

# IN THE HIGH COURT OF JUDICATURE AT PATNA

## Criminal Appeal (SJ) No.759 of 2013

Arising Out of PS.Case No. -7 Year- 2007 Thana -BIRAUL District- DARBHANGA

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1. Sunil Mandal S/O Shri Laxman Mandal Resident Of Village- Pokhraj, P.S-Beraul,District- Darbhanga.
  2. Laxman Mandal S/O Late Baleshwar Mandal Resident Of Village- Pokhraj, P.S-Beraul,District- Darbhanga.
  3. Chameli Devi W/O Shri Laxman Mandal Resident Of Village- Pokhraj, P.S-Beraul,District- Darbhanga.

.... .... Appellant/s

Versus

1. The State Of Bihar

.... .... Respondent/s

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### Appearance :

For the Appellant/s : Mr. Raj Kumar Singh, Adv.  
Mr. Ram Kishore Singh, Adv.  
Mr. Amit Kumar Singh, Adv.  
For the Respondent/s : Mr. Binod Bihari Singh, APP

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**CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA**

**C.A.V. JUDGMENT**

**Date: 17-10-2017**

This appeal is directed against judgment dated 26.09.2013 and order dated 28.09.2013 passed by Shri Sudhakar Singh, Adhoc Additional Session Judge- II, Benipur, Darbhanga in Session Trial No. 193/2008 by which the appellants have been convicted under Sec 304 B of Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years.

2. Prosecution case, in brief, based on the written application made by the informant, paternal uncle of the deceased (P.W.13) is that his niece Daisy Devi (deceased) was married to accused Sunil Mandal s/o Laxman Mandal on 18.05.2005 thereafter. At the time of marriage, sufficient gifts and dowry were given according to the status of the



family of deceased, however, the accused and his family were not contented with that. The accused persons were forcing and torturing the deceased to demand further Rs. 25,000 from her father. The deceased was also threatened by the accused persons that she will be killed if she did not fulfill their demand of bringing Rs. 25,000 and second marriage of accused Sunil Mandal shall be solemnized. On the alleged date of occurrence i.e. 06.01.2007, around 5 AM, the informant got the news that the accused persons killed the deceased by administering poison whereafter which the informant rushed to her sasural and found her dead. The informant further sated that he is sure that the deceased was killed by administering poison by her husband , mother-in-law and father-in-law.

3. On the basis of written application of the informant, FIR was registered and Biroll P.S. Case No. 07 of 2007 was instituted under Section 304 B/34 of Indian Penal Code against all the above mentioned three accused namely Sunil Mandal, Chameli Mandal and Laxman Mandal. On completion of investigation, the Investigation Officer submitted charge sheet against all the above mentioned three accused under Sec 304 B/34 of Indian Penal Code.

4. The cognizance was taken on 28.04.2008 and on 23.05.2008, the case was committed to the Court of Sessions and accordingly charge was framed to which the accuseds pleaded not guilty



5. Defence of the appellants as per the statement made under Section 313 Cr. P. C. is that they are not guilty and that they are being falsely implicated in the present case.

6. During trial altogether seventeen witnesses have been examined on behalf of prosecution, they are P.W.1. Bhuneshwar Jha, P.W.2. Shambhu Prasad, P.W.3 Dukha Mandal, P.W.4 Soma Devi, P.W.5 Jeevan Mandal, P.W.6 Satya Narayan Kumar, P.W.7 Kundan Kumar, P.W.8 Vinod Kumar Rai, P.W.9 Dr. Pradip Kumar Rai, P.W.10 Pawan Paswan, P.W.11 Ram Nandan Rai, P.W.12 Bijli Devi, P.W.13 Dev Narayan Rai (informant), P.W.14 Anit Kumar Rai, P.W.15 Tarini Prasad Thakur, P.W.16 Dr. Ramanand Choudhery and P.W.17 Suresh Paswan.

7. Apart from above, following documents have been admitted as exhibits in this case, they are Ext. 1- signature formal FIR, Ext. 2- endorsement of officer-in-charge on fardbeyan, Ext. 3/1- signature of Jeevach Mandal on Death Inquest Report, Ext. 3/2- signature of officer-in-charge on formal FIR, Ext. 4- complete fardbeyan written application, Ext. 5- chargesheet, Ext. 6- para 29-67 of case diary, Ext. 7- para 1-26 of case diary and Ext. 8- vasera report of the deceased.

8. On behalf of defence, three witness, were examined namely, D.W.1 Ramdana Devi, D.W. 2 Lal Choudhary and D.W. 3 Bhola Sharma. However, no documents have been produced and brought on



record.

9. After conclusion of trail, the learned trial court has convicted the appellants under Sec 304 B of Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years.

10. Being aggrieved by the aforesaid judgment and order, the present appeals has been filed by the appellants on various grounds.

11. On perusal or the oral evidence on behalf of the defence, the defence of the accused persons is of innocence and false implication.

12. As stated above, the learned trial court relying upon the evidence of P. W.13 (informant) corroborated by other evidences has convicted the appellants under Section 304 B, IPC.

13. At the very outset, it has been submitted by learned counsel for the appellant that appellant –Sunil Mandal has been released by the learned Trial Court as he has completed his period of sentence. So far other appellants, namely, Laxman Mandal and Chameli Mandal is concerned, the judgment and sentence of the trial court has been assailed by the appellant mainly on the grounds that the appellants have falsely been implicated in the present case and there is no specific allegation of torture for dowry prior to the incident and the doctor, who conducted the post-mortem examination could not state the actual cause or reason of death of the deceased and actually the death of the deceased was caused due to cold. it has been submitted



that they are father-in-law and mother-in-law of the deceased and there is absolutely nothing available on record to show that any specific allegation for demand of dowry or cruelty has been levelled against them, rather only general and omnibus allegation has been made and further, no specific allegation is there against any of the appellants to administering poison to the deceased. It has also been submitted that though in the Viscera Report of the deceased Salphos was found, which is a severe gastro intestinal irritant and is highly poisonous, however, finding of the Viscera Report does not appear to be probable as in the Viscera of the deceased some dark brown fluid was found, which cannot be caused due to administering poison. Further submission is that Viscera of the deceased has not been sent to F.S.L, Patna for its chemical examination rather the evidence of I.O. shows that the same was sent to F.S.L. Muzaffarpur, and in such a situation, there is nothing available on record as to how the same reached to F.S.L., Patna, this fact clearly creates a cloud of doubt about genuineness of Viscer Report. It has also been submitted that though post mortem report shows that there were some injuries on the person of the deceased but in the inquest report, there was no mention of any injury on the person of the deceased. It has also been submitted that there is nothing available on record to show that administering the poison to the deceased was suicidal or homicidal. On the basis of the above, learned counsel for the appellant has submitted that there



are several inconsistencies in the prosecution case, which shows that prosecution has not been able to establish its case beyond all reasonable doubt, hence, conviction of appellants under Section 304(B) IPC is not just and proper.

14. On the other hand learned counsel for the State has submitted that there are evidence available on record to show that there was demand of dowry of Rs. 25,000 by the appellants from the informant and there is also evidence that the deceased was subjected to assault for non fulfillment of the said demand and further the Viscera Report shows that the death of the deceased was caused due to poisonous substance and the death of the deceased was caused within seven years of her marriage and as such, conviction appellant under Section 304(B) is just and proper.

15. On the above background, this court intends to examine the evidences available on record. P.W. -13, Deo Narayan Rai is the informant of this case as well as uncle of the deceased and his evidence shows that the marriage of the deceased with appellant Sunil Mandal was solemnized in the year 2005. His evidence further shows that accused persons were asking the deceased to bring Rs. 25,000/- but that demand could not be fulfilled. His evidence further shows that he received the information in June, 2007, that the deceased was administered poison and, thereafter, went there and found the deceased dead. His evidence further shows that thereafter, he



informed the police and after postmortem, cremation was done in the maternal house (maike) of the deceased. In his cross-examination in para 6, this witness has stated that appellant Sunil Mandal has one room house. In para -13 of his cross-examination, this witness has stated that he had not seen the deceased being administered poison and he cannot say who administered her poison. This witness has also stated in para -19 of his cross – examination that appellant Laxman Mandal used to work outside and further he has denied a suggestion that the deceased was suffering from any mental disease.

16. P.W. 14, Amit Kumar Rai has supported the factum of marriage in the year 2005 and stated in his evidence that he received information on 01.06.2007 about the death of deceased Daizy Devi and came to know that the deceased was administered poison by the appellants and then went there and saw the deceased – Daizy Devi, dead. He has also stated that there was demand of money from appellants. He has further stated in para -5 of his evidence that father of the deceased is his cousin brother. In para -11 of his cross-examination, he has admitted that a phone call was received by the “Master Sahab” (father of the deceased) and has repeatedly stated that “Master Sahab” and his son had not gone to the place of occurrence. In para -14 of his cross-examination, this witness has admitted that he is a hear say witness.

17. P.W. 10, Amar Paswan has also supported the factum of



marriage in the year 2005 with appellant Sunil Mandal and deceased Daizy Devi had told him that “Sasural” people were demanding dowry and they had told her that if the demand is not fulfilled they would kill her. This witness has also stated that in the marriage no dowry was given. This witness has admitted that brother of the deceased Pradip and his mother has informed him at about 7. A.M. in the morning that Laxman Mandal (appellant) gave information about the death of deceased Daizy Devi.

18. P.W. 12, Bijli Devi is sister-in-law of the deceased and she has also supported the factum of marriage of the deceased with appellant Sunil Mandal as well as demand by the appellants and also of assault to the deceased and stated in her evidence that they have poisoned the deceased to death. In para -4 of her cross –examination, she has admitted that whatever she has stated, she has stated on the basis of hearsay evidence. This witness has stated that mother -in-law of the deceased, appellant – Chameli Devi, had informed about the death of the deceased on her mobile and, thereafter, she had informed her father-in-law as well as to her husband. Her evidence further discloses that father of the deceased had not gone to the place of occurrence.

19. P.W. 11, is the grand father of the deceased and he has also supported the factum of marriage of deceased with appellant Sunil Mandal as well as demand of dowry and torture and administering poison to the deceased by the appellants. However, in para -9 of his



cross – examination, this witness has admitted that whatever he has stated, he has stated on the basis of information given by father and mother of the deceased.

20. P.W. 9, Pradip Kumar Rai, is the brother of the deceased, he also has supported the factum of marriage on 18.05.2005 and has stated that the deceased was not happy in “Sasural” and further supported the factum of demand of dowry of Rs. 25,000/- and non fulfillment of the said demand, threatening of dire consequences to the deceased. This witness has come with evidence that his sister (deceased) told him that fulfill the demand otherwise, they would kill her and on 01.06.2007, he received information. In para -12, of his cross-examination, he has stated that his wife received information from appellant –Laxman Mandal, thereafter, he along with Anil Kumar Rai and Kundan Kumar went there, however, this piece of evidence appears to be a contradictory one as P.W. 14 has stated in his evidence that father and brother of the deceased had not gone to the place of occurrence.

21. P.W. 8, also happens to be cousin brother of the deceased and he has also supported the prosecution story with regard to demand of dowry as well as threatening and assault to the deceased but he has admitted that Sasural people had informed about the death of deceased Daizy Devi.

22. P.W. 7, Kundan Kumar, happens to be another cousin brother



of the deceased and he has supported the factum of marriage of the deceased with appellant Sunil Mandal and has also supported the prosecution case with regard to demand of dowry, assault and administering the poison to the deceased by appellants but this witness has stated in his evidence that on 06.01.2007, he received information at about 5 to 6 A.M. that deceased was serious then he and Amit Kumar Rai went to *Pokhrana* and met the accused persons, who were standing near the dead body.

23. P.W. 5, has stated that the deceased was the sister of his brother-in-law and on information, he went to Pokhrana along with Amit Kumar Rai and dead body of the deceased was lying in the Verrandah. He has also stated that the appellants had administered poison to the deceased. This witness has further stated about demand of dowry of Rs. 25,000/- but in his cross-examination, this witness could not disclose as to what was the age of deceased at the time of her marriage and further stated that his brother-in-law had not told him about demand of dowry.

24. P.W. 16 is the Doctor, who conducted post-mortem examination on the body of the deceased and has stated in his evidence that he found the face of the deceased swollen, tongue was found protruded from the mouth. Both eyes were found closed. Finger nails were bluish in colour. He has also stated that following antimortem injuries were found over the body of the deceased (i) one



bruise 1 ½” X ½” over left side of neck (ii) one bruise 1’ x ½’ on posterior of neck. On dissection underlying skin and soft tissues at the site of bruise were inttacted with blood and clots. Hyoid bone, larangial and trachea. Further cartilage were found intact. Right chamber of the heart was found full wth dark fluid blood and left empty. Both lungs were widely congested. All Viscera in general that is lever, spleen and both kidneys were found mildly congested. Stomach contents about 15 M.L. cream colour turbid fluid with pungent smells and congested mucosa and petecheal hemorrhage at placed were seen. Further urinary bladder was fond empty. Further his evidence shows that the Viscera was kept reserved and forwarded to the R.F.S.L. Bela, Muzaffarpur.

25. P.W. 17, is the Assistant Director, F.S.L. and he after the examination of Viscera of the deceased has opined that Aluminum Phosphide was detected in the Viscera and further opined that Aluminum Phosphide is commercially known as “Celphos”, which is a severe gastro intestinal irritant. It is used as a gran preservative and is highly poisonous. This witness has been put to rigorous cross-examination and in his cross – examination, he has stated that the liquid which has been sent for chemical examination was of dark brown colour and Aluminium Phosphide contains brown colour and it also be dark in colour. Though it has been argued on behalf of the appellants that Viscera report was sent to F.S.L. Muzaffarpur but there



is nothing on record to show as to how the same reached to F.S.L. Patna, however, no cross-examination was made to this witness or to the I.O. (P.W. 15) with respect to the said fact.

26. P.W. 15, is the I.O. of this case and from his evidence, it appears that he is the second I.O. in this case and his evidence discloses that he had taken over the investigation after paragraph -26 of the case diary but he has proved the earlier investigation carried out by one U.P. Bihari, Sub – Inspector and it is in his handwriting. He has submitted charge-sheet in this case and apart from that there is nothing in his evidence.

27. P.W. 1 to 4 has been examined in this case but P.W.1 and P.W. 2 are the formal witness, who has proved formal F.I.R and endorsement of formal F.I.R. Further in the evidence of P.W. 3, there is nothing important except that appellant Sunil Mandal had married in *Sumha* and his wife has died. Similarly, P.W. 4 has stated that she does not know anything about the death of wife of appellant Sunil Mandal.

28. On behalf of defence also, three witnesses were examined and it appears from their evidence that the deceased was suffering from cold and they had denied the fact that the deceased was being tortured and poisoned to death and apart from that there is nothing important in their evidence. However, above defence story is falsified by the post mortem report as well as the report of F.S.L.



29. Prosecution evidence, which has been discussed in earlier paragraphs, it appears that there are consistent prosecution story with regard to marriage of the victim girl with appellant Sunil Mandal in the year 2005. It further appears from their evidence that deceased died in January 2007 i.e. within seven years of her marriage. Further postmortem report as well as viscera report clearly shows that the death of the deceased was due to poison. Apart from that there are also consistent prosecution evidence available on record to show that there was demand of Rs. 25,000/- by the accused person from the deceased and there are also some evidence that the deceased was subjected to assault and cruelty, however, those evidence of assault and cruelty is quite general and omnibus in nature. No material showing specific allegation of demand of dowry and assault has been brought. On the other hand, evidence available on record shows that appellant Laxman Mandal and Chameli Devi had informed about the death of the deceased to her '*Maike*' and on that information, they had come and seen the dead body of the deceased. It further appears that there is nothing available on record to show that appellant Laxman Mandal and Chameli Devi were living in the same house along with the deceased and her husband (appellant –Sunil Mandal) rather the evidence of one of the prosecution witnesses shows that appellant – Laxman Mandal used to live outside in connection with his work.

30. The case is under Section 304(B) of Indian Penal Code and on



conjoint reading of Section 304(B) and Section 113B of Indian Evidence Act, no doubt, there is presumption against the husband and in-laws of the deceased, once the prosecution has been able to establish that death of the deceased was within seven years of her marriage, secondly, there was demand of dowry and thirdly the deceased was subjected to cruelty in connection with demand of dowry soon before her death. It is well settled that once prosecution has been able to establish all these ingredients against the appellants by a cogent, consistent and reliable evidence and only, thereafter, there shall be presumption against the accused persons and onus will be on the accused person to explain the cause of death of the deceased. In this case, no doubt, appellants are husband and father-in-law and mother-in-law of the deceased but as discussed above, there is absolutely nothing, except only general and omnibus allegation against the appellants Laxman Mandal and Chameli Devi, there is not an iota of evidence available on record that they are living in same house. Most of the prosecution witnesses appear to be hearsay witness and also there are certain contradictions in between the evidence of prosecution witnesses.

31. No doubt, death of the deceased is within seven years of her marriage and due to poisoning and in her Sasural. Appellant Sunil Mandal is the husband but appellant Laxman Mandal and Chameli Devi are father-in-law and mother-in-law respectively, and as stated



above there is not an iota of evidence available to show that they are living in same house. On the other hand, they informed about the death of the deceased. Hence, the ingredients of Section 304(B) of Indian Penal Code read with Section 113B of Indian Evidence Act has not been established by a credible and reliable evidence, so far appellant Laxman Mandal and Chameli Devi are concerned. In such a situation, they are certainly entitled for benefit of doubt.

32. Considering the entire discussions made above, so far conviction and sentence of appellant Sunil Mandal, is concerned, the same is just and proper. So far appellant Laxman Mandal and Chameli Devi, is concerned, the prosecution has failed to prove its case against these two appellants, beyond all reasonable doubts. However, it appears that learned Trial Court has not considered this aspect of the matter and convicted the appellants Laxman Mandal and Chameli Devi only on the basis of general and omnibus allegation and even not considered that there is no evidence to show that they were living in the same house.

33. Accordingly, conviction and sentence of the appellants, namely, Laxman Mandal and Chameli Devi is set aside. So far conviction of appellant Sunil Mandal is concerned, no interference is required. As it has been informed that he has been released after serving the sentence, no order need be passed so far order of sentenced passed in connection with appellant Sunil Mandal.



34. Accordingly, this appeal is partly allowed.

35. As the appellants, namely, Laxman Mandal and Chameli Devi, are in custody, they are directed to be released forthwith, if not required in connection with any other case.

**(Vinod Kumar Sinha, J)**

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