

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.419 of 2015

Arising Out of PS.Case No. -7 Year- 2010 Thana -KHAGARIA GRP CASE District- KHAGARIA

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1. Gauri Shankar Chauhan S/o Late Nand Kishor Chauhan Resident of Village
Thana Bihpur Railway Colony, Government Quarter No. M/5, P.S. Bihpur, District
Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

with

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Criminal Appeal (SJ) No. 524 of 2015

Arising Out of PS.Case No. -7 Year- 2010 Thana -KHAGARIA GRP CASE District- KHAGARIA

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1. Shiv Shankar Chauhan Son of Late Nand Kishor Chauhan Resident of Village -
Thana Bihpur Railway Colony, P.S. Thana Bihpur, District - Bhagalpur.

.... Appellant/s

Versus

1. The State of Bihar.

.... Respondent/s

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Appearance :

(In CR. APP (SJ) No.419 of 2015)

For the Appellant/s : Mr. Ram Sumiran Rai, Adv.

For the Respondent/s : Mr. Ashfaq Ahmad, APP

(In CR. APP (SJ) No.524 of 2015)

For the Appellant/s : Mr. Ram Sumiran Rai, Adv

For the Respondent/s : Mr. Bipin Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 20-11-2017

Cr. Appeal No. 419/2015, wherein Gauri Shankar Chauhan is the appellant and Cr. Appeal No. 524/2015, wherein Shiv Shankar Chauhan is the appellant sprang out commonly from the judgment of conviction dated 10.07.2015 and order of sentence dated 16.07.2015 passed by the learned Additional Sessions Judge III, Khagaria in Sessions Trial No. 110/2011, whereby and whereunder



both the appellants have been found guilty for an offence punishable under Section 304B/34 of the Indian Penal Code and sentenced to undergo S.I. for ten years, under Section 201/34 of the Indian Penal Code and sentenced to undergo S.I. for three years with a further direction to run the sentences concurrently.

2. Informant, Sumitra Devi, PW.8, being suspicious over the activity of the accused persons, rushed to their place but could not find her daughter, daughter's husband as well as other family members. The house was locked. None was present, whereupon, lodged Sanha. Subsequently thereof, the aforesaid Sanha was converted as written report after conducting preliminary enquiry, on the basis of which, Rail Thana Bihpur P.S. Case No. 7/2010 was registered, whereupon, investigation commenced and concluded by way of submission of charge-sheet against these two accused persons keeping the investigation pending against others, who, accordingly faced trial and met with the ultimate result, subject-matter of instant appeal.

3. As per written report, the prosecution case happens to be that the daughter of the informant, namely, Laxmi Kumari, was married with Shiv Shankar Chauhan, S/o Nand Kishore Chauhan, residing in the quarter no. M/5 by the side of Bihpur Railway Hospital on 07.07.2007. After marriage, the daughter of the informant stayed at



her *Naihar* for ten days and then thereafter, her son-in-law, Shiv Shankar Chauhan, got *Vidai*, whereupon, her daughter began to reside at her *Sasural*. After staying for 8 to 9 months (approximately), condition of informant deteriorated on account of some sort of ailment whereupon, her son Pappu had gone to bring her daughter. At that very moment, her *Sasuralwala* disclosed that they will themselves accompany Laxmi Kumari, the victim to his place. Even after five days, she didn't come, on account thereof, the informant along with her son and daughter-in-law demanded *Vidai* of Laxmi Kumari in the month of October. Her father-in-law had disclosed that as she is pregnant, therefore, *Vidai* will be effected after delivery. The husband will himself accompany her. Even thereafter she was not brought to her place as such, they again insisted for *Vidai* whereupon, in usual phenomenon they spoke that they themselves will carry Laxmi to her Maika. On 10.03.2009, when the informant contacted her daughter over phone, she divulged that her husband (Mehman) is demanding Rs. 50,000/- and is saying that he will not effect *Vidai* till receipt of the aforesaid amount whereupon, the informant along with others rushed to the place and arrived in the morning of 13.03.2009. After coming to the residence, they have seen the house closed. Lock was hanging. None of the family members were present. They, even after great effort could not know about Laxmi and her daughter and so,



they apprehended some foul play, whereupon, the matter has been reported to the police.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has specifically been pleaded that aforesaid Laxmi was in love since before her marriage with Ashutosh Marwari and she fled away with the aforesaid Ashutosh Marwari leaving behind her four months' old daughter. Furthermore, also examined DWs on that very scope along with exhibit of certain paras of the case diary.

5. Prosecution had examined altogether 10 PWs in order to substantiate its case, namely, PW.1-Pappu Kumar, PW.2-Krishna Mahto, PW.3-Ashok Mahto, PW.4-Lothi Devi, PW.5-Nageshwar Mahto, PW.6-Dinesh Kumar Singh, PW.7-Md. Simpu, PW.8-Sumitra Devi, PW.9-Kapildev Sah and PW.10-Ramakant Upadhyay. Side by side has also exhibited, Ext.1-written report, Ext.2- Statement under Section 164 of the Cr.P.C. of Md. Simpu, Ext.3-Formal F.I.R. On the other hand, four D.Ws. have been examined on behalf of the appellants/accused persons. DW.1-Md. Pappu, DW.2-Md. Rasheed, DW.3-Karan Sahni, DW.4-Suresh Ram as well as has also exhibited, Ext. A to Ext. A/5, paragraph 8, 9, 10, 11, 14 and 15 of the case diary respectively.



6. The appellants were charged for an offence punishable under Section 302/34 of the Indian Penal Code and in an alternative under Sections 304B/34 as well as under Section 201/34 of the Indian Penal Code but, from paragraph 23 of the judgment impugned, it is evident that learned lower court, in pre-determine exercise, had observed that a case under Section 304B/34 of the Indian Penal Code is made out and further, as the defence failed to rebut the same in terms of Section 113B of the Evidence Act, recorded the verdict of guilt.

From perusal of evidences of the PWs, it is evident that source of information regarding demand of dowry was through mobile, but none of the prosecution witness had disclosed their own mobile number, more particularly of PW.1, Pappu Kumar, brother of Laxmi as well as SIM number of Laxmi as source of information with regard to demand of Rs. 50,000/- is based thereupon. Furthermore, the learned lower court also failed to perceive that right from initial version, the prosecution had not alleged that Laxmi was being treated with cruelty by her *Sasuralwala* for fulfillment of demand of dowry along with the fact that soon before her death, she was tortured on that very pretext.

7. So far ingredients of Section 304B of the Indian Penal Code is concerned, apart from plain reading of the Section, the



Hon'ble Apex Court times without number laid down the same. More recently in **Maya Devi & Anr. vs. State of Haryana** reported in **2016 Cr.L.J 629**, the Apex Court has held:

14. In order to convict an accused for the offence punishable under Section 304-B IPC, the following essentials must be satisfied:

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death. If the abovementioned ingredients are attracted in view of the special provision, the court shall presume and it shall record such fact as proved unless and until it is disproved by the accused. However, it is open to the accused to adduce such evidence for disproving such conclusive presumption as the burden is unmistakably on him to do so and he can discharge such burden by getting an answer through cross-examination of the prosecution witnesses or by adducing evidence on the defence side.

15. Section 113-B of the Evidence Act, 1872 speaks about presumption as to dowry death which reads as under:

“113-B. Presumption as to dowry death.—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.

Explanation.—For the purposes of this section, ‘dowry death’ shall have the same meaning as in Section 304-B of the Indian Penal Code (45 of 1860).”

As stated earlier, the prosecution under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and such was caused “soon before her death”. In view of the Explanation to the said section, the word



“dowry” has to be understood as defined in Section 2 of the Dowry Prohibition Act, 1961 which reads as under:

“2. Definition of ‘dowry’.— In this Act, ‘dowry’ means any property or valuable security given or agreed to be given either directly or indirectly—

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person,

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.”

8. That means to say, it happens to be obligation on the part of prosecution to satisfy that deceased died within seven years of her marriage, on account of burn or bodily injury or in abnormal circumstances, there was demand of dowry, soon before her death, she was subjected to torture on that pretext and the aforesaid torture should be at the end of her husband or relative of her husband.

9. That being so, it was incumbent upon the learned lower court, while recording finding adverse to the appellants relating to Section 304B/34 of the Indian Penal Code to trace out from the evidences adduced by the prosecution, whether prosecution has been able to substantiate the same or not. From the scrutiny of the judgment impugned, it is evident that learned lower court had failed on that very score. The learned lower court not even cared to see whether there was reliable evidence exposing the event of demand of dowry, torture on that very pretext as well as even soon before her death at the end of



husband or relative of the husband.

10. So far other aspect is concerned, from the judgment impugned, it is evident that the learned lower court had tried to escape from proper scrutiny of the evidence available on the record in order to find out whether the same would justify the event of murder, based upon circumstantial evidence coupled with an obligation upon the accused in terms of Section 106 of the Evidence Court, having properly explained by way of adducing defence evidence, on the other hand, found it easier to conclude and held the appellants guilty for dowry death in mechanical manner, without having been supported with legal, cogent, reasonable reason.

11. Consequent thereupon, the judgment impugned is set aside. Both the appeals are allowed. The matter is remitted back to the learned lower court with a direction to proceed afresh from the stage of hearing of argument and will pass judgment in accordance with law within three months from the date of receipt of the judgment. Both the appellants, who are on bail, are directed to surrender before the learned lower court within fortnight and for that purpose, the privilege of bail is allowed to extend and pray before the learned lower court, which the learned lower court will consider in accordance with law, failing which, the learned lower court will be at liberty to proceed against the appellants in accordance with law and in that



circumstances, the time frame, as made hereinabove, would not be applicable.

(Aditya Kumar Trivedi, J.)

Rakhi

AFR/NAFR	AFR
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