

3. On the basis of the said information, the police registered a case under sections 498-A and 304-B of the I.P.C. and took up investigation.

4. On completion of investigation, the police submitted charge sheet under sections 498-A and 304-B I.P.C. On the basis thereof, cognizance was taken but the charge was not framed under section 498-A I.P.C. Learned trial court framed charge under section 304-B/34 I.P.C. or alternatively under section 302/34 I.P.C.

5. The case was committed to the court of sessions for trial. The accused-appellants pleaded not guilty of the charges and claimed to be tried. According to them, they were falsely implicated in the case by the informant.

6. The prosecution in order to establish the charges examined as many as ten prosecution witnesses. P.W.1-Shankar Sinha is a relative of the deceased. However, he did not support the prosecution case and was declared hostile. P.W.2-Ghanshyam Pandey is the witness to the inquest report. He is the neighbour of the accused-appellants. He, inter alia, stated that the second appellant-Amit Kumar Singh raised an alarm when he found that his sister-in-law (Bhabhi) bolted the door and windows from inside and was not responding to the call. This witness also went there. When the door was broken, she was found hanging with ceiling fan. This witness, however, has said that there was no quarrel in the family and they had a 'happy life'. P.W.3-Brajendra Kumar is the brother of the deceased, though he is the hearsay witness. He has stated that he came to know that her sister committed suicide. P.W.4-Braj Kishore Pandey, happened to be a mediator at the time of settlement of marriage. He has not supported the prosecution case and was declared hostile. P.W.5-Bhuneshwar Sharma is the informant. The prosecution was initiated on the basis of his written report. However, in his deposition, he has stated that he was unable to say the cause of the death and the suspected was on the basis of rumour about her death. P.W.6-Sudhist Narain Singh is the neighbour of the appellants. He has stated that about 12.30 P.M. he saw that the deceased-Savita Kumari was spreading wet cloths outside after bath. After sometimes, he heard an alarm raised by the second appellant-Amit Kumar Singh that his sister-in-law (deceased) bolted the door and windows from inside and she is not responding to the knock and the call. This witness went to see. When the window was broken opened, they saw Savita Kumar (deceased) hanging with the ceiling fan. Thereafter the door was broken and she was taken to hospital, where she was found dead. In cross-examination, he has stated that there was never any quarrel in the family. P.W.7-Satyandar Thakur is the employee of the Telco. He has

stated that on 30.11.2003, he came to know that Savita Kumari (deceased) committed suicide. He was declared hostile. P.W.8-Geeta Devi is the mother of the deceased-Savita Kumari. She has stated that when her daughter was married everything was alright. On 30.11.2003 she came to know that her daughter (deceased) hanged herself and committed suicide. She was also declared hostile. P.W.9 is the Doctor, who conducted autopsy on the dead-body of Savita Kumari. He has stated that he found several ante-mortem injuries including the ligature mark over upper part of neck directed upward backward and obliquely over left side of neck and right side back of neck. Mark was found absent over left side back of neck. Abression of size 1.5 x 1 c.m. over left side upper part of neck under surface of mandible in the line of ligature. He has also found some abression over left finger of hand and wrist and the medial aspect of left wrist. According to his opinion, the cause of death was hanging. P.W.10 is the Investigating Officer. He has proved the written report, formal F.I.R.(Exhibit-5) and Inquest Report (Exhibit-8). He has stated that when he visited the place of occurrence, he found the dead-body of the deceased lying on the floor and the eyes and mouth were opened and there was mark on the neck and some injuries on the left wrist and middle finger.

7. In their examination under section 313 Cr.P.C., the accused-appellants claimed themselves to be innocent and falsely implicated in the case. Their specific plea was that the deceased has a daughter aged about 5-6 years and she is a pure vegetarian. The deceased was also a pure vegetarian. On that day, non-vegetarian food was cooked in the house and the daughter was served non-vegetarian food and because of that, the deceased became angry and in fit of anger, committed suicide.

8. On conclusion of the trial, learned court below came to the finding that though there is no eye witness, the charge of murder of the deceased by the appellants has been established by circumstantial evidence. Learned court below heavily relied on the evidence of the informant and drawn inference on the basis that the time of the occurrence was 12.30 P.M. but the doctor found the time of death 24 hours to 30 hours on 30.11.2003 and according to learned court below, the death must have occurred at 4.30 A.M. or 10.30 A.M. On that basis, learned court below concluded that the difference of time goes to suggest that the deceased might have been firstly assaulted and strangulated to death. According to him, the story of committing suicide by the deceased by hanging appears to be false. Learned court below, thus, held the appellants guilty of the charge under section 302/34 I.P.C.

9. In this appeal, the impugned judgment of conviction has been assailed on the following grounds:

- (i) There is no eye witness in this case.
- (ii) There are no links of the circumstances to form a complete chain of circumstantial evidence as well to conclude and hold the appellants guilty of the charge under section 302/34 I.P.C. The finding of learned court below is based on mere hypothesis and assumptions.
- (iii) There is no positive evidence worth the name to prove homicidal death of the deceased-Savita Kumari and any hand of the appellants in the crime.
- (iv) The doctor has opined that the injuries were ante-mortem. The cause of death was hanging, but contrary to the said expert opinion and without any evidence on record, the learned court below has held that the injuries on the person of the deceased were post mortem.

10. Mr. B.P.Pandey, learned senior counsel, appearing on behalf of the appellants submitted that this is a case of absolutely no evidence and learned court below has committed serious error of law as well as of fact in holding the appellants guilty for the charge under section 302/34 I.P.C. There is no direct or circumstantial evidence to point with certainty that these appellants committed murder of the deceased. The evidences on record clearly go to establish that it was a suicidal death and that there was no complicity of these appellants. He further submitted that learned court below has used such circumstances for convicting the appellants regarding which no question was put to the accused-appellants. Learned counsel submitted that the conviction based on such circumstances is not sustainable in law. Learned counsel referred to and relied upon the decision of this Court in the case of '**Shib Ratan Kumhar & anr. Vrs. State of Bihar (now Jharkhand)**', reported in **2009(2) BLJ 6** based on the decision of the Apex Court in **Ajay Singh Vrs. State of Maharashtra [(2007) 12 SCC 341]**. Learned counsel submitted that the impugned judgment is wholly erroneous, unsound and perverse and the same is liable to be set aside.

11. Learned Addl.P.P., appearing on behalf of the State, supported the impugned judgment. It has been submitted that the circumstances appearing on record go to form a complete chain of circumstantial evidence and learned court below has rightly relied on the said evidence and convicted the appellant. Learned counsel submitted that a newly married lady has been killed by the appellants by hatching a conspiracy,

with common intention. He referred to the evidence of the informant-P.W.5 and submitted that he has stated that after marriage, his daughter was tortured and ultimately finished. Learned counsel submitted that since the circumstances are apparent on the record, failure in putting the question regarding the circumstances does not prejudice the appellants. Learned counsel submitted that though there are some contradictions, overall assessment of the surrounding facts and circumstances go to prove the charge under section 302/34 I.P.C. against the appellants.

12. Having heard learned counsel for the appellants and learned Addl.P.P., we meticulously scrutinized the evidence on record. The prosecution heavily relied on the evidence of informant-P.W.5, who is the father of the deceased and P.W.9-the doctor. Admittedly, there is no corroboration of the testimony of the informant by any independent evidence. P.W.5 in his deposition stated that on 30.11.2003 when he went to the matrimonial home of his daughter, he found that her daughter was lying dead. In paragraph-2 of his deposition, he has stated that he heard that she was killed. He suspected that she was killed by these appellants. In cross-examination, he has stated that he cannot say about the reason of death of his daughter. He was unable to say as to who conveyed him that his daughter was killed. In a reply to the court's question, he stated that from the gossip of some people, he gathered that her daughter was killed. When we examined the evidence of the doctor-P.W.9, we find that he has given definite opinion that the injuries found on the person of the deceased were ante-mortem and the cause of her death was hanging. There is no evidence on record to suggest that these appellants killed the deceased. In view of definite expert opinion that the death was by hanging and injuries were ante-mortem, we find no basis for the finding of learned trial court that the deceased must have been first assaulted, strangulated to death and thereafter been hanged to give a colour of suicide. The said finding of the learned court below is based on no evidence and is completely perverse. We find from the evidences of P.W.2, P.W.6 and P.W.8-mother of the deceased that the deceased was never subjected to any torture by the appellants. P.W.2 has clearly stated that the deceased was leading a happy married life. The brother, mother and the other independent witnesses have clearly stated that the deceased committed suicide.

13. In view of the above, there is no basis to hold that the deceased was killed at 10.30 A.M. or at 4.30 A.M. i.e. before the reported time of death i.e. 12.30 P.M. P.W.6, who is the close door neighbour, has stated that he had seen the deceased spreading wet cloth after bath between

12.00 P.M. to 12.30.P.M. There is nothing in the cross-examination to disbelieve this independent witness.

14. On careful scrutiny of the evidence on record, we come to the conclusion that there is no admissible evidence worth the name either direct or circumstantial to suggest that the appellants had any hand in killing the deceased-Savita Kumari. We find no ground to uphold the impugned judgment of the learned court below, which, according to us, is based on fig of imagination and hypothesis. The impugned judgment of conviction of the appellants is, thus, wholly perverse and unsustainable.

15. In the result, we allow this appeal, set aside the impugned judgment of conviction and order of sentence passed by learned Additional Sessions Judge, Fast Track Court-II, Jamshedpur in Sessions Trial no.167 of 2004 and acquit the appellants of the charges levelled against them. We have been informed that the appellant nos. 2 and 3 were granted interim bail, but the appellant no.1 has been languishing in jail custody. The appellant no.1(Ajit Kumar Singh) is, thus, directed to be set at liberty forthwith, if he is not wanted in any other case. The appellant nos. 2(Amit Kumar Singh) & 3(Smt. Draupadi Devi) are discharged from the liabilities of their respective bail bonds.

(Narendra Nath Tiwari,J.)

(Prashant Kumar,J.)

Jharkhand High Court, Ranchi
Dated: 19th May, 2009
N.A.F.R./S. B.