

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 296 OF 2005

ASHA DEVI & ANR.

.. APPELLANT(S)

vs.

STATE OF BIHAR

.. RESPONDENT(S)

WITH

CRIMINAL APPEAL NOS. 297 OF 2005 AND 1256 OF 2007



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D E R

These appeals arise from the following facts:

Sudhia Devi deceased was married with Hare Ram Jha about 3-4 years before the incident happened and was pregnant at the time of the occurrence. On 22nd September, 1997. PW.5 - Meena Devi, Sudhia Devi's aunt, received information that Sudhia Devi was being beaten by her husband and his parents and sisters. Meena Devi along with her relatives rushed to Sudhia Devi's home and was told by her mother-in-law Meera

Devi and her daughters Asha Devi and Mithilesh Devi that she was in the process of delivering a child. Meena Devi, however, insisted that she should be allowed to see Sudhia Devi on which she was restrained from doing so by Asha Devi and Mithilesh Devi and was also threatened with dire consequences if she tried to enter the room. A heated argument ensued between the parties



and the resultant noise attracted some residents of the village. Meena Devi however managed to enter the room and having done so found the dead body of Sudhia Devi lying in the courtyard. Meena Devi then rushed

to the police station and lodged the FIR. On the completion of the investigation the accused Hare Ram Jha, Sudhia Devi's husband, Durga Nand and Meena Devi, his parents & Asha Devi & Mithilesh Devi, his sisters were charged for offences punishable under Sec.304-B and 498A of the Indian Penal Code and brought to trial.

The prosecution in support of its case relied upon the evidence of PW.5- Meena Devi and several other persons who had accompanied her to the house of the deceased on the crucial day and also on the evidence



of Ram Saran Mishra-PW.11 the father of the deceased, PW.13-Jeevo Devi-her mother, and PW.15-Phoolo Devi, her Mousi. The prosecution also produced in evidence PW.16 Dr. Dhrub Kumar Dheeraj who had conducted post-mortem on the dead body of the deceased and PW.17-B.P.Singh, the Investigation Officer. In the course of the trial PW.1-10 i.e.Meena Devi and all the others who had rushed to the rescue of Sudhia Devi on the crucial day were declared hostile. A letter Ext. P.2 written by the deceased to her mother on 25/6/1995, alleging maltreatment was also produced in evidence

by the

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prosecution. The trial court relying upon the evidence of PW.11, PW.13 and PW.15 and the documents which had been produced on record,



convicted the accused under Sec.304-B and Sec.498-A of the IPC and sentenced Asha Devi, Mithilesh Devi and Meera Devi to seven years R.I. under Sec.304-B and Durga Nand Jha and Hare Ram Jha - the father-in-law and the husband of the deceased respectively, to undergo imprisonment for life.

The accused thereupon filed an appeal in the High Court which has been dismissed by the impugned judgment dated 23/4/2004.

Three appeals have been filed in this Court: Criminal Appeal

No.296/2005 by Asha Devi and Mithilesh Devi, Criminal Appeal No.297/2005 by Meera Devi and 1256/2007 by Durga Nand Jha - father-in-law of the deceased, whereas Hare Ram Jha has filed no appeal. All these matters are being disposed of by this judgment.

The learned counsel for the appellants has, at the very outset, argued that as per the facts on record, a case under Sec.304-B of the IPC was not spelt out as there was no demand for dowry soon before the death which was a *sine qua non* for the applicability of that Section. On facts,



the learned counsel has brought to our notice that the marriage had taken place in the year 1993 and the death had occurred on 22/9/1997 and even if Ext. P.2 which was the primary piece of evidence on record, was taken into consideration, this too had been written on 25/6/1995 which was

about two years and three months before the death and such as this could not form basis of the conviction. He has also submitted that in any case

there was no evidence to connect the accused, more particularly Asha Devi, Mithilesh Devi and Meera Devi, with the incident and that in any case the sentence awarded to Durga Nand Jha was excessive as it was the settled position that in a case of conviction under Sec.304 seven years R.I. was the normal rule with a higher sentence being awarded in exceptional cases. For the last submission reliance has been placed upon the judgment Hem Chand vs. State of Haryana in 1994 (6) SCC 727

The learned counsel for the State has, however, pointed out that



a clear finding of fact had been recorded by the two courts below on an appreciation of the evidence and the fact that the deceased had met an unnatural death and had been tortured prior to the strangulation indicated that all the accused had been involved in the incident. She has brought to our notice the evidence of the Doctor - PW.16 who deposed of epidermal burn injuries 4" x 3" x 3 x 2" on the upper part of the abdomen and contusions on the chest wall in an area of 7" x 3" and observed that ultimate cause of death was traumatic asphyxia and strangulation and that

the mark of hanging was post mortem in nature. On internal examination it was found that upper lobes of both lungs were bruised and other internal organs were congested. It

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is also clear from the post-mortem report that a female foetus of about 36



weeks was also found in the dead body. She has accordingly urged that instead of presenting a case of murder, the accused have already been dealt with in a very light manner. She has also emphasized that the words 'soon before the death' occurring under Sec.304-B could not be mechanically applied and the chain of circumstances and the conduct of the accused were extremely relevant factors in evaluating the evidence in a case under Sec.304-B, more particularly, on account of the presumption laid against the accused by virtue of Sec.113-B of the Evidence Act.

We have heard learned counsel for the parties and have perused the record. At the very outset we must observe that a perusal of the statements of PWs. 11 and 15 who are father and mother of the deceased respectively, do not show any involvement of Asha Devi and Mithilesh Devi - two of the sisters-in-law. Even a perusal of the letter - Annexure P.2 does not indicate any cruelty on their part. As a matter of fact, it has been brought to our notice by the learned counsel for the appellants that Mithilesh Devi had been married in the year 1976 and Asha Devi in 1979



and they were living in their matrimonial homes at some distance from the village in which the incident happened.

We, therefore, find that there is absolutely nothing to connect these two accused with the incident. Criminal Appeal No. 296/2005 must, therefore, to our mind be allowed. Asha and Mithilesh are ordered to be acquitted.

The evidence against the other accused however is unexceptional. Meera Devi is the mother-in-law and Durga Nand Jha is the father-in-law and Hare Ram Jha-the husband. It has come in the evidence that the deceased was being harassed by these three persons for having brought inadequate dowry and repeated demands were made for a T.V. set



etc. and further that a sum of Rs.51,000/- had been given after the marriage pursuant to a demand. The learned counsel for the appellants has, however, submitted that as a Panchayat had been organized to sort out the dispute, the best evidence in this case would have been the appearance of some members of the Panchayat to show that such a problem had arisen. It is true that if a statement from a Panchayat member had come on record, the case of the prosecution would be strengthened but this omission would not mean that the evidence available was insufficient to record a

conviction, more particularly, in the back drop of Sec.113-B of the Evidence Act.

We also find from Ext. P.2 referred to above that the primary villain was the mother in law Meera Devi and that Her husband and son were in fact acting as tools at her behest.



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Moreover, from a reading of Ext. P.2 with the statements of ocular evidence it appears that the demands had been made over for a period of time. The presence of burn marks on the abdomen of the deceased indicate torture and cruelty meted out to the deceased even on day when she met her death. Moreover, as already observed above, from the doctor's evidence it transpires that the deceased was first strangled,

and, thereafter (to camouflage the cause of death) she had been hanged in the bedroom to make it look as a case of suicide. It has come in the evidence of PW.17, the I.O.B.P.Singh, that he had entered the room to find the dead body hanging from the roof. In this view of the matter and keeping in mind the presumption under Sec.113-B of the Evidence Act, we find absolutely no merit in the other two appeals.

The appeals of Meera Devi and Durga Nand Jha (Crl.A.Nos. 297/2005 and 1256/2007 respectively), are accordingly, dismissed. We are



told that Meera Devi is on bail. She shall be taken into custody forthwith to serve out the remaining period of sentence.

.....J.
(HARJIT SINGH BEDI)

.....J.
(J.M. PANCHAL)

New Delhi,
July 22, 2009.

SUPREME COURT OF INDIA



JUDGMENT