

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.465 of 2015

Arising Out of PS.Case No. -52 Year- 2012 Thana -DUMRIAGHAT District-
EASTCHAMPARAN(MOTIHARI)

=====

Kishun Deo Mahto, Son of Banarsi Mahto, Resident of Village- Husseni Dih,
Police Station- Dumariyaghat, District- East Champaran at Motihari.

.... Appellant/s

Versus

The State of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. Binit Kumar, Advocate.
Mr. Rakesh Ranjan, Advocate.
For the Respondent/s : Mr. Sujit Kumar Singh, APP.

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**CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA
JAISWAL**

ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the appellant as well as
learned APP for the State and perused the record.

2. This criminal appeal has been filed against the
Judgment and Order of conviction dated 01.04.2015 and order of
sentence dated 06.04.2015 passed by the 5th Additional Sessions
Judge, East Champaran, Motihari in Sessions Trial No. 127 of 2013
arising out of Dumariyaghat P.S. Case No. 52 of 2012, whereby the
learned trial court acquitted the appellant of the charge levelled under
Section 302 of the Indian Penal Code and convicted him for the
offence punishable under Sections 304B/34 and 201/34 of the Indian
Penal Code and sentenced him to undergo R.I. for ten years and also



slapped him with fine of Rs. 10,000/- and in default of payment of fine, to further undergo R.I. for two years under Section 304B/34 of the Indian Penal Code and also sentenced him to undergo R.I. for 2 years and slapped him with fine of Rs. 2000/- and in default of payment of fine, to further undergo R.I. for one year for the offence punishable under Section 201/34 of the Indian Penal Code. Both the sentences were directed to run concurrently.

3. The factual matrix of the case is that Dumariyaghat P.S. Case no. 52 of 2012 was instituted under Sections 304B/201/34 of the Indian Penal Code against the accused persons, namely, Banarsi Mahto, Chandradeo Mahto, Kishundeo Mahto, Prabhawati Devi and Meera Devi on the basis of the written report of the informant Satahu Mahto, Son of Musafir Mahto, Resident of Village- Manoradih, P.S. – Kalyanpur, District- East Champaran at Motihari with the allegation in succinct that he performed marriage of his daughter, namely, Bibha Devi with Kishundeo Mahto on 18.04.2012 and accorded articles in gift worth Rs. 50,000/- including a bicycle in the marriage. After marriage, his daughter went to her marital house on the following day of the marriage. His son, namely, Bhushan Kumar and nephew, namely, Belash Kumar also accompanied her. On the very day of their arrival there, Banarsi Mahto, wife of Banarsi Mahto, Chandradeo Mahto, wife of Chandradeo Mahto and



Kishundeo Mahto slated them and asked them to regress to take back the bicycle and ask the father of the girl to accord motorcycle in place of bicycle else to face dire consequence. The aforesaid boys regressed to their house taking the bicycle and divulged the occurrence to him. Thereafter, 5-6 days later he went to marital house of his daughter, but the accused persons refused to allow him to meet his daughter and perform her Bidai till fulfillment of the aforesaid demand. He however, regressed to his house persuading them. Later on he tried to contact with his daughter on mobile phone, but in vain. On 04.05.2012 in the morning when he along with his villagers arrived at the marital house of his daughter, he found the said house cordoned off by the police and the dead body of his daughter lying on the heap of straw in a room. It is claimed by the informant that all the accused persons subjected his daughter to cruelty and strangled her to death over dowry demand of motorcycle.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet under Sections 304B/201/34 of the Indian Penal Code against the accused Kishundeo Mahto keeping investigation pending against rest accused persons, namely, Banarsi Mahto, Chandradeo Mahto, Prabhawati Devi and Meera Devi.



5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the accused and committed the case to the court of sessions and on transfer finally the case came in *seisin* of the 5th Additional Sessions Judge, East Champaran, Motihari for trial.

6. Charges against the accused Kishundeo Mahto were framed under Sections 304B, 201 and 302 of the Indian Penal Code. Charges were read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eight prosecution witnesses namely, Ramjyoti Devi as PW-1, Sudish Mahto as PW-2, Bhushan Kumar as PW-3, Sima Devi as PW-4, Chandan Prasad as PW-5, informant Satahu Mahto as PW-6, Dr. Shailendra Kumar Jha as PW-7 and I.O. Shambhu Kumar Singh as PW-8. Out of the aforesaid witnesses, PW-2, PW-3 and PW-5 happens to be hostile witnesses while PW-4 is the tendered witness. In documentary evidence, the prosecution has filed and proved several documents.

8. The statement of the accused Kishundeo Mahto was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming himself to be innocent. In buttress of his case, in ocular evidence he



has examined two witnesses, namely, Sona Devi as DW-1 and Sita Devi as DW-2. He has not filed any document by way of documentary evidence.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned Judgment and Order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid Judgment and Order of conviction and sentence, the convict has preferred the present Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellant that though the death of the deceased has occurred within a month of her marriage in her marital house in otherwise than under normal circumstances, but the prosecution has utterly and miserably failed to substantiate the important ingredients of dowry demand and subjecting the deceased to torture and cruelty by her husband or by relative of her husband soon before her death in connection with said dowry demand by adducing consistent, trustworthy and convincing ocular evidence as PW-1, PW-3 and PW-6 who happen to be the mother, brother and father of the deceased respectively have not



supported the case of the prosecution regarding making of dowry demand by the appellant and subjecting the victim to torture and cruelty over the said demand by him soon before her death. It is further submitted by learned counsel for the appellant that as the prosecution has failed to prove the aforesaid ingredients of Section 304B of the Indian Penal Code, the burden is not shifted upon the shoulder of the defence to prove that he has not committed the dowry death of the deceased and the prosecution has utterly and miserably failed to substantiate the dowry death of the deceased by the appellant or his family members. It is also submitted by the learned counsel for the appellant that as per the medical evidence, the deceased has died due to asphyxia caused by throttling, but the said circumstances has not been put to the accused under Section 313 of the Code of Criminal Procedure to enable him to explain the same. So the aforesaid evidence of the prosecution cannot be considered against him and thus, the prosecution has utterly and miserably failed to substantiate the prosecution case and the accused is entitled to get the benefit of doubt.

13. On the other hand, learned APP advocating the correctness and validity of the impugned Judgment and Order of conviction and sentence submitted that it is admitted case of the parties that death of the deceased has occurred within 15 days of the



marriage in her marital house in otherwise than under normal circumstances and the prosecution has also substantiated the demand of dowry and subjecting the deceased to torture and cruelty by the appellant and his family members in connection with the said demand of dowry soon before her death. Thus, entire ingredient of Section 304B of the Indian Penal Code stands established and in that case, burden lies on the shoulder of the appellant to prove that he has not committed the death of the deceased as per Section 113B of the Indian Evidence Act, but the appellant has utterly and miserably failed to discharge the aforesaid burden. The learned lower court correctly appreciating the facts and evidence available on record has rightly passed the impugned Judgment and Order of conviction and sentence which is liable to be upheld and this appeal has no substance in it and is liable to be dismissed.

14. From perusal of Section 304B of the Indian Penal Code, it appears that there are four ingredients of aforesaid section. Firstly death of the deceased must be within seven years of marriage, secondly the death must be caused by any burns or bodily injury or otherwise than under normal circumstances, thirdly there must be dowry demand and fourthly the deceased must be subjected to cruelty and harassment by her husband or any relative of her husband in connection with the aforesaid dowry demand soon before her



death and as per Section 113B of the Indian Evidence Act, when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that such person had caused the dowry death. The conjoint reading of Section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment in connection with dowry demand by the husband or relative of her husband. Then the burden to prove that the accused has not committed dowry death shifts upon him.

15. From perusal of the record, it appears that it is admitted case of the parties that marriage of the deceased Bibha Devi was performed on 18.04.2012 and she has died in otherwise than under normal circumstances in her marital house within 15 days of her marriage on 03.05.2012. Regarding other two ingredients of Section 304B of the Indian penal Code, it is the case of the prosecution as mentioned in the written report that the son of the informant namely, Bhushan Kumar and his nephew namely Belash Kumar had accompanied her daughter to her marital house at the time of Bidai on 19.04.2012. On the very day of their arrival there,



all the accused persons named in the F.I.R. including the appellant had slated them and asked them to take the bicycle given in the marriage back and ask the father of the daughter to accord motorcycle to them else to face dire consequence. 5-6 days later when the informant went to the marital house of his daughter, the accused persons put the said demand and did not allow him to meet his daughter and also refused to perform Bidai till fulfillment of the aforesaid demand. Thereafter on 03.05.2012, his daughter was strangulated to death by the accused persons including the appellant over the said dowry demand.

16. As per the aforesaid case of the prosecution, the very first witness of demand of dowry is the son of the informant namely Bhushan Kumar and his nephew, namely, Belash Kumar before whom the aforesaid dowry demand was made by the accused persons. Out of the aforesaid two witnesses, only Bhushan Kumar has been examined by the prosecution as PW-3. The said witness has turned hostile. In his examination in chief, he has not supported the prosecution case of accompanying the deceased Bibha Kumari to her marital house on the date of her Bidai rather he has stated that he went to marital house of Bibha Kumari to see her 8-9 days later to the marriage. He has also not supported the prosecution case regarding demand of motorcycle by the accused persons, slating



them over the said demand and asking them to ask the informant to fulfill the aforesaid demand else to face dire consequence. Moreover in the said examination-in-chief, he has stated that he had met Bibha Devi on the said date but he has not even whispered about any demand of dowry and subjecting Bibha Devi to cruelty and harassment by the accused persons including the appellant over the said demand.

17. Nephew of the informant, namely, Belash Kumar has not been examined by the prosecution and no plausible reason has been assigned by the prosecution for his non-examination. Hence, adverse inference is drawn against the prosecution.

18. From perusal of the testimony of the informant (PW-6), it appears that he has stated in Para-1 of his examination-in-chief that he has not accorded any article to Kishundeo Mahto in the marriage. In Para-2 of his examination-in-chief, he has stated that he had sent his son Bhushan Kumar and his nephew Belash Kumar to the marital house of Bibha Devi, but they did not divulge anything on regressing. Though in the said Para he has himself further stated that his son had divulged about demand of motorcycle by Kishundeo Mahto, but in Para-5 of his cross-examination, he has stated that neither Kishundeo Mahto nor his parents has demanded any motorcycle from him directly. Bibha Devi has also not informed him



about mounting pressure upon her for the said demand of motorcycle either by giving letter or otherwise. Moreover said son of the informant has not supported the demand of motorcycle by the appellant before him and divulgence of the factum of said demand of dowry by him to his father. He has also not divulged the factum of subjecting the deceased to cruelty over the said demand to the informant. Moreso in Para-8 of his cross-examination, the informant has candidly stated that there was no trouble to his daughter in her marital house. The aforesaid statement of the informant itself rules out the prosecution case regarding demand of motorcycle in dowry and subjecting the deceased to cruelty and harassment over the said demand by the accused persons including the appellant. Thus from perusal of the statement of PW-6, it appears that he has not supported the aforesaid case of the prosecution regarding demand of dowry and subjecting the victim to cruelty and harassment over the said demand.

19. PW-1, namely, Ramjyoti Devi who happens to be the mother of the deceased has stated in her examination-in-chief that her son Bhushan Kumar and Nephew Vikash Kumar had gone to the marital house of Bibha Devi and on regressing divulged her about demand of motorcycle by the accused persons. But Bhushan Kuamr has not corroborated the factum of divulgence of the demand of



motorcycle by the accused persons in dowry to PW-1 and Vikash Kumar has not been examined by the prosecution. Moreover in Para-4 of her cross-examination, the said witness has stated that no one informed them about making of any demand of dowry. Thus, PW-1 has also not supported the prosecution case of demand of dowry and subjecting the victim to torture by the accused persons including the appellant over the said demand. Thus, on perusal of the aforesaid evidence of the prosecution, I find and hold that the prosecution has utterly and miserably failed to establish the aforesaid two ingredients of Section 304B of Indian Penal Code of demand of dowry by the appellant and subjecting the deceased to cruelty and harassment over the said dowry demand soon before her death. As the aforesaid two ingredients of Section 304B of the Indian Penal Code does not stand established by the prosecution, burden under Section 113B of the Indian Evidence Act is not shifted upon the appellant to substantiate that he has not committed the dowry death of the deceased. Though on perusal of the post mortem report and evidence of Dr. Shailendra Kuamr Jha examined in this case as PW-7, it appears that the cause of death has been opined by the doctor as asphyxia caused due to throttling, but from perusal of the statement of the accused recorded under Section 313 of the Code of Criminal Procedure, it appears that the aforesaid circumstances of committing murder of the deceased by



throttling has not been put to the appellant under Section 313 of the Code of Criminal procedure enabling him to explain the aforesaid circumstances. Hence, in my considered opinion, the aforesaid evidence cannot be considered against the appellant.

20. In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate the charges levelled against the appellant beyond all reasonable doubt by adducing consistent, trustworthy, reliable and cogent ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside and the appellant is acquitted from the charges levelled against him. As the appellant is in custody, he is directed to be released forthwith, if not wanted in any other case. Accordingly, this appeal is allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

AFR/NAFR	A.F.R.
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