

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.353 of 2013

Arising Out of PS.Case No. -19 Year- 2010 Thana -BHAGWANPUR District- BHABHUA
(KAIMUR)

=====

1. Rajesh Pal S/O Shiv Pal Resident Of Village- Panapur, P.S.- Belaon, District-
Kaimur (Bhabua)

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 295 of 2013

Arising Out of PS.Case No. -19 Year- 2010 Thana -BHAGWANPUR District- BHABHUA
(KAIMUR)

=====

1. Shiv Pal S/O Late Bhikhari Pal Resident Of Village- Panapur, P.S- Belaon,
District- Kaimur (Bhabua)

.... Appellant/s

Versus

1. The State Of Bihar

.... Respondent/s

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Appearance :

For the Appellants

In both the cases

: Mr.Abhishek Kumar

**For the Opp.Party in
Cr.Appeal No. 353/13**

: Mr.Abhay Kumar

For Opp.Party in

Cr.Appeal No. 295/13.

: Mr.Binod Bihari Singh,A.P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-05-2017

Both the appeals are directed against the judgment dated

6th March, 2013 and order dated 13.03.2013 passed by Sri Harendra

Nath, Adhoc Additional Sessions Judge-V, Kaimur at Bhabua in

Sessions Trial No. 307 of 2010/ 64 of 2010 arising out of Bhagwanpur



(Belaon) P.S.Case No. 19 of 2010, by which he has convicted both the appellants under Sections 304B as well as 201/34 of the Indian Penal Code and also convicted them under Section 3 & 4 of Dowry Prohibition Act. By the aforesaid judgment, the learned Additional Sessions Judge has acquitted the appellants under Section 120B/34 of the Indian Penal Code. The learned Additional Sessions Judge has sentenced them to rigorous imprisonment for ten years under Section 304B of the Indian Penal Code and rigorous imprisonment for one year under Section 201 of the Indian Penal Code and fine of Rs. 2000/- and also under Section 3 & 4 of Dowry Prohibition Act and sentenced them to rigorous imprisonment for six months. He has further directed that all the sentences shall run concurrently and in default of payment of fine, further imprisonment of two months.

The prosecution case, in brief, is that Lal Bihari Pal, P.W.6, has lodged a written report before the Officer Incharge, Belaon Police Station, stating, inter alia, therein that his daughter, Sushma Devi, was married in 2007 with the appellant- Rajesh Pal son of appellant Shiv Pal and in the year 2009 second marriage was solemnized. Further case of the prosecution is that after the second marriage when she went to her Sasural, the appellants, the mother-in-law and sister-in-law started demanding motorcycle and Rs. 20,000/-. Due to non fulfilment of demand of dowry, they started torturing her



and after keeping all articles she was ousted from her house. Thereafter, a case was lodged against them. The said case was compromised and she returned back to her Sasural. Further case of the prosecution is that on 17.02.2010 in the night he received a call in his mobile from her Sasural, informing him that the condition of his daughter is critical and on this, he along with other witnesses went to the Sasural (Village- Panapur) of his daughter and there he found the house of his daughter, locked and the accused persons were traceless. It is further alleged that on 21.2.2010 at about 10 A.M. he came to know that her daughter was killed by the appellants and other accused persons and disappeared the dead body and fled away from the house.

On the basis of the aforesaid written report, Bhagwanpur (Belaon) P.S. Case No. 19 of 2010 was instituted against the appellants, as well as other accused persons under Sections 304B, 201/34 of the Indian Penal Code and Section 3 & 4 of Dowry Prohibition Act. The police after investigation submitted charge sheet in this case against the appellants in both the cases and continue the investigation against other accused persons.

Cognizance of the offence was taken against the appellants and later on the case was committed to the court of Sessions, which ultimately came to the file of Sri Harendra Nath,



Adhoc Additional Sessions Judge, Kaimur at Bhabua for trial and disposal.

After conclusion of the trial, the learned trial court has convicted the appellants under Section 304B as well as under Section 201/34 of the Indian Penal Code and also under Section 3 / 4 of the Dowry Prohibition Act and sentenced them, as stated above.

Against the aforesaid judgment, Cr.Appeal No. 353 of 2013 has been preferred by appellant Rajesh Pal and Cr. Appeal No. 295 of 2013 has been preferred by appellant Shiv Pal.

As both the appeals arise out of the same judgment, as such they are being taken up together and are being disposed of by this common judgment.

In this case altogether twelve witnesses have been examined and they are P.W.1,Bahadur Pal, brother of the deceased, P.W.2- Kumar Pal @ Shiv Kumar Pal, uncle of the deceased, P.W.3- Dr.Shyam Kumar, who had prepared post mortem report,P.W.4, Narain Pal, village of the appellants, P.W.5- Shankar Pal, villager of the appellants, P.W.6- Lal Bihari Pal, father of the deceased as well as informant of the case.P.W.7- Shashi Bhusan Thakur, Investigating Officer of the case, P.W.8- Hira Muni Kunwar, villager of the deceased, P.W.9- Dhanji Pal, brother of the deceased, P.W.10- Shrimati Devi, villager of the appellants, P.W.11- Chandrika Pal,



villager of the appellants and P.W.12- Vijay Kumar, Investigating Officer of the case.

Out of the aforesaid witnesses, P.W.7 and P.W. 10 are the Investigating Officers of the case. P.W.3 is a doctor, who had conducted post mortem on the dead body of the deceased.

It appears from the record that out of the aforesaid 12 witnesses, P.W.2, P.W.5, P.W.8, P.W. 10 and P.W.11 had been declared hostile by the prosecution.

P.W.6 is the informant of the case and he has stated in his evidence that her daughter was married with the appellant- Rajesh Pal of village Panapur three years before and after one year second marriage was solemnized. His evidence in chief also disclosed that after marriage his daughter went to her Sasural and she complained that Motorcycle was demanded by her Sasural. Thereafter he lodged a case, which has been compromised and thereafter she again went back to her Sasural. It is also stated that after two months, he came to know that she died, then he came to the village of the appellants but he did not meet any body and also did not come to know about her from others, as such he lodged a written report with Beloan Police Station and after 15-20 days he came to know that she died and her dead body was found in a well. This witness has been cross examined and in his cross examination he has



stated in his evidence that he had compromised the case before the learned S.D.J.M. on her own will and thereafter whenever he met her daughter, she appears to be happy in her Sasural and she had not made any complain against Sasural people. In para 5 in his cross examination this witness has also stated that he came to know that her daughter had gone to attend call of nature and fell down in the well and died. This witness has further stated in para 6 of his cross examination that the contents of the written was not read over to him and only his thumb impression was taken.

Considering the evidence discussed above it appears that he has given a complete go by the prosecution story in his cross examination and not stated about the demand of dowry or cruelty after compromise has been reached in the court of learned S.D.J.M. and further his evidence shows that her daughter died as she fell down in the well. It clearly demolishes the prosecution story.

P.W.1 is the brother of the deceased and this witness has stated in his chief that the marriage of his sister was solemnized in the year 2007 with the appellant- Rajesh Pal and second marriage was performed in 2009. In his chief, this witness has stated that she was killed due to demand of motorcycle, on which he went to village Panapur but not found her body in her Sasural and in spite of vigorous search, she was not found. It is also stated that after a



month her dead body was found in a well and her dead body was pulled out with “ Kanta”. He identified her dead body by her Saree and blouse. He identified his signature on inquest report as Ext.1. He had stated in his chief that a stone was tied with the dead body. However, in his cross examination this witness has stated that he had not seen any body killing her and he had deposed on the basis of hear say. His cross examination further goes to show that he had seen the appellants assaulting her. Thereafter, after one month a case has been lodged and in para 5 of his cross examination this witness has stated that the case was compromised. His evidence in para 5 of his cross examination disclosed that the accused persons had never demanded dowry from him. In his cross examination, this witness has also stated that he was informed by the appellant- Rajesh Pal that she was ill and on that he went there but he did not find any body there. This witness has stated in para 5 of his cross examination that he has informed the police and the police has taken his signature. This witness has also stated in para 6 of his cross examination that thereafter he came back to his house and never went to the Sasural of his sister. In para 9 of his cross examination this witness has stated that he had not given any article to the appellants as dowry as the appellants have not demanded anything from him. On consideration of his whole evidence, it appears that though he had supported the prosecution



story of deceased being killed with respect to demand, but he had himself admitted that no demand was made nor they had given anything as dowry. This witness also claims that information was given by him to the police, whereas FIR shows that the same was instituted on the basis of written report of P.W.6. All the above creates a serious doubt about his credibility.

P.W.2.- Kumar Pal is the uncle of the deceased . This witness has been declared hostile. He has stated that as to how she died he could not know. Thereafter his attention was drawn to the statement made before the police but he denied to have made any such statement.

P.W.4., is also one of the villagers of the appellants. He has stated in his evidence that his statement was not recorded by the police. He has also stated that the appellants were demanding dowry and her dead body was recovered from the well. However, in his cross examination in para 3 he has admitted that he did not know as to how she died and Sasural people were never demanding dowry from him. He has further stated that two months prior, he met her and at that time she was happy. He has not disclosed that she was torturing by the accused persons. So his cross examination completely demolished the prosecution case of demand and torture.

P.W.5. has also stated in his chief that Sushma was



married with appellant Rajesh Pal two and a half year age and she died in her Sasural but he has not gone to Panapur and his statement was not recorded by the police. Thereafter this witness was declared hostile.

P.W.8 has also stated in his chief that he could not know as to how the wife of appellant- Rajesh Pal died. Thereafter this witness has been declared hostile. His attention has been drawn to the statements' made before the police to which he denied to have made any such statement.

P.W.10 has also stated that Sushma died three years prior but she did not know as to how she died. Thereafter this witness has been declared hostile and her attention has been drawn to the statements made before the police to which she denied to have made any such statement.

P.W.9,Dhananjay Pal, brother of the deceased has stated in his evidence that the marriage of his sister was solemnized in the year 2007 and the second marriage was performed in the year 2009. He has also stated that he identified her dead body and identified his signature on Inquest Report as Exhibit 1/1. Apart from that he has not stated anything in his examination- chief rather in his cross examination this witness has stated that the accused persons never demanded dowry nor they have tortured . In his cross examination in



para 7 this witness has stated that later on he came to know that deceased had gone to attend the call of nature.

P.W.7 is the Investigating Officer of the case and has proved only the written report as well as formal FIR as Ext. 3. He has also stated that on 12.06.2010 he has submitted charge sheet against the appellants but in his cross examination he has stated that he has not recorded the statement of any witness during investigation.

P.W.11 has stated that he does not know anything about the occurrence. Thereafter this witness has been declared hostile and his attention has been drawn to the statement made before the police, to which he denied to have made any such statement.

P.W.12 is also one of the investigating officer of the case. He has stated that on the basis of written report of P.W.6 he has registered Belaon P.S. Case No. 19 of 2010 and forwarded the same and he has proved the same as Ext.4. This witness has also stated in para 5 that earlier also a case being Belaon P.S. Case No. 41 of 2009 was registered under Sections 498A of the Indian Penal Code as well as Sections 3 and 4 of Dowry Prohibition Act. But they have compromised the case. Thereafter she was killed. This witness has also stated in para 6 of his evidence that he found the room of the deceased “Leepa Hua Paya”. This witness has also stated in para 6 that the dead body was found in Nauhata well at the Siwana of



Mouza Manihera and he has prepared inquest report, which has been marked as Ext.5 and also found stone tied around her waste and further stated that there was sign of injury on her chest. Thereafter he sent the dead body for post mortem report and obtained post mortem report. In his cross examination, in para 10, this witness has stated that he has not seen stone as well as rope and not even noted down the length of the rope and weight of the stone. In para 10 of his cross examination he has also stated that he has not found any paper showing that she was tortured prior to the occurrence.

P.W.3 is a doctor, who has conducted post mortem on the dead body of deceased Sushma Devi and stated that on 3.4.2010 he was posted at Sadar Hospital, Bhabhua as Medical Officer and on that day at 3.15 P.M. he conducted post mortem of Sushma Devi, aged about 20 years and found that :

“ External appearance of deceased body swelling claw in position peeling of skin of several places, all smelling coming from the dead body. Its putrefaction taken place.

External Examination.

Appearance of dead mentioned in column 6 to putrefaction falling of skin, swelling of the dead body. No any apparent anti mortem fatal injuries found over the dead body.

Internal examination as dissection skull bone NAD.



Brain matter congested. Neck muscle NAD, larynx trachea intact and contained blood tinged forth thoracic Kage intact, thoracic viscera congested. Dark clotted blood present in both side of heart, Stomach empty. Intestine contained gas, liquid and feces. Rest all. abdominal viscera intact and congested. Uterus non gravid. Urinary bladder contain about 150 ml of urine.

(1) On the basis of above mentioned findings death since to be by asphyxia shock resulting to sudden CR arrest due to may be smothering.

(2) Time elapsed between the death and autopsy is approximately more than a week. Smothering may occure due to presser of neck. He has proved post mortem report as Ext. 2.

Exhibit 1 is the signature of Bahadur Pal on Inquest Report, Ext. 1/1 is the signature of Dhananjay Pal on Inquest Report, Ext. 2 is the post mortem report, Ext. 3 is the endorsement on written report, Ext. 4 is the signature of the investigating officer on fardbeyan, Ext. 4/1 is identifying the signature of S.I. on fardbeyan and Ext. 5 is the signature of I.O. on Inquest Report.

Though no defence has been taken by the appellants in their cross examination as well as in their statements recorded u/s 313 Cr.P.C. it appears that the defence of the accused persons is total denial and of innocence.



It has been submitted on behalf of the appellants that the prosecution has failed to prove the charges under Section 304B of the Indian Penal Code as well as under Section 201 of the Indian Penal Code. It has also been submitted that nothing has come to establish the charge under Section 3 & 4 of Dowry Prohibition Act. The informant in his evidence himself has denied the demand of dowry as well as torture in his cross examination and his evidence also disclosed that while she was going to attend call of nature, she fell down in the well and died. This witness has also disclosed that after compromise in the earlier case, there is no demand of dowry from the side of the appellants. It has also been argued that P.W.1 and 9 who are brother of the deceased and their evidence also do not disclose the allegation of demand of dowry or torture in connection with demand of dowry and apart from that P.W.4, who is villager of the appellants had categorically stated that when he met deceased, she was happy. So far evidence of other witnesses are concerned, they have been declared hostile by the prosecution as they have not supported the prosecution version. It has further been submitted that the doctor who has conducted autopsy has also stated that no cause of death could be ascertained at the time of post mortem and as such considering the above evidence no case is made out and the conviction of the appellants u/s 304B IPC or under Section 201 of the



Indian Penal Code as well as under Section 3 /4 of Dowry Prohibition Act does not appear to be just and proper and is fit to be set aside.

On the other hand, learned A.P.P. has argued that P.W.1, brother of the deceased, has supported the prosecution case and also stated that the deceased was killed as demand of motorcycle and Rs. 20,000/- has not been fulfilled. He has further stated that the dead body was recovered from the well and stone was tied with the rope along with her body. There was injury on the person of the deceased and stone tied with the rope was also found around the dead body. It has also been submitted that the doctor, P.W.3, has also found injury on the person of the deceased and given a finding that death was due to sudden asphyxia may be due to smothering. It has further been submitted that admittedly death occurred within seven years of the marriage and at that time the deceased was residing in her Sasural and death was in abnormal circumstances, as such the conviction of the appellants under Section 304B IPC as well as under Section 3 and 4 of the Dowry Prohibition Act is just and proper and does not require any interference.

In the above back ground I am going to analyse the evidence available on record.

In this case charge has been framed under Section 304B and 201/34 of the Indian Penal Code as well as under Sections 3 and



4 of the Dowry Prohibition Act and in order to establish the charge under Section 304B IPC, prosecution has to establish:-

- (i) death occurred within seven years of the marriage.
- (ii) death was not under normal circumstances.
- (iii) there was demand of dowry soon before her death.
- (iv) the deceased was subjected to cruelty in connection with demand of dowry.

Once the above facts are established, there shall be a presumption of dowry death against the appellants under Section 113 of Indian Evidence Act.

No doubt presumption is rebuttable.

In the present case P.W.6 is the informant in this case. No doubt he has stated that the deceased died within seven years of the marriage but his evidence itself shows that after compromise between the parties in earlier case, there was no demand of dowry from the appellants. His evidence does not disclose deceased being subjected to cruelty rather his evidence in cross examination shows that she appears to be happy in her Sasural.

P.Ws. 1 and 9 are brothers of the deceased and P.W.1 has stated about the killing of the deceased due to non fulfillment of demand of motorcycle and Rs. 20,000/- but in his cross examination this witness has stated that there was no demand of dowry by the



appellants from him and he had not given any dowry. So far evidence of P.W.9 is concerned, he had not stated either about demand of dowry and torture. Other witnesses also have not supported the prosecution case so far demand of dowry and also their evidence does not disclose that she was subjected to cruelty.

Considering the discussions made above, there is no cogent, reliable evidence available on record to show that there was any demand of dowry soon before her death or she was subjected to cruelty in connection with demand.

No doubt there are evidences available on record showing that the death was within seven years of the marriage and death was not in normal circumstances.

The evidence of P.W.1 shows that there were injuries on the person of the deceased and her dead body was recovered from well, tied with stone and evidence of doctor (P.W.3) also shows that he found anti mortem injuries over person of deceased and death was due to asphyxia. There is also evidence of P.W.1 that he received call that her sister is not well, then he came to her Sasural but did not find her and P.W.6 has also stated so in his evidence and the above evidence supports the prosecution story of deceased being killed. However, P.W.6 has himself stated in his cross examination that deceased died as she slipped into well. Further there is no seizure of



stone and rope by the Investigating Officer. Apart from that there is not an iota of evidence to show that she was killed, except the above circumstances, which is in itself not conclusive in nature to prove the charges against the appellants.

In view of the discussions made above, so far charge under Section 304B IPC is concerned, the prosecution has failed to establish the charge under Section 304B IPC or under Section 201/34 IPC beyond reasonable doubt and hence the conviction of the appellants under Sections 304B IPC and 201/34 IPC is not sustainable in the eye of law.

So far Sections 3 and 4 of the Dowry Prohibition Act is concerned, as there is no evidence available on the record in support of demand of dowry, as such the conviction of the appellants under Sections 3 and 4 of the Dowry Prohibition Act is also not sustainable in the eye of law.

Accordingly, both the appeals are allowed and the judgment dated 6th March, 2013 and the order dated 13.03.2013 passed by Harendra Nath, Adhoc Additional Sessions Judge-V, Kaimur at Bhabhua in Sessions Trial no. 307 of 2010/ 64 of 2010 arising out of Bhagwanpur (Belaon) P.S.Case No. 19 of 2010 are set aside.

As the appellant Rajesh Pal in Cr. Appeal no. 353 of



2013 is in custody, he is directed to be released forthwith, if not wanted in any other case. So far appellant Shiv Pal in Cr. Appeal no. 295 of 2013 is concerned, he is on bail, as such he is discharged from the liability of his bail bonds.

(Vinod Kumar Sinha, J)

singh/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A
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