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Cr1.A.No. 607 OF 1997
ITEM No.102

Court No. 4

SECTION IIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CRIMINAL APPEAL No.607 OF 1997

AMOLOK SINGH Appellant (s)

VERSUS

STATE OF BIHAR Respondent (s)
(With office report)

Date : 11/12/2003 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE DORAISWAMY RAJU
HON'BLE MR. JUSTICE ARIJIT PASAYAT

For Appellant (s)Mr. MP Jha, Adv.
Mr. Ram Ekbal Roy, Adv. for
Mr. Anil K chopra, Adv.

For Respondent (s)Mr. Ashok Mathur, Adv.
Mr. Santosh Kr. Mishra, Adv.

Mr. BB Singh, Adv. (not present)

UPON hearing counsel the Court made the following

O R D E R

Mr. MP Jha, learned counsel for the appellant started his arguments at 1.25 AM and concluded at 12.05 PM. Thereafter Mr. Ashok Mathur, learned counsel for the respondent made his submissions upto 12.20 PM. The appeal is allowed and the appellant is acquitted of the charge in terms of the signed order. He is discharged from his bail bonds.

(D.L.Chugh) (Vijay Aggarwal)
Court Master Court Master
Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.607 OF 1997

AMOLAK SINGH Appellant (s)

VERSUS

STATE OF BIHAR Respondent (s)

O R D E R

The husband of the deceased Manminder Kaur @ Babli, who was arrayed as A-1 along with his father A-2 and mother A-3 to face trial in Sessions Case No.726 of 1994 on the file of the 2nd Additional Sessions Judge, Jamshedpur, is the appellant in this appeal. The challenge is to the judgment of the High Court which affirmed the judgment of the learned trial judge in which the appellant came to be convicted and sentenced under Section 304B read with Section 34 of the Indian Penal Code and Section 201 read with Section 34 IPC on account of the death of his wife due to burns otherwise than under normal circumstances within seven years of marriage, by what is called as 'dowry death'. The case of the prosecution was that on 18.2.1994 the wife of the appellant was involved in an occurrence in which she was said to have sustained injuries on her entire body below the naval portion leaving the upper part above the same, to be intact. It appears that she had been immediately thereafter taken to the hospital at about 1.35 PM and the father of the deceased was said to have also been informed of the occurrence by about 3.00 PM that day itself. She was in the hospital undergoing the treatment till 22nd February, 1994 when at about 6.30 AM on that day she died. Thereupon a report was said to have been lodged with the police and it appears that on 27.2.1994 U.D. Case No.4 of 1994 was said to have been registered. Even on the basis of the information received on 22.2.1994 U.D. Case No.4/1994 was said to have been registered. After the formal lodging of the FIR, the investigation has been undertaken and after completing the formalities of the investigation the three accused were charged for offences under Section 304B read with Section 34 IPC and Section 201 read with Section 34 IPC. The accused contested the charge against them stating that the occurrence was an accidental one and it was not a case of homicidal death attributable, in any manner, to the accused. In support of the prosecution case PWs 1 to 12 were examined of which PWs 2, 3 and 7 the doctors were declared hostile. These were the doctors who initially attended the deceased and prepared the injury report and made the entries in the injury register enumerating the injuries found and the reasons for the occurrence as was said to have been disclosed by the deceased, personally. The defence also examined DWs 1 to 6 in addition to the marking of certain documents on their side. After considering the materials on record, the learned trial judge found that the prosecution has let in sufficient evidence to substantiate its case that it was not an accidental or natural or normal death but really was one in which the deceased was set on fire to put an end to her life. It was also found that there were ample materials to show that the accused were harassing the deceased for more dowry and keeping in view all these aspects, the charge under Section 304B read with Section 34 IPC came to be held proved so far as A-1, the husband, and A-3 the mother-in-law, are concerned. The learned trial judge, at the same time, found A-2, the father-in-law of the deceased, to be innocent and acquitted him of the charge. For the conviction under Section 304B read with Section 34 IPC, A-1 was sentenced to 10 years rigorous imprisonment with a fine of Rs.5,000/- with a default clause and for the conviction under Section 201 read with Section 34 IPC rigorous imprisonment of two years was imposed. So far as A-3 was concerned, for the conviction under Section 304B read with Section 34 IPC rigorous imprisonment for seven years with a fine of Rs.2,000/- with a default clause was imposed and for the conviction under Section 201 read with Section 34 IPC rigorous imprisonment for one year came to be imposed.

Aggrieved, A-1 and A-3 pursued the matter on appeal before the High Court. A learned Single Judge of the High Court of Patna affirmed the findings recorded by the learned trial judge that the death was not on account of accidental fire but that she was really set on fire, though the learned judge thought fit to acquit A-3 the mother-in-law of the deceased, and affirmed the conviction and sentence imposed on the husband A-1 alone. Hence, this appeal.

Learned counsel for the appellant, while inviting our attention to the relevant portions of the judgments of the courts below as well as the evidence on record, strenuously contended that the evidence on record which was entirely circumstantial in nature could not sufficiently make out a charge under Section 304B or Section 201 read with Section 34 IPC even as against the appellant-husband and that the courts below proceeded on a total misconception of the materials and misdirected themselves in arriving at a finding of guilt in respect of the appellant merely on the basis of certain assumptions and surmises as to the manner it could have happened rather than on any substantive evidence of concrete nature to prove any positive role as such which could reasonably be attributed to the appellant, in the occurrence. Our attention has been specifically invited to the relevant materials relied upon by the courts below on the basis of which only the appellant came to be indicted, to substantiate the challenge on behalf of the appellant that the circumstances are not such as would conclusively establish the guilt of the appellant, particularly on the nature and quality of evidence let in. It has been also urged that the relationship between the husband and wife was cordial all along; that there was no reason for the appellant to even think of eliminating his wife from his life and that not o

nly the deceased was taken to the hospital immediately but all concerned were informed of the occurrence including the father of the deceased and, therefore, there was no reason to suspect any foul play in the occurrence, by the appellant.

Per contra, Mr. Ashok Mathur, learned counsel for the State of Jharkhand, with equal vehemence, contended that the concurrent findings have been recorded against the appellant by both the courts below for sufficient reasons supported by ample materials on record and they do not call for any interference in this appeal. Argued the learned counsel further that the fact that the police was not informed till 22.4.1994 of the occurrence and the fact that the father of the deceased though arrived at the hospital was denied access to meet his daughter till she was alive are very relevant circumstances which have been rightly taken note of by the High Court to legitimately infer foul play on the part of the appellant to cover up the entire matter and the conviction concurrently recorded by the courts below, so far as the appellant is concerned, may not be interfered with. Relevant portions of the judgment as well as evidence on record to substantiate the stand on behalf of the respondent State have been brought to our notice in this regard.

We have carefully considered the submissions of learned counsel appearing on either side. Indisputably, the case on hand rests completely on circumstantial evidence and it is well settled that circumstances from which an interference of guilt is sought to be proved must be established firmly and cogently, that those circumstances must be of such nature as to unerringly point towards the guilt of the accused and taken cumulatively they must form so complete a chain that there is no escape from the conclusion that it was the accused who committed it and none else and that the circumstances proved should be incapable of explanation on any reasonable hypothesis save that of the guilt of the accused. In the light of the cursory manner of consideration undertaken by the High Court in this case, it became necessary to scan through the evidence to find out the merit or otherwise of the grievance sought to be projected on behalf of the appellant. We find in the process that both the courts below have chosen to appreciate the materials on record mainly on an assumption and hypothesis based on the belated reporting of the occurrence and the alleged denial of access to the father of the deceased to meet his daughter, till she was alive. The circumstances noticed as to the nature of injuries, particularly on the parts of body of the deceased as also to reject the plea of accident on account of the use of the kerosene stove though the facility of gas stove was very much available at the kitchen in question, may perhaps, at the most, provide clues of strong suspicion but by themselves, in our view, may not be concrete material or sufficient evidence to convict the appellant for an offence under Section 304B IPC. Mere suspicious circumstances, however strong it may be, and to whatever extent it may morally appear to lead towards the guilt of the accused cannot amount to provide legal proof and be a substitute for the otherwise required substantive proof to convict an accused of a charge, particularly of a grave charge of the nature with which we are concerned. The type of evidence let in in this case for the alleged dowry demand and harassment also appears to be too slender and general and do not provide any concrete basis to safely infer or reasonably deduce the guilt of the appellant for indictment under Section 304B IPC. The basic assumption by the courts below that the information as to the occurrence was kept away from the police stand belied by the very document made available even by the prosecution in the form of Ext. P-1 and P-2 and the evidence of PW 2 before the court that the injury report was sent to the police and the police officer at TMH Hospital Campus knew about the incident. The further positive assertion by PW 2 that after preparing the injury report and entering the same in the register also he sent a memo to the police post in the hospital itself to register a case as a medicolegal one equally remained unchallenged and in the teeth of such materials there is no basis for any such assumption against the accused. Indisputably the father of the deceased was also informed by about 3.00 PM and he was at the hospital immediately and his claim made belatedly that he was not allowed to meet his daughter before her death - which was almost for nearly 4 days and yet he kept quiet merely to make a grievance later does not provide any credibility to such claims. Consequently, the circumstantial evidence of the nature made available for the prosecution does not provide a safe or trustworthy basis to reasonably presume the guilt of the accused. Consequently, in our view, the findings, though concurrent, could not be said to be based on any legally acceptable evidence with the type of materials brought on record and the conviction of the appellant on the charge having committed the murder of his wife cannot be at all be sustained. The appeal is accordingly allowed and the judgments of the courts below are set aside and the appellant stands acquitted of the charges. He is also discharged from his bail bonds.

.....J (DORAISWAMY RAJU)

.....J (ARIJIT PASAYAT)

New Delhi,
December 11, 2003