

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.783 of 2010

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SUNIL KUMAR SINGH @ SUNIL KUMAR, SON OF TANIK LAL SINGH,
RESIDENT OF VILLAGE-DHANPUR, P.S.-TARAPUR, DISTRICT-MUNGER.

.... APPELLANT/S

VERSUS

THE STATE OF BIHAR

.... RESPONDENT/S

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Appearance:

For the Appellant/s : Mr. Devendra Kumar Pandey, Adv.

For the State : Mr. Sujit Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. JUDGMENT

Date: 15-01-2015

Sole appellant Sunil Kumar Singh @ Sunil Kumar who has been found guilty for an offence punishable under Section 498A and directed to undergo R.I. for two years as well as also fined Rs.1000/- in default thereof, to undergo R.I. for fifteen days under Section 304(B) / 34 IPC and directed to undergo R.I. for ten years, under Section 201/34 IPC and directed to undergo R.I. for four years as well as also fined Rs.1000/- in default thereof, to undergo R.I. for thirty days with a further direction to run the sentences concurrently vide judgment of conviction dated 23-06-2010 and order of sentence dated 28-06-2010 by Additional Sessions Judge, FTC, Munger in Sessions Trial No.486 of 2009 has preferred instant appeal.

2. Sikandar Singh (PW-3) father of deceased Kanchan Kumari had filed written report before the concerned police station on 12-04-2008 alleging inter alia that his daughter



Kanchan Kumari was married with appellant Sunil Kumar Singh @ Sunil Kumar on 22-06-2007 and accordingly, gone to her *Sasural* where, during course of stay, her *Sasuralwala* began to torture for procurement of dowry. Even on 10-04-2008 his daughter was brought by appellant Sunil to his place who threatened that in case demand is not fulfilled within shortest span of time, Kanchan Kumari will be murdered. Today, he has been informed over which they rushed and found the house locked without having presence of any of the family member of *Sasuralwala* of Kanchan Kumari. Dead body of Kanchan Kumari was also not found.

3. On the basis of the aforesaid information, Tarapur P.S. Case No.44 of 2008 was registered followed with investigation, during course of which dead body was recovered from a bush, and after completing the same, charge sheet was submitted only against the appellant, as was under custody keeping investigation pending against others on account of their abscondance. Accordingly after taking cognizance of an offence case has been committed, trial commenced and concluded in a manner, subject matter of instant appeal.

4. The defence case as is evident from mode of cross-examination as well as from statement recorded under Section 313 of the Cr.P.C. is of complete denial of occurrence. Though defence mumbled but had suggested at one stage that on account of exposure of illicit relationship with her brother-in-

law, she (Kanchan) committed suicide by consuming poison, at the other end she committed suicide on account of non-refund of cash by her '*Naiharwala*' which they borrowed and on that very score two DWs have also been examined, whole to some witness, denial of marriage has been suggested.

5. While assailing the judgment of conviction and sentence recorded by the learned trial court, it has been submitted on behalf of appellant that prosecution case is suffering from so many infirmities. At an earlier stage, none had claimed to be an eye witness to occurrence however, during course of trial, the mother of deceased (PW-1) came forward and deposed that in her presence deceased was administered poison, which got erased by other PWs. It has further been pleaded that dead body was subsequently recovered which was not at all identifiable and on account thereof, claiming to be that of deceased. It has further been submitted that majority of witnesses, so examined on behalf of prosecution including that of sister of deceased who also been married in the same village, have not supported the case of the prosecution more so relating to demand as well as torture and cruelty at the hands of appellant including his other family members and consequent thereupon, the learned lower court committed error in convicting and sentencing the appellant. Hence, the judgment of conviction and sentence recorded by the learned trial court is unsustainable in the eye of law.



6. On the other hand, the learned Additional Public Prosecutor opposed the prayer and submitted that by consistent evidence, the prosecution succeeded in proving its case beyond all reasonable doubt. Marriage of deceased Kanchan Kumari with appellant on 22-06-2007 is found sufficiently proved and in likewise manner, torture having inflicted upon deceased for procurement of dowry and on account thereof, elimination of deceased just within a year while she was at her *Sasural*. The cause of death, as per viscera report happens to be on account of pesticide. Consequent thereupon, in terms of Section 113(B) of the Evidence Act the presumption now goes against the appellant subject to rebuttal which, appellant failed to discharge. Hence, the judgment of conviction and sentence recorded by the learned trial court did not attract interference.

7. From perusal of record, it is evident that altogether fifteen PWs have been examined on behalf of prosecution out of whom PW-1 is Manorama Devi, PW-2 is Munni Devi, PW-3 is Sikandar Singh, PW-4 is Rekha Devi, PW-5 is Subhash Mandal, PW-6 is Rubi Mandal, PW-7 is Dr. Anil Kumar Singh, PW-8 is Binod Singh, PW-9 is Kripali Singh, PW-10 is Anita Devi, PW-11 is Kalpana Devi, PW-12 is Sabuja Devi, PW-13 Pramila Devi, PW-14 is Vinay Shankar Prasad, PW-15 is Rishi Kumar Singh as well as had also exhibited Ext.1-Postmortem Report, Ext.-2 Inquest Report. So far the categories of witnesses are concerned, PW-1,

PW-2, PW-3, PW-4, PW-5, PW-6 are on material aspect while PW-7 is doctor, PW-8, PW-9, PW-11, PW-12, PW-13 have been tendered, PW-10 has been declared hostile while PW-14 is I.O. and PW-15 is inquest witness

8. From the evidence of PW-14, the Investigating Officer, the dead body was traced out during course of investigation and on account thereof, after preparation of inquest report, dead body was sent to postmortem and as per evidence of PW-7, Dr. Anil Kumar Singh postmortem was conducted during course of which as no external as well as internal injury was found, hence viscera was preserved and as per report, thimet has been found the cause of death. It is worth mention to note that the viscera report is dated 12.05.2010 which was received by the learned lower court on 14.05.2010, but the learned lower court vide order dated 22.05.2010 rejected it to be exhibited as it could not satisfy Section 74 of the Evidence Act though perceived Section 293 Cr.P.C. which gave a special privilege regarding acceptance of report submitted by Forensic Science Laboratory without being guided by Section 74 of the Evidence Act. Hence, the view taken up by the learned lower court happens to be inconsistent with the provision of law and is found perfidious.

9. On this score, the matter would have been remanded back for fresh appraisal however same is avoided in the background of defence taken up by the appellant more

particularly during course of statement under Section 313 Cr.P.C. whereunder appellant had acknowledged the deceased died on account of consumption of poison while being under medical surveillance as well as had also examined two DWs on this score.

10. Thus, from evidence of PW-14 as well as PW-15 the inquest report coupled with the evidence of doctor, it is apparent that defence had not cross-examined them on this very score, moreover statement of appellant along with evidence of DWs manifestly speaks regarding physical condition of deceased and on account thereof, the controversy raised on behalf of appellant proper identification of dead body is found properly repelled.

11. Furthermore, from the statement as well as examination of two DWs coupled with suggestion inflicted to prosecution witnesses consumption of poison as well as death on account of poison is also admitted, hence the death otherwise than normal circumstance is no more remained under controversy apart from being affirmed by the report of Forensic Science Laboratory.

12. Now coming to the material evidence PW-1, Manorama Devi, mother of deceased had deposed that Kanchan was married with Sunil Kumar Singh. At the time of marriage she was gifted according to her means. During stay at her *Sasural* she was subjected to torture for procurement of



demand of dowry and in the aforesaid background husband, father-in-law, mother-in-law, brother-in-law administered poison resulting her death. After coming to know about the same they have gone to **Sasural** of Kanchan and found the house locked. During cross-examination as she had stated that she had seen the act of administering poison by husband of deceased, hence much emphasis has been drawn on behalf of appellant that she happens to be liar. However, the defence it erases the aforesaid material by cross-examining her on other aspect as recorded under para-6 and 7 which also supports the narration of the written report. In para-8 there happens to be suggestion which she denied that deceased committed suicide on account of exposure of her illicit relationship with his brother-in-law, Subhash a co-villager of accused.

13. PW-2 had reiterated the same version during her examination-in-chief. During cross-examination she had categorically stated under para-7 that she had not seen the accused persons administering poison to the deceased. She had further stated that on coming to know about the event, they have gone. She had further stated that dead body was recovered. They have performs funeral, "*Shradh*". In para-8 she had stated that they have not made complain to Surpanch or Mukhiya regarding torture meted out to Kanchan over fulfilment of demand of dowry. In para-10 (wrongly mentioned as para-20) she had categorically stated that Kanchan used to

say regarding torture meted out to her over fulfilment of demand of dowry but could not take proper legal step against him to save the marriage. Then had denied the suggestion that she committed suicide on account of exposure of illicit relationship with her brother-in-law.

14. PW-3, Sikandar Singh, informant who had reiterated his earlier version. Then had stated that as the police swung into action, subsequently thereof came to know that dead body has been concealed in a bush duly wrapped which was traced out and then they identified the dead body to be of Kanchan Kumari. At that very time forth was coming out from her mouth. Dead body was sent to postmortem afterwards was handed over to them and accordingly they performed funeral, other rituals. During cross-examination at para-7 he has admitted that he had not complained before Mukhiya, *Surpanch* regarding torture meted out by the deceased for fulfilment of demand of dowry as they did not consider it prudent.

15. In para-12 he has admitted that he had not seen the accused persons administering poison. In para-14 he had stated that dead body of Kanchan was recovered in his presence. In para-18, he had denied the suggestion that Kanchan was not married with Sunil.

16. PW-4 is Rekha Devi, sister of deceased as well as wife of Subhash Mandal who also reiterated the allegation. During cross-examination she had, at para-6, para-7,



categorically stated regarding demand of dowry and torture inflicted by the accused persons over deceased which deceased use to say whenever she visited her Naihar. In para-9 he had further admitted that she had not seen the accused persons administering poison but had heard rumour. In para-10 she had further stated regarding recovery of dead body of deceased. In para-11 she had denied the suggestion that Kanchan Kumari developed illicit relationship with her husband and on account thereof, she had further denied the suggestion that accused has falsely been implicated.

17. PW-5 is Subhash Mandal, husband of PW-4. He had reiterated the prosecution version as well as had also disclosed regarding recovery of dead body. During cross-examination he had stated that his house lies in vicinity of deceased's house and on account thereof, he occasionally heard uttering coming out therefrom. In para-7 he had stated that he had not seen anybody administering poison. He had further stated that he had not made complain before any authority. He had heard demand 6-7 days prior to death of deceased Kanchan. In para-8 she had stated that he had not advised his father-in-law to file petition before appropriate authority over demand as well as torture. In para-9 he had stated that he had not seen anybody removing the dead body. However, had seen the dead body which was traced out by the police in a bush. In para-13 he had further stated that he is not remembering from whom he came

to know regarding occurrence. In para-18 he had denied the suggestion that Sunil was not married with Kanchan. He had also denied the suggestion that the allegation of demand as well as torture happens to be false and frivolous. He further denied the suggestion that Kanchan had fallen under illicit relationship with him.

18. PW-6 is another sister of deceased namely Rubi Devi, a resident of different village who had reiterated the version of the prosecution during her examination-in-chief. At para-4 of her cross-examination she had stated that she had deposed before the court for the first time. She had further stated that she met with deceased at her Maika however failed to disclose the date, year. In para-6 she had further stated that as she failed to give gift at the time of marriage of Kanchan, hence she was unable to disclose the items which were given by her Naiharwala at the time of marriage of Kanchan. In para-7 she had admitted that she was unable to disclose the date on which accused had demanded. At para-9 she had denied the suggestion that deceased was not married with Sunil.

19. PW-14 is the Investigating Officer who, after registration of the case, proceeded with the investigation, visited the place of occurrence which happens to be house of Sunil, (accused) detailed the topography of the P.O., traced out the dead body from a bush prepared inquest, the dead body for postmortem. Recorded statement of witnesses and after



completing the investigation submitted charge sheet. During cross-examination at para-12 cross-examination has been confined relating to supervision more particularly of supplementary case diary. He had further admitted under para-16 that he had not recorded statement of those persons whose house lies in the boundary of accused. In para-18, he had further admitted that he had not recorded statement of those persons whose presence happens to be near about the place from where dead body was recovered. He had further admitted under para-21 that he had not recorded statement of independent witness of Naihar village of deceased save and except her family members. He had further stated that in para-22 that he had not found phial from the house. Then his cross-examination has also been made towards the contents of supplementary case diary.

20. So from the evidence of PWs, it is apparent that they are consistent over factum of marriage, demand of dowry as well as torture meted out to deceased for procurement of dowry.

21. Furthermore, as found above there is no controversy over death of Kanchan on account of poison.

22. During cross-examination of witnesses, as is evident, fluctuating defence has been taken. At one occasion, it happens to be suicidal event while at other, denial of marital status. However, is found settled at rest while taking into

account the statement of accused inconsonance with the evidence of DW.

23. DW-1 is Guleshwar Singh who had stated that on 11-04-2008 at evening hour, while he was returning from market he met with Sunil, Sadhu of Sunil and Kanchan Devi. He also saw Sunil and Subhash carrying Kanchan to Tarapur for treatment over Thela. Kanchan herself disclosed that she had gone to her Naihar to bring back her money which she had entrusted to her father. As her father declined, she returned back and out of frustration, she consumed poison. On the same day evening Sunil returned back to arrange money leaving deceased along with Subhash and other members. Subsequently he came to know regarding her death. In para-4 he had admitted that marriage of deceased was consummated with Sunil about two years ago. At para-5 he had further admitted that at the time of marriage parents of Kanchan had given sumptuous gift. Then he denied the suggestion that at the instance of accused he had concealed the event of demand of dowry as well as torture.

24. DW-2 is Vinay Singh who had stated that on 12-04-2008 father-in-law, mother-in-law and Sadhu of Sunil came over police jeep. Father-in-law of Sunil shown the place behind the back of house of Ram Lakhan from where dead body of deceased was taken out. In para-3 he had further stated that Sunil had taken away Kanchan to hospital a day prior to 12-04-

2008. During cross-examination at para-5 he had stated that dead body was taken out at the instance of mother-in-law, father-in-law, Sarhu of Sunil. He had further stated that deceased died of poison.

25. After close, careful scrutiny of the material available on the record, it is apparent, that the status of deceased Kanchan as wife of appellant is found conclusively proved. In likewise manner, the death of deceased Kanchan within seven years of marriage. The cause of death on account of poison, otherwise than normal circumstances.

26. In likewise manner the prosecution also succeeded in proving that before her death, there was demand of dowry and for that she was regularly tortured.

27. Furthermore, by examining two DWs, the appellant has tried to explain suicidal event, more particularly oral dying declaration as well as bringing the deceased for medical treatment is found completely scission for want of even prima facie evidence, where she was taken away, where the deceased was admitted, examined, treated which, at least appellant was under obligation to explain.

28. For the purpose of attracting Section 304(B) IPC as well as torture or cruelty meted out soon before her death in terms of Section 113(B) of the Evidence Act has been considered in detail in case of *Davinder Singh v. State of Punjab* reported in **2014 Cr.L.J. 4065**.

9. Section 304B IPC relates to dowry death

and reads as follows:

“304B. Dowry death.— (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this subsection, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

10. For the purpose of the said Section, a presumption can be raised only on proof of the following essentials:

(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 her marriage

(c) The woman was subjected to cruelty or harassment by her husband or his relatives.

(d) Such cruelty or harassment was for, or in connection with, any demand for dowry and

(e) She was meted out with such cruelty or harassment was soon before her death. In this connection, we may refer this Court decision in *Kaliaperumal vs. State of Tamil Nadu*, AIR 2003 SC 3828.

11. In the case of *Hira Lal & Others Vs. State (Govt. of NCT), Delhi*, (2003) 8 SCC 80, this Court considered the expression “before death” used in the Section 304B IPC and Section 113-B of the Indian Evidence Act which reads as under:

“8. Section 304-B IPC which deals with dowry death, reads as follows:

“304-B. Dowry death .—(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of

her husband for, or in connection with, any demand for dowry, such death shall be called 'dowry death', and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this subsection, 'dowry' shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The provision has application when death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relatives of her husband for, or in connection with any demand for dowry.

In order to attract application of Section 304-B IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death. Section 113-B of the Evidence Act is also relevant for the case at hand. Both Section 304-B IPC and Section 113-B of the Evidence Act were inserted as noted earlier by Dowry Prohibition (Amendment) Act 43 of 1986 with a view to combat the increasing menace of dowry deaths. Section 113-B reads as follows:

"113-B. Presumption as to dowry death.—When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.—For the purposes of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

The necessity for insertion of the two provisions has been amply analyzed by the Law Commission of India in its 21st Report dated 10-8-1988 on “Dowry Deaths and Law Reform”. Keeping in view the impediment in the pre-existing law in securing evidence to prove dowry-related deaths, the legislature thought it wise to insert a provision relating to presumption of dowry death on proof of certain essentials. It is in this background that presumptive Section 113-B in the Evidence Act has been inserted. As per the definition of “dowry death” in Section 304-B IPC and the wording in the presumptive Section 113-B of the Evidence Act, one of the essential ingredients, amongst others, in both the provisions is that the woman concerned must have been “soon before her death” subjected to cruelty or harassment “for or in connection with the demand of dowry”. Presumption under Section 113-B is a presumption of law. On proof of the essentials mentioned therein, it becomes obligatory on the court to raise a presumption that the accused caused the dowry death. The presumption shall be raised only on proof of the following essentials:

(1) The question before the court must be whether the accused has committed the dowry death of the woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC.)

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

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

(4) Such cruelty or harassment was soon before her death.”

29. In the present case, as discussed above the cumulative effect of analytical approach of the respective evidence, it is apparent that prosecution has succeeded in proving its case and on account thereof, the appeal lacks merit

and is accordingly dismissed. In likewise manner the quantum of sentence happens to be. Appellant is under custody, hence is directed to serve out the remaining part of sentence.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated, the 15th day of Jan, 2015
Prakash Narayan

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