

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.927 of 2012

Arising Out of PS. Case No.-361 Year-2010 Thana- SITAMARHI District- Sitamarhi

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1. Ram Lobhit Rai son of Chandeshwar Rai
 2. Chandeshwar Rai son of late Jagdeo Rai Both residents of village Baswariya Tola, Police Station Sitamarhi, District Sitamarhi.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur & Mr. Ashhar Mustafa Advocates
For the Respondent/s	:	Mr. S.N.Prasad, APP

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

Date : 17-11-2017

Ram Lobhit Rai (Appellant No.1) is the husband of the deceased Sabita Kumari, whereas Chandeshwar Rai (Appellant No.2) is her father-in-law. They were charged and convicted under Sections 304B/34 and 302/34 IPC, vide judgment dated 29.08.2012, passed by the Trial Court in Sessions Trial No. 585 of 2010 and sentenced to suffer R.I. for life with fine of Rs. 10,000/-having default clause only for the offence under Sections 302/34 IPC. No separate sentence under Sections 304B/ 34 IPC was imposed.

2. PW-5 Sochit Khirhar, father of the victim, Sarita



Kumari, filed the written report (Ext. 3), prepared by his brother-in-law(PW4) on 18.06.2010 alleging that Sarita Kumari was married to Appellant No.1 in May , 2008 and she was residing at her 'Sasural'. Gifts were given to her at the time of marriage. Six months after the marriage, Appellant No.1 started torturing Sabita Kumari to bring a sum of Rs. 50,000/- from her parents. In the evening of 17.06.2010, some co-villagers of her 'Sasural' called him to inform that Sarita Kumari was burnt to death by her in-laws at her 'Sasural'. He immediately reached the village/ 'Sasural' of his daughter and found the victim lying burnt beneath a wooden cot inside the room. PW-7 Shankar Rout conducted the investigation, drew the inquest report (Ext. 5), got the autopsy conducted by the doctor (PW3). Later investigation was made over to PW6 Jawahar Paswan who filed the challan leading to trial. The Trial Court framed the charge which was abjured by the appellants. The appellants set up the defence that the victim had accidentally caught fire and died of the burn injuries sustained by her. They were away from the house during the relevant time.

3. In order to discharge the burden of proving the charges beyond shadow of doubts, the prosecution examined seven witnesses. The resume of the prosecution witnesses is as



follows:-

PW-1 Dilip Kumar was then residing in the village of the appellants. He has deposed that in the morning at about 8.30 AM a quarrel had broken out in the 'Sasural' of the deceased. Several villagers had assembled there. At about 2 PM in the noon he noticed smoke billowing from the house of the deceased. In the evening, the father of the victim reached the 'Sasural' of the victim where he was also present. Both of them entered into the room and found the victim in a completely burnt condition. The dead body was lying beneath the cot in one of the rooms. Co-villagers who had assembled there disclosed that the in-laws of the victim had burnt her to death. PW-2 Ram Naresh Kumar is the brother-in-law of PW-5 (the informant). According to him, on hearing the tragic death of Sarita Kumari, he proceeded to the village Baswaria and saw her dead body lying beneath a wooden cot. Strong smell of kerosene oil was coming out from that room. Before his arrival there, his brother PW-4 Ram Prawesh Yadav had reached the place of occurrence. On enquiry, the villagers assembled there disclosed that at about 10 AM, a quarrel had taken place in the family on non-payment of the demand of Rs. 50,000/- by the parents of Sarita Kumari, due to which she was being persistently tortured/harassed. On the



relevant date, the appellants and other family members conjointly poured kerosene oil and set her on fire which resulted in her death. PW-3 is Dr. Uday Shankar Priyadarshi, who held the autopsy on 18.06.2010 at 2.15PM and proved the postmortem report (Ext.2). The doctor found the following ante-mortem injuries on the person of the deceased:-

“External finding: whole body burnt with blackening deep burn over chest, abdomen and whole lower limb. Some part of intestine protruded out. Superficial burn over back upto buttock. Sign of inflammation present over back with redness. Skin peeled off some places over back. Smell of K. oil coming out of dead body. Total burn 100%.

Internal finding: On opening of skull-cranium intact and brain matter congested.

On opening of neck-Trachea intact.

On opening of Thoracic cavity- both lungs intact and congested. Heart intact and chambers filled with cherry red blood.

On opening of abdominal cavity. –Whole abdominal viscera intact and congested. Stomach contained gastric juice only. Urinary partially filled. Uterus normal in size.

Time elapsed since death and PM held within 24 hours”.

4. The doctor has opined the cause of death due to hypovolumic shock leading to cardio respiratory failure as a result of above noted extensive burnt injury caused by flame of fire.



5. PW-4 Ram Prawesh Yadav is another brother-in-law of the informant, who had also reached the 'Sasural' of Sarita Kumari on hearing the incident. He had drawn up the written statement and signed it as a writer thereof. He has also deposed on the lines on which his brother PW-2 has deposed. Sochit Khirhar, PW-5, as noted above, is the father of the deceased. He got information on phone about the homicidal death of his daughter at her 'Sasural' and reached the house of the deceased at 7 PM. After seeing her dead body, he travelled two kilometers to inform the police about the incident. He returned to the place of occurrence followed by the arrival of the police. He again visited the Police Station at about 8.30 PM, the same day where the written report was lodged which set the criminal law in motion. PW-6 was then posted as the Sub-Inspector of police at Mehsaul police out post. He took over the investigation from PW7 and laid the charge sheet. PW-7 Shankar Rout is the I.O. of the case. After institution of the case, investigation was assigned to him. He visited the place of occurrence in the following morning. According to him, the inquest report (Ext. 5) was drawn on 18.06.2010 at 6.30 PM in the room of the deceased by the officer in charge of Mehsaul police out post which was witnessed by PWs 1 and 4.



6. Heard Mr. Thakur for the appellants and learned APP for the State.

7. It has been urged by the appellants that the essential ingredients constituting the offence under Section 304(B) of the IPC have not been established by the prosecution. The statutory presumption under Section 113-B of the Evidence Act (for short 'the Act') can be invoked only upon proving beyond doubt the three basic ingredients i.e. (i) death occurred within seven years of marriage, (ii) the death was unnatural and (iii) the deceased was subjected to cruelty for non-fulfillment of dowry soon before her death. In support of his submission, he referred to **Baijnath and others Vs. State of Madhya Pradesh (AIR 2016 SC 5313)** and the case of **Sham Lal vs. State of Haryana [(1997) 9 SCC 759]**. While criticizing the findings of guilt recorded under Section 302 of the IPC, it is contended that the same has also not been proved brushing aside the reasonable doubts. Merely on the basis of presumption under Section 106 of the Act, the appellants cannot be convicted. If the prosecution has failed to establish the case beyond doubt the Court should not take aid of Section 106 of the Act.

8. Learned APP, on the other hand, supported the impugned judgment. He contended that the evidence of PWs



1,2,4 and 5 (informant) unerringly proves the essential ingredients of Section 304-B of the IPC. The conviction of the appellants under Section 302 of the IPC is also sustainable in law as the appellants have failed to explain the circumstances that led to homicidal death of the victim within 02 years of marriage while living in the 'Sasural'. Such offence is invariably committed secretly and not very often eye witness to the occurrence is found.

9. To appreciate the rival contention, it is pertinent to first examine the objective findings of the Autopsy Surgeon in the postmortem report (Ext. 2). The relevant findings of the doctor have been noticed above. In the opinion of the doctor, the death had caused due to Hypovolumic shock leading to cardio respiratory failure owing to above burn injuries sustained by her. The victim was married to the appellant Ram Lobhit Rai only two years ago. The unnatural death of his wife occurred in the matrimonial home. The above factums have not been questioned by the appellants. The evidence on record, read along with the inquest report (Ext. 5) and the postmortem report (Ext.2), establish the same. The two ingredients constituting the offence under Section 304-B are well proved.

10. Submissions galore have, however, been advanced



on the third ingredients of the offence. Consistent case of the prosecution as averred by PWs 1,2,4 and 5 is that soon after the marriage the appellant Ram Lobhit Rai started demanding a sum of Rs. 50,000/- for which the victim was being harassed/tortured. PW-1 is an independent witness. He was then living in the neighbourhood of the appellants. He has testified that in the morning of the date of occurrence serious skirmishes had taken place amongst the family members of the appellants which attracted several co-villagers. He was also a witness to the quarrel. In the afternoon, he could notice smoke billowing from the house of the appellants. On getting information, the father (informant) of the victim arrived in the evening. He had also called his two brothers-in-law, PWs 2 and 4, to the place of occurrence. All of them along with appellant no.2 went inside the house to find the deceased lying dead in a room having received burn injuries. Strong smell of K oil was coming out from the room. All of them stated about the disclosure by the neighbours of the appellants about her death having been caused by the appellants. PW-1 has also claimed himself as a witness who had seen the assault on the victim by the family members. He is unconnected with the informant. PWs 2 and 4 have specifically stated about the factum of marriage, the



demand of dowry by the appellants which started few months after the marriage and perpetual torture on the victim by the in-laws. PW-5 is the father of the victim. He has stated that he had visited 3-4 times to the 'Sasural' of his daughter. On each visit her daughter used to complain about the torture on her by the appellants on account of non fulfillment of the demand of dowry. She was also physically assaulted and was being threatened to be killed. The matter was not reported to the police but to the neighbours, and Panchayati was held at least on two occasions. His evidence is also that the victim used to complain about the torture to him whenever they had a talk. It may be noted here that PW-4 in paragraph no.3 has also stated that in the morning of the date of occurrence when the deceased was being assaulted she had made an attempt to leave the house but was captivated and dragged inside the house by the family members. Learned counsel for the appellants has submitted that PW's 1,2,4 and 5 although have stated about the demand and torture but have said so in general terms. Specifically they have not named the appellants and the manner such assault was inflicted. The said contention of the appellants may be true but when the witnesses say about demand of dowry and assault on the victim by her family members which would include the



appellant no.1 (husband) and appellant no.2 (father-in-law_). In **Baijnath** (supra) the Apex Court, while dealing with the case under Section 304 B of the IPC held mere factum of unnatural death in matrimonial home within 07 years of the marriage would not be sufficient to convict accused under Section 304 B of the IPC. The third ingredient of the offence must also be proved beyond doubt. The Apex Court interfered with the judgment of conviction of the Appellate Court on noticing that though the demand of motorcycle was made, which lingered for 02 years but there was nothing convincing on the record that any quarrel over the issue occurred within few days preceeding the death of the victim. The evidence of the defence witnesses that there was no quarrel in the family was found reliable. The Court granted the benefit of doubt taking into account that one fundamental ingredient to hold the appellant guilty was missing. The doctor had not found precise cause of death i.e. whether it was homicidal/suicidal and origin and cause of external injuries. In these factual position, the Apex Court held that for want of reliable evidence the prosecution was disentitled to the benefit of statutory presumption under Section 113-B of the Act.

11. Coming to the case at hand, the evidence of PW-1



goes a long way to establish that only in the morning of the date of occurrence the deceased was subjected to assault at the hands of the appellants. PW-1 was cross-examined at length by the defence. There is, however, nothing substantial extracted from him barring few lapses on his part in not stating the facts about his place of residence and avocation. In **Sham Lal** (supra) the Hon'ble Supreme Court dealt with the meaning of expression 'soon before her death'. It was stated that it is imperative for invoking the legal presumption to prove that the victim was subjected to cruelty/harassment soon before her death. In the said case, there was persistent dispute between the two sides regarding dowry paid or to be paid. The victim was taken by her parents about 1 and ½ years ago before her death. On account of some patch up the victim had gone to the nuptial home around 15 days prior to the occurrence. There was nothing to show that she was either maltreated or harassed during the period after her going back to matrimonial home. In those factual background, the Apex Court held that there was no evidence adduced that in the last 15 days such torture/harassment even after patch up persisted on her (victim). In the present case, the evidence of PW-1 read with the evidence of PWs-2, 4 and 5 established that in the morning



of the alleged date of occurrence the victim was assaulted/tortured. In other words, harassment continued to be perpetrated on her by the in-laws. In the afternoon of that date she was found burnt in one of the rooms of her matrimonial home.

12. In **Trimukh Maroti Kirkan vs. State of Maharashtra (2006) 10 SCC 681** the Apex Court in the context of dowry death, held that many a times the prosecution case in such offence hinges on circumstantial evidence. Considering the special characteristics of the presumptive offence it was held that burden of proof in such case is of lighter character as the offence is committed in secrecy inside the house. In view of Section 106 of the Act, there is a corresponding burden on the inmates of the house to give a cogent explanation as to how the victim died an unnatural death. They cannot get away by keeping quiet and on the premise that the prosecution must discharge the burden of proving the case if the prosecution succeeds in leading evidence to show that either the husband and wife were last seen together or the offence was committed in the dwelling house where the husband also resided. It shall be considered as strong circumstance incriminating him in the crime.



13. The defence also adduced oral evidence. DW-1 has stated that he knew PW-1. He, however, did not reside in his house on rent. He has, however, admitted that his house is close to the house of the appellants. The mother of appellant no.1 was confined to bed. He stated that the accidental death of the victim was disclosed to the appellant no.1 by him. In his cross-examination, he has, however, admitted that he had not even gone to the house of the appellants to see the incident and that appellant no.2 was his uncle. DW-2 does not even know how many accused(s) are facing the trial. DW-2 has taken the dock to state that there was no panchayati held. Their evidence do not absolve the appellants of the charge. The prosecution has led convincing evidence that at least on two occasions panchayati was called and held. Turning to the statement of the appellants recorded under Section 313 of the Cr. P.C. both of them have explained the death as an accidental one. The victim, according to them, accidentally caught fire from 'Dibri'. Although both of them have stated about their non presence at the place of occurrence when the incident occurred but the same has not been proved by the cogent evidence. The doctor found smell of k. oil coming from the body. Prosecution witnesses have also stated so. The story of accidentally



deceased catching fire completely falls to ground. In the facts and circumstances available on record, the explanation offered by them cannot be accepted.

14. As the last limb of argument, it has been argued that the first version of the prosecution case, which was narrated by the informant in the evening of 17.6.2010 has not been produced. Indisputably, the written report was filed on the following day at about 8 or 8.30 AM. PW-5, it is submitted, has stated that in the evening of the occurrence he had gone second time to the police out post and filed the written report. Almost all the prosecution witnesses have stated that on the information given to the police out post two chowkidars were only deputed at the place of occurrence and the police arrived the following morning at about 8 or 8.30 AM when the inquest proceeding was carried out and the dead body was dispatched for postmortem examination. PW-4 is the scribe of the written report. In paragraph no.5 he has stated that the Darogaji had arrived in the evening but only after deputing the chowkidar he went back. In the following morning he came and prepared the inquest report which was signed by him. PW-5 (informant) has, however, stated about going to the police out post second time with the written report. However, he has not stated about the



filing of the written report at the police out post. In this connection, counsel for the appellants has referred to the evidence of PW-7 who was entrusted with the investigation after recording the statement of the accused(s). His evidence that on the evening of 17.06.2010 no one from the prosecution side met him shall not be relevant as he was entrusted the investigation on the following day when the FIR was drawn at 8.30 AM and under the instruction of the Officer-in-charge he was made the Investigating Officer. On the contrary, his objective findings of the place of occurrence support the case of the prosecution that it was a case of unnatural death. K. oil was poured on the victim before she was lit. Deviating a bit, the court would again notice the explanation of death given by the appellants that while carrying 'Dibri' the victim accidentally caught the fire and died. She was wearing a nylon cloth (sari). If it was accidental then the presence of K oil used in commission of crime may not have been found. The prosecution witnesses have alleged and the Investigating Officer found strong smell of K oil spreading/present in the room where the victim was found dead. The informant, in paragraph no.8, has stated that nylon sari was not on her body. It was lying in a burnt condition near the dead body.



15. Seen thus, the Court finds sufficient and convincing evidence on record to prove that the deceased was subjected to torture on account of non-fulfillment of dowry demand inasmuch as in the morning of the date of occurrence she was beaten up by the appellants who are the in-laws of the deceased and live together in the house and subsequently she was put on fire resulting in her death. The evidence on record further prove that the deceased was living in the matrimonial home with appellant no.1 (husband) and appellant no.2 (father-in-law). Soon after the morning incident she was subjected to death. The lighter burden of the prosecution has been discharged by reliable evidence. The circumstances leading to unnatural death of the victim within two years of her marriage within the four walls of her 'Sasural' has not been explained by the appellants. The explanation given by them is not supported by the evidence on record. The charge against the appellants under Section 304-B is well proved.

16. The Trial Court has held the appellants guilty under Section 302 of the IPC. Section 304B is a presumptive offence where the burden of proof is lighter. Relevant witnesses in row have stated about the atrocities committed on the deceased by the in-laws who resided in the house along with the



victim. They have, however, not specifically named the appellants. PW-1 has also stated about the quarrel and assault by the in-laws in the morning of the date of occurrence. However, he too has not named specifically the appellants. The Court is unable to find from their evidence about the presence of the appellants in the house immediately, before the occurrence which led to the death of the victim. In **Hanumant Vs. The State of Madhya Pradesh 1952 SCR 1091** the Apex Court has held that the Court should desist from supplying the weakness and lacunae in the prosecution case failing to establish the substantive charge of murder by simply taking aid or recourse to Section 106 of the Act. The prosecution has not led convincing evidence as regards the charge under Section 302 of the IPC. The burden of proof shall continue on the prosecution. We also find no reliable evidence to conclusively establish that except the appellants there was no other family members in the house. In **Anjan Kumar Sarma & Ors. vs. State of Assam (AIR 2017 SC 2617)** the Hon'ble Apex Court held that in absence of proof of other circumstances, only circumstance of last seen together absence of satisfactory explanation cannot be made basis of conviction. We are conscious of the fact that there is no eye witness to the occurrence. Section 113 B raises a



presumption against the in-laws having caused dowry death whereas there is no such presumption in law to find an accused guilty under Section 302 of the IPC. Having given our thoughtful consideration to the entire facts and circumstances emanating from the record it is unsafe to hold the appellants guilty under Section 302 of the IPC. The evidence falls short. The appellants are entitled to benefit of doubt. Their conviction under Section 302/34 of the IPC is set aside. Conviction for the offence under Section 304B, in light of the evidence on record and considering the legal position as discussed above, warrants no interference and is sustained.

17. Appellant no.1 is the husband whereas the appellant no.2 is the father-in-law. The responsibilities of appellant no.1 vis-a-vis the deceased is greater. He had the moral obligation to protect his wife in the matrimonial home. Instead of doing so, he indulged in the crime and awarded a cruel death to her. Considering the above, the appellant no.1 is directed to suffer R.I. for life with fine having default clause as directed under the impugned judgment. Appellant no.2 is directed to suffer R.I. for ten years with fine of Rs. 20,000/- . In case of default in payment of fine, he shall additionally suffer R.I. for one year. The appellant no.2 is enjoying the privilege of



bail. His bail bond is cancelled. He is directed to surrender forthwith.

18. With the aforesaid modification in conviction and sentence the appeal is dismissed.

I agree.

(Kishore Kumar Mandal, J)

(Madhuresh Prasad, J)

shyambihari/-

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