

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.767 of 2013

Arising Out of PS. Case No.-62 Year-2008 Thana- AAYAR District- Bhojpur

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Guru Charan Singh Son of Chand Deo Singh Resident of Village- Sihar,
P.S- Ayer, District- Bhojpur.

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Criminal Appeal (DB) No. 312 of 2013

Arising Out of PS. Case No.-62 Year-2008 Thana- AAYAR District- Bhojpur

- =====
1. Chand Deo Singh S/O Late Moti Singh Resident of Village - Sihar, P.S. - Ayer, District - Bhojpur
 2. Raj Muni Devi wife of Chand Deo Singh Resident of Village - Sihar, P.S. - Ayer, District - Bhojpur

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

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Appearance :

(In Criminal Appeal (DB) No. 767 of 2013)

For the Appellant/s : Mr. Dhirender Kumar Sinha, Advocate

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

(In Criminal Appeal (DB) No. 312 of 2013)

For the Appellant/s : Mr. Dhirender Kumar Sinha, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
and
HONOURABLE MR. JUSTICE MADHURESH PRASAD
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL)

Date : 11-09-2017

All the three appellants herein were tried and convicted under Section 304B/34 of the IPC and Section 201 of the IPC by the judgment dated 18.02.2013 passed by *Ad hoc* Additional Sessions Judge II, Ara, in Sessions Trial No. 82 of 2009.



2. Baban Singh (PW6) filed the written statement (Ext.1/3) before the S.H.O. Ayar Police Station (PS) on 30.08.2008 alleging that his daughter Basanti Devi (deceased) was married with appellant Guru Charan on 04.07.2004 at a temple. Soon after the marriage the deceased was being tortured by the appellants on account of non-fulfillment of demand of dowry. This was disclosed to him and his son by the deceased. The matter was reported by him to the mediator of the marriage. After some conciliation, the informant had provided a tape recorder to the husband whereafter only they agreed to permit the deceased to go to 'Naihar'. During her stay at 'Naihar' his daughter used to narrate the cruelty perpetrated on her by the in-laws including the husband. The 'Gouna' of the deceased was performed after one year. The younger son (PW4) of the informant viz Dharmender Singh had gone to the matrimonial home of his sister when she disclosed her plight and desired to go back to her parents house. The informant thereafter along with the mediator went to the matrimonial home of her daughter for her 'bedai' where the in-laws of his daughter (appellants herein) demanded bicycle and she-buffalo for her 'bedai'. They, however, agreed to allow the deceased to go to 'Naihar' on 29.08.2008 only after an old bicycle



was given to the husband. On 29.8.2008 the brother (PW4) went to the matrimonial home of the deceased for her 'bedai' but he was asked to come on the next date. On 30.8.2008 the informant came to learn that his daughter was killed by the in-laws and thrown in the river. He immediately went to the 'sasural' of the deceased and did not find his daughter at home. The appellants gave an explanation that she had fled from home in the morning. An investigation was carried out by PW-8. He visited the place of occurrence and recorded the statement of the witnesses. On 31.08.2008 the I.O. received an information about the recovery of the dead body of the victim from nearby river which was taken out and kept near the Sultanpur bridge. On reaching the place the death inquest proceeding was carried by him and the cadaver was sent for autopsy. PW-7 was then posted as the Medical Officer who conducted the autopsy on the cadaver on 31.08.2008 at 8.30 P.M. and found that death had occurred due to strangulation by hands leading to asphyxia. The postmortem report furnished by him is Ext. 2. On conclusion of investigation and finding the accusations true, the charge-sheet was filed on 24.11.2008 whereon cognizance was taken and the case was later committed to the Court of Session on 29.01.2009. On transfer,



the trial came on the file of learned Trial Judge wherein charges under the relevant Sections was framed on 3.7.2009. The appellants abjured the guilt and claimed a trial.

3. With a view to prove the charge(s) the prosecution examined 08 prosecution witnesses. The defence, in order to prove their innocence, examined 03 defence witnesses.

4. PW-1 Muni Narain Singh is the mama of the deceased. He had accompanied the informant to the 'sasural' of the deceased on 30.08.2008. On 31.8.2008, he was present with the informant when the dead body of the deceased was recovered from Banash river under a bridge/culvert. PW-2 Upendra Kumar Singh is the cousin of the deceased. He had signed the written report as a witness. Ext. 1/1 is his signature on the written report. He has deposed on the lines on which PW-1 had deposed. According to PW-1, when the appellants were queried about non- presence of the deceased, appellant nos. 1 and 2 disclosed that she died of ailment. They had disposed of the dead body in the Banash river whereas PW-2 has stated that when the whereabouts of the deceased was asked the appellants disclosed that she fled from the 'Sasural'. Both of them have also stated about the torture perpetrated on



the deceased at 'Sasural' on account of non-fulfillment of demand of bicycle and a she-buffalo. PW-3 is a witness to the recovery of the dead body on 31.08.2008. He has also stated about the presence of deceased at her 'Sasural' immediately preceding the recovery of her dead body. PW-4 is the son of the informant and brother of the deceased. His evidence throws light on relevant aspects of the case. Whenever he used to visit the 'Sasural' of the deceased, she used to complain about the ongoing physical torture perpetrated on her. She was anticipating untoward incident against her. She even cajoled him to take her back to the parents house. This was reported by him to his father. The father then managed to give one used bicycle to the appellant /husband whereafter they agreed to give 'bedai' of the victim on 29.08.2008. On that day he visited the 'sasural' of the deceased but the in-laws insisted on giving 'bedai' to her on the following day. On 30.08.2008 they heard about the killing of the deceased by her in-laws. He too had accompanied PW-6 on 30.08.2008 to the 'Sasural' of his sister when they gave an explanation that the deceased had fled from the home. The co-villagers, however, informed him that the deceased was killed and thrown in the Banash river. All of them thereafter kept on searching the dead body in the



Banash river which ultimately was retrieved on 31.08.2008. PW-5 is Bhuar Yadav. He is also a relative of the informant. He too was involved in search for the victim. He has stated that on retrieval of the dead body on 31.08.2008 the police was immediately informed.

5. PW-6 is the father of the victim and the informant of the case. He has spoken in detail as to how and when the marriage of the deceased was solemnized with appellant Guru Charan whereafter they all started demanding some more articles. After using the good office of the mediator he provided a tape recorder, whereafter only, the first 'bedai' of the deceased was permitted. While the deceased was at 'Naihar' she narrated the torture and atrocity committed on her by the appellants in diverse ways to pressurize the parents to fulfill the demand. After providing a bicycle to the husband the deceased was brought to the 'Sasural'. When his son visited the 'Sasural' she again narrated her ongoing plight. Apprehending danger to her life she requested him to take her back. The appellants had agreed to allow the deceased to go to 'Naihar' on 29.08.2008 when his son PW-4 went to the 'Sasural' of his daughter but the appellants on some plea returned him back saying the 'Bedai' of the deceased will be given on



30.08.2008. On 30.08.2008 he got information about the murder of her daughter by the in-laws at the 'Sasural'. PW-7 is the autopsy surgeon who held the autopsy and submitted his report (Ext.2). PW-8 is the Investigating Officer (IO) who was then posted as the Station House Officer (SHO) Ayar P.S.

6. The trial Court, on analyzing the evidence, held the charges proved beyond shadow of doubt and convicted the appellants who are father-in-law, mother-in-law and husband of the deceased.

7. Heard Mr. Dhirender Kumar Sinha, for the appellants in the two appeals and Mr. S.N. Prasad APP for the State.

8. The judgment of conviction has been criticized on manifold grounds. It is stated that there is delay in transmitting the FIR to the Court which creates a serious doubt on the veracity of the prosecution case. Delay provides opportunity to the prosecution to embellish the case and also give rise to suspicion of the prosecution case being manoeuvred. There is nothing on record to show that in spite of previous demand of dowry and continued torture by the appellants on the victim on account of non fulfillment of the demand of dowry the same was ever reported to any authority.



The prosecution has also not given the specific dates, and for that matter any witness, of such demand made by the appellants before the informant (PW6). The medical evidence including the post-mortem report (Ext.2) do not support the prosecution case. The doctor found the dead body of the deceased swollen. How could the doctor then find ligature mark around the neck as the same would not be readily visible. In this connection, he has drawn our attention to the relevant evidence of the PWs, particularly, PW 3 at para 17 and PW-2 at paras 19 and 25, wherein they have stated about the physical appearance of the body retrieved on 31.8.2008 from the Banash river. He would also urge that there is no evidence to establish that the deceased had died in the house of the appellants. In these circumstances, the presumption raised against the appellants under Section 113-B of the Evidence Act (for short 'the Act') would not arise. Arguing further Mr. Sinha has argued that from the evidence of the I.O.(PW8), it shall appear that he received an information about the death of the deceased and reduced the same as 'Sanha' which has not been produced at the trial. It makes the prosecution case suspicious. Criticizing the framing of the charge against the appellants, it is urged that the same do not fulfills the requirements of law as it is not stated in the



charge that any such torture committed on the deceased by the appellants was soon before her death.

9. Mr. Prasad, conversely, submits that all the ingredients constituting the offence the appellants are charged with have clearly been established by the evidence of the PWs 1,2,4 and 7. The postmortem report (Ext.2) proves the homicidal death of the deceased. The evidence on record demonstrate that the deceased was then living at 'Sasural'. Controverting the submission of the appellants with respect to the contents of the charge, it is stated that the Courts have held that torture, mental or physical, on the victim immediate prior to the incident, shall mean in close proximity.

10. Before dealing with the submission of the parties it may be reiterated that the description of the occurrence has been clearly spoken by PWs 1,2,4 and 6. Their evidence cumulatively prove the ingredients of the offence i.e. the death of the victim is caused by any burns or bodily injury or occurs otherwise than the normal circumstances, within 7 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. Incidentally, it may also be stated here that



Section 113-B of the Act raises a statutory presumption as to the dowry death. Noticeably, this presumption is also founded on the proof of cruelty or harassment of the women dead for or in connection with any demand for dowry by the person(s) charged with the offence. Necessarily, it shall mean that such presumption as to the dowry death would get attracted only upon the proof of the fact that the deceased had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of the death. To support the aforesaid proposition of law, we may usefully refer to the case of ***Bajinath and others vs. State of Madhya Pradesh (2017)1 SCC 101.***

11. With regard to the first contention of the defence, it is apparent from the F.I.R. (Ext.3) that it was sent to the Court and was signed by the learned C.J.M. on 1.9.2008. The formal FIR was drawn at 4 PM on 30.8.2008. On 31.8.2008, in the afternoon, the I.O received an information about the recovery of the dead body from the river. He immediately rushed to the place and reached there at 4.50 PM. The death inquest proceedings was prepared at the said place. These reasons provide plausible explanation for delay of one



day in sending the FIR to the court which was seen and counter signed by the learned Magistrate on 1.9.2008. In our view, in the facts of the case, there is no undue delay in transmission of the FIR. The contention of the appellants has no legs to stand on.

12. Quite diffidently, it has also been argued that the demand of dowry made by the appellants was not ever reported to any authority, and as such, the prosecution case be viewed with suspicion. On going through the relevant evidence of PWs 1,4 and 6 it is explicit that such demand was made on repeated occasions soon after the marriage for which the victim was being tortured. True it is, that a formal information was not lodged with regard to the persistent demand of dowry earlier made by the appellants with the police authority. However, PW 5 has stated about such reporting to the police earlier by the informant. The evidence of PWs 1,2,4, 5 and 6, in our view, clearly prove that the appellants had started demanding dowry from the father of the victim only few months after the marriage. The court takes judicial notice of the fact that such dispute is perceived initially as a family dispute and is generally not reported to the police. Instead, practically and traditionally the good office of the relation(s) are taken for



resolving such matter. We, thus, find no reason to suspect the prosecution case on this count.

13. Before proceeding further, it becomes necessary to extract in detail the findings of the doctor in the postmortem report to consider the contention of the appellants that it does not support the prosecution case. The examination of the evidence on this point is to ascertain whether the death was homicidal or not. Was it a case of simple drowning in water? The doctor in the postmortem report (Ext. 2) found the following:-

“External

Bodies swollen, face swollen, putrefaction started of the whole body. Rigor- mortis disappeared. Abrasion of 2.5” x 1” present over neck. Bleeding comes from mouth and nose.

On Dissection. Neck underlined tissue- ecchymosed and lacerated. Fracture of hyoid bone. Brain and meninges congested. Lungs congested. Heart-blood present in right chamber. Stomach -four m.l. of digested food present. Liver, spleen and kidney are congested. Uterus -gravid. Dead foetus of about 2- 3 months present. Time elapsed since death 2 to 4 days. Cause of death strangulation leads to asphyxia and death.”

14. The presence of injury over neck, bleeding from mouth and nose, ecchymose of tissues under neck, laceration and the fracture of hyoid bone found and reported by the doctor leave no room to doubt his opinion as to the



cause of death by strangulation resulting in asphyxia. Incidentally, it may also be noted that the prosecution has stated that the deceased was carrying pregnancy when the incident occurred with her. The doctor found presence of foetus of about 2-3 months present in the uterus of the deceased. Those findings in the post-mortem examination and the medical opinion expressed thereon clearly establish that the deceased was given a homicidal death.

15. There is ample evidence on record that the deceased after the marriage with appellant Guru Charan Singh had been to '*Sasural*' when the appellants started torturing her for non-fulfillment of the demand of dowry. In the case at hand, the appellants had insisted for providing a she-buffalo and a bicycle. It is also established that during the relevant time she was at the '*Sasural*'. PW4 (brother) and PW-6 (father) have clearly spoken on this point. On the following morning she was not found in the '*Sasural*'. The accuseds- appellants, under law, owed an explanation as to what happened to her. Whether any reasonable explanation of the circumstances leading to the death of the deceased is given by the defence is also a relevant issue. We have noticed, how the explanations given by the appellants vacillated on this point. Some of the



witnesses was told that she died due to ailment and was consigned to river whereas to some of the witness the appellants explained that the deceased had fled from the 'Sasural'. By adducing evidence of DWs 1,2 and 3, the defence gave an explanation that the deceased died due to pain in her abdomen and the dead body of the deceased was consigned to river as she was pregnant. The postmortem report (Ext.2) completely contradicts the explanation(s) given by the defence. The doctor found it a case of death by strangulation causing asphyxia. Even if the body was swollen such ligature mark shall not vanish. If the explanation given by the defence for her death is found false/untrue, the Court would treat it yet another incriminating circumstance enforcing the guilt of the appellants.

16. The crime of this nature is committed secretly within four walls of the 'Sasural'. A direct evidence is seldom found in such cases. In ***Trimukh Maroti Kirkan vs. State of Maharashtra (2006)10 SCC 681***, the Apex Court while dealing with a case of dowry death held as under in paragraph nos. 14 and 15:

“14. If an offence takes place inside the privacy of a house and in such circumstances where the assailants have all the opportunity to plan and commit the offence at the time and in



circumstances of their choice, it will be extremely difficult for the prosecution to lead evidence to establish the guilt of the accused if the strict principle of circumstantial evidence, as noticed above, is insisted upon by the courts. A judge does not preside over a criminal trial merely to see that no innocent man is punished. A judge also presides to see that a guilty man does not escape. Both are public duties. (see Striland v. Director of Public Prosecutions-quoted with approval by Arijit Pasayat, j. in State of Punjab v. Karnail Singh.) The Law does not enjoin a duty on the prosecution to lead evidence of such character which is almost impossible to be led or at any rate extremely difficult to be led. The duty on the prosecution is to lead such evidence which it is capable of leading, having regard to the facts and circumstances of the case. Here it is necessary to keep in mind Section 106 of the Evidence Act which says that when any fact is especially within the knowledge of any person, the burden of proving that fact is upon him. Illustration (b) appended to this section throws some light on the content and scope of this provision and it reads:

“(b) A is charged with travelling on a railway without ticket. The burden of proving that he had a ticket is on him.”

15. Where an offence like murder is committed in secrecy inside a house, the initial burden to establish the case would undoubtedly be upon the prosecution, but the nature and amount of evidence to be led by it to establish the charge cannot be of the same degree as is required in other cases of circumstantial evidence. The burden would be of a comparatively lighter character. In view of Section 106 of the Evidence Act there will be a corresponding burden on the inmates of the house to give a cogent explanation as to how the crime was committed. The inmates of the house cannot get away by simply keeping quiet and offering no explanation on the supposed premise that the burden to establish its case lies entirely upon the prosecution and there is no duty



at all on an accused to offer any explanation.”

17. Section 113-B of the Evidence Act (for short ‘the Act’) raises a presumption of guilt if the ingredients of Section 304-B are well proved. We may re-emphasize here that one of the essential ingredients of dowry death is that the accused must have subjected the deceased to cruelty in connection with demand for dowry soon before her death and that this ingredients is proved by the prosecution beyond reasonable doubt. Only then the Court will invoke the presumption of guilt under Section 113-B of the Act. The word ‘soon before’ the death has been interpreted to mean in close proximity. In the case of **Kunhiabdulla v. State of Kerla** reported in **AIR 2004 SC 1731** the Apex Court has held that ‘Soon before’ is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. The Hon’ble Apex Court has clearly observed that it would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The



Apex Court has further clarified that expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the concerned death and that the demand of dowry should not be so remote in time so as to become stale enough, not to disturb mental equilibrium of the woman concerned.

18. In the instant case, we find that the demand for dowry was on going and had been made a pre-condition for allowing her 'bedai' as soon as few days prior to 29.08.2008 on which date, subsequent to receiving the used bicycle to the husband (appellant), the in-laws had agreed to permit her 'bedai' on 29.08.2008. Thus, in the instant case, the facts are glaring as regards demand of dowry 'soon before' the death of the victim. Turning to the evidence let in by the prosecution, particularly, the brother of the deceased (PW4) and the father of the deceased (PW6) we entertain no doubt that the appellants had subjected the victim to cruelty on repeated occasions for non-fulfillment of the demand of dowry preceding her death. PW-4 has gone to the extent of stating that during his last visit to the 'Sasural' of the victim



the deceased had complained her about the persistent torture heaped on her by the appellants and she was expecting untoward incident. Their evidence gives required assurance to the Court about the truthfulness of the charge levelled against the appellants.

19. On an overall consideration of the evidence and in the light of the discussions made above, we are not hesitant to hold that the prosecution has proved the charge against the appellants beyond shadow of reasonable doubt.

20. This takes us on the next question of imposition of appropriate sentence upon the appellants. No doubt a husband owes paramount responsibility to provide safety and happy matrimonial environment. In the instant case the appellant Guru Charan Singh (husband) is 22 years of age as per the judgment of the Trial Court dated 18.02.2013. The occurrence was committed in 2008, according to which, his age, at the time of occurrence, would be around 18 years. Earlier, in the instant case, counsel for the appellants had sought repeated adjournments to place on record the evidence of juvenility of the appellant (husband). In spite of repeated adjournments, he could not do so. Thus, his prayer for juvenility being considered by the Juvenile Justice Board was



rejected by this Court. Nonetheless, taking into consideration that the trial Court, on the date of its judgment, assessed the age of the appellant as 22 years and also, the fact that at the time of alleged occurrence his age was about 18 years, it appears that at the time of the alleged occurrence the appellant (husband) was bordering on juvenility. Though his claim for juvenility could not be sustained in law but the practical aspect of the matter is that he was not a fully grown up man. Age by itself cannot be taken as a circumstance relevant for consideration while imposing sentence. The other two appellants are mother and father of Guru Charan, who have all been sentenced to undergo rigorous imprisonment for life. Though the circumstantial evidence against the accused persons are overwhelming and leave no room for any doubt, but the manner of the occurrence, and the individual role of the three accuseds, is incapable of being ascertained. The accused persons are from poor and rustic background, having no criminal history and one of them is a lady.

21. The responsibility of the mother and father-in-law of the deceased who are appellants in Cr. APP (DB) No. 312 of 2013, in the facts of the instant case, cannot be said to be greater than that of the husband the appellant of Cr. Appeal



(DB) No. 767 of 2013.

22. In view of the discussions aforesaid, we consider it appropriate to direct each of the appellants of the aforementioned two appeals to suffer RI for 10 years under Section 304(b)/34 IPC which shall serve the twin purpose of the law of sentencing. They are also imposed sentence to serve RI for two years under Section 201 IPC. The sentence(s) imposed on the appellants shall run consecutively. The sentence of the trial Court is modified to this extent and the appeals are dismissed. Since the appellants of Cr. Appeal (DB) No. 312 of 2013 are on bail, their bail bonds are cancelled and they are directed to surrender forthwith.

23. Let the lower court records be sent back to the Trial Court.

(Kishore Kumar Mandal, J)

I agree

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
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