

Sk. Basir Vs. State of Bihar

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Court : Patna

Decided On : Nov-24-2003

Judge : Sachchidanand Jha and Braj Nandan Prasad Singh, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 304B

Appeal No. : Criminal Appeal (DB) Nos. 174 and 366 of 2000

Appellant : Sk. Basir

Respondent : State of Bihar

Advocate for Def. : Ashwani Kumar Sinha, APP

Advocate for Pet/Ap. : Sudhir Singh and Rabindra Kumar Priyadarshi

Disposition : Appeal allowed

Prior history : B.N.P. Singh, J. 1. Though all appellants suffered conviction under Section 304B of the Indian Penal Code (IPC), while appellant Sk. Basir, Bk. Shahid, Sk. Afi and Sk. Jamil Ahmad were sentenced to suffer imprisonment for life, Mariyam Khatoon and Hasina Khatoon , being female members and also in view of their age, were sentenced by the trial Court to suffer rigorous imprisonment for a term of ten years only. All the appellants were also convicted under Section 201, IPC for which they were se

Judgement :

B.N.P. Singh, J.

1. Though all appellants suffered conviction under Section 304B of the Indian Penal Code (IPC), while appellant Sk. Basir, Bk. Shahid, Sk. Afi and Sk. Jamil Ahmad were sentenced to suffer imprisonment for life, Mariyam Khatoon and Hasina Khatoon , being female members and also in view of their age, were sentenced by the trial Court to suffer rigorous imprisonment for a term of ten years only. All the appellants were also convicted under Section 201, IPC for which they were sentenced to suffer rigorous imprisonment for a term of two years, with a rider that all the sentences shall run concurrently.

2. Allegedly, after Shiba Khatoon was married to Basir Ahmad, her happiness was short-lived, as in-laws became hostile to her for failure of her parents to make provision of sufficient dowry to them. Harassment and torture continued to be meted out to her, as her parents could not make provision of Rs. 40,000/- for construction of a house, and eventually, information about tragic end of Shiba Khatoon was received by the parents, pursuant to which her dead body in a gunny bag floating in a local river was noticed. After a Police case had been instituted, investigation followed, evidences were collected, inquest report over the dead body of the deceased was prepared by the Police Officer and post mortem was conducted by the doctor, and on conclusion of investigation, Police laid charge sheet before the Court.

3. Quite a good number of witnesses were examined by the State to establish guilt attributed to the appellants about death of Shiba Khatoon due to infliction of harassment and torture on her allegedly for failure of the parents to make provision of Rs. 40,000/- for construction of house to the in-laws. The defence too examined three witnesses, who stated, inter alia that 4/5 months, preceding the incident, pursuant to a Panchayati convened in the village, Shiba Khatoon was divorced by her husband, and on these premises, defence of the appellants was that in no way appellants were answerable for killing of the deceased and circumstances too were not formidable to bring the offence within mischief of Section 304B, IPC. Trial Court, however, on evaluation of probative value of the testimony of the witnesses, while rejected the defence version, recorded finding of

guilt and sentenced appellants in the matter stated above.

4. Though quite a good number of witnesses were examined by the prosecution to establish charges against the appellants, we have noticed that either many of them had turned volte face to the State or even those, who had made endeavours to establish guilt of the appellants, had failed to establish death of the deceased within proximity range of 'soon before the death'. A brief narration of evidences of the witnesses can, however, be noticed Sk. Vajul (PW 1) did not know the cause of death of Shiba Khatoon, and similar has been the evidence of Lakshmi Sah (PW 3). Evidence of Md. Gyasuddin (PW 4) too was not on a better footing, as he too did not know as to how Shiba Khatoon and died. We may refer to the evidence of Md. Ayub (PW 5) also, who exhibited his complete ignorance about cause of death of Sabina Khatoon. Almost similar had been the evidence of Sk. Gaffar (PW 2) and Bibi Safidan (PW 8) also.

5. Now prosecution was left with the evidence of Md. Izharul (PW 7) and Md. Qureshi (PW 9). PW 7, brother of deceased says that Sabina Khatoon was harassed for dowry for which a Panchayati too had been convened. Dead body of Sabina Khatoon was found packed in a gunny bag near a local river. Though the witness stated to have learnt about torture meted out to his sister by in-laws, but he did not recall the period when either such demands were made by the in-laws or when Sabina Khatoon was mal-treated or tortured by them. To crown all, though he had been regular visitor to his sister's house, he had never noticed any marks of violence on her person. This witness happens to be none else but brother of the deceased and assertions made by him about torture or assault made on victim are completely lost, in view of subsequent narrations made in the evidence, Md. Qureshi (PW 9) too was brother of the deceased and though this witness too states about assault on Sabina Khatoon by in-laws for failure of her parents to make provision of Rs. 40,000/- for construction of house and also a Panchayati having been convened to resolve the dispute, he too would not state in explicit terms about period when either demands were made or Sabina Khatoon was assaulted by the in- laws, and on own showing the too had participated in burial of the dead body. If narrations made by this witness was to be given any credence, Sabina Khatoon was quite comfortable in her in -laws' house and we

are afraid that in the backdrop of these assertion made by this witness, the Court can draw any inference about deceased facing hostile atmosphere in the in-laws' house for which she was shown to have been killed by the in-laws. These two witnesses, on whom prosecution had sought to place reliance, happen to be none else but brother of the deceased, and their evidences as such were not of less significance.

6. As against prosecution assertions, three witnesses, examined by the defence, stated with all emphatic assertion that 4/5 months preceding the incident, pursuant to a Panchayati held in the village, Sabina Khatoon was divorced by her husband. We have noticed that even evidences of Md. Izharul (PW 7) and Md. Qureshi (PW 9) were not of clinching nature to conclusively suggest that even if torture were meted out to the deceased that was for dowry related demand, and was also soon before her death. Needless to emphasise that to invoke penal provision of Section 304B, IPC, it was quite incumbent upon the prosecution to establish that there was proximity or nexus between torture inflicted on the deceased and her death for dowry related demand. We are however, not oblivious that Sabina Khatoon was carrying pregnancy and also that her dead body was found at a distance of about one Km. from house in a local river, packed in a gunny bag, which unerringly suggests killing of the deceased but for that reason alone, the appellant cannot be made answerable under Section 304B, IPC, and since the prosecution had failed to establish charge under Section 304B, IPC, which is primary charge, we do not find good reason to uphold the findings of the Court below for sustaining conviction of the appellant also under Section 201, IPC which was ancilliary flowing from primary charge.

7. In the circumstances, we are of the view that the findings of guilt and also sentence recorded by the Court below are not sustainable which are accordingly set aside. Both the appeals bearing Cr. Appeal No. 174 of 2000 and Cr. Appeal No. 366 of 2000 are accordingly allowed and appellants Mariyam Khatoon and Hasina Khatoon, who are on bail, are discharged from liability of the bail bonds. As appellants Sk. Basir alias Sk. Basir Ahmad of Cr. Appeal No. 366 of 2000 and appellants Sk. Shahid, Sk. Afi and Sk. Jamil Ahmad happen to be in custody, it is directed that they be set free forthwith, if not wanted to any other case.

S.N. Jha, J.

8. I agree.

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