

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1199 of 2011

Arising Out of PS.Case No. -69 Year- 2008 Thana -Rajgir District- NALANDA (BIHARSHARIFF)

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Akash Kumar @ Chunnu, Son of Sri Chandra Chaudhary, Vill Birchait P.S. Rajgir,
District- Nalanda

.... Appellant/s

Versus

The State Of Bihar

.... Respondent/s

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Appearance:

For the Appellant/s : Mr. A. K. Thakur, Advocate.
Mr. Md. I. Ahmad, Advocate.

For the Respondent/s : Mr. A. K. Sinha, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SAMARENDRA PRATAP SINGH

AND

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 28-07-2017

Heard learned counsel for the appellant as well as
learned APP for the State.

2. This appeal has been preferred against the judgment
and order of conviction dated 05.11.2011 and order of sentence dated
09.11.2011 passed by the learned Additional Sessions Judge-V,
Nalanda at Biharshariff in Sessions Trial No. 357 of 2009 arising out
of Rajgir P.S. Case No. 69 of 2008 instituted under Sections 304B and
328/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry
Prohibition Act, whereby convicting the appellant for the offence
punishable under Sections 304(B) and 498A of the Indian Penal Code



and sentencing him to undergo rigorous life imprisonment for the offence under Section 304B of the Indian Penal Code and also slapping him with fine of Rs.1,000/- and in default of payment of fine to further undergo R.I. for one month and also sentencing him to undergo R.I. for one year for the offence under Section 498A of the Indian Penal Code. Both the sentences were directed to run concurrently.

3. The factual matrix of the case is that Rajgir P.S. Case No. 69 of 2008 was instituted under Sections 304(B) and 328/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the appellant, namely, Akash Kumar @ Chunnu, Suraj Kumar Chaudhary, Sri Chand Chaudhary, wife of Sri Chand Chaudhary and Dhannu Chaudhary on the basis of the fardbeyan of the informant Mahendra Chaudhary, son of Late Sri Banshi Chaudhary, resident of village-Dargah Road, Sanichra More, P.S.-Sultanganj, Patna City, District-Patna recorded by S.I. Arun Kumar Singh, S.H.O. Rajgir Police Station on 11.05.2008 at 09:30 A.M. at Village Birchait, with the allegation in succinct that, he had performed marriage of his daughter, namely, Renu Kumari with Akash Kumar @ Chunnu on 15.02.2008 as per Hindu rites and rituals and spent Rs. 1,50,000/- in the marriage. On the fateful night at 12 P.M., he received telephonic information that his daughter has



been afflicted with diarrhoea and her condition is precarious. On the said information, he along with his son, Deena Kumar Chaudhary, Nephew Bijay Kumar Chaudhary and two-four other persons arrived at Village Birchait on the following morning and found his daughter dead and her entire body blackened. On grilling the locals, he learnt that her husband Akash Kumar @ Chunnu, her brother-in-law Suraj Kumar Chaudhary, maternal grand-father of her husband Dhannu Chaudhary, her father-in-law Sri Chand Chaudhary and her mother-in-law eliminated her daughter by administering her poison for dowry demand and gave wrong information to him on telephone. They absconded from their house on their arrival. Further allegation is that they used to subject her to torture for demand of Rs. 50,000/- from his daughter and due to not coughing up the demand, they have poisoned his daughter to death.

4. The aforesaid case was investigated by the Police. During the course of investigation, the I.O. recorded further statement of the informant, statement of the witnesses, inspected the place of occurrence and prepared inquest report and sent the dead body for post mortem, obtained post mortem report and sent the viscera of the deceased to F.S.L. for its chemical examination. On conclusion of the investigation, I.O. submitted chargesheet under Section 306 of the Indian Penal Code against the appellant, namely,



Akash Kumar @ Chunnu.

5. On receiving the chargesheet and the case diary and on perusing the same, the learned Magistrate took cognizance of the offence under Section 304(B)/34 of the Indian Penal Code against the appellant and committed the case to the Court of Sessions for its trial. Charge against the appellant was framed under Section 304(B)/34 of the Indian Penal Code. The charge was explained to the appellant to which he pleaded not guilty and claimed to be tried.

6. During the course of trial, in ocular evidence, the prosecution has been able to examine altogether nine prosecution witnesses namely, Bijay Kumar Chaudhary (PW-1), Deena Kumar Chaudhary (PW-2), Ajay Kumar Chaudhary (PW-3), Ramchandra Chaudhary (PW-4), Kanti Devi (PW-5), Mahendra Chaudhary (PW-6), Umesh Prasad Singh (PW-7), Girdhar Pathak (PW-8) and Dr. Pandey Binay Krishna Sahai (PW-9). Out of the aforesaid witnesses, PW-6 happens to be the informant-father of the deceased, PW-1 is the nephew of the informant, PW-2 is the son of the informant, PW-3 is the nephew of the informant, PW-4 is the brother of the informant, PW-5 is the wife of the informant, PW-7 is the 2nd I.O., PW-8 happens to be the 1st I.O. and PW-9 is the doctor conducting autopsy of the dead body of the deceased. In documentary evidence, the prosecution also filed certain documents including the F.S.L. report



of viscera marked as exhibit-6.

7. The statement of the appellant was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming to have been falsely implicated in this case. In support of his case, in ocular evidence, the defence has examined two defence witnesses, namely, Manoj Kumar (DW-1) and Awadhesh Rajbanshi (DW-2).

8. After hearing the parties and perusing the record, the learned lower court convicted the appellant for the offence punishable under Sections 304(B) and 498A of the Indian Penal Code and sentenced him as mentioned in earlier Para.

9. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence passed by the learned lower court, the appellant Akash Kumar @ Chunnu has filed the present Criminal Appeal.

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

11. It is submitted by learned counsel for the appellant that out of nine witnesses examined by the prosecution, PW-1 and PW-3 are the cousin brother of the deceased, PW-2 is the own brother of the deceased, PW-4 is the uncle of the deceased, PW-5 is



the mother of the deceased and PW-6 is the informant-father of the deceased. As such, they happen to be the highly interested witnesses of the case. Barring the aforesaid witnesses, none of the independent witnesses has been examined by the prosecution. In the fardbeyan of the informant, it is not alleged that the deceased was subjected to cruelty by her husband and her in-laws in connection with the dowry demand soon before her death, and moreover, there is no cogent, consistent and reliable evidence on record in this regard. Hence, the important ingredient of Section 304(B) of the Indian Penal Code is lacking and for want of the same, no offence is made out under Section 304(B) of the Indian penal Code. It is further submitted that as per the account of the informant, there was no demand of dowry preceding to the occurrence, as he has stated in his cross-examination that at the time of *Bidai* of his daughter with his son-in-law one month preceding to the occurrence, the relation between his daughter and son-in-law was cordial and there was no demand and difference between them. It is further submitted that though as per the account of the witnesses, deceased informed the prosecution party regarding the demand of dowry of Rs. 50,000/- and harassing her for the said demand on telephone 4-5 days preceding to the occurrence, but the informant himself has stated, in his evidence, that he had not accorded mobile phone to the deceased. Wife of the informant (PW-



5) has stated that phone is not installed at the house of the in-laws of the deceased. Thus, for want of mobile phone or the basic telephone, the aforesaid case of the prosecution of giving information to it regarding demand of dowry and subjecting the deceased to torture or harassment over the said demand 4-5 days preceding to her death is not tenable. It is further submitted that there is vital contradiction between the statements of the witnesses recorded before the Court and that recorded by the I.O. under Section 161 of the Code of Criminal Procedure and in view of the said contradiction, the testimony of the witnesses are not worth credence and reliable.

12. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence has submitted that the learned lower court has passed the impugned judgment and order of conviction and sentence correctly appreciating the evidence, facts and law involved in the case which is liable to be sustained and this appeal has no substance in it and is liable to be dismissed.

13. From perusal of the record, it appears that the marriage of the deceased, namely, Renu Kumari was solemnized on 15.02.2008 and he had died in her marital house in the night of 10/11.05.2008 i.e. within three months of her marriage in otherwise than under normal circumstances. As per the provision of Section



304(B) of the Indian Penal Code, besides the aforesaid ingredients, prosecution is also required to substantiate that there was dowry demand and the deceased was subjected to cruelty or harassment in connection with the dowry demand by her husband and his relative soon before her death. Regarding the demand of dowry and subjecting the deceased to cruelty or harassment, the informant in his fardbeyan has stated that the accused persons always used to subject his daughter to torture and ask her to procure Rs. 50,000/- from her parents, but in his fardbeyan, he has not stated that four days preceding to death, his daughter informed him on telephone regarding demand of dowry and subjecting her to harassment by extending threatening of dire consequences. But in addition to the aforesaid statement as given in the fardbeyan, the informant in his examination-in-chief for the first time stated that his daughter had informed four days preceding to the occurrence by telephone that her in-laws were demanding Rs. 50,000/- in dowry else she would be eliminated. In his cross-examination, he has also stated that his daughter had divulged that her in-laws were tormenting her for dowry demand of Rs. 50,000/- four days preceding to her death by telephone. But the I.O.(PW-8) in his cross-examination has denied giving of such statement by the informant to him. Thus the aforesaid contradiction between the statement of the informant given in the



fardbeyan and before the court and also before the I.O. under Section 161 of the Code of Criminal Procedure creates serious doubt about the sanctity and veracity of the said statement of the informant and makes it unreliable and not worth credence.

14. Though the informant in his fardbeyan has stated that the accused persons used to subject the deceased to torture over dowry demand of Rs. 50,000/- but in his examination-in-chief he has simply stated that his daughter has been eliminated in the marital house over dowry demand of R. 50,000/-. Thus, he has not supported the case of subjecting his daughter to torture by accused persons over said dowry demand. Moreover, the informant in his cross-examination has stated that his son-in-law had taken his daughter to her marital house on Bidai one month preceding to the occurrence and there was cordial relation between his daughter and his son-in-law and there was no difference between them and there was no demand of dowry between the time of arrival of his son-in-law at his house and departure there from, which means that there was no demand of dowry and subjecting the deceased to torture or harassment till one month preceding to the occurrence.

15. The allegation regarding demand of dowry and subjecting the victim to torture is only based upon the information allegedly given to him by his daughter by telephone four days



preceding to her death. But the informant in his cross-examination has stated that he had not accorded mobile phone to his daughter Renu Kumari at the time of her marriage. Though in the cross-examination, he has stated that Renu Kumari divulged to him about demand of dowry of Rs. 50,000/- from her by phone installed at her marital house, but PW-5 Kanti Devi who happens to be the mother of the deceased and wife of the informant has candidly stated in Para-2 of her cross-examination that phone was not installed at the house of her son-in-law. The aforesaid contradictory statement of the informant and his wife indicate that the deceased had neither mobile nor basis phone facility. Due to non-availability of mobile phone or landline phone giving information to the informant on the telephone by the deceased regarding demand of Rs. 50,000/- under threat of elimination to the deceased by her in-laws, appears to be not convincing and reliable. It is not the case of the prosecution that the deceased had not given such information to the informant or her relative personally or through some messenger.

16. Though PW-1, namely, Bijay Kumar Chaudhary who happens to be cousin brother of the deceased, PW-2, namely, Deena Kumar Chaudhary who happens to be the own brother of the deceased and PW-3, namely, Ajay Kumar Chaudhary who also happens to be the cousin brother of the deceased, PW-4, namely,



Ram Chandra Chaudhary who happens to be the uncle of the deceased and PW-5 Kanti Devi, who happens to be the mother of the deceased have stated in their respective examination-in-chief that the deceased had informed them two to six days preceding to the death about demand of Rs. 50,000/- and subjecting her to harassment by her in-laws by phone, but for the want of the phone facility with the deceased, the aforesaid statement of the said witnesses appears to have no leg to stand upon. As per the statement of the informant, the relation between his daughter and son-in-law was cordial and there was no difference between them and there was no demand of dowry till one month preceding to the occurrence. But in quite contradiction to the aforesaid statement of the informant, PW-1 in Para-1 of his examination-in-chief has stated that 1-2 months later on again arriving at her marital house, deceased informed him on telephone that her in-laws were demanding Rs. 50,000/- and subjecting her to torture. Likewise, PW-2 Deena Kumar Chaudhary has also stated in his examination-in-chief that after arrival of the deceased at her marital house after the marriage, her in-laws used to demand Rs. 50,000/-and subject her to torture and PW-4 Ram Chandra Chaudhary has stated in his examination-in-chief that after marriage of his niece, she went to her marital house but couple of days later to her arrival there, she started making complain by phone about



demand of Rs. 50,000/- in dowry under threat of dire consequences by her in-laws. But the aforesaid statements of the said witnesses also stand in quite contradiction to the statement of the informant in this regard. Hence in view of the material contradictions, the statements of the witnesses do not appear to be reliable, trustworthy and worth credence. Thus, from the perusal of the prosecution case and the statements of the prosecution witnesses, it appears that the prosecution has utterly and miserably failed to substantiate the important ingredients of the case that there was demand of dowry and the deceased was subjected to cruelty or harassment by her husband and his relative in connection with dowry demand soon before her death by adducing consistent, cogent, trustworthy and reliable evidence and for want of corroboration of the aforesaid ingredients, conviction under Section 304(B) of the Indian Penal Code cannot be made.

17. Impugned judgment indicates that the appellant has also been convicted for the offence punishable under Section 498A of the Indian Penal Code, but from perusal of the record, it appears that no charge under Section 498A of the Indian Penal Code has been framed against the appellant by the learned trial court rather only charge under Section 304(B) of the Indian Penal Code has been framed against him. Hence, for want of charge framed against the



appellant, he cannot be convicted for the offence punishable under Section 498A of the Indian Penal Code.

18. Considering the facts and circumstances of the case and the evidence of the prosecution, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, cogent, trustworthy and reliable evidence. Hence, the appellant is acquitted from the charge levelled against him. Accordingly, the appeal is allowed and the impugned judgment and order of conviction and sentence passed by the learned lower court is set aside As the appellant is in custody, he is directed to be released forthwith from the jail custody, if not wanted in any other case.

(Prakash Chandra Jaiswal, J.)

Samarendra Pratap Singh, J.

Mishra/-

(Samarendra Pratap Singh, J.)

AFR/NAFR	A.F.R.
CAV DATE	25.07.2017
Uploading Date	01.08.2017
Transmission Date	01.08.2017

