ext. 2, contents of which had been stated by P.Ws 5 and 4, and after which the deceased had been brought to the house of the appellant by him, sufficiently lends credence about the proximity of the incident to the act finally accomplished by the appellant. All signs of being strangled appear noted by P.W. 6 Narendra Prasad Saha, which may be perceived in the form of clenching palms and presence of fecal matter around the anus and further oozing out of frothy mucus. These are fundamental symptoms attending upon the case of asphyxiated death caused by ligature. These circumstances which appear from the evidence of witnesses, clearly indicate that Chanda Devi was brutally strangled to death by the present appellant who had brought her into his house just a few days prior to the occurrence.

12. In view of the evidence which is available on record, I find that the trial judge was not wrong in holding that Chanda Devi was murdered. However, what disturbs this Court about which this Court has expressed its view earlier also, was that the

judges who man the court of Sessions have forgotten to consult the provision of Cr.P.C., especially, section 220 thereof and other allied provisions contained in Chapter XVII (b) of Cr.P.C. If the facts of a case constitute several offences then a trial court could be fully justified in framing charges under all the offences which appear constituted or, in other words, committed by the accused. Framing charges alternatively is one aspect of administering criminal justice which has its own importance and value. One could resort to framing charge alternatively if there is any doubt or confusion as to what offences were clearly made out by the facts presented by Public Prosecutor or which may be contained in the police report which has to be considered at the time of hearing under sections 227 or 228 Cr.P.C. But, when facts are so glaringly clear, as was in the present case, then there was no reason for the Presiding Officer of Fast Track Court V, Katihar to frame the charge u/s 304B IPC. The facts indicated that they constitute an offence u/s 302 IPC. The facts clearly indicate that Chanda Devi was strangled to death and there was intentional murder. The demand of dowry may be the motive. It may be a case u/s 304B IPC, but the facts fundamentally indicated that they constituted an offence u/s 302 IPC. In addition to the above, serious error in which the learned trial judge was falling, which further appeared to this Court, is that the learned trial judge was completely untrained on sentencing jurisprudence. He ought to have consulted section 304 IPC and ought to have considered the circumstances appearing from the evidence adduced on record indicating as to how the offence of murder of Chanda Devi had been committed. It was brutal and in most of the parts, it was disturbing the conscience of a reasonable person. A house wife, who was only 22 years of age and who was having a child of 11 months in her lap, was so brutally killed, as could be found from the circumstances which appear from the evidence of P.W. 6. Her fists were clenched, the anus was carrying the evidence of strains which was the result of the manner of killing a living being. The trial judge was ignorant of the circumstances and does not appear indicating any reason much less any simple reason as to how he could find seven years RI sufficiently compensating the ends of justice as regards the death of such a young mother of 11 month old child. These are the fields upon which the judges who man the court of Sessions, probably, require deep training. I cannot do much except suggesting to the Court that Bihar Judicial Academy, Patna be requested to carry out an extensive training programme on framing of charges as also on the sentencing jurisprudence as regards inflicting appropriate sentences which may be commensurate with the nature of offence committed and proved. For that purpose, let a copy of the judgment be placed before the Hon'ble the Chief Justice for her Lordship's kind information.

13. After having found myself unable in enhancing the sentence in absence of any notice earlier given, I simply leave the sentence passed upon the appellant undisturbed. The appeal appears devoid of any merit and the same is dismissed.