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Court : Patna

Decided On : Mar-04-2014

Judge : Dharnidhar Jha

Appeal No. : Criminal Appeal (SJ) No. 438 of 2002

Appellant : Ramanuj Singh and Another

Respondent : State of Bihar

Judgement :

Dharnidhar Jha, J:

The two appellants Ramanuj Singh and Mina Devi, spouses between them and parents in law of the deceased and in-laws of the deceased Pallavi Mehta, were charged with committing offences under Sections 304B and 498A of the Indian Penal Code by the 6th Additional Sessions Judge, Patna, in Sessions Trial no. 63 of 2001 and by judgment dated 12.8.2002 they were convicted of committing the offences. The appellants were heard on 14.8.2002 under Section 235 Cr.P.C. and each of them were directed to suffer rigorous imprisonment for ten years as also for two years each respectively on the counts of their conviction. This is how they have preferred the present appeal to challenge the judgment of conviction and order of sentence passed upon them.

Some of the undisputed facts may be noticed.

Pallavi Mehta was married to Rajesh Kumar, the son of the two appellants on 21.2.1997. She was residing on the date of occurrence in her matrimonial house. As appears from the evidence as also from the written report she was pregnant. Undisputedly, she had some complication. Appellant- Mina Devi, her mother-in-law, rushed Pallavi to Patna Medical College Hospital with the help of some one. She was taken to maternity ward of the hospital where some assistant in the emergency ward attended on Pallavi Mehta and declared her dead. This is also not disputed that the informant (P.W.6) Suman Prasad Mehta had duly been informed by appellant- Ramanuj Singh that Pallvi had delivered a girl child but she was not keeping well and her condition had turned serious.

Under the above admitted and undisputed facts what was alleged was that the informant had been informed by the deceased Pallavi a month before that she was not being allowed to talk to her parents on phone and the informant also stated that he was not allowed to see the deceased by appellant-Mina Devi. The informant does not dispute that Pallavi was a highly qualified girl having obtained bachelors degree in History in B.A. examination with honours, besides she having been admitted into some Fine Art course. She was a lady of high composer.

It appears from the written report that the informant was only suspicious about what had happened to Pallavi.

The written report (Ext.3) was given to Budha Colony Police Station on the same date, i.e., 5.10.1999 and the case was immediately registered. There does not appear delay in holding inquest report, which was prepared within four hours of the death of Pallavi. The dead body was also dispatched immediately for holding post mortem examination but autopsy held on the next date, i.e., 6.10.1999. The doctor was not clear in his opinion as to what was the cause of death of Pallavi and as such he preserved the viscera of the deceased, as is evident from Ext.1 (Post Mortem Examination Report) and also from the evidence of P.W.1, Dr.Ashok Kumar Yadav, Associate Professor Forensic Medicine, Patna Medical College Hospital, Patna.

From the evidence it appears that in spite of there being no direct and clear allegation in the FIR that Pallavi had been tortured or harassed in connection with

dowry or for non fulfillment of such demand, the witnesses in their statements stated that she was being asked for bringing a motor cycle , cash of Rs. 1,25,000/- and one katha of land as dowry. The evidence of parents of Pallavi, who were examined as P.Ws. 4 and 6 also indicated that those demands were duly met, but still their daughter was being harassed for additional dowry. P.W.5- Bipula Mehta, sister of deceased Pallavi ,was coming out in support of P.Ws. 4 and 6 on subsequently developed story of demanding a motor cycle, cash and the area of land as noticed above.

The defence had produced some of the letters written by the deceased to her family members and relied upon such recorded statement of the deceased to urge as appears from the judgment of the court below, that there was never any demand of dowry and the whole story was an after thought, probably to create a case.

The learned trial judge accepted the evidences of nine witnesses, out of whom P.W.2.- Akhilesh Kumar Sinha alias Lal Babu and P.W.7- Mina Devi had not supported the prosecution story . In fact, P.W.7 Mina Devi had initially come in support of the prosecution as an eye witness claiming to have seen the accused administering alluminum phosphide, but during her cross examination she was not adhering to that particular statement of hers leading the Court to grant permission to cross examine by declaring her hostile.

The learned trial judge held that there was sufficient evidence in support of the allegation that Pallavi had been harassed and tortured for dowry and that the charges under Sections 304B and 498A of the Indian Penal Code were established to the hilt.

Shri S.N.P.Sinha, learned Senior Counsel, appearing on behalf of the appellants submitted that there was no evidence regarding demand of dowry and harassment of Pallavi on that count and as such the charge under sections 304B of the India Penal Code was not established. Submission also was that Pallavi was a happily married lady and had cordial relationship with her family members. She was pregnant and had delivered a child which signified that her relationship with her husband was also good and cordial which also appears from the array of accused

which was not excluding Rajesh Kumar, her husband. The attention of the Court was drawn to the post mortem examination report and it was submitted that Pallvi had developed some complications and information in respect of delivery of a girl child and complication was duly given to the informant. He was in full know of the fact and that serious attempt was made by appellant- Mina Devi to take her to the hospital. She was taken to the P.M.C.H after the delivery of the girl child where she was declared dead. As such, it could be said that it was a case of natural death, it could not be a case under Section 304B of the Indian Penal Code. The next contention on behalf of the appellants was that the post mortem examination was held on 6.9.1979 and the viscera was preserved on the same day. It appears from the evidence of P.W.8, the Investigating Officer of the case that the viscera was dispatched to the Forensic Science Laboratory , Patna by the Investigating Officer directly without following due process of law and that too on 26.11.1999, i.e., after one month 28 days. Submission was that P.M.C.H and Forensic Science Laboratory , Patna are situated in the same city but the date of receipt of viscera in the Forensic Science Laboratory was 4.12.1999,i.e., after 8th days of the dispatch of the same. The seal of the viscera was removed after one month and nine days. The submission, as such, was that the events regarding dispatch, receipt and removal of the seal creates serious doubt regarding the veracity of the test and the report. The attention of the Court was drawn to the work-sheet prepared by the Forensic Science Laboratory, Patna, which is dated 10.4.2000 and which has been marked as Ext.A on behalf of the defence to submit that the result of chemical analysis for phosphide test was negative and thereafter one line in the report at the bottom indicated that the repeat test for phosphide was found positive. Submission was that it was containing two opinions on the result of the chemical analysis which further falsifies the charges.

Shri Sunil Sinha, learned counsel appearing for the informant submitted that the written report was not containing any story of demand of anything and there was no story of ill treatment of Pallavi at the hands of the accused persons but it has always to be recalled that written report is not supposed to contain all details. It is meant to initiate the prosecution, investigation and the veracity has to be judged on its own merit. Submission was that the parents (P.Ws. 4 and 6) of the deceased along with her sister have fully supported the prosecution story and they

have also been supported by P.W.5, the younger sister of the deceased who had the special knowledge regarding the fact attending on the occurrence.

Shri Sujit Kumar Singh, learned A.P.P., submits that the story of ill treatment and torture was not natural as is evident from the report submitted after analysis of the viscera.

It is true that the written report or the FIR cannot be an encyclopedia of informations as regards the prosecution story. The purpose of lodging the report is to set the criminal law in motion by initiating the investigation into the alleged offence. Nevertheless the importance of the document is primal as has been held by this Court in several judgments. By looking to the document one may gather as to what was the initial prosecution story and who were the witnesses who had seen the occurrence. The defence by drawing the attention of the Court to the document may, on the other hand, submit that the prosecution was guilty of introducing a new story or facts which were completely missing in its primary- case and further that the introduction of new facts was purposeful, so as to make the story believable. This Court as also the Supreme Court have held that the FIR does not cease to be an important document; it may be looked into by the Court for many purposes, specially, for the purpose to find out as to what was the initial prosecution story and how the prosecution had developed or embellished that story. The other purpose for which document may be utilized is to find out as to who were the persons cited as witnesses for the prosecution. This Court is not concerned as to who were the witnesses because in such a matter which relates to commission of murder within the four walls of the house, there may not be a number of persons who could be the witnesses to such incident. However, what remains still be considered in the case is as to what initially was the case and was there any deviation from that initial case, purposely made while leading the evidence. This is one area of judicial scrutiny which has to be made as regards the appreciation of evidence.

Here in the present case, undisputedly, the written report which was very much in the hand of P.W.6, who happens to be the father of Pallavi Mehta did not state about any demand for dowry made earlier. It did not mention of any incidence of ill

treatment or torture or intervention by him or by any relative of the two families to resolve the dispute. On the contrary what this Court finds on mere glance of ext.3 is that it contains certain circumstances pointing out the conduct of the accused. The informant has stated in the written report that he was duly informed by Dr.Ramanuj Singh, the father-in- law of Pallavi that she had delivered a girl child and her condition had deteriorated and had requested the informant to reach the place of Mrs. Sharma (a doctor) near P.M.C.H. The informant himself admitted that he reached there and that his daughter was brought on rickshaw by appellant-Mina Devi with the assistance of a boy and the lady doctor was not there, but the assistant available there advised them to take Pallavi to the emergency ward of P.M.C.H and when deceased Pallavi was taken to the P.M.C.H. the lady doctor available declared her dead.

The only allegation appearing in the written report of the informant was that he had not been allowed to see his daughter for about a month and his daughter had also complained to him that appellant no.2,the mother-in-law of Pallavi was not permitting her to use the telephone for talking to any one.

In above circumstances, undisputedly it appears improbable that the accused had administered poison to the deceased.

Moreover, it appears from the evidence of the prosecution that there was some statements of the witnesses regarding demand of a motor cycle, cash of Rs. 1,25,000/- and one katha of land. But unfortunately there was no such story coming even before the investigating officer. It was only when P.W.9, Upendra Narain Singh, had taken up the investigation of the case that he recorded the statement of P.W.4- Smt.Lalita Mehta, the mother of Pallavi and P.W.5, the younger sister of the deceased and that too on 18.6.2000 after about eight months of the incident. There was no reason as to why no statement was given either by P.W.1 or P.W.5 before the first Investigating Officer. I do not want to make any comment on the belated statement of the two witnesses because inference to be drawn on their belated statement before the police could very well be appreciated.

Some other circumstance which emerges from the evidence of the very witnesses examined by the prosecution is that the relationship of the deceased with her

husband and with others of the family members was cordial. She was married on 21st of February, 1999 and it was in the month of October, 1999 that she had delivered a girl child. The post mortem examination report and the evidence of P.W.1 Dr. Ashok Kumar Yadav indicated that the delivery was not normal. The uterus and placenta had proponded and he stated that those internal organs of Pallavi were preserved. During cross examination, P.W.1 stated that the non discharged placenta had its own consequences, because it becomes poisonous and death may be caused.

So far as the presence of sign or symptoms on the dead body on account of poisoning of the deceased is concerned, P.W.1 stated that he had not found any congestion either in stomach, lungs ,kidney , liver and spleen. Due to loss of blood in delivering the child, an empty heart may be found. Blood clots were not found in the mouth or nostrils. In fact, he had categorically stated that he did not find any external injury and, as such, preserved the viscera . There could be the probability that the death of Pallavi would have occurred only of poisoning, may not be acceptable or appearing from the records. So far as other aspect of the prosecution case on preserving the viscera and its chemical analysis is concerned, before recording a finding I want to have a glance of relevant rule in the Bihar Police Manual, 1978. Chapter 42 of the Police Manual, Rule 1254 deals with Forensic Science Laboratory, Functions etc.

Sub rule (c) of Rule 1254 is relevant for the purposes:-

œ(c) Method of sending exhibits.- Exhibits are preferably sent by investigating officers through judicial magistrates concerned though there is no bar in sending them through Superintendent or sub- divisional police officer also. However, in cases where samples have been collected by medical officers it shall be sent by them direct.?

On perusal of the above noted Rule it appears that the transmission of exhibits to the Forensic Science Laboratory for chemical analysis or any other forensic test has always to be routed through a judicial magistrate who might have jurisdiction of the case. It may also be routed either through the Superintendent of Police of the district or the Deputy Superintendent of Police. The third mode of transmission

prescribed by the above rule, is by the Medical Officer, who had collected the sample and in that case it has directly to be transmitted by such a doctor to the Forensic Science Laboratory. The very rule also indicates that in cases where exhibits are likely to be damaged in transit or delay is likely to cause deterioration or putrefaction, these should be sent through special messenger at once.

The very use of the phrase 'at once' itself indicates the urgency or necessity in transmitting the exhibits or articles to the Forensic Science Laboratory. The rule points out some sort of immediacy which could ensure the receipt of sample in the Forensic Science Laboratory so that no time in transmit is spent or lost. The further purpose which appears to me, is that any person who could have some ulterior interest in the result of investigation of the trial is not to be allowed to tamper with the sample. This appears from the part of the Rule by which that the sample has been directed, in case of the same being transmitted by the police officer, to be routed either through the judicial magistrate or through the Superintendent of Police or Deputy Superintendent of Police. The safeguard or in other words the precaution which has put in place by framing the above rule is only to eradicate any chance of tampering with or adulterating the sample before its chemical analysis. I have already noted that the rule does not envisage the sample or any exhibit or article which may be an evidence, which may be important for the just decision of a case, to be transmitted to the Forensic Science Laboratory by any police officer directly to the Forensic Science Laboratory.

Here in the present case, it appears from the very evidence of P.W.8, the Investigating Officer, that he had transmitted the viscera directly. He has not routed the same either through the judicial magistrate concerned nor had routed it through the Superintendent of Police/ Deputy Superintendent of Police concerned. Not only that he had dispatched the viscera on 26.11.1999, i.e., after one month and 28 days of its preservation by P.W.1, who had held post mortem examination on the dead body. It further appears from the record of the Forensic Science Laboratory that the viscera was received on 4.12.1999 through a special messenger, who was constable no. 1211. These details are available in the work sheet prepared by the Forensic Science Laboratory, Patna, which has been marked Ext.A in the present case. The chemical analysis of the sample had been

concluded on 10.4.2000 after receipt of the viscera on 17.1.2000, i.e., after three months. Thus, what appears from the above is that seal was removed after one month and 90 days and the report was finally prepared on 10.4.2000, i.e., after about six months of the preservation of the viscera by P.W.1. I have already noted that post mortem examination was held in Patna Medical College Hospital on 6.10.1999 and it was dispatched by P.W.8- Md. Israr Ahmad on 29.11.1999, i.e., after about one month and 23 days and it took about one month and eighteen days to reach the Forensic Science Laboratory, Patna from Budha Colony Police Station in Patna. There is no explanation coming from the police and specially from P.W.8- Israr Ahmad as to what was the purpose of with-holding the preserved viscera in the police station till it was finally received by the Forensic Science Laboratory, Patna. These are some of the incidents which indicate that there was complete violation of rule 1254 of Bihar Police Manual ,1978 not only as regards its dispatch to the laboratory but also as regards the authority who could have been competent to transmit the viscera to the Forensic Science Laboratory. The mode of dispatch was completely violated.

P.W.1, Dr. Ashok Kumar Yadav, has stated in his evidence that ejection of uterus of the deceased might have caused poisoning to her, but he has not specified the poison which could have caused such a physical disorder. It must not have been caused by aluminum phosphide. Moreover, initial test carried out by the Forensic Science Laboratory itself suggested that all tests were carried out to isolate different poisonous compounds. The test to isolate phosphide was carried out and the result was negative. Repeated test for phosphide was carried out and the result was found positive.

The submission of learned counsel for the appellants was that repeated test to isolate phosphide was never called for as no repeat test to isolate other poisonous compound was carried out by the Forensic Science Laboratory and this is itself suggests that the report was not authentic and acceptable. It was either interpolated or manipulated by with-holding the viscera by the police so as to tamper or concoct it in order to create evidence of some sort in support of its case. There appears the probability in favour of the defence from the above facts that either the viscera had been concocted or the result on its analysis has been

manipulated.

I have already had a glance of the evidence adduced by the prosecution and I have already noted that there was no initial story of demanding dowry or torturing the deceased. There was no further evidence that the deceased Pallavi Mehta had been ill treated or tortured in connection with dowry. The cause of death not being ascertained, it appears probable that the death has occurred on account of some poisonous reaction which she had undergone during the delivery of the child. Under these circumstances, it was not a case in which the appellants should have been convicted.

In the result, the appeal is allowed and the judgment of conviction passed against the appellants is set aside. The appellants are acquitted of the charges. They shall stand discharged from the liability of their bail bonds.

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