

Md. Budhu Vs. the State of Bihar

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Court : Patna

Decided On : Feb-26-2014

Judge : Akhilesh Chandra

Appeal No. : Criminal Appeal (SJ) No. 351 of 2002

Appellant : Md. Budhu

Respondent : The State of Bihar

Judgement :

1. Heard learned counsel for the appellant and learned Additional Public Prosecutor for the State.
2. The solitary appellant has preferred this appeal against his conviction for the offences under Section 304(B) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years as awarded on 29th May, 2002 by learned Additional Sessions Judge, Fast Track Court “ III, Purnea, in connection with Session Case No. 62/1990 / T.R. No. 13/2002 arising out of Bhawanipur P.S. Case No.54/1989 instituted under section 302/304(B) of the Indian Penal Code.
3. The prosecution has come out with a case as reveal from fardbeyan of Md. Jiyauddin (P.W.6) the informant, recorded on 4th August 1989 at about 12.40 hours at his door by A.S.I. (not examined) that in the previous evening at about 6.00 p.m. his niece (Bhagini) the deceased was being assaulted by the appellant and other family members but due to intervention of Mohalla people she could be

escaped. The informant left for market and on return he could know that the occurrence took place only for a petty demand of Rs. 1000/- continued for the dowry and again she was assaulted and the appellant being her husband had threatened to administer poison which he did resulting into her death. After investigation, police submitted charge-sheet and the solitary appellant faced trial for the offences under Section 302/304(B) of the Indian Penal Code. But, finally acquitted from the charges under Section 302 of the Indian Penal Code, but, convicted and sentenced accordingly for the offences under Section 304(B) of the Indian Penal Code.

4. The prosecution has not produced a single chit of document including fardbeyan, formal First Information Report and post mortem examination report etc., but, produced only six witnesses. Out of whom P.W. 4 Yasin uncle of the deceased was tendered for cross examination. P.W.1 Maulvi Md. Siddique has come to say about the prosecution version and finding the deceased lying dead. In examination in chief, he was silent about the period of marriage, but in very first paragraph of their cross examination he states the same taking place five years before the incident. He is consistent about torture. P.W. 2 Md. Siddique is one of the maternal uncle of the deceased coming with the case of marriage three years before the occurrence and stated about assault and demand etc. P.W.3 Md. Musraf has also stated the prosecution version likewise. P.W.5 Masomat Darudan mother of the deceased has come to say about the period of marriage and demand of dowry etc. Last but not the least Md. Jiyauddin the informant has also stated the prosecution version.

5. Attention of all these witnesses have been drawn towards some varying statement made during trial and recorded by the police under section 161 of the Code of Criminal Procedure, but, for no reason explained, investigating officer has not been examined giving room to learned counsel for the appellant to submit that serious prejudice has caused and that apart the prosecution has cut the very root of its case by non examining the doctor and producing other connected materials, and in absence whereof, conviction of the appellant for the offences under Section 304(B) of the Indian Penal Code cannot be said justified. Accordingly, it is set aside. But, taking into consideration, the consistent case of the prosecution about

some demand and torture, it is converted into Section 498A of the Indian Penal Code and as submitted and emerging from the record the appellant remained in custody for about nine months, the sentence is reduced as undergone. With the above modification in sentence, the appeal is hereby dismissed and let the lower court records be sent back to the court below forthwith.

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