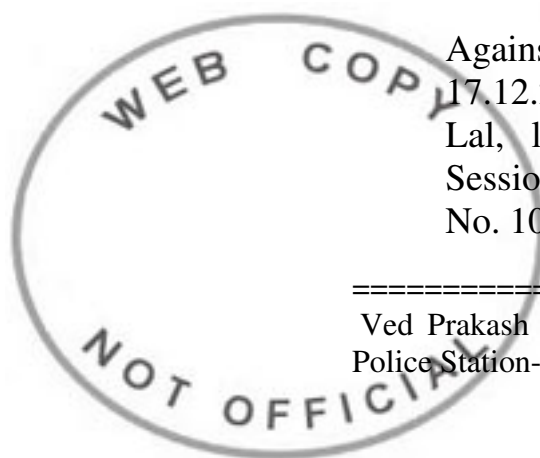






IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.89 of 2014

Against the judgment of conviction and order of sentence dated 17.12.2013 and 20.12.2013 passed by Shri Man Mohan Sharan Lal, learned 3rd Additional Sessions Judge, Madhubani in Sessions Trial No. 213 of 2012 (arising out of Harlakhi P.S. Case No. 100 of 2011, G.R. No. 3004 of 2011).

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Ved Prakash Singh, Son of Shyamsunder Singh Resident of Village- Pipraun, Police Station- Harlakhi, District- Madhubani

.... Appellant.

Versus

The State Of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 54 of 2014

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1. Shail Devi, wife of Shyamsunder Singh.
2. Shyam Sunder Singh, son of Late Parmeshwar Singh Resident of Village- Pipraun, Police Station- Harlakhi, District- Madhubani

.... Appellants

Versus

The State Of Bihar

.... Respondent

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Appearance :

(In CR. APP (SJ) No. 89 of 2014)

For the Appellant : Mr. Kanhaiya Prasad Singh, Senior Advocate.
Mr. Birendra Kumar Singh, Advocate.

For the informant : Mr. Krishna Kant Singh, Advocate.

For the State : Mr. Z. Hoda, A.P.P.

(In CR. APP (SJ) No. 54 of 2014)

For the Appellants : Mr. Kanhaiya Prasad Singh, Senior Advocate.
Mr. Birendra Kumar Singh, Advocate.

For the informant : Mr. Krishna Kant Singh, Advocate.

For the State : Mrs. Abha Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE GOPAL PRASAD
ORAL JUDGMENT

Date: 02-11-2015

Heard learned counsel for the appellants and learned counsel for the informant as well as learned counsel for the State.

2. Two appeals have been heard together and disposed of by common judgment as two appeals arise in Sessions Trial No. 213 of 2012 (arising out of Harlakhi P.S. Case No. 100 of 2011, G.R. No. 3004 of 2011) passed by Shri Man Mohan Saran Lal learned 3rd Additional Sessions Judge, Madhubani, by which the appellants Shail Devi, Shyam Sunder Singh and Ved Prakash Singh had been convicted for offence under Sections 304(B)/34 of Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years and payment of fine of Rs. 10,000/- and in default of payment of fine, the convicts had further sentenced to rigorous imprisonment for three months.

3. The prosecution case as alleged that victim Chanchala Devi, daughter of the informant, Shambhu Narain Singh, was married with Ved Prakash Singh on 13.05.2011. After solemmising of the marriage the victim went to sasural and there started demand of motor cycle and freeze etc. The daughter of the informant was apprehensive all time by the appellants due to subjecting cruelty and the victim had also disclosed this fact regarding demand and subjecting cruelty to the informant. The informant thought that he would try his best to satisfy his son-in-law. In the meantime, the son-in-law came in his house on



the occasion of 'Chhath'. In the meantime, the informant received information through his brother-in-law Jitendra Kumar Singh, P.W.1 on 07.11.2011 at about 4.30 A.M. that his daughter was murdered by her husband Ved Prakash Singh along with his mother Shail Devi and father Shyam Sunder Singh in furtherance of common intention. He reached the Village-Pipraun at 8.00 A.M. then he found that his daughter was murdered and attempt was made to set fire. Further case is that in-laws disclosed that she died by burning while she was preparing tea, The informant found that mouth of the victim was closed by clothes and her hands were tied and her bangles were broken outside the room.

4. On the basis of written report filed by Shambhu Narain Singh, P.W.6, an endorsement was made for registering a case bearing Harlakhi P.S. Case No. 100 of 2011 on which formal F.I.R. was drawn, marked as Exhibit-2 for offence under Sections 304 (B)/34 of the Indian Penal Code and investigation proceeded.

5. During investigation the Inquest report was prepared marked as Exhibit-1. The I.O. inspected the P.O. which is house of Shyam Sunder Singh in the Village-Pipraun. The I.O. during investigation took the statement of the witnesses. Post mortem examination was conducted and post mortem report was obtained and after completing investigation, charge sheet was submitted against

Ved Prakash Singh, Shail Devi and Shyam Sunder Singh. Cognizance taken and case was committed to the Court of Sessions. After commitment of the case, charge was framed for offence under Sections 304(B)/34 of the Indian Penal Code.

6. During trial nine witnesses were examined. P.W. 1 Jitendra Kumar Singh who informed the informant about death of his daughter and he is also witness to the inquest report, P.W. 2 Rabindra Kumar Singh, is maternal uncle of the victim who was informed by P.W.3. P.W. 3 Ramadhar Kumar is friend of Rajnish Kumar Singh and stated that he went to the village- Pipraun along with Rajnish Kumar Singh and found the dead body of Chanchala Devi in the kitchen of the accused persons in burnt state, mouth of Chanchala was closed with cloth and her body was burnt. He has further stated that clothes which was put in the mouth of the deceased was burnt from the front side and smell of kerosene oil was surrounded. P.W. 4, Rajnish Kumar Singh is maternal uncle of the victim and has stated that he received the information from Shambhu Narain Singh, P.W.6 the informant then he went to the sasural of the victim and found the victim was dead, her mouth was tied and there was sign of burn and body of the victim was burnt. P.W. 5 Umesh Prasad Singh, brother of the informant. However, he has stated that victim was married with Ved Prakash Singh on 13.05.2011 and after marriage, 'Duragaman'

was performed and she went to her sasural and from there she used to inform her father that sasural people demanding motorcycle and freeze. However, his evidence is hit by hearsay regarding demand and subjecting cruelty and as per evidence the victim used to inform her father and not to this witness. However, he has denied the suggestion that he has stated before Daroga that Chanchala used to tell her father regarding demand of motorcycle and freeze by the accused. P.W. 6 is the informant. He has stated that marriage of the victim was solemnised on 13.05.2011 with Ved Prakash Singh. After marriage the Ved Prakash Singh, Shyam Sunder Singh and Shail Devi used to demand motorcycle and freeze. Chanchala refused to fulfill the demand then she was subjected to cruelty by various means. Further case is that his daughter used to disclose this fact on telephone. After sometime her husband came from Calcutta on the occasion of 'Chhath' visited the house and he had also telephone. He has further stated that his brother-in-law Jitendra Kumar Singh informed him that his daughter had been done to death by her sasural people and also disclosed the names of the accused persons who killed her which includes Ved Prakash Singh. Shyam Sunder Singh and Shail Devi. Thereafter, he went to village-Pipraun and found dead body was lying in the kitchen and her clothes were burnt and smell of kerosene oil was coming. He also found that bangles of Chanchala were broken.

From perusal of place of occurrence, he found that dead body was dragged to the kitchen from outside. He gave written statement before the police. P.W. 7 is doctor and he opined that cause of death was due to Asphyxia and shock caused by strangulation (smothering) and burn injury was post mortem burnt and his report marked as Exhibit-3. P.W. 8 is also member of the Medical Board and in his supervision, post mortem was done and on his identification his signature over post mortem report had been marked Exhibit-3/1. P.W. 9 is the I.O. had proved Exhibit-4 formal F.I.R.

7. However, defence has also adduced one witness D.W. 1 Yogendra Singh. He has stated that Shyam Sunder Singh accused is his elder brother and Ved Prakash Singh is his nephew. Ved Prakash Singh was married with Chanchala Devi. After marriage, Chanchala Devi came to her sasural remained in sasural and marriage was idle and there was no Tilak or dowry. Further stated that while Chanchala Devi was preparing tea in the morning then fire set in by which she was burnt and when Shail Devi, mother-in-law came to save her, she had also got burn injury.

8. The trial court taking into consideration both oral and documentary evidence convicted the appellants in view of the fact that prosecution has been able to prove unnatural death of the deceased at the house of the accused within six months of her marriage and doctor



has also proved that death was due to Asphyxia and shock caused by strangulation (smothering) and burn injury was post mortem burnt and hold that death was not caused to accident rather caused to homicidal and victim was done to death due to non-fulfillment of demand of motorcycle and freeze by which she was subjected to cruelty and there is perceptible nexus between the death of deceased and demand of dowry related to harassment and convicted the appellants for offence under Section 304(B)/34 of the Indian Penal Code as prosecution has been able to prove the charges beyond all reasonable doubt. However, accused persons had been acquitted from the offence under Section 302/34 of Indian Penal Code.

9. Learned counsel for the appellants challenged the order of conviction and sentence and contends that opinion regarding death is difficult to accept as conclusive and submitted that in case of **Asphyxia “the face is puffy and cyanosed, the tongue is often swollen, bruised, protruding and dark in colour. The cornua of the hyoid bone may be fractured”** and in case of strangulation **“face congested , livid and marked with petechiae and fracture of the larynx trachea and hyoid bone”** and doctor has given his opinion without giving medical reason. It is submitted that there is no mark of violence on the face so opinion of the doctor is not acceptable. He has referred to pages 240, 242, 243, 245 and 246 of

the book R. M. Jhala and medical jurisprudence 1963 page 166 that appearance due to Asphyxia the face is swollen and cyanosed marked with petechiae. It has further been contended that there is no valid and satisfactory evidence regarding demand and subjecting cruelty. It has further been contended that except evidence of P.W. 6 there is no real evidence regarding demand of dowry and subjecting cruelty and evidence regarding demand and subjecting cruelty made by informant P.W. 6 which is not acceptable for the reason that, though, it has been stated that the victim was informed regarding demand and subjecting cruelty on telephone, there is evidence that daughter of the informant used to talk on telephone, but informant in his evidence had not disclosed the mobile number of the daughter by which she used to call, though, informant has given his mobile number in which he used to receive call, but mobile from which calls were made has not been mentioned in his evidence. Further I.O. has also not investigated the case carefully and could not locate the mobile number from which informant received call from his daughter. It has further been contended that, though, there is evidence regarding demand and subjecting cruelty, but there is no specific evidence about implication of Shyam Sunder Singh and Shail Devi for their involvement in demand and subjecting cruelty or in participating the murder of the victim. It has further been contended that allegation regarding



demand and subjecting cruelty is general and omnibus and there is no specific act regarding demand and subjecting cruelty for non-fulfillment of demand. Hence case of appellants Shyam Sunder Singh and Shail Devi was convicted as such, prosecution has not been able to prove the charge of demand and subjecting cruelty against them which is one of the most important ingredient for offence under Section 304 (B) of Indian Penal code. It has further been contended that there is no evidence soon before the death the victim was subjecting to cruelty for non-fulfillment of demand in relation to demand of dowry and hence order of conviction and sentence is not sustained.

10. Learned counsel for the State however contends that there is specific evidence regarding the fact that marriage was solemnised within seven years particularly in the facts and circumstance of the case within six months of marriage the victim was done to death. The marriage of the victim was solemnised on 13.05.2011 and after 4-5 days of marriage demand was started and continued and ultimately the victim was done to death on 07.11.2011, and hence prosecution has been able to prove that marriage solemnised within seven years and there is allegation of demand and subjecting cruelty and victim died due to Asphyxia and even attempt was made to burn her dead body apparently shows that death was in suspicious circumstance. Further

the victim was done to death within six months of marriage and there is allegation of demand and subjecting cruelty and there is perceptible nexus between the death of the deceased and demand of dowry and death of the victim in the manner apparently soon before the death the victim was subjected to cruelty and prosecution has been able to prove the ingredient for offence under Section 304(B) of Penal Code to record the sentence.

11. I proceed to consider the evidence in the light of submission made by the parties. The prosecution case as alleged in the First Information Report by the informant Shambhu Narain Singh, P.W. 6 that marriage of his daughter Chanchala Devi was solemnised on 13.05.2011 with Ved Prakash Singh and after marriage there was demand of motorcycle and freeze etc. and various articles and the victim was pressurising and she was threatened of her life which she used to disclose to her father on telephone. Thereafter, when Ved Prakash Singh the son-in-law of the informant came to his house on the occasion of Chhath, thereafter, he learnt that victim had been done to death. When informant went to sasural of the victim he found that victim was murdered. There was also attempt to burn her dead body. Her mouth and hands were tied with clothes and found bangles were broken. It appeared that victim was dragged outside the kitchen. The defence of the accused that when the victim was preparing tea, she got

burn injury. However, P.W. 6 has supported the prosecution case regarding marriage and demand of motorcycle and freeze and subjecting to cruelty on her and he learnt from telephone about death of victim mouth tied and body burnt as well as her cloths and smell of kerosene oil.

12. However, learned counsel for the appellants has raised criticism of the evidence that, though, there is allegation on evidence that the informant received information from telephone but he has not mentioned telephone number from which he received telephone from his daughter by which his daughter disclosed about demand and subjecting cruelty.

13. However, attention has been drawn in paragraph 10 in cross-examination in which informant has stated that he did not remember the mobile number which was used by the victim for talking, though, he has stated his mobile number in which informant received calls from his daughter bearing SIM No. 9973612051. He has stated specifically stated that aforesaid SIM standing in his name. However, no further query has been made neither this part of evidence has been challenged nor any suggestion has been raised the statement is false nor any attempt was made disclosing the telephone number used by the accused persons nor any suggestion has been made that no telephone call was done on this telephone.

14. However, argument has been advanced that I.O. has not taken care to investigate the matter to see whether informant talk on his mobile with his daughter and no investigation has been done by the I.O. in this matter. The prosecution has also not taken care to this part of evidence that no talk was made on telephone by the daughter nor there was disclosed the mobile number nor they have asserted that talk was made from the mobile of the accused persons with the mobile of the informant. Hence, the evidence of the informant that he learnt about demand and subjecting cruelty from his daughter on telephone has not been challenged nor any material to disbelieve. It is true that except evidence of witnesses as well as evidence of P.W. 1 regarding demand of motorcycle and freeze and in cross-examination of P.W. 1 he has specifically stated that after marriage he went to sasural of Chanchala to meet and she disclosed him about demand by the accused persons. However, evidence of P.Ws. 2, 3 and 4 are to the effect that they learnt about death of the victim from the father of the victim and they went to the house of the victim and they saw the victim was burnt and they also found mouth of the victim was closed by clothes and clothes were also burnt. However, P.W. 5 has also stated that marriage of the victim was solemnised on 13.05.2011 with the appellant Ved Prakash Singh, but he has stated that the victim used to inform her father regarding demand of motorcycle and freeze.

However, his evidence is hit by hearsay and there is no evidence to the effect of this witness that victim ever disclosed him on telephone and his evidence is only the effect that victim used to inform her father.

15. However, going to the evidence of P.Ws, 1, 2, 3, 4, 5 and 6 and there is evidence that marriage of the victim solemnised on 13.05.2011 and from the evidence of P.W. 6 that there was demand and subjecting cruelty by accused persons and this witness learnt from telephone as his daughter used to disclose about demand and subjecting cruelty. Further, there is evidence he received information regarding death then the informant along with others went to sasural of the victim and they saw mouth of the victim was closed by clothes and victim was burnt. The dead body was dragged outside the kitchen and bangles were broken.

16. However, P.W. 7, Dr. Vimlesh Prakash who conducted the post mortem of Chanchala Devi at 8.30 A.M. and found the following post mortem injury:-

(a) Superficial to deep thermal burn was found in her body 98% burn was present. Only the area around the mouth and nostril was left due to cover in a cloth;

(b) In the burn injury- line of redness not presents. Base of the injuries was appeared pale and yellow and there was no any blister in her body;

(c) whole body was covered that black sheet and appearance of body was pugilistic attitude.

On dissection, face bloods froath in the nasal cavity was present, neck tracks was full of bloody froath and mucus membrane of the track was congested. No carbon soot present in the Tractrea. Heart, right side of heart was full of blood and left empty. All the Viscera like lungs, liver, spleen, kidney, brain and merrings were congested. Uterus not gravity, urinary blood empty, stomach containing digested mucaid fluid; small intestine containing gases and fical matters. Times since death between 4 hours to 24 hours and it has been opined that death was due to Asphyxia and shock caused by strangulation (smothering) burn injury was post mortem burn. In his cross-examination he has stated that thermal burn was caused by kerosene oil or other petroleum substances and thermal burn is severe than other burn. In thermal burn there will be flame. In flame burn blister may or may not be when the body exposed to great hit it gets cooked and become sorigide with limbs black. Arms fixed and fingers looked like claws that assumes attitude of deface caused by pulgistic posture. As there was no line of redness present in the body of the deceased base of the body was pale and yellow. There was no blister in her body. In deep burn and especially body is cooked then the line of redness disappeared. There was no mark of violence on the

upper part of neck of the deceased. In burn injury when a person inhale carbon in that case Asphyxia is caused. in case of Asphyxia caused by strangulation cynosis is present. In the case of Asphyxia caused by strangulation the eye may be opened or closed.

17. It has been contended that sign of strangulation has not been found and reliance has been placed on R. M. Jhala that no cyanosed was mentioned in the post mortem examination.

18. However, learned counsel for the appellants has challenged the finding of the doctor that cause of death by strangulation. However, if defence was not agreed with the post mortem examination then he was required to confront the doctor with the medical authority of Jhala by placing the same to explain. However, in the entire evidence no attention has been drawn regarding post mortem examination fluctuating with the passage of Modi Jhala or to challenge the medical report of post mortem examination. However, the evidence of the doctor has not been challenged nor there the doctor confronted with the authority and only suggestion has been given that doctor had prepared the collusive post mortem report on the instruction of the informant. Further evidence of the witnesses as well as evidence of the doctor that mouth of the victim was closed by clothes. The victim was aged about 21 years old and was found dead, though, manner of occurrence may be varied, but it had specifically

stated death caused by strangulation (smothering) and body was burnt as per evidence of the doctor and inquest report and death of the victim was found to be in suspicious circumstance.

19. The prosecution had been established ingredient for offence under Sections 304(B) of Indian Penal Code that marriage was solemnised within six months well within seven years. There was demand and subjecting cruelty and further death had caused in suspicious circumstance. However, there is four ingredients under Section 304(B) of Penal Code, one of the ingredient that soon before the death the victim was subjecting cruelty is concern, since marriage had solemnised on 13.05.2011 and there is allegation of demand within 4-5 days of marriage and victim disclosed to his father regarding demand and having been subjecting cruelty does not means with only physical but also mental cruelty and death of the victim was in suspicious circumstance. Further, regarding “soon before the death” Section 304 (B) of Indian Penal Code and Section 113 (B) of Evidence Act has not been given any time limit and stage of occurrence from the date and time or month. However, it has been submitted judicial pronouncement by this Court as well as parent court there is perceptible nexus between the death of the deceased and demand of dowry and subjecting cruelty related to her harassment.

20. In the facts and circumstances of the case, I find that soon



marriage, harassment within six months from 13.05.2011 to the date of death of the victim and there is allegation after fourth day of marriage, demand and subjecting cruelty was started and it has come victim disclosed about demand and subjecting cruelty within six months itself indicates that victim was subjecting to cruelty for non-fulfillment of demand soon before the death and she had done to death and nexus between death and demand and subjecting cruelty in relation to demand of dowry having been established by the prosecution.

21. However, there are three appellants, in Cr. Appeal (SJ) 89 of 2014 the appellant, Ved Prakash Singh is the husband whereas in Cr. Appeal (SJ) 54 of 2014 the appellants Shail Devi and Shyam Sunder Singh are mother-in-law and father-in-law, though, there is allegation of demand but evidence regarding demand and subjecting cruelty are general and omnibus and whatever evidence had come all the accused persons used to demand. However, no specific allegation had been imputed in the evidence leading specific demand and subjecting cruelty upon the father-in-law and mother-in-law of the victim. However, evidence regarding dowry death, the husband must be responsible. However, there is no specific evidence regarding demand and subjecting cruelty against other family member and it is proper to record conviction and hold guilty for offence under Section

304 (B) of Penal Code.

22. Regard being had to the fact, there is no specific allegation against father-in-law and mother-in-law Shail Devi and Shyam Sunder Singh in Cr. Appeal (SJ) 54 of 2014, hence I find it proper to give benefit of doubt to the appellants Shail Devi and Shyam Sunder Singh and order of conviction and sentence recorded by the trial court is hereby set aside. Since the accused-appellants are on bail, their bail bonds are hereby cancelled and their sureties shall remain discharged. Accordingly, Cr. Appeal (SJ) 54 of 2014 **is allowed**.

23. So far appellant in Cr. Appeal (SJ) 89 of 2014, Ved Prakash Singh, the prosecution has been able to prove the charges against him. Accordingly, this appeal is **dismissed** and conviction and sentence recorded by the trial court against Ved Prakash Singh is sustained.

(Gopal Prasad, J)

m.p.
N.A.F.R.

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