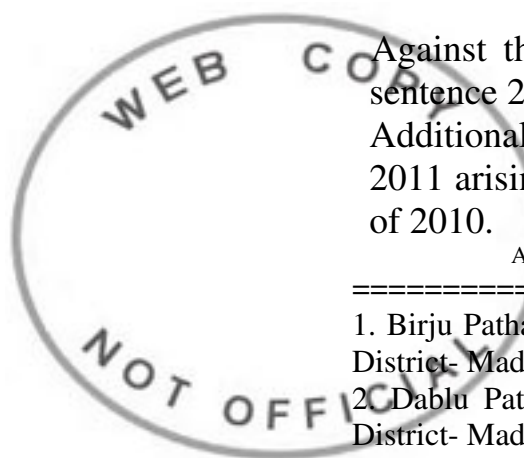




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.766 of 2013

Against the judgment of conviction dated 21.11.2013 and order of sentence 25.11.2013 passed by Sri Man Mohan Sharan Lal, learned 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 82 of 2011 arising out of Pandaul P.S. Case No. 64 of 2010, G.R. No. 1293 of 2010.

Arising Out of PS.Case No. -64 Year- 2010 Thana -PANDAU District- MADHUBANI

1. Birju Pathak Son Of Purandar Pathak Resident Of Village- Hati, P.S. Pandaul, District- Madhubani
2. Dablu Pathak Son Of Birju Pathak Resident Of Village- Hati, P.S. Pandaul, District- Madhubani
3. Chameli Devi Wife Of Birju Pathak Resident Of Village- Hati, P.S. Pandaul, District- Madhubani
4. Babita Devi Wife Of Lalit Jha Resident Of Village- Hanuman Nagar, P.S.- Pandaul, District- Madhubani

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 115 of 2014

Against the judgment of conviction dated 21.11.2013 and order of sentence 25.11.2013 passed by Sri Man Mohan Sharan Lal, learned 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 82 of 2011 arising out of Pandaul P.S. Case No. 64 of 2010, G.R. No. 1293 of 2010.

Arising Out of PS.Case No. -64 Year- 2010 Thana -PANDAU District- MADHUBANI

Bablu Pathak

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

For the Appellants : Mr. Ramakant Sharma, Senior Advocate.
For the State : Mr. S. A. Ahmad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT
Date: 08-01-2015

Gopal Prasad, J.

Heard

1. Two appeals are being heard together and disposed off by common order and judgment as two appeals arise in Sessions Trial No. 82 of 2011 arising out of Pandaul P.S. Case No. 64 of 2010, G.R. No. 1293 of 2010 passed by Sri Man Mohan Sharan Lal, learned 3rd Additional Sessions Judge, Madhubani, by which all the appellants have been convicted for offence under Section 304(B) of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years.

2. The prosecution case as alleged in the Fardbeyan of the informant, namely, Harischandra Jha that victim Babita Devi is daughter of the informant and was married with Bablu Pathak, son of Birju Pathak of village Hati about five years back. Duragawan was performed after three years. Further case is that after six months of her living in Sasural, there was demand of Rs. 10,000/- as disclosed by the victim and she was subjected to cruelty by Birju Pathak, father-in-law, mother-in-law, husband, Dewar and Nanad by abusing and subjecting cruelty. Further case is that victim used to inform by telephone on which informant came and tried to pacify the matter, but they have continued to demand and subjecting cruelty. In the meantime, the victim blessed with a male child aged about one and half years. Further case is that the victim, daughter of the informant came to the

house of the informant in the Shardh ceremony of the mother of the informant. After one month, she went to her sasural with her Dewar and there was quarrel. On information, the informant contacted with son-in-law at Kolkata, but he also threatened the informant. Further case is that five-six days prior to the occurrence, the son-in-law of the informant came at Village- Hati and about 7.30 A.M. he got information that daughter of the informant was burnt by her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law by sprinkled kerosene oil by which she was burnt to death and all the inmates of the house flee away. It has been claimed that all the accused persons have done to death by pressing the neck of the victim and burnt her to death by sprinkled kerosene oil.

3. Fardbeyan was recorded on 06. 06. 2010 at 12.15 at Hati P.S. and on the Fardbeyan of the informant recorded by S.I. B. Upadhaya and on the basis of Fardbeyan, F.I.R. lodged. Investigation Proceeded. After investigation, charge sheet submitted, cognizance was taken and case was committed to court of sessions. Charge framed under Sections 304(B) and 201/34 of the Indian Penal Code. During trial seven witnesses were examined on behalf of the prosecution as P.W. 1 Neha Kumari, P.W. 2 Shyam Chandra Jha, P.W.3 Shanti Devi, P.W. 4 Bipin Kumar Jha, P.W. 5 Harish Chandra Jha, P.W. 6 Dr. Shankar Chaudhary and P.W. 7 Becha Updhyaya.

Besides oral evidence, the prosecution has also adduced documentary evidence as Exhibit-1 signature of informant over Fardbeyan, Exhibit-2 post mortem report of the deceased Babita Devi, Exhibit-3 Fardbeyan, Exhibit-4 Formal F.I.R., Exhibit-5 Inquest report and Exhibit-6 seizure list. Defence has also adduced documentary evidence as Exhibit-A prescription of Brijendra Pathak issued by Dr. Sagarmal Agrawal, Exhibit A/2 prescription issued by Dr. B. N. Josi, Exhibit-A/2 prescription issued by Dr. S. N. Jha.

4. The trial court taking into consideration the oral and documentary evidence convicted all the appellants and sentenced as mentioned above holding that there was demand and subjecting cruelty for non-fulfillment of the demand and death has been caused within seven years of marriage of the deceased in suspicious circumstance and hence presumption against the appellants has been discharge to have dowry death.

5. Learned counsel for the appellants however challenged the order of conviction and sentence recorded by the trial court. It has been asserted that evidence regarding demand and subjecting cruelty for non-fulfillment of demand is quite general and omnibus and no specific act of cruelty or harassment has been mentioned. It has further been pointed out that death of the victim was accidental and the death of the victim is natural or accidental, hence it cannot be held

death of the victim is in suspicious circumstance. It is further submitted that the injury of the victim does not suggest external injury of larynx hence can well be said to be accidental death. It has further been contended that there is no evidence that soon before the death the victim she was subjected to cruelty. It is further contended that if the ingredients of Section 304 B of Indian Penal Code is not established then the presumption under Section 113 B of Penal Code is not attracted. It has further been contended that both the parties were living separately as apparent from the evidence of the I.O. that house of the parents is asbestos roof where house of the victim was a part from the house of father-in-law and mother-in-law. It is further contended that P. W. 2, though, deposed but his deposition is against the statement of other witness, but has not been declared hostile and hence prosecution has not been able to prove the ingredient for offence under Section 304 (B) and 113 B of the Indian Penal Code to attract the presumption and hence prosecution has not been able to establish the charges.

6. Learned counsel for the State however contends that prosecution has well been proved the ingredients for offence under Section 304B of Penal code to attract the presumption under Section 113B of Penal Code and appellants have been discharged their duty to rebut the presumption hence prosecution has been able to prove the

charge beyond all reasonable doubt.

7. Taking into consideration the respective submission, it is apparent there are two sets of appeals arising out of the same judgment. In one the appellant is husband of the deceased and other set, appellants are father-in-law, mother-in-law, brother-in-law and Nanad. Two sets of appeals being heard together and disposed off by common order.

8. However, the prosecution case as alleged that marriage solemnised within five years of the occurrence and as per prosecution story after three years of marriage Duragaman was done. Further case is after six months of '**Bidai**' the victim wife was subjected to cruelty by abuse and assault for which the victim used to intimate that demand of Rs. 10,000/- has been made and else she was killed on which prosecution party went to sasural of the victim and tried to pacify the matter. Further case is that victim came to her Naihar for Shardh ceremony of grand mother and after one month she returned back to her sasural with her Dewar, though, there was quarrel between victim and her Dewar. On receiving information of quarrel, the informant contacted the husband of the victim at Kolkata and in retaliation the husband threatened. Further case is that about five-six days prior to the occurrence the husband came to his village home and thereafter, information was received at 7 P.M. about death of the victim by



strangulation and all the accused persons sprinkled kerosene oil on the body of the victim and set on fire. F.I.R. was recorded on 06.10.2010 at 12.15. Thereafter inquest report prepared and charge sheet submitted. All the witnesses have supported the prosecution case about demand and subjecting cruelty as alleged in the First Information Report. It is apparent from the evidence that marriage solemnised within seven years of the occurrence and witnesses deposed that father-in-law, mother-in-law, brother-in-law and sister-in-law used to assault the victim for non-fulfillment of demand of Rs.10,000/- and motorcycle.

9. P.W. 5 is the informant and his evidence is that he got information at 7 A.M. about the occurrence then he sent his nephew in the sasural of the victim who saw that house was burnt. Then he informed the police and when the police open the house and he found that dead body of the victim was lying in the burning state. It is further stated that victim Babita Devi came to his house on Shradh ceremony of his mother and has disclosed about demand and subjecting cruelty. It is further submitted that prior to the occurrence Babita Devi went to Sasural after attending the Shradh ceremony and there was quarrel between the victim and her dewar then informant inform the son-in-law then he threatened.

10. All the witnesses have supported the prosecution case

where P.W. 4 is brother of the victim and P.W. 3 is mother of the victim. P.W. 2 has also supported the prosecution about demand and subjecting cruelty and has stated that at about 2.30 A.M. he received information through telephone from his brother, the informant and on getting information he along with his niece Neha Kumari went to sasural of Babita Devi and found Babita Devi was lying in burning state. However great emphasis laid down having regard to the evidence of the witnesses in contradiction with other witnesses. However it is apparent that marriage of the victim had been solemnised within seven years of the occurrence and there is allegation of demand and subjecting cruelty for non-fulfillment of demand. Further fact that only one month prior to the occurrence the victim had occasion to come to Naihar to attend Shardh ceremony of her grand-mother and then disclosed about subjecting cruelty for non-fulfillment of demand and from this evidence it is apparent prosecution has been able to establish the demand and subjecting cruelty for non-fulfillment of demand. Hence from their evidence, it is apparent that soon before the death the victim was subjected to cruelty. The word “soon before” has no specific time limit mentioned and there is no straight jacket formula to define what is mean of “soon before” the death, but it has been well settled that it depends on the fact and circumstance of the case. It has been held in various decisions that there must be a proximate living

link between the effective cruelty based dowry demand and death.

11. However having regard to the fact that marriage solemnised within five years of marriage from the date of occurrence thereafter, as per evidence she came to Sasural after three years and after remaining six months in Sasural, she was subjecting cruelty by assault and abuse for non-fulfillment of demand. In the meantime she was blessed with a male child about one and half years and before the occurrence she had come to Naihar then she disclosed about subjecting cruelty, thereafter quarrel with Dewar and when husband was informed he started abusing thereafter the husband came and just on the same day took the victim and the victim was murdered hence that time of subjecting cruelty and demand is proximate having live link about five-six days prior to the occurrence the husband came in village. Thereafter, occurrence took place and victim found dead with sign of burning and house of roof was also in burnt stage. The doctor who conducted autopsy on the person of the deceased examines as witness as P.W. 6. He has stated that no external injury was found on her body. It is a case of burn injury. Further conducted post mortem examination on 06.10. 2010 at 9.00 A.M. and found time elapsed since death was within twenty-four hours and death has been said to be asphyxia caused by strangulation.

12. However, attempt was made by the learned counsel for

the defence to establish that the death occurred is an accidental death. However, no evidence has been set up about accidental death. However, evidence of P.W.6 doctor that there was fracture of larynx but there is no injury and has opined that cause of death due to asphyxia caused by strangulation.

13. Having regard to the nature of the description and facts and circumstances of the case, it cannot be said death of the victim was either natural or accidental, but it is apparent under the fact and circumstance that death is homicide and in such situation it can well be inferred that death of the victim is in suspicious circumstance other than natural or accidental. An attempt has been made by the learned counsel for the appellants to show that cause of death of the victim was accidental nor a case of accident has been brought up by setting up any such defence.

14. However, taking into consideration the entire facts and circumstance of the case, it can well be inferred that death in suspicious circumstance and it was neither natural nor accidental and there is sufficient evidence that there is allegation of demand and subjecting cruelty. However, defence counsel stressed that victim was living separate with other family members as they were living separately in separate room as apparent from the evidence of the I.O. However, attempt has been made with regard to the evidence of the

I.O. that house of the victim was separate with other family members having apart 18-20 feet. However, there is no evidence of separating except that room was 18-20 ft apart, but no evidence that this distance was intervene by any outsider or any other person. However, from the evidence it is apparent that rooms were part adjacent to 18 feet and there is no suggestion that this distance was not intervention by residence to any other person.

15. Having regard to the fact attracting presumption for dowry death under Section 304 B of Indian Penal code it is required to be proved that (a) marriage solemnised within seven years of the occurrence, (b) there was demand of dowry, (c) for non-fulfillment of demand the victim was subjected cruelty, (d) soon before the death victim was subjected cruelty in connection with relation or relation of demand of dowry and (e) death of the victim was in suspicious circumstance. However, if these circumstances are established then presumption follows under section 113B of Penal Code that appellants have caused dowry death of the victim.

16. However, having regard to the facts and circumstances of the case, I find that prosecution has been able to prove the ingredients that marriage solemnised within seven years and there was demand of Rs. 10,000/- and a motorcycle and further for non-fulfillment of demand she was subjected to cruelty and soon before the

death she was subjected to cruelty and death in suspicious circumstances.

17. So far appellant in Cr. Appeal (SJ) 115 of 2014 is concerned, Bablu Pathak is husband, there is allegation of demand by the husband specifically subjecting cruelty for non-fulfillment of the same and for quarrel with Dewar of the victim, the husband was intimated but his response against the victim and her parent by abuses. Further husband came about five to six days prior to the occurrence when the victim was done to death found by strangulation and body found bent itself indicates the ingredient for offence under Section 304B of Indian Penal Code to infer presumption under Section 113B of Indian Penal Code to have caused the dowry death and there is no evidence in rebutting and hence the offence under Section 304B of Indian Penal Code is established and order of conviction and sentence sustained and the appellant being husband is dismissed confirming the order of conviction and sentence recorded by the trial court.

18. Having regard to the fact there is no specific overt act against the father-in-law, mother-in-law, Dewar and Nanand of the victim. Hence appellants in Cr. Appeal (SJ) 766 of 2013 who are father-in-law, mother-in-law, Dewar and Nanand are concerned, they are entitled for benefit of doubt as presumption against them was not as strong as against the husband hence prosecution has not been able to

prove the charges against them beyond all reasonable doubt and trial court did not take into consideration this aspect and hence order of conviction and sentence recorded by the trial court against these appellants is set aside. The appellants of Cr. Appeal (SJ) No. 766 of 2013, namely, appellant no. 1, Birju Pathak, and appellant no. 3 Chameli Devi, who are in custody, be set at liberty forthwith, if not required to be detained in any other case.

m.p.
NAFR

(Gopal Prasad, J)

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