

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.420 of 2014

Arising Out of PS.Case No. -99 Year- 2008 Thana -DHAKA District-
EASTCHAMPARAN(MOTIHARI)

=====

Dinanath Prasad S/O - Late Rambilash Prasad Resident of Village - Siswa Mangal,
P.S.- Panchpakri Dhaka, Disrtcit - East Champaran

..... Appellant

Versus

The State of Bihar

..... Respondent

with

=====

Criminal Appeal (SJ) No. 429 of 2014

Arising Out of PS.Case No. -99 Year- 2008 Thana -DHAKA District-
EASTCHAMPARAN(MOTIHARI)

=====

Ram Surat Prasad Son of Late Rambilash Prasad R/o Village Siswa Mangal, P.S.
Panchapakri Dhaka, District East Champaran

..... Appellant

Versus

The State of Bihar

..... Respondent

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Appearance :

(In CR. APP (SJ) No.420 of 2014)

For the Appellant : Mr. Ram Kishun Prasad, Adv.
Mr. Binod Kumar, Adv

For the Respondent : Mr. Syed Ashfaque Ahmad, Spl. P.P.

(In CR. APP (SJ) No.429 of 2014)

For the Appellant : Mr. Ram Kishun Prasad, Adv.
Mr. Binod Kumar, Adv.

For the Respondent : Mr. Binod Bihari Singh, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL JUDGMENT
Date: 20-07-2017

This appeal is directed against the judgment dated



16.07.2014 passed by Sri Santosh Kumar, Adhoc A.D.J.-Ist, East Champaran, Motihari in Sessions Trial No.107 of 2009, by which he has convicted the appellants of both the Cr. Appeal No.420 of 2014 and Cr. Appeal No.429 of 2014, under Section 304B and 201/34 of the Indian Penal Code (hereinafter referred to be as 'the IPC'), vide order dated 16.7.2014, R.I. for ten years under Section 304B of the Indian Penal Code and R.I. for five years under Section 201/34 of the IPC and further fine of Rs.20,000/- each under Section 201 of the IPC and in default of payment, conviction for one more year.

2. The prosecution story in short is that P.W. 5 Makhan Sah who is said to be grand father of the deceased, has lodged a written report, stating *inter alia* that his grand daughter was married with the appellant Dina Nath Prasad as per Hindu rites and customs about 1 ½ years ago and at the time of marriage presentation of Rs.1.50 lakh, one Hero Honda Motorcycle, two golden rings and other articles were given to the appellant Dina Nath Prasad. Further case is that after marriage, his grand daughter was living peacefully in her 'Sasural'. It is also his case that for the last two months, appellants as well as their other family members started demanding Rs.01 lakh which was informed by her, on that he and his family members tried to settle the matter but accused persons were rigid on their demand. It is also a case that when the deceased came at her "Maike", at the time



of '*Raksha Bandhan*', she started saying that unless demand is fulfilled, she would not go to her '*Sasural*' as they would kill her. It is also a case of the prosecution that they gave a buffalo of Rs.60,000/- and one Nokia Mobile of Rs.16,000/-, and sent her to her '*Sasural*'. The case of prosecution is also that the deceased was pregnant at that time. The written report dated 1.9.2008 shows that on 1.9.2008 at 10.00 A.M. he received information that her grand daughter was killed and the dead-body was disposed of and on that information, he along with others went to her '*Sasural*' i.e. Siswa Mangal and there he came to know that they had killed her grand daughter and the dead-body was burnt also.

3. On the basis of the aforesaid written report, Dhaka (Pachpakri O.P.) P.S.Case No.99 of 2008 dated 1.9.2008 was registered under Section 304B and 201/34 of the IPC against the appellants as well as eight other accused persons.

4. The police after investigation submitted charge-sheet under Section 304B and Section 201/34 of the IPC on 7.12.2008 against the appellants and the cognizance was taken and the case record of other accused persons was separated.

5. It further appears that the case was committed to the court of sessions and ultimately came to the court of Sri Santosh Kumar, Adhoc ADJ-Ist, East Champaran at Motihari for trial and



disposal.

6. The charges were framed under Section 304B and Section 201/34 of the IPC against the appellants.

7. In course of the trial, the following witnesses have been examined on behalf of the prosecution : P.W. 1 Amar @ Madan Prasad, P.W.2 Jiyalal Prasad, P.W.3 Kamli Devi, P.W.4 Babita Kumari, P.W.5 Makhan Sah and P.W.6 Amendra Paswan. Out of the aforesaid witnesses, P.W.5 is the informant and P.W.6 is the I.O. of the case and P.Ws. 2 and 3 are father and mother respectively of the deceased and P.W.1 is brother and P.W.4 is the sister of the deceased.

8. Apart from the oral evidence, the following documents have been brought on record on behalf of the prosecution – Ext.1 signature of Makhan Sah on written report, Ext.2 forwarding on fardbeyan, Ext.3 endorsement of fardbeyan , Ext.4 F.I.R. and Ext.5 seizure list.

9. No specific defence has been taken by the defence rather it appears from the trend of cross examination and suggestion given to the witnesses that she was suffering from epilepsy and she is under treatment of Dr. Ashutosh Kumar. On the day of occurrence, she went to ease herself and in that course '*Dibri*' fell down and she caught fire, causing burn injury to her and information about the same has been given to the family members of the informant on phone.



10. The learned trial court after conclusion of the trial convicted the appellants under Section 304B as well as under Section 201/34 IPC and sentenced them as stated above.

11. Being aggrieved by the aforesaid judgment and order, the present appeal has been filed on behalf of the appellants on the ground that the conviction of the appellants under Section 304B of the IPC is not sustainable in the eye of law on the ground that the death of the deceased was accidental and information about the same had been given to the family members of the informant and evidence also shows the informant and other witnesses also received information on phone and when the informant and his family members did not turn up, the dead-body was cremated. Further submission is that the evidences available on the record clearly shows that the relationship of the deceased with the in-laws was cordial and there was no demand of dowry till '*Rakshabandhan*'. Further submission is that there is nothing available on the record to show that she was subjected to cruelty in connection with the demand and that too soon before her death.

12. It is also submitted on behalf of the appellants that not a single independent witness of the village of the appellants or the village of informant has been examined in support of the prosecution case. Even seizure list witness has not been examined.



13. Submission of the learned counsel for the appellants is also that so far demand of dowry is concerned, the evidence itself shows that even if prosecution case is believed, the demand is for doing business hence, it does not come under the purview of the “dowry demand”.

14. On the basis of the above submission, learned counsel for the appellants has submitted that considering the circumstances as stated above, the conviction of the appellants under Section 304B and 201/34 IPC is not sustainable in the eye of law.

15. On the other hand the learned counsel for the prosecution has submitted that the evidence available on the record clearly shows that the death has occurred within two years of marriage and there is sufficient evidences available on record to show the demand of dowry of Rs.01 lakh and she was subjected to cruelty for that demand and there are consistent evidence to support the aforesaid prosecution case. Further submission is that the death of the deceased is under unnatural circumstances and in such view of the matter, the conviction of the appellants under Section 304B of the IPC and under Section 201/34 of the IPC is just and proper and it does not require any interference.

16. In the present case, the charges have been framed under Section 304B and Section 201/34 of the IPC and the appellants



in both the cases have been convicted under the aforesaid Sections.

17. On conjoint reading of Sections 304B and 120B of the Evidence Act, it clearly appears that in a case of dowry death. If prosecution is successful in establishing that (i) Death of the deceased occurred within seven years of her marriage and that too not under natural circumstances, (ii) there was demand of dowry, (iii) she was subjected to cruelty soon before her death in connection with demand of dowry. There shall be presumption against the accused persons of “Dowry Death”. No doubt the above presumption is rebuttable.

18. In the present case so far marriage of the appellant Dina Nath Prasad with the deceased is concerned, it is not under challenge rather the evidence shows that she was married in the month of May, 2007 and the death occurred on 31.08.2008/1.9.2009, as such the death is within seven years of marriage. It is also admitted that the death was due to burning. As per defence, it was accidental, whereas as per the prosecution she was burnt to death. Hence, death was homicidal.

19. There is no eye witness to the occurrence of the death of the deceased, however, the prosecution case is based on disclosure by the villagers but they have not been named by either of the witnesses nor they have been examined in this case as witnesses. P.W. 5 in his chief has specifically stated that people of nearby has stated so



but in Para 15 of his cross examination, he has stated that he did not have any talk with the villagers of Siswiat Mangal village. As per evidence only P.W. 1, 2 and 5 have visited place of occurrence and even evidence of P.W. 1 and 2 are silent on that point. Evidence of P.W.3 at para 8 shows that none of the witness has gone to her 'Sasural', when they learnt about death of deceased. That creates doubts about their claim of coming to know from villagers. On the other hand, as per cross examination, defence tried to show that she had gone to ease herself and the 'Dibri' fell down and caught fire to her cloth, causing burn injury and she died. The defence has also not brought any evidence to show that the death was accidental.

20. Investigating Officer (P.W.6) has inspected the place of occurrence and he has found half filled gallon of yellow colour, piece of clothes and broken bangles from there and the I.O. has not found any piece of 'Dibari' from the place of occurrence.

21. Above discussions shows that there is no direct evidence either in favour of accidental or homicidal death and only materials that comes are that P.W.6 (I.O.) has found half filled gallon kerosene oil. Apart from that it appears that P.W.5 (informant) P.W. 1 (brother of deceased) and P.W.2 (father of deceased) received information on 1.9.2008. It is the case of defence that they had given information to the family members of the informant about the



occurrence and P.Ws., 1, 2, & 5 had also been cross examined about the person, who has given information and suggestion has also been given to the witnesses that brother of appellants given information, but they have denied suggestion. Even trial court has put question in this regard to P.W.1 as in Phone, number displays but he could not answer to the same. Above conduct of witnesses show that prosecution is withholding the real fact from the court.

22. So far prosecution case of demand of dowry is concerned, P.W.5 is the informant as well as grand father of the deceased and he has stated in his evidence that at the time of marriage, one Hero Honda Motorcycle and other articles were given. His evidence further shows that the deceased sent an information from her '*Sasural*' that the appellants and other accused persons are demanding Rs.01 lakh for the purpose of doing business and when in "*Rakashabandhan*" she came she stated that unless the demand is fulfilled, she will be killed but the aforesaid evidence of this witness is contrary to the prosecution case as stated in the F.I.R. whereas this witness has not stated about the demand prior to *Rakshabandhan*. His evidence further shows that they have given a buffalo and one mobile to the appellant Dina Nath Prasad. This witness has been cross examined and in para 8 of his cross examination, he has stated that marriage was solemnized in peaceful manner. This witness has also



stated that the appellant Dina Nath Prasad was not in job. This witness has been examined again in para 10 that shows that the appellants were demanding money for the purpose of business but he did not know date of demand. So far other witnesses are concerned, P.W. 2 is father of the deceased, P.W.3 is mother of the deceased and P.W.1 and 4 are sister of the deceased.

23. P.W.3, who is mother of the deceased has also stated about demand but her evidence does not show any demand prior to *Rakshabanda*. She has also stated about giving one buffalo and nokia mobile at the time of her departure. Her cross examination in para 6 shows that in the marriage there was no dispute between the parties and the marriage was performed peacefully. Further her statement in para 8 shows that on the day, they came to know about the occurrence, none of her family members from her house had gone to her '*sasural*' and they have not visited her '*sasural*' any day and only her father-in-law had gone to the police station. Her evidence in para 9 clearly shows that she had deposed as per instruction made by her father-in-law. This evidence demolished her evidence.

24. P.W.2 is the father of the deceased and he has also supported the case of demand of Rs.1 lakh by her daughter when she came on '*rakshabandan*' but after '*rakshabandan*' on 19.8.2008 she went back and the girl disclosed about torture and harassment by the



appellants and their family members. His evidence also shows that at the time of '*bidai*', he had given a buffalo and one nokia mobile of Rs.16,000/-, however, his attention has been drawn towards the statement made before the police. In para 8, in which he has stated that he disclosed before the police about demand of Rs.1 lakh for the purpose of doing business. This witness has been cross examined and his cross examination in para 5 shows that at the time of "*Rakshabandan*" his daughter came along with her husband and in his presence, they returned back.

25. P.W.4 is the sister of the appellants and she has supported the story of demand but her statement shows that the demand of Rs.01 lakh was for the purpose of doing business. Her evidence also shows that at the time of her departure one buffalo and one nokia mobile had been provided to her. She has also been cross examined and her cross examination at para 4 shows that marriage was solemnized peacefully and even in '*bidai*' there was no dispute.

26. P.W.1 is the brother of the deceased and his evidence has also supported the demand of Rs.01 lakh for the purpose of doing business. He has also stated about buffalo and one nokia mobile provided to her at the time of departure. His cross examination in para 10 shows that the marriage was peaceful and even at the time of



'bidai' everything was perfect. In para 12 of his statement, he has disclosed that after Diwali, *'gauna'* was performed happily. Para 13 shows that there was no obstruction to them in visiting his *'sasural'*.

27. All the aforesaid evidence clearly shows that even at the time of marriage, there was no demand and till *gauna* in November, everything was peaceful. Though P.W.5 has stated that two months prior, there was demand of Rs.01 lakh but his evidence has not been corroborated by the evidence of other witnesses. The evidence also shows that the appellant Dina Nath Prasad who is the husband of the deceased was not doing any job and further evidence shows that at the time of departure, after *'rakshabanhan'* they had provided buffalo and one nokia mobile also to pacify the matter and there is no evidence of demand or torture after she went back.

28. Even the aforesaid evidence is believed, there appears that there was demand of Rs.01 lakh for the purpose of doing business.

29. Submission of the learned counsel for the appellants is that demand of Rs.1 lakh does not come under the purview of the dowry demand as the same has been made for the purpose of business and all the witnesses have stated so in their evidence that the same has been demanded for the purpose of business. So far demand of dowry is concerned, the dowry has been defined in the case of ***Vipin Jaiswal***



(A-I)- Vrs. State of Andhra Pradesh reported in 2013 (3) SCC 684

at **para 9 and 10** as follows : -

“9. We have perused the evidence of PW 1 and PW4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, TV fridge and several other household articles worth more than Rs.2,50,000 were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a Xerox-cum-typing institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000 from them as he was intending to purchase a computer and set up his own business. Similarly, PW 4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000 and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW 1 and PW 4 is that the demand of Rs.50,000 by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000 that the trial court has recorded a finding of guilt against the appellant for the offence under Section 304-B IPC and it is only in relation to this demand of Rs.50,000 for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the trial court with regard to guilt of the appellant under Section 304-B IPC. In our view, both the trial court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a “dowry demand” within the meaning of Section 2 of the Dowry Prohibition Act, 1961.

10. This Court has held in Appasaheb v. State of



Maharashtra (SCC PP.726-27, Para 11)

11. In view of the aforesaid definition of the word 'dowry' any property or valuable security should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning."

30. From perusal of above decision, I find force in the argument of the learned counsel for the appellants and as such even there is demand of Rs.01 lakh that is for the purpose of settlement of the appellant Dina Nath Prasad and that is not in connection with marriage.

31. So far prosecution case is concerned, she was subjected to cruelty and harassment in connection with such demand soon before her death. She had stated that if the demand is not fulfilled she would not go to her 'maike', otherwise they would kill



her and P.W.3 is mother and she has stated so in her evidence, however, as stated above. Evidence of P.W.2 has also stated about disclosure by the deceased of her being subjected to cruelty and similarly P.W. 1 and 4 have also stated about disclosure by the deceased that she was subjected to cruelty by the appellants, however, the learned counsel for the appellants has submitted that though there are evidence but those evidences are quite vague and general in nature and not a single instance has been brought by any of the witnesses of any torture and cruelty, on the other hand there is evidence of P.W.1 that at the time of her 'gauna' she was happy. Even prior to 'rakshabandhan' she appears to be happy. Learned counsel for the appellants has further submitted that there is no cogent and reliable evidence available to show that she was subjected to cruelty and relying on the general and vague evidence for establishing the case of cruelty is not proper and against the principle as laid down by the various decisions of our own High Court in the case of **Suresh Singh-Vrs.- The State of Bihar** reported in **2006 (4) PLJR 152 and** in the case of **Sanjay Singh & Ors.- Vrs. Ramchandra Singh & Ors.** Reported in **2004(4) PLJR 736** and also in the case of **Bhudeo Choudhary @ Bhudeo- Vrs.- State of Bihar**, reported in **2006 (2) PLJR 68 (S.J.)**.

32. All the witnesses have stated that she was apprehensive of being killed on not being fulfillment of demand and



there was some evidence that she was harassed by all the appellants and their family members. So far judgments as cited by the learned counsel for the appellants in the case of *Suresh Singh- Vrs. The State of Bihar (supra)* and *Sanjay Singh & Ors. – Vrs.- Ramchandra Singh & Ors (supra)* is concerned, the facts and circumstances of the case is different from the present case. However, as I have discussed above, on consideration of their evidence on the point of cruelty or harassment, it appears that those evidences are general and omnibus and they are vague and not a single instance has been attributed of any cruelty being meted out or she being subjected to any assault. Further there is no independent witness to support or corroborate the prosecution case and all the witnesses are family members of the informant.

33. Considering the entire discussions as made above though the prosecution evidences are consistent showing the death of deceased within seven years of marriage and death was under unnatural circumstances and claim of the prosecution is that the same is homicidal but except the claim of the informant there is nothing available to show that the case is homicidal as well as except seizure of one gallon half filled of Kerosene oil, no independent witness has been examined by the prosecution in support of the case. As discussed earlier claim of P.Ws. 1, 2 and 5 that they came to know from



villagers, is contrary to the evidence of P.W.3, who has stated that none of his family members has visited village of deceased, after coming to know about death. On the other side the witnesses have been cross examined and suggested also about information being given by the brother of the appellants to the informant and grand father (informant no.5) and also to the father of the deceased P.W.2, even the court put question in this regard.

34. So far evidence of cruelty that being subjected before her death is concerned, the evidence is general and omnibus and no instance of cruelty or assault has been shown and not a single independent witness either of the village of the informant or of the village of the appellants have been examined by the prosecution to corroborate the aforesaid evidence. So far demand is concerned, in view of the settled principle, such demand appears to be in connection with settlement of appellant in Case No.420 of 2014 and for the purpose of doing business as he was not doing any job and the same is not in connection with dowry.

35. In such view of the matter, it appears that the prosecution has failed to prove the circumstances as enumerated under Section 304B for establishing a case of dowry death beyond reasonable doubt and hence there may not be a presumption under Section 113 B of the Indian Evidence Act.



36. Accordingly both the Appeals bearing No.420 of 2014 and No.429 of 2014 are allowed and conviction and sentence of the appellants of both the Appeals are set aside. As the appellant (Dina Nath Prasad) of Criminal Appeal No.420 of 2014, is in custody, he is directed to be released forthwith. The appellant (Ram Surat Prasad) of Criminal No.429 of 2014 is on bail, as such he is discharged from the liabilities of his bail bonds.

(Vinod Kumar Sinha, J)

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