

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.383 of 2015

Arising out of P.S.Case No. -26 Year- 2004 Thana -KASMA District- AURANGABAD

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1. Rayindar Prasad
2. Ramnandan Prasad, Both S/o of late Ganauri Mahto, Resident of Village-
Tilaiya, P.S - Banke Bazar, Dist- Gaya(Bihar).

The State of Bihar

Versus

.... Appellant/s

.... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ajay Thakur Mr. Manish Kumar No.2
For the State	:	Mr. Ashwini Kumar Sinha
For the Informant	:	Mr. Birendra Prasad Sinha, Sr. Adv. Mr. Kumar Ganesh Gunjan.

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CORAM: HONOURABLE JUSTICE SMT. ANJANA PRAKASH

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL JUDGMENT

(Per: HONOURABLE JUSTICE SMT. ANJANA PRAKASH)

Date: 29-02-2016

Heard learned counsel for the Appellants and
learned counsel appearing on behalf of the State as well as the
learned counsel for the Informant.

2. The Appellants have been convicted under
Section 304B/34 and 201 of the Indian Penal Code and sentenced
to Rigorous Imprisonment for life by a Judgment dated
09.04.2015/15.04.2015 by the 3rd Additional Sessions Judge,
Aurangabad in Sessions Trial No. 12 of 2006/188 of 2014.

3. The case of the prosecution, according to the



Informant, Umesh Singh Mehta, P.W.6, who is father of the deceased, by way of a complaint given to the Chief Judicial Magistrate, Aurangabad on 16.04.2004, is that his daughter Sobha Devi was married to the Appellant Ravindar Prasad in the year 1999 on which occasion a large number of gifts were given to the Bribe Groom Party. Her life was happy till the year 2001, but it started deteriorating when the accused persons wanted money for building their ancestral house. The Informant had also retired from service on 21.05.2001 and the accused persons had wanted part of the retirement benefits and hence, started torturing his daughter Sobha Devi. His daughter Shobha Devi came to his house in the year 2004 for a month on which occasion she told her mother, Daulti Devi (P.W.3) and elder brother, Sanjay Singh Mehta (P.W. 4) that her husband had completely changed. He always abused and assaulted her for small things. The reason was only that the demand of Rs. 1,50,000/-, which had been refused. On 10.02.2004, the brother-in-law of the deceased (Appellant No.2) came with the uncle-in-law, Bhola Mahto and stayed with them over night and insisted that Shobha Devi be sent with them. However, he refused and said that he would take her to the service place. At this, the accused once again reiterated their demands i.e. Rs. 1,50,000/- and said that this message had been sent by the husband. On the next

day i.e. 11.02.2004, both the accused persons came and left saying that Shobha Devi should be taken to the house of her husband. So, he reached there on 16.02.2004 and stayed overnight at the house of the Appellant no.1, Ravindar Prasad, on which occasion the husband also demanded money for construction of the house.

4. On 06.04.2004, he suddenly learnt from somebody that his daughter had been killed and hanged. So, he left along with his son, Sanjay Singh Mehta (P.W.4) and Sukhdev Prasad Verma (P.W.2). When he demanded an explanation from the Appellant No.1, Ravindar Prasad, he started to give confusing answer and it is then he was convinced that his daughter has been killed and hanged.

5. He then contacted the local Police Station and the Hospital and received the photocopy of the Inquest Report and the photocopy from which it was detected that his daughter had been killed and hanged. The reason for the occurrence was non-fulfillment of demand of Rs. 1,50,000/-.

6. During trial, the prosecution examined 11 witnesses. Since the conviction is one under Section 304B of the Indian Penal Code, this Court would have to determine the following relevant ingredients :

- (i) Whether the marriage had taken place

within 7 years of the occurrence ?

(ii) Whether death occurred under un-natural circumstances ?

(iii) Whether demands in consideration of marriage were made by the accused persons soon before the death ?

7. In the present case, we find that the witnesses have stated that the marriage had taken place in the year 1999, whereas the un-natural death had taken place in the year 2004, which means that the first ingredient of Section 304B is fulfilled.

8. The second ingredient that the death must have occurred under un-natural circumstances is also fulfilled since there is no dispute on this.

9. As for the third ingredient, we shall in short discuss the evidence of witnesses so as to determine as to whether the prosecution has succeeded in proving this circumstance.

10. P.W.1, Parmanand Prasad, is somewhat related to the informant, who stated that when the deceased came after marriage, she had met him and stated that the demands were being made by the in-laws and she was being assaulted and abused by them. He does not say as to when exactly he had met her or when the demand of dowry was being made by the Appellants.

11. P.W.2, Sukhdev Prasad Verma, who is the maternal-uncle of the deceased, stated that whenever the deceased used to come to her maternal house. He met her and learnt from her that till 2001, the relationship was all right but it started deteriorating thereafter. He also stated that the entire family of the Appellants used to demand money from the retirement benefits of the Informant and used to abuse her. The in-laws had been given Rs. 85,000/- over and above the dowry.

12. On 10th February, 2004, the Appellant no.2, Ramnandan Prasad and Bhola Mahto came to his house and stated that he should tell his brother-in-law, i.e. the Informant, that he should pay a sum of Rs. 1,50,000/- or else, the consequences would be bad. At that point in time, the deceased was in her maternal home. He then went to his brother-in-law and told him about the conversation. His brother-in-law then took Shobha Devi to the place of service of the Appellant no.1, Ravindar Prasad. On 06.04.2004, he learnt that Shobha Devi had been murdered. Then they went to Rajasthan. He alleged that on account of non-fulfillment of demand of dowry, the deceased had been murdered.

We find from his evidence that he had stated that Appellant No.2, Ramnandan Prasad and one Bhola Mahto had come to his house and demanded Rs. 1,50,000/-, which message

was to be conveyed to the Informant. However, the Informant had stated in the written statement that the Appellant No.2 and Bhola Mahto had come to his house on 10.02.2014 and demanded Rs. 1,50,000/- from him.

13. P.W. 3, Daulti Devi, is the sister of the deceased, who stated that the deceased had come to her maternal house after marriage and stated that her in-laws were demanding money even though Rs. 85,000/- had been given after marriage. After her father retired, Appellant No. 2, Ramnandan Prasad, had come and demanded Rs. 1,50,000/- and threatened that if the demand was not fulfilled, they would loose the daughter. She then stated that her father had taken Shobha Devi to Rajasthan and left her there.

From her evidence, we find that she had not given any date as to when demands were made and how she learnt about such demands. She merely gives a vague statement. We also find that she names only Appellant No.2, Ramnandan Prasad of having come to her house and demanded Rs. 1,50,000/-. She omits the name of Bhola Mahto, whose name was mentioned in the written statement. She, however, does not state as to when this conversation had taken place.

14. P.W. 4, Sanjay Singh Mehta, who happens to be brother of the deceased, stated that in January, 2004, his sister had

come to his house and on 10th February, 2004, Bhola Mahto and Appellant no.2, Ramnandan Prasad, had come to take her back and demanded money. They stated that they wanted Rs. 1,50,000/- for construction of the house but his father refused such demands, so they threatened him of dire consequences.

We, thus, find that he had taken the name of both the Appellant no.2, Ramnandan Prasad as well as Bhola Mahto and the demand was for construction of the house.

15. P.W. 5, Anumati Mehta, mother of the deceased, stated that when her daughter came to the maternal home, she told her that the Appellant no.1, Ravindar Prasad, used to demand money for construction of the house and also used to torture her. He was also allegedly given Rs. 85,000/- , but he was not satisfied.

We, thus, find that she is completely silent in regard to the details as to when the demand of dowry for construction of the house was made or when the Appellant no.1, Ravindar Prasad had been given Rs. 85,000/-.

She also omitted the names of the Appellant no.1 Ravindar Prasad and Bhola Mahto, having come to their house in February and demanded money and threatened them of dire consequences.

16. P.W.6, Umesh Singh Mehta, the Informant, had



stated that his daughter had disclosed to him that before his retirement on 31.05.2001, the Appellant no.1, Ravindar Prasad, had used to ask her for money for construction of the house. He had given him Rs. 85,000/- for the same before his retirement and thereafter, in September, 2001, once again demands were made for money for construction of the house, but he refused. In the meanwhile, in January, 2004, his daughter had come to the maternal home and told her that the Appellant No.1, Ravindar Prasad, used to torture her for money.

17. On 10.02.2004, Bhola Mahto and Appellant no.2, Ramnandan Prasad, had come to his house and demanded Rs. 1,50,000/- for completion of the house and had threatened him for dire consequences if the money was not paid by 31.03.2004. It was, thereafter, on 16.02.2011 that the deceased was taken to her house at Rajasthan and soon after, she was murdered.

We find from his evidence that he stated about giving money to the Appellant no.1, Ravindar Prasad, sometime in the year 2001. He also stated that the Appellant No.2, Ramnandan Prasad and Bhola Mahto had come to his house and demanded money and gave him the ultimate date i.e. 31.03.2004. We find that he gives his evidence in conformity with the written statement.



18. P.W.7, Brajesh Singh Mehta, is also brother of the deceased, who stated that the accused persons used to demand money for construction of the house and Appellant no.2, Ramnandan Prasad and his uncle, Bhola Mahto, had come to the house when his sister was also in the maternal home and demanded Rs. 1,50,000/-. He stated that accused persons did not take back his sister and later his father had to take to her home. His sister told him that the accused person used to pass nasty remarks and also used to mentally and physically torture her for non-fulfillment of demand of money.

We find from the evidence of this witness that he has not given any dates as and when the demands were made upon the family of the deceased.

19. We, thus, find that the important ingredients as to whether demands were made in consideration of marriage soon before the death have not been satisfied. Either the witnesses had not stated as to when the demands were being made or witnesses contradict each other as to who exactly was making the demand. P.W. 6, Umesh Singh Mehta, Informant gives a statement that the Appellant no.2, Ramnandan Prasad, had come to his house and made a demand whereas his brother-in-law, P.W.2 Sukhdev Prasad Verma, stated that they had come to his house and sent a message

to the informant in regard to the demand. We also find that if at all the demands were being made, it was for completion of the construction of the house, which is not in consideration of the marriage.

20. We also find from the evidence of P.W. 9, Birendra Kumar Yadav, who was posted at Gobari Police Station, that he had stated in his cross-examination of having received the documents of U.D. Case No. 08 of 2004, from which it appears that the S.D.M. had made inquiry in regard to un-natural death of the deceased. He had also recorded the statements of witnesses, who had disclosed that the deceased had committed suicide. The cause of death was admittedly asphyxia due to hanging as is apparent from his evidence and Postmortem Report proved by P.W.11, Ram Pukar Paswan, which was marked as Exhibit-X for identification. What appears from the evidence of P.W.3, Daulti Devi, who is sister of the deceased, is that the Informant P.W.6 and brother P.W.4, Sanjay Singh Mehta and uncle P.W.2, Sukhdev Prasad Verma, had gone at Barmer, Rajasthan, and participated in the last rites of the deceased and returned from there after six days. Two months later on 17.04.2004 a Written Statement was given to the Chief Judicial Magistrate in regard to the occurrence, which had taken place on 06.02.2014. This delay has not been explained

by the Informant. In such circumstances, it appears that it is only after due deliberation that a case of demand of dowry has been foisted upon the Appellants.

21. The counsel for the Informant has stated that the circumstance that the accused persons had not given any information to the parents of the deceased shows that they were guilty and also when the Informant went to Barmer, Rajasthan he was confined.

22. On the contrary, we find that there is a consistent story that information was given to the family of the deceased by the Appellant no.1, Ravindar Prasad and the Informant, his brother-in-law, Sukhdev Prasad Verma (P.W.2) and son, P.W.4, Sanjay Singh Mehta had participated in the last rites.

23. If at all the Informant was confined at Barmer, Rajasthan, the natural reaction would have been to immediately give an information about this to some authority but the same was never done and instead the Informant who was an Ex-Air Force employee chose to keep quite for two months and even then did not say about his confinement by the accused persons in the *fardbeyan*.

24. Under these circumstances, the two circumstances cannot be used against the present Appellants.

25. In the result, the appeal is allowed. The Judgment of conviction and Order of sentence dated 09.04.2015/15.04.2015 passed by the 3rd Additional Sessions Judge, Aurangabad in connection with Sessions Trial No. 12 of 2006/188 of 2014 arising out of Kasma P.S. Case No. 26 of 2004 is hereby set aside. The above named Appellants, who are in jail custody, are directed to be released forthwith, if not wanted in any other case.

(Anjana Prakash, J.)

(Rajendra Kumar Mishra, J.)

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