

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.365 of 2002**

Arising Out of P.S.Case No. -139 Year- 1993 Thana –Bihiya District- BHOJPUR

- =====
1. **Umesh Prasad**, son of Sri Thakur Prasad
 2. **Thakur Prasad**, son of late Hira Lal Prasad, resident of Village-Bihiya (Judge Bazar) Police Station-Bihiya, District-Bhojpur.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Baxi S. R. P. Sinha- Sr. Advocate

Mr. Rajesh Kumar-Amicus Curiae

For the State : Mr. Bipin Kumar- A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 20-01-2015**

Heard learned Mr. Rajesh Kumar, learned Amicus Curiae as well as learned senior advocate who subsequently appeared along with learned Additional Public Prosecutor.

2. Both the appellants namely Umesh Prasad as well as Thakur Prasad, have been found guilty for an offence punishable under Sections 304(B), 498(A) of the I.P.C. as well as Section 3/4 of the Dowry Prohibition Act vide judgment of conviction dated 12.06.2002 and further been directed each of them to undergo rigorous imprisonment for ten years as well as seven years separately, independently under Section 304(B) of the I.P.C. However, no sentence was passed against them for an offence punishable under Section 498(A) of the I.P.C. as well as under Section 3/4 of the

Dowry Prohibition Act vide order of sentence dated 15.06.2002 passed by 2nd Additional Sessions Judge, Bhojpur at Ara in Sessions Trial No.105 of 1994, have preferred instant appeal.

3. During pendency of instant appeal, the appellant Thakur Prasad died and on account thereof, the appeal has been directed to abate against him vide order dated 10.07.2014. On account thereof, now the appeal survives only against Umesh Prasad.

4. Ganpat Seth (since deceased) father of unfortunate girl Geeta Kumari had filed written report on 26.11.1993 before O/c Bihiya Police Station disclosing therein that Geeta was married with appellant Umesh Prasad on 06.06.1991 and her *Duragaman* was effected on 10.11.1992. While she was staying at her Sasural, her husband, father in-law, mother in-law were always coercing her for bringing fridge, sofa, colour television, godrej and cash appertaining to Rs.10,000/- which they have spent over her operation otherwise either she will be eliminated or will be deserted. All these events were passed over to him by his daughter through letter and in the aforesaid background, it has been alleged that in the evening of 24.11.1993, she has been burnt to death. Even then, on 25.11.1993 at about 4.30p.m., Ramesh Prasad, another son of his Samdhi had come to his place and disclosed that as Geeta is suffering from stomach pain on account thereof, he has been called upon by his father. Accordingly, he along

with his wife accompanied Ramesh Prasad and reached at his house at about 1.00 a.m. None were found at his residence. He also came to know regarding murder of his daughter. He then sent back his wife to his village for having the letter which was sent by his daughter at an earlier occasion which he annexed with the written report.

5. On the basis of the aforesaid written report, Bihiya P. S. Case no.139 of 1993 was registered followed with investigation as well as submission of charge sheet. Consequent thereupon, the appellants met with ultimate result after conclusion of trial, subject matter of instant appeal.

6. Defence case, as is evident from mode of cross-examination as well as from the statement recorded under Section 313 Cr.P.C. is of complete denial. It has also been submitted that on 24.11.1993 at about 7.00 p.m. while the appellant Umesh Prasad along with his brothers were studying, heard cry of deceased who had gone to upper floor with lamp and accordingly, they rushed and found the deceased under flame. Anyhow, the fire was extinguished by putting quilt and during course thereof, appellant Umesh Prasad also sustained burnt injury at his toe. Deceased was taken to hospital where police came, recorded his statement. Umesh Prasad was also examined by the doctor and to support the same, witnesses along with exhibit of relevant documents have also been made. With regard to

appellant Thakur Prasad (since deceased), a plea of alibi was raised and to support the same, witnesses along with relevant documents were also exhibited.

7. In order to substantiate its case, prosecution had examined altogether seven PWs, out of whom, PW-1 is Satish Kumar Seth, PW-2 is Vimla Devi, PW-3 is Vishwanath Prasad, PW-4 is Anil Kumar Verma, PW-5 is Baiju Prasad Seth, PW-6 is Dr. Mahesh Kumar Sinha and PW-7 is Munmun Lal as well as had also exhibited the documents as Exhibit-1 series letters, Exhibit-2 post mortem report, Exhibit-3 written report, Exhibit-4 formal F.I.R.

8. On the other hand, defence had also examined four DWs, out of whom, DW-1 Kailash Prasad Jaiswal, DW-2 Devendra Prasad Singh, DW-3 Dr. K. P. Singh and DW-4 Murat Ram as well as had also exhibited the documents as Exhibit-A attendance register, Exhibit-B certificate granted by Divisional Engineer (DW-1), Exhibit-C injury report of Umesh Prasad (appellant), Exhibit-D fard-bayan of Umesh Prasad, Exhibit-D/1 station diary no.527/ 1993, Exhibit-D/2 Sanha Entry no.537/ 1993.

9. While assailing the judgment of conviction and sentence recorded by the learned trial Court, it has been submitted on behalf of appellants that virtually it happens to be a case of no evidence. However, the learned lower Court, after appreciating the



evidence available on the record in mechanical manner convicted and sentenced the appellants. Further, elaborating his submission, the learned counsel submitted that prosecution case is fumacious. It has further been submitted that on account of non-examination of Investigating Officer, the defence is found highly prejudiced. Had there been examination of I.O., the conduct of the appellant would have been exposed in impartial manner which could have suggested conclusively it a case of accidental fire coupled with the fact that on account of non-examination of I.O., the objective finding regarding place of occurrence also not properly been brought up on record which could have spoken regarding the events taken up by the appellant to save deceased. That means to say, death though admitted by means of burn, but being an accidental one and on account of non-examination of I.O., the defence has been unduly prevented to substantiate the same.

10. It has also been submitted that conduct of the appellants should have been tested which, the learned lower Court failed to exercise in its right perspective. To buttress the same, it has been submitted that just after the occurrence, having the flame extinguished, appellant Umesh Prasad himself lifted his wife, the deceased, to Bihiya Hospital where police came, got his statement, found the deceased, prepared inquest, got the Post mortem conducted

which has been overlooked by the learned lower Court as well as on account of non-examination of the I.O., could not properly been brought up on record in legal way. At the present moment, it has also been submitted that on account of death of informant Ganpat Seth, the appellant has again been deprived of to test the allegation.

11. Now, coming to the ocular evidence, it has been submitted that PW-7 remained formal while PW-4 and PW-5 though supported the factum of occurrence, but subsequently thereof, as they failed to oblige the prosecution, were declared hostile. Now, remains the evidence of PW-1, the brother of deceased, PW-2 mother of deceased, PW-3 maternal uncle of deceased and PW-6 Dr. Mahesh Kumar Sinha, who had conducted post mortem.

12. It has also been submitted that on account of admitted position that deceased had died of burn injury, the evidence of PW-6, the doctor who had conducted post mortem was not at all helpful for the prosecution. More particularly, as he failed to depose whether the burn injury was accidental or intentional or suicidal. So far evidence of PWs-1, 2 and 3 are concerned, it has been submitted that neither they proved the demand of dowry nor the theme of torture for procurement of dowry soon before death of deceased and on account thereof, the major ingredients attracting application of Section 304B of the I.P.C. remained unsaturated. Consequent thereupon,

judgment of conviction and sentence recorded by the trial Court is fit to be set aside.

13. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned trial Court has submitted that whenever there happens to be application of Section 304B of the I.P.C. that has to be seen through the lens of Section 113(B) of the Evidence Act subject to having ingredients of Section 304(B) I.P.C. duly proved. On this score, it has been submitted that appellant failed to examine his brother who had written letter to deceased while she was staying at her Naihar asking for Tape recorder. All the letters, which ever been exhibit of the record is either in pen of deceased or in pen of brother of appellant and nicking demand and torture and, it was expected at the end of appellants to propitiate even putting forward himself in terms of Section 315 of the Cr.P.C. Having failed to do so, prima facie, evidence of demand of dowry coupled with evidence of cruelty and torture for the aforesaid purpose is found with lucidity.

14. It has also been submitted that date of death on 24.11.1993 is not at all denied. The appellant also not denied the marriage having been solemnized on 06.06.1991 and *Duragaman* on 10.11.1992. As such, after *Duragaman*, the deceased stayed at her sasural only for a year and having a prima facie evidence of demand

as well as cruelty also suggest otherwise ingredients of soon before her death, in the background of the fact that aforesaid term is to be perceived “under approximately”. Consequent thereupon, the judgment of conviction and sentence passed by the learned lower Court is fit to be confirmed.

15. In order to attract application of Section 304(B) of the I.P.C., the following ingredients are to be fulfilled as held in *Kalia Penimal vs. State of Tamil Nadu* reported in A.I.R. 2003 SC 3828.

A) Death of woman has been caused by burns or bodily injury or not under normal circumstances.

B) The said death have occurred within seven years of marriage.

C) The woman was subjected to cruelty or harassment by her husband or his relative.

D) Such cruelty or harassment was for or in connection with any demand for dowry.

E) She meted out with such cruelty or harassment was soon before her death.

16. After going through the record, the defence taken up by the appellant, the evidence led on behalf of prosecution, evidence led by the appellant, the following factual aspect is found admitted one:-

A) Status of deceased Geeta being spouse of

appellant Umesh Prasad.

B) The marriage was solemnized on 06.06.1991

C) Duragaman was effected on 10.11.1992

D) Died of burnt on 24.11.1993

E) Death of Geeta while staying at her sasural within seven years of marriage other than normal circumstance.

17. Now, the only question remains, whether there was demand of dowry as well as soon before her death deceased was tortured in connection therewith and in the aforesaid background, the defence of the appellant should also properly be subject to adjudication.

18. Though, during course of cross-examination, suggestion was given at the end of appellant over authenticity of Exhibit-1 series, the letters, but having not been hammered in a way as was expected at his end and further, having presence of the aforesaid letters since inception of the prosecution case, there happens to be specific allegation coming out there from regarding demand of dowry as well as apprehension of deceased to be eliminated on that very score at her *sasural*. The other letters happen to be in the pen of brother of appellant and in both the letters though in guarded language, but demand is apparent by way of asking for tape recorder while the deceased was staying at her Naihar, at the time of her Bidai. The aforesaid letters happens to be of dated 02.01.1993 as well as

04.01.1993 written by Vijay, admitted by brother of appellant.

19. The aforesaid demand is to be perceived from the ocular evidence, PW-1 in Para-2, Para-4. During cross-examination at Para-8, he further disclosed that Geeta was operated upon 2-3 months after Gauna at Ara by Dr. Shail Kumari. In Para-9, he had stated that he had not enquired with regard to contents of letters written by Geeta from the neighbours, but he had stated that he used to go to *Sasural* of Geeta. Then at Para-13 suggestion was given to him denying the aforesaid event. In Para-15, he had stated that Geeta had come to his place one and half months after operation and had stayed for at about 4-5 months and then thereafter, she returned back to her sasural along with Thakur Prasad, her father in-law. In Para-16, he had further stated that while his mother had fallen ill, Geeta had come. In Para-17, he had stated that on 26.11.1993, his mother came from Bihiya and then, he proceeded along with letters. He met with his father. Handed over letters and then case was instituted. In Para-18, he had admitted that he also gone to police station. Then, there happens to be contradictions. In Para-19, he had stated that he had not gone to the place of Umesh Prasad on the said date. He had further admitted that Thakur Prasad is an employee under Telephone Department posted at Patna. Then had denied the suggestion that deceased met with an accidental fire.



20. PW-2 is the mother of deceased. She had supported the case of prosecution during her examination-in-chief on the factum of demand as well as torture meted out to deceased on that very score. During cross-examination at Para-5, she had stated that after marriage, deceased had gone to her sasural where she stayed. Then thereafter, she returned back. After staying for long, her Gauna was effected. However, she is not remembering the exact time. She had further disclosed that Umesh Prasad, her son in-law, had come to her place only once. In Para-6, she had stated that 2-3 months after Gauna, she had faced the incidence. In Para-7, she had further stated that deceased had written letters to her after Gauna. In Para-8, he had stated that during course of her ailment, deceased had come to her place. While she was admitted at Banaras, her daughter was along with her. She had further narrated that after returning there from her daughter was operated upon and then her husband accompanied her daughter to her place. After staying for 2-3 months, her daughter returned back to her Sasural. At Para-11, she had stated that Ramesh had come at 4.00-4.30 p.m.. On the same day, they all proceeded along with Ramesh. They have gone to Mugalsarai and then to Bihiya. Her husband was along with him. They have gone to the residence along with Ramesh. She had gone inside the house of Ramesh. She wept, none of neighbours came. As Thakur Prasad was not present,



therefore, she has no talk with him. At that very time, wife of Thakur Prasad and his younger son Vijay was present. Then, they came out from the house of Thakur Prasad. In Para-12, she has stated that she proceeded to her village at about 6.00 a.m. and reached at her house at mid-day. Letters were kept in almirah which, she had handed over. Then had denied the suggestion that there was no demand and further having the incidence an accidental one.

21. PW-3 is the maternal uncle of deceased. In his examination-in-chief, he had supported the case of prosecution regarding demand as well as torture. He had further stated that he enquired as well as also requested the accused not to torture. During cross-examination, he had stated that he came to know regarding the occurrence from one Bechu Seth with whom he had got business dealing. In Para-8 of his cross-examination, he had stated that he is unable to name neighbours of accused persons in likewise manner, the boundary. However, he had specified the same. He had further admitted that Geeta died at hospital. He had not gone to hospital. In Para-10, he had stated that about 5-6 months prior to the occurrence, he had gone to the *Sasural* of Geeta. He had gone on his own. Geeta had not called him. At that very time, house of Thakur Prasad was single storeyed. He had talked with Geeta. Geeta had whispered regarding torture and accordingly, he requested the accused. He had

not spoken to the neighbours regarding demand as well as torture. In Para-14, there happens to be contradictions and then the suggestion in Para-15.

22. PW-6 is the doctor who held post mortem over the dead body of Geeta and found following ante-mortem over her person:-

1) Superficial burn blisters and peeling of skin of whole of face, front of neck, front of chest and upper abdomen. Both upper limbs and right scapular region on back. Few blisters also present on both thighs and left knee. On dissection, heart chambers are full, lungs, liver, spleen and kidneys are congested. Stomach contains about 4 oz of fluid. Bladder contains about 6 oz of urine uterus is non-grained and small. All the above are ante-mortem in nature. Time elapsed since death within 24 hours, % of burns about 40 %.

23. During cross-examination, he had disclosed that he had conducted post mortem in connection with U.D. Case No.13 of 1993.

24. As stated above, from the evidence more particularly PWs-1 and 2 coupled with the Exhibit-1 series, it is apparent that there happens to be specific and conclusive material regarding demand of dowry and for procurement of the same, deceased was subjected to torture.



25. Now, coming to the defence, in terms of Section 113(B) of the Evidence Act whenever prima facie evidence is found, presumption of dowry death will follow subject to rebuttal at the end of accused. In the aforesaid background, it was incumbent upon the appellant to have properly erased the allegation. Though, he had tried to explain the death of deceased through DW-4 coupled with the evidence of PW-6. On the other hand, he had also tried to place his genuine conduct by the evidence of DW-3. After going through the evidence of DW-3 coupled with own statement of appellant Umesh Prasad, Exhibit-D, it is apparent that while he along with his brother Ramesh and Vijay were reading, he heard alarm of his wife, rushed to upper stair, found her under flame, got it extinguished and taken the deceased to hospital and during course thereof, he had found burnt injury over his toe. According to DW-3, he had examined the appellant on 24.11.1993 and found (1) smell of burn (2) superficial burn over palmer aspect of right foot and right toe, caused by fire, simple in nature. Apart from nature of injury, location of injury speaks a lot regarding its genuineness. When there was rescue at the end of appellants, then in that event, at least the fingers of the hand, the palm, the lower part of hands should have perceived the impact of flame then that of at toe which, in the facts and circumstances of the case, would not have in direct contact therewith. Furthermore, it was also

expected at his end to have demolished the evidence of demand as well as the letters written by Vijay, his brother asking for a tape recorder. Thus, after having the minute as well as parallel scrutiny of the material placed by the parties, the following event comes out:-

1) Demand was there and for that there was threatening followed with specific disclosure by PW-1 as well as PW-2 who were cross-examined on that very aspect specifically. Though explanation has been offered at the end of appellant, but those explanation speaks a lot more particularly taking into account the evidence of DW-3, Dr. K. P. Singh.

26. The next question remains regarding torture meted out to deceased soon before her death. In Davinder Singh vs. State of Punjab reported in 2014 Cr.L.J 4065, it has been observed as follows:-

12. In the present case, from the statements of PW-2 and PW-3 it is clear that the death took place within seven months of marriage. Admittedly, death of the deceased was due to burn i.e. not in normal circumstances. We have to see now whether the remaining ingredients are satisfied looking into the evidence on record.

13. The statements of the PW-2 and PW-3 are specific as they were eye witnesses. In their statements they specifically stated about the harassment in connection with demand of dowry. Deceased died within seven months of marriage. She also

telephonically complained about harassment. The prosecution thus proved that there was harassment in connection with dowry soon before death of the victim.

In the present case, the continuous stay of deceased at her sasural effected after Duragaman on 10.11.1992, while the death by burn has occurred on 24.11.93. Hence, this period satisfies the event of soon before her death, as during aforesaid intervening period, there happens to be persistent demand of dowry as well as torture inflicted on that very score.

27. Now, coming to another legal aspect raised on behalf of appellant on the score of non-examination of the I.O. though no cause has been shown relating to prejudice, it is apparent from the record that no prejudice has been caused to the appellant in the background of the fact that appellant had offered an explanation and to support the same, examined four DWs. In case, the appellant was not satisfied with the same, then in that event, the opportunity was already existing since before, whereunder, more witnesses would have been examined on behalf of defence. More particularly, Ramesh and Vijay, own family members whose presence, since the day of marriage, is found as well as one of them was interlinked with the event to deny the same. So far theme of contradiction is concerned, it does not speak to be vital one.

28. As such, after scrutiny of the materials available on the record which consist ocular as well as documentary evidence adduced on behalf of respective parties, the demand of dowry followed with torture soon before death as well as death otherwise than normal circumstance within seven years of marriage is found properly proved. Consequent thereupon, the judgment of conviction and sentence recorded by the learned trial Court is affirmed. The appeal is dismissed. Appellant Umesh Prasad is on bail. His bail bond is cancelled with a direction to surrender before the learned lower Court to serve out the remaining part of sentence.

29. First and last page of the judgment be handed over to the learned Amicus Curiae for the needful.

(Aditya Kumar Trivedi, J)

Patna High Court
Dated-20.01.2015
Vikash/-

U		T	
---	--	---	--