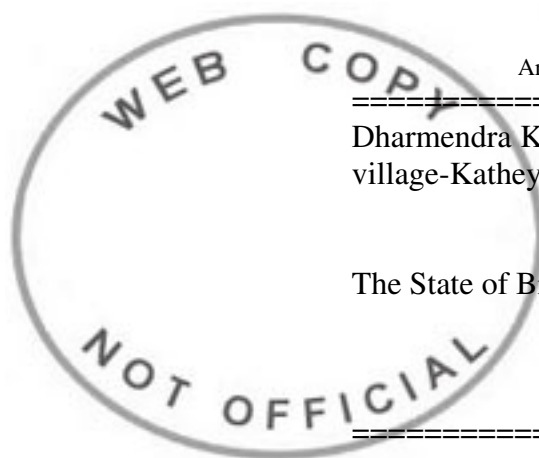




IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.686 of 2008

Arising Out of PS.Case No. -262 Year- 1994Thana –Chapra Muffasil District- SARAN

Dharmendra Kumar @ Dharmendra Kumar Singh son of Bichma Singh, resident of village-Katheyra, P.S.-Jalalpur, District-Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 744 of 2008

Arising Out of PS.Case No. -262 Year- 1994Thana –Chapra Muffasill District- SARAN

Raj Kishore Singh @ Faujdar Singh son of late Kailash Singh, resident of village-Katheyra, P.S.-Jalalpur, District-Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (DB) No. 634 of 2008

Arising Out of PS.Case No. -262 Year- 1994 Thana –Chapra Muffasil District- SARAN

- 1. Narendra Prasad Singh son of Brahma Singh
- 2. Kalawati Devi wife of Narendra Prasad Singh
- Both of village-Katheyra, P.S.- Jalalpur, District-Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

with

Criminal Appeal (SJ) No. 488 of 2008

Arising Out of PS.Case No. -262 Year- 1994 Thana –Chapra Muffasil District- SARAN

- 1. Brahma Singh son of late Ram Pukar Singh
- 2. Nag Narayan Singh son of late Kedar Singh
- Both resident of village-Katheyra, P.S.-Jalalpur, District-Saran.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

Appearance :

(In CR. APP (DB) No. 686 of 2008)

For the Appellant/s : Mr. Udit Narayan Singh, Advocate
Mr. Rakesh Kumar, Advocate
Mr. Satyeshwar Singh, Advocate

For the Respondent/s : Mr. Abhimanyu Sharma, APP

(In CR. APP (DB) No. 744 of 2008)

For the Appellant/s : Mr. R. J. Maharaj, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

(In CR. APP (DB) No. 634 of 2008)

For the Appellant/s : Mr. Yogesh Chandra Verma, Sr. Advocate
Ms. Priyanka Singh, Advocate

For the Respondent/s : Mr. S. N. Prasad, APP

(In CR. APP (SJ) No. 488 of 2008)

For the Appellant/s : Mr. Satyeshwar Prasad, Amicus Curiae

For the Respondent/s : Mr. Mukesh Kumar no. 2, APP

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

and

HONOURABLE MR. JUSTICE AMARESH KUMAR LAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH)

Date: 01-05-2015

All the four appeals arise out of the common judgment of conviction and sentence dated 4.6.2008 and 10.6.2008 passed by the learned Additional Sessions Judge, F.T.C. 3rd, Saran at Chapra in Sessions Trial no. 344 of 1995, whereby the appellants have been convicted under Sections 304B and 201 of the Indian Penal Code and Section 3 of the Dowry Prohibition Act and have been sentenced to three years imprisonment and a fine of Rs. 5,000/- each for the offence punishable under Section 201 of the Indian Penal Code and in default of payment of fine further imprisonment for six months. Separate sentences have been awarded to the appellants for the



offence punishable under Section 304 B of the Indian Penal Code. For instance, appellants Dharmendra Kumar Singh, Narendra Prasad Singh and Kalawati Devi have been sentenced to life imprisonment under Section 304B of the Indian Penal Code with a fine of Rs. 20,000/- each, and in default of which to undergo rigorous imprisonment for further period of two years. However, appellants Nagnarain Singh and Raj Kishore Singh have been sentenced to ten years rigorous imprisonment for the offence punishable under Section 304B of the Indian Penal Code with a fine of Rs.10,000/- each and in default of which to undergo one year imprisonment. Appellant Brahma Singh, however, has been sentenced to seven years rigorous imprisonment for the offence punishable under Section 304B of the Indian Penal Code with a fine of Rs. 5,000/- and in default of which to undergo imprisonment for six months. However, all the sentences have been directed to run concurrently. No separate sentence has been awarded under Section 3 of the Dowry Prohibition Act.

2. The prosecution case, in short, as made out in the fardbeyan of Ajit Kumar, son of Ram Nagina Singh, of village-Bisnupura, P.S. Chapra Muffasil, District-Saran recorded by Sub-Inspector, Parokhan Das, Officer-in-Charge, Jalalpur on 30.7.1994 at 9 hours at Jalalpur Police Station is that his sister Kiran Kumari was married to Dharmendra Kumar Singh (the sole appellant of Cr.



Appeal no. 686 of 2008), son of Brahma Singh of village-Katheyia on 29.4.1994. After marriage, his sister remained at sasural in Katheyia. The informant on a number of occasions travelled to his sister's sasural. She used to complain of torture meted by her in-laws for a motorcycle and an electric fan. She used to say that in case the demands were not fulfilled, they would kill her. He found that his sister was becoming weaker day by day. Many a times her in-laws, namely, mother-in-law, sister-in-law (Gotni), husband, brother-in-law and father-in-law tortured her for non-fulfilment of demand of motorcycle and electric fan. The informant tried to pacify them by saying that he would fulfil those demands, as soon as he would become capable of it.

3. On 29.7.1994, the informant once again visited his sister's sasural to see her. She insisted to take her back otherwise her in-laws would kill her for non-fulfilment of the demands. Even her husband Dharmendra Kumar, father-in-law and mother-in-law asked him to make available a motorcycle and a fan at the earliest. The informant again tried to pacify them that he would fulfil the demand as soon as he would have sufficient money for them. The informant requested the in-laws to allow his sister to go with him. The in-laws unceremoniously turned down the request with a threat that if the demands were not fulfilled, then only her dead body would go. After



staying for an hour, the informant went to the house of his Mausa at village-Basdila which was situated at a close distance from the village-Katheyra. At about five in the morning, the informant along with his cousin (P.W.4) came again to his sister's sasural. However, he was shocked to find the burnt dead body of his sister kept in the courtyard. All the in-laws including villagers Nagnarain Singh, Keshab Prasad Singh, Raj Kishore Singh @ Fauzdar Singh were present. The accused persons even turned down their request to have a glimpse of the dead body even once. Instead the accused persons held them back and in the meantime Fauzdar Singh rushed to bring a jeep to whisk away the dead body. Soon, Fauzdar Singh brought a jeep and took the dead body of Kiran Kumari. After a lot of requests, the informant and his cousin (P.W.4) were freed. Thereafter, the informant straightway proceeded to Jalalpur Police Station where he gave his fardbeyan.

4. The fardbeyan of the informant gave rise to Chapra Muffasil P. S. Case no. 262 of 1994 dated 30.7.1994. The police soon after recording of the fardbeyan inspected the place of occurrence, but did find neither Kiran Kumari nor her dead body. The police after investigation submitted chargesheet under Sections 302/34 and 201 of the Indian Penal Code. The charges were framed under Sections 304B/201 of the Indian Penal Code and Sections 3 / 4 of the Dowry

Prohibition Act, cognizance was taken and the case was committed to the court of Sessions.

5. The prosecution in support of its case examined five witnesses, out of which two witnesses P.W.1 and P.W.4 turned hostile. P.W.2 Ajit Kumar is the informant in this case, whereas P.W.3 Dhaneshwari Kuer is mother of the deceased. P.W.1 Mithilesh Singh had turned hostile and P.W.4 Ajay Singh, the maternal brother of the informant also turned hostile. P.W.5 Parokhan Das was the investigating officer of the case, who had also recorded the fardbeyan.

6. The case of the defence is complete denial of their involvement in the crime. Their case is that Kiran Kumari died an accidental death as earthen lamp fell from the table on the bed upon which the victim was lying and caught fire causing fatal burn injuries.

The trial court on consideration of the materials on record convicted the appellants under Sections 304B and 201 of the Indian Penal Code and Section 3 of the Dowry Prohibition Act and sentenced them as already stated in para-1 of this judgment. Being aggrieved, the accused-appellants have filed four appeals.

7. Criminal Appeal no. 686 of 2008 comprises of the sole appellant Dharmendra Kumar, who is husband of the deceased. Criminal Appeal no. 744 of 2008 is also filed by the sole appellant Raj Kishore Singh @ Faujdar Singh, a co-villager. Criminal Appeal

no. 634 of 2008 comprises Narendra Prasad Singh and Kalawati Devi, who are elder brother of the husband of the deceased and wife of the elder brother. Criminal Appeal no. 488 of 2008 has been filed by Brahma Singh, father of the husband of the deceased and Nag Narayan Singh, a co-villager.

8. Before we examine the grounds raised by the defence in support of the case, it would be relevant to notice the case of the prosecution. The prosecution in order to establish the charge against the appellants, has mainly relied upon P.W.2 (informant), P.W.3 (mother of the victim) and P.W.5 (investigating officer of the case). P.W1 and P.W.4 have already been declared hostile. P.W.2 in his evidence has supported the prosecution case as reiterated in the evidence. He stated that his sister was married on 29.4.1994 to Dharmendra Kumar, son of Brahma Singh of village-Katheyia. After marriage he regularly visited his sister's sasural. On all these occasions, his sister complained of torture for non-fulfilment of demand of motorcycle and fan and looming threat to her life. The informant had apprised his mother about the plight of his sister. The informant reiterated in his evidence that on 29.7.1994 he went to his sister's sasural where she asked him to take her back, otherwise the accused persons would kill her for non-fulfilment of demand of dowry. The accused persons, namely, husband, father-in-law and



mother-in-law also repeated the demand of motorcycle and fan. The informant tried to pacify them and made a requested to allow his sister to go with him, which they rudely refused with a threat to fulfil the demands. On the next morning, when the informant again went to his sister's sasural with his maternal cousin, he found her dead in the courtyard being burnt to death. Thereafter, he lodged the F.I.R.

9. We find that P.W.2 has fully supported the prosecution version as narrated in the F.I.R.

10. P.W.3 in her evidence before the court has supported the case. However, in her cross-examination she stated that she did not have any first hand informations about the demand of dowry and torture, but could come to learn about it from her son, namely, Ajit Kumar (P.W.2). The evidence of P.W.3 is based entirely on information given by her son.

11. The prosecution also examined Parokhan Das, investigating officer of the case, who has proved the fardbeyan (Ext.2) and also his signature and the fardbeyan written in his hand writing. In his evidence, he stated that after recording the fardbeyan, he forwarded the same to the police station for registration of a case. Soon thereafter, he inspected the place of occurrence. However, the burnt bedsheet and the bed upon which the deceased was lying were not produced before him by the accused side. The investigating

officer inspite of hectic search was not able to find the girl nor the dead body was shown to him.

12. Mr. Udit Narayan Singh has appeared for the appellant, Dharmendra Kumar, in Cr. Appeal no. 686 of 2008. Mr. Yogesh Chandra Verma, has appeared on behalf of appellants Narendra Prasad Singh and Kalawati Devi in Cr. Appeal no. 634 of 2008. Mr. R. J. Maharaj has appeared for the appellant Raj Kishore Singh @ Faujdar Singh in Cr. Appeal no. 744 of 2008, whereas Mr. Satyeshwar Prasad has appeared as amicus curiae in Cr. Appeal no. 488 of 2008.

13. Mr. Udit Narayan Singh, learned counsel appearing for Dharmendra Kumar, submitted that the prosecution has failed to prove the ingredients of Section 304B of the Indian Penal Code and also has not been able to establish that any torture was meted to the victim. There is no eye witness to the occurrence rather the deceased suffered an accidental death on account of fall of earthen lamp on her 'saree' which caught fire. He also placed reliance upon P.Ws. 1 and 4 who were declared hostile. He submits that evidence of hostile witnesses cannot be discarded. In support of his submission he has relied upon cases of *Paramjeet Singh @ Pamma v. State of Uttrakhand* reported in (2010) 10 SCC 439 and *Manohar Lal v. State of Haryana* reported in (2014) 9 SCC 645.



14. Mr. Yogesh Chandra Verma, learned senior counsel appearing on behalf of the brother-in-law and sister-in-law of the deceased in Cr. Appeal no. 634 of 2008, submits that their case is different to that of Dharmendra Kumar as they had no connection with the affairs of the deceased and her husband. He submits that they live separately and have separate electric connections. In support of his submissions, he has placed reliance on the evidence of the witnesses as well as the documentary evidence produced on behalf of the defence. He further submits that the allegations are general, vague and lack clarity. In support of his submission learned counsel has relied upon the decision in the case of ***Pawan Kumar and others v. State of Haryana*** reported in ***AIR 1998 Supreme Court 958***.

15. Mr. Ram Janam Maharaj, learned counsel appearing on behalf of Raj Kishore Singh, submits that there is no allegation of demand of dowry against the appellant. Even the informant in his fardbeyan stated that it is only the mother-in-law, father-in-law and the husband, who made demand for motorcycle and fan from Kiran Kumari. He submits that only allegation against him is of whisking away the dead body of the deceased on a jeep.

16. Mr. Satyeshwar Prasad appearing as amicus curiae submits that appellant Nagnarayan Singh is a co-villager and there is no allegation of demand of dowry against him. So far as appellant

Brahma Singh, father of Dharmendra Kumar Singh is concerned, learned counsel has learnt from his senior counsel Mr. Udit Narayan Singh that he is dead. It is relevant to state that the trial court had recorded the age of the appellant as 86 years in 2007/2008 itself.

17. Mr. S. N. Prasad, learned APP for the State submits that the prosecution has been able to establish the charge under Sections 304B and 201 of the Indian Penal Code and 3 of the Dowry Prohibition Act against the appellants. He submits that marriage took place on 29.4.1994 and death took place within three months of marriage. He submits that it has come in the F.I.R. as well as in the evidence of P.W.2, duly corroborated by P.W.3, that just after 8 days of marriage, the accused persons made the demand for motorcycle and fan which was repeated time and again. P.W.2 used to apprise his mother (P.W.3) about his sister's complaints. He submits that such demand of dowry and threatening were given a day before his murder on 29.7.1994. Learned counsel submits that next day admittedly the deceased died of burn injuries. He submits that the death was not accidental rather it was unnatural which had occurred within four months of her marriage in suspicious circumstances. He submits that the dead body of the deceased was taken to an unknown place just within five hours of her death in order to wipe off evidence.

18. We have heard learned counsel for the parties.



19. The following facts emerge from the pleadings of the parties. The informant's sister Kiran Kumari was married to Dharmendra Kumar, the sole appellant of Criminal Appeal No.686 of 2008 on 29.4.1994. She died within three months of her marriage in the night of 29/30.7.1994. Within 5 hours of her death, the dead body was whisked away and was not even shown to the police who arrived at the place of occurrence around 10 A.M. on 30.7.1994. The case of the prosecution is that the deceased was done to death for non-fulfillment of dowry within 3-4 months and she was tortured immediately before her death.

20. It is further case of the prosecution that the death occurred not under normal circumstances as the dead body was not shown to the police, who came within 6-7 hours of her death. Furthermore, the defence has not been able to bring any material on record even remotely to suggest that the dead body was cremated, much less with any rites and rituals. On the contrary, there is a direct evidence of P.W. 2 that the deceased complained to him of torture and demand of dowry as well as threat to her life in default of non-fulfillment of the same.

21. The issue is whether the prosecution has succeeded in proving the charge under section 304B of the Indian Penal Code against the accused persons. In order to establish charge under section



304B, following factual position has to be satisfied (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death.

22. If the accused rebuts the allegations, the onus is on him to disprove the same. Reliance can be placed on a judgment in the case of S.M. Multtani vs. State of Karnataka, reported in 2001 SC 921 and State of A.P. vs Raj Gopal Asawa, reported in 2004 SC 1933.

23. In light of the provisions of section 304B of the Indian Penal Code and the evidence of the witnesses noticed in the foregoing paragraphs, we will now examine the individual cases.

24. It is relevant to state that out of 6 appellants, Brahma Singh, appellant in Criminal Appeal No.488 of 2008 and father-in-law of the victim, who was 86 years of age as recorded by the Trial Court in the year 2007-08, has died and as such the appeal against him abates. This leaves five appellants, namely (i) Dharmendra Kumar, appellant in Criminal Appeal No.686 of 2008, the husband of the

deceased, (ii) Narendra Prasad Singh, (iii) Kalawati Devi, both appellants in Criminal Appeal No. 634 of 2008, who were brother-in-law and sister-in-law of the deceased and (iv) Raj Kishore Singh @ Faujdar Singh, the sole appellant of Criminal Appeal No.744 of 2008 and (v) Nag Narayan Singh, appellant in Criminal Appeal No.488 of 2008, who are co-villagers of the in-laws of the victim.

25. So far Raj Kishore Singh @ Faujdar Singh and Nagnarayan Singh are concerned, they are admittedly not the family members of the husband of the deceased, rather they are co-villagers. There is no concrete evidence against them of making any demand of dowry. As such they would not fall within the mischief of Section 304B of the Indian Penal Code and are accordingly acquitted of the charge.

26. We will now take up the case of Narendra Prasad Singh and Kalawati Devi, who are appellants in Criminal Appeal No.634 of 2008. Narendra Prasad Singh is elder brother of appellant Dharmendra Kumar who was husband of the deceased. Kalawati Devi is wife of Narendra Prasad Singh. The defence has brought materials on record to show that they lived separately and do not have concern with the family affairs of appellant Dharmendra Kumar. P.W. 2 has also nowhere in his evidence stated that these two persons even made any demand of dowry to him. In view of documentary as well as oral

evidence, we hold that the prosecution has not been able to set out a case under section 304B of the Indian Penal Code against these two appellants, namely, Narendra Prasad Singh and Kalawati Devi and as such they are acquitted of the charge.

27. Now we would consider the case of appellant Dharmendra Kumar, the husband of the deceased. The case of the defence is that the prosecution has failed to establish a case under section 304B of the Indian Penal Code against him. It is relevant to reiterate that P.W. 2 is the only direct witness on the point of demand of dowry and torture meted to her deceased sister. The mother of the deceased P.W. 3 merely corroborates the evidence of P.W. 2. The prosecution has heavily relied on his evidence to establish its case, as such the evidences of P.W.2 would require closer scrutiny.

28. P.W.2 stated in his evidence that just after eight days of her marriage, his sister complained of torture and threats of the accused persons if demand of motorcycle and fan was not fulfilled. Further more, P.W.2 visited her sister's place on more than 4 to 5 occasions and every time his sister complained of torture and demand of dowry. Even one day before her death, i.e., on 29.7.1994, the demand for motorcycle and fan was made and threatening was also meted out in case the demand was not fulfilled. There are no inconsistency or material contradictions in his evidence to doubt his

testimony.

29. Counsel for the defence now argued that Section 304B of the Indian Penal Code would not be attracted in the facts and circumstances of the case as the alleged demand was a new demand and was not a demand made in connection with the marriage and as such it would not constitute dowry demand which is essential ingredients of Section 304B. It is true that Section 304B of the Indian Penal Code does not define dowry. Nonetheless, the section states that the term 'dowry' would have the same meaning as defined in Section 2 of the Dowry Prohibition Act. As per section 2 of Dowry Prohibition Act, dowry means any property or valuable security given or agreed to be given either directly or indirectly by one party to the other party in connection with the marriage and it would also be applicable in case of Muslim Personal law. In the instant case, we find that the accused made demand of motorcycle and fan just after eight days of marriage which cannot be said to be a new demand but it would be deemed to be a demand in connection with the marriage as it was made within 8 days of marriage and it was specific by continuation and necessary implication, it follows that such demand was in connection with the marriage, which was repeated time and again at regular intervals. Thus, the contention of the defence that the alleged demand would not constitute dowry is misconceived and rejected.



30. We find that the prosecution evidence particularly of P.W. 2 and the investigating officer (P.W.5) satisfies all necessary conditions which constitute Section 304B of the Indian Penal Code and the prosecution has been able to establish the charge under Section 304B of the Indian Penal Code against appellant Dharmendra Kumar.

31. Situated thus and for the reasons mentioned in the foregoing paragraphs, we find no reason to interfere with the judgment of conviction and sentence passed against appellant Dharmendra Kumar.

32. So far as the charge under Section 201 of the Indian Penal Code is concerned, we find that P.W.2 in his statement stated that Raj Kishore Singh @ Faujdar Singh had carried the dead body of the deceased in order to wipe off the evidence. The defence has not been able to rebut evidence which we find free of doubts as the dead body was not shown to the investigating officer (P.W.5) though he reached the place of occurrence admittedly within eight hours of the death which took place soon after midnight of 29.7.1994. As such, we find sufficient evidence to convict Raj Kishore Singh under Section 201 of the Indian Penal Code. Now the issue is as to what punishment be awarded.

33. The case is of the year 1994 and the accused had undergone rigours of prosecution for more than 20 years. Thus, in our

view, it would subserve the ends of justice if the sentence is reduced to period already undergone.

34. In the result, Criminal Appeal no. 686 of 2008 so far as appellant Dharmendra Kumar @ Dharmendra Kumar Singh is concerned is dismissed. Criminal Appeal no. 488 of 2008 partly abates so far as Brahma Singh is concerned and partly allowed so far as appellant Nag Narayan Singh is concerned. Criminal Appeal no. 634 of 2008 is allowed and Cr. Appeal No. 744 of 2008 is also allowed, to the extent indicated in the judgment.

35. The appellants, other than Dharmendra Kumar are discharged from their bail bonds and would remain at large, if not wanted in any other case.

36. Learned counsel appearing amicus curiae is entitled to get his prescribed fees from the Patna High Court Legal Aid Committee. Let a copy of the first page, second page and last page of the judgment be given to the learned amicus curiae.

(Samarendra Pratap Singh, J)

(Amaresh Kumar Lal, J)

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