

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 709 OF 2015
(Arising out of S.L.P. (CrI.) No. 5796 of 2014)

Indradeo Sao and others

... Appellants

Versus

State of Bihar

...Respondent



J U D G M E N T

Prafulla C. Pant, J.

This appeal is directed against judgment and order dated 28.2.2014, passed by the High Court of Judicature at Patna in Criminal Appeal (SJ) No. 419 of 1998 and Criminal Appeal (SJ) No. 437 of 1998, whereby both the appeals are dismissed, and conviction and sentence recorded by 1st Additional Sessions

Judge, Nalanda at Bihar Sharif in Sessions Trial Nos. 192 of 1994/134 of 1996 (PS Case No. 63 of 1994) under Section 304B, 498A and 201 of Indian Penal Code (IPC) against the appellants, namely, Indradeo Sao, Nand Kumar Sao and Raj Kumar Sao, is affirmed.

2. It is pertinent to mention here that we issued notice in this appeal, through special leave, only on the quantum of sentence, and with regard to plea of juvenility of appellant No. 2 Nand Kumar Sao (younger brother of the husband of the deceased).

3. We have heard learned counsel for the parties and perused the papers on record.

4. Prosecution story in brief is that appellant No. 3 Raj Kumar Sao got married to Sushila Devi (deceased) about five years before her death. As per custom, she departed from her parental house for her husband's house, about two years after her marriage. In the intervening night of 3rd and 4th March, 1994, she died unnatural death. On 4.3.1994 at about 8.30

p.m., her father PW-2 Saudagar Sao gave a report (Fard Bayan) to the Officer-in-charge of Police Station Hilsa, stating that his daughter was subjected to cruelty, in connection with demand of dowry by her husband (Raj Kumar Sao), her father-in-law (Indradeo Sao), mother-in-law (Rajeshwari Devi) and brother-in-law (Nand Kumar Sao). It was further alleged by the informant Saudagar Singh that the accused demanded Rs.10,000/- as dowry at the time of her 'Bidayee', i.e., when Sushila left from her parental house to her husband's family for the first time, which he could not fulfill and resultantly she was subject to harassment and cruelty by her husband and his father, mother and younger brother. On the basis of Fard Bayan (Ext. 4) crime case No. 63 of 1994 was registered against all the four accused relating to offences punishable under Section 304B, 498A and 201 read with Section 34 IPC. Investigation was taken up by PW-6 S.I. Kamla Kant Pandey. On 5.3.1994, the Investigating Officer (PW-6) went to the house of the appellant (accused) in village Nadaha but could not find the body of the deceased on that day. Accused had disappeared from their house. Next day, i.e., 6.3.1994, the

dead body could be recovered from a distance of about half a kilometer from their house, from a ditch of Dangra Kandha. The tongue of the deceased looked protruding, compressed between the teeth. The dead body was sealed and the inquest report (Ext. 5) was prepared. The dead body was sent for post mortem examination. PW-1, Dr. Mathura Prasad of Sadar Hospital, Bihar Sharif, conducted autopsy at 4.15 p.m. on the very day (i.e. 6.3.1994 when the dead body was recovered). After post mortem examination, the Medical Officer opined that the deceased has died of strangulation. However, since he suspected that poisonous substance also might have been consumed by the deceased, as such, he preserved viscera. He has further observed in the post mortem examination report that though there was no clear ligature mark on the neck, but on dissection trachea was found broken. The Investigating Officer, after interrogating the witnesses, and arrest of the accused, and on completion of investigation, submitted charge sheet against all the four accused for their trial.

5. The case was committed to the Court of Sessions, on 4.5.1994, by the Judicial Magistrate, Hilsa. After hearing the parties, the trial court framed charge against all the four accused in respect of offences punishable under Sections 304B, 498A and 201 IPC to which they pleaded not guilty and claimed to be tried.

6. On this, prosecution got examined PW-1 Dr. Mathura Prasad (who conducted post mortem examination), PW-2 Saudagar Sao (informant/father of the deceased), PW-3 Mahendra Sao (husband of sister of the deceased), PW-4 Ram Udit Prasad (brother of the deceased), PW-5 Rajkumari Devi (mother of the deceased), PW-6 S.I. Kamla Kant Pandey (who investigated the crime) and PW-7 Surendra Prasad Singh (Officer-in-charge of Police Station, Hilsa). Oral and documentary evidence was put to the accused under Section 313 of the Code of Criminal Procedure, 1973, in response to which they stated that Sushila died of diarrhea, whereafter DW-1 Baliram Prasad and DW-2 Shiv Kumar, both neighbours of the accused, were examined on behalf of the defence.

7. The trial court, after hearing the parties, found that the charge of offences punishable under Sections 304B, 498A and 201 IPC stood proved as against all the four accused, namely, Indradeo Sao (father-in-law), Rajeshwari Devi (mother-in-law), Raj Kumar Sao (husband) and Nand Kumar Sao (brother-in-law), and convicted them accordingly on 28.11.1998. After hearing on sentence on 30.11.1998, each of the convict was sentenced to rigorous imprisonment for a period of ten years under Section 304B IPC, rigorous imprisonment for a period of three years under Section 498A IPC, and rigorous imprisonment for a period of two years under Section 201 IPC. All the sentences were directed to run concurrently.

8. Aggrieved by said judgment and order dated 28.11.1998/ 30.11.1998 passed by the 1st Additional Sessions Judge, Nalanda at Bihar Sharif, in Sessions Trial Nos. 192 of 1994/ 134 of 1996, Criminal Appeal (SJ) No. 419 of 1998 was filed by Indradeo Sao, Rajeshwari Devi and Nand Kumar Sao. Raj Kumar Sao (husband of the deceased) filed separate Criminal

Appeal (SJ) No. 437 of 1998. Both the appeals were heard together and disposed of vide impugned order challenged before us by Indradeo Sao, Nand Kumar Sao and Raj Kumar Sao. (Convict Rajeshwari Devi is reported to have died during the pendency of the appeal before the High Court, and her appeal stood abated.)

9. We have already mentioned above, that the impugned order is under examination in this appeal only on the quantum of sentence, and regarding plea of juvenility qua appellant No. 2.

10. Considering the plea of juvenility of appellant No. 2 Nand Kumar Sao, on the basis of documents before us, on 23.2.2015, we directed the Sessions Judge, Nalanda, Bihar, to conduct an enquiry with regard to the juvenility of appellant No. 2 Nand Kumar Sao and to send the report to this Court by 13.4.2015.

11. In response to communication made by the Registry of this Court in compliance with our order, report dated

31.3.2015 of Additional District and Sessions Judge-I, Bihar Sharif, Nalanda, after enquiry, is received by this Court.

Relevant part of the report is reproduced as under: -

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I have taken up the matter afresh and perused all the original documents related with age of petitioner no. 2, Nand Kumar Sao @ Nand Kumar Chand filed by the parties on affidavit before me and from bare perusal of the original matriculation certificates, admit card, registration receipt and character certificate. I find that every where the date of birth of Nand Kumar Sao @ Nand Kumar Chand which is said to be petitioner no. 2, the date of birth is recorded as 08.05.1978. Though the certificate stands in the name of Nand Kumar Chand S/o Indradeo Prasad, who has claimed on affidavit that Nand Kumar Chand S/o Indradeo Prasad also bears the alias name Nand Kumar Sao (petitioner no. 2) and the father Indradeo Sao had no other son named as Nand Kumar Chand. This fact has also not been controverted in any way before this enquiry or before the matter earlier required by the court of ACJM, Hilsa, Nalanda on 07.12.1995.

Now coming on the point to test the juvenility of the petitioner no. 2 Nand Kumar Sao, who also bears the alias name Nand Kumar Chand and on the strict proof of the age as recorded on all the original certificates filed by the petitioner no. 2 including original matriculation certificates duly issued from the office of the Bihar School Examination Board-Patna, recorded the date of birth of the petitioner as 08.05.1978 and I find that this date of birth of the petitioner no. 2 is also duly entered in the admit card and registration certificate

in the office of the Bihar School Examination Board, which was issued from the B.S.E.B. office earlier to the date of occurrence. I have also gone through the established procedure followed in determination of age of any juvenile mentioned in the rule of the juvenile justice care and protection of children in clause-3 as under-

“ in every case concerning a child or juvenile in conflict age determination inquiry shall be conducted by the court or the Board as the case may be the committee by seeking evidence by obtaining –

- (a) i. The matriculation or equivalent certificate available and in the absence whereof;
- ii. The date of birth certificate from the school (other than a play school) first attended and in the absence thereof;
- iii. The birth certificate given by a corporation or a municipal authority or a panchayat.
- (b) And only in the absence of either (i) (ii) or (iii) of clause (a) above the medical opinion will be sought from a duly constructed medical board, which will declare the age of the juvenile or child.”..

Thus on the touch stone of the aforesaid principle in determination of age, I find and hold that the petitioner no. 2 Nand Kumar Sao @ Nand Kumar Chand, S/o Indradeo Sao was juvenile and was much below the age of sixteen year (i.e. 15 years 09 months 26 days) at the time of occurrence

FIR dated 04.03.1994, Hilsa P.S. case no. 63/94 corresponding to S.Tr. No. 192/94.

Thus in obedience of the Hon'ble Apex Court directions, I am herein submitting my report before your honour to place the same before the Hon'ble Bench as desired."

12. In view of the above report, it is evident that on the date of death of Sushila Devi, her brother in law (Devar) Nand Kumar Sao (appellant No. 2 before us) was aged 15 years 9 months and 26 days, as such, on further considering the law laid down by this Court in ***Vijay Singh v. State of Delhi***¹, ***Vaneet Kumar Gupta alias Dharminder v. State of Punjab***² and ***Upendra Kumar v. State of Bihar***³, we are of the view that the sentence recorded by the courts below against the juvenile accused is liable to be quashed. As to the other appellants, in the facts and circumstances of the case, we do not find any reason to reduce the sentence, awarded against them.

¹ (2012) 8 SCC 763

² (2009) 17 SCC 587

³ (2005) 3 SCC 592

13. Accordingly, the appeal of appellants Indradeo Sao and Raj Kumar Sao is dismissed, but that of Nand Kumar Sao is allowed partly. We affirm the conviction recorded against him but considering that he was juvenile on the date of incident, sentence of imprisonment is quashed. Appellant No.2 Nand Kumar Sao shall be set at liberty, if not required in connection with any other crime.

.....J.
[Dipak Misra]

New Delhi;
April 28, 2015.

.....J.
[Prafulla C. Pant]

JUDGMENT