

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.405 of 2002

Arising Out of PS.Case No. -70 Year- 1989 Thana -Kudra District- Bhabhua

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Rajeshwar Singh, Son of Jagnarayan Singh, Resident of village – Dewararh, P.S.-
Kudra, District-Kaimur (Bhabua)

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance:

For the Appellant/s : Mr. Ashok Kumar Mishra, Advocate.
Mr. Tribhuwan Naraian, Advocate.
Mr. Varun Kumar, Advocate.
For the State : Mr. Bipin Kumar, APP.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 11-08-2017

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 and sentence dated 18.07.2002 passed by the
learned Additional Sessions Judge, F.T.C.-IV, Kaimur at Bhabua in
Sessions Trial No. 105 of 1991/160 of 2002 arising out of Kudra P.S.
Case No. 70 of 1989, whereby convicting accused Rajeshwar Singh
for the offence punishable under Sections 304B and 201 of the Indian
Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and



sentencing them to undergo R.I. for seven years for the offence punishable under Section 304B of the Indian Penal Code and further R.I. for two years for offence punishable under Section 201 of the Indian Penal Code and no separate sentence was awarded under Sections 3 and 4 of the Dowry Prohibition Act. Both the sentences were directed to run concurrently. While accused Jagnarayan Singh, Sitama Devi, Rameshwar Singh and Urmila Devi were acquitted.

3. The factual matrix of the case is that Kudra P.S. Case No. 70 of 1989 was instituted under Sections 304B and 201/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act against the accused persons, namely, Rajeshwar Singh, Jagnarayan Singh, Sitama Devi, W/o Jagnarayan Singh, Rameshwar Singh and wife of Rameshwar Singh on the basis of the complaint petition filed by Ram Das Singh, Son of Late Kumar Singh, resident of village-Kaithi, P.S.-Shivsagar, District-Rohtas, with the allegation, in succinct that, the marriage of his daughter, namely, Bimla Devi was solemnized with Rajeshwar Singh on 18.06.1985. After marriage, the accused persons were demanding Rs. 10,000/- cash and a motorcycle in dowry and were not fixing the date of her *bidai* for the aforesaid demand. Thereafter, a panchayati was organized and as per the verdict of Panches, Rs. 10,000/- was deposited in Sasaram Post Office in the name of Bimla Devi and her



husband was made her nominee. Thereafter, the accused persons took her daughter to her marital house after *bidai* on 21.01.1989. But they continued demanding motorcycle after *gauna* as well. The husband stopped interacting with her daughter and all the accused persons used to subject her daughter to various sorts of torture. Her daughter used to send letters in this regard. Last letter was received by him on 12.05.1989 in which she had called him to meet her. On 13.06.1989, when he went to her marital house, he learnt that the accused persons have committed murder of his daughter in the night of 10/11.06.1989 and cremated her dead body without informing him. His daughter was completely healthy and she was not suffering from any ailment. Accused persons also extended him threatening of dire consequences in case of approaching police.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused persons, namely, Rajeshwar Singh, Jagnarayan Singh, Sitama Devi, W/o Jagnarayan Singh and Rameshwar Singh under Sections 304B and 201/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and subsequently submitted supplementary chargesheet against the accused Urmila Devi, W/o Rameshwar Singh under the aforesaid sections.

5. On receiving the chargesheet and the case diary and



perusing the same, the learned Magistrate took cognizance of the offence against the accused persons and committed the case to the court of sessions for trial and on transfer finally the case came in *seisin* of the Additional Sessions Judge-IV, Kaimur at Bhabua for trial.

6. Charge against all the aforesaid five accused persons were framed under Sections 304B/34 and 201/34 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act. Charge was read over and explained to the accused persons to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has been able to examine altogether five prosecution witnesses namely, Harihar Singh (PW-1), Chandrabhan Ram (PW-2), Ram Das Mahto (PW-3), Ramadhar Singh (PW-4) and Sheokumar Singh (PW-5). Out of the aforesaid witnesses, PW-2 happens to be formal witness who has proved the formal F.I.R. which has been marked as Exhibit-1, while PW-4 and PW-5 were tendered for cross-examination. In documentary evidence, the prosecution has filed only formal F.I.R. which has been marked as Exhibit-1.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves



to be innocent. In support of its case, in ocular evidence, the defence has examined three witnesses, namely, Ramkrit Singh (DW-1), Sheoji Singh (DW-2) and Ram Barai Singh (DW-3).

9. After hearing the parties and perusing the record, the learned trial court acquitted the accused Jagnarayan Singh, Sitama Devi, Rameshwar Singh and Urmila Devi for the charges levelled against them and convicted the accused Rajeshwar Singh for the offence punishable under Sections 304B and 201 of the Indian Penal Code and Sections 3 and 4 of the Dowry Prohibition Act and sentenced him for the offence punishable under Sections 304B and 201 of the Indian Penal Code as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Rajeshwar Singh has filed this Criminal Appeal.

11. 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.

12. It is submitted by learned counsel for the appellant that the occurrence is said to be of 10/11.06.1989, but the complaint petition has been filed after an inordinate delay of eight days i.e. on 19.06.1989 without assigning any possible reasons for the aforesaid delay which creates serious doubt about the prosecution case. It is



further submitted that the deceased used to inform the informant regarding the demand of dowry and subjecting her to torture over the said demand by her in-laws through letters and also called the informant to meet her by sending a letter, but the said letters of the deceased have not been brought on record in substantiation of the aforesaid case of the prosecution. The father of the deceased who happens to be the important witness of the case has not been examined by the prosecution which creates serious doubt about the prosecution case. Evidence of demand of dowry and subjecting the deceased to torture by her husband and her in-laws for the said dowry demand soon before her death has not been brought on record by the prosecution and for want of the said evidence, the conviction of the appellant cannot be made under Section 304B of the Indian Penal Code. Though as per the prosecution case, Rs. 10,000/- was deposited in the Sasaram Post Office in the name of the deceased obliging the verdict of the panchayati organized by the prosecution party over the demand of the aforesaid money by the accused persons, but there is no cogent evidence of holding panchayati at the behest of the prosecution party for the said cause rather prosecution witness has himself stated that the panchayati was organized at the behest of the accused persons as the father of the deceased has not executed his share of the land in favour of his daughter rather in



favour of his nephew and as per the verdict of the Panches, Rs. 10,000/- was deposited in the name of the deceased in the Sasaram Post Office in lieu of the aforesaid share as the deceased was only issue of her father. It is further submitted by the defence that the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing consistent, trustworthy, reliable ocular and documentary evidence.

13. On the other hand, learned APP submitted that the prosecution witnesses have consistently supported the demand of dowry and subjecting the deceased to torture over the said demand and finally eliminating her by administering poison and disposing of her dead body in haste without giving information to the prosecution party. Learned lower court has passed the impugned judgment and order of conviction and sentence correctly appreciating the facts, law and evidence on record and there is no illegality and impropriety in the impugned judgment and order of conviction and sentence and the same is liable to be sustained and the appeal is liable to be dismissed.

14. From perusal of the records, it appears that the marriage of the deceased, namely, Bimla Devi was solemnized on 18.06.1985 and she had died in the night of 10/11.6.1989 in her marital house i.e. around four years of her marriage in otherwise than under normal circumstances. As per the provision of Section 304B of



the Indian Penal Code, besides the aforesaid ingredients, prosecution is also required to establish that there was demand of dowry and the deceased was subjected to cruelty or harassment in connection with the said demand of dowry by her husband or by the relatives of her husband soon before her death.

15. Regarding the aforesaid two ingredients, it is the case of the prosecution that earlier Rs. 10,000/- and motorcycle was demanded in dowry at the time of performing second marriage (Gauna) and on depositing Rs. 10,000/- in the Sasaram Post Office in favour of the deceased, her *gauna* was performed by the accused persons. But after fulfillment of the aforesaid demand, the accused persons continued to demand motorcycle in dowry and subjected the deceased to torture for the said demand and finally eliminated her. In buttress of aforesaid case, the prosecution has examined two witnesses namely, Harihar Singh (PW-1) and the informant himself (PW-3).

16. It is the case of the prosecution that the accused persons including the appellant demanded motorcycle from the deceased in dowry. The informant has also supported the said fact in his examination-in-chief. But in quite contradiction to the statement of the informant (PW-3), PW-1 in Para-3 of his examination-in-chief has stated that the accused persons demanded motorcycle and



television in dowry. It is the case of the prosecution that the deceased used to send letters to the informant regarding the demand of dowry and subjecting her to torture by her in-laws. PW-1 in Para-11 of his cross-examination has stated that the brother of the deceased, namely, Rajaram had divulged him about the aforesaid letter. He had not seen the said letter but the said Rajaram has not been examined by the prosecution in corroboration of the divulgence of the writing of the letter by him to PW-1. Hence for want of corroboration, the aforesaid hearsay evidence of PW-1 in this regard is not admissible. Though the informant (PW-3) in Para-3 of his examination-in-chief has stated that his daughter used to send letters to him. She had written the letter to the effect that her in-laws would eliminate her in case of not coughing up the demand of motorcycle. In Para-4 of his examination-in-chief, he has further stated that the deceased had called her maternal people to meet her by sending a letter one month preceding to the occurrence. But the aforesaid letters have not been brought on record by the prosecution. The said letters happen to be material evidence and not bringing on record of it by the prosecution creates serious doubt about the aforesaid case of the prosecution. Thus, there is nothing cogent and convincing on record to indicate that the accused persons have demanded motorcycle in dowry and subjected the deceased to torture or cruelty over said demand soon



before her death.

17. As per case of prosecution, as the accused persons were not fixing the date of gauna due to non-fulfillment of the demand of Rs. 10,000/- and motorcycle, a panchayati was organized by the prosecution party and obliging the verdict of the Panches, prosecution party deposited Rs. 10,000/- in the post office in favour of the deceased and then the accused persons performed gauna of the deceased. Though the defence has admitted that Rs. 10,000/- was deposited in the Sasaram Post Office in favour of the deceased by her maternal people, but the defence has explained the reason of depositing the said money as the father of the deceased has no male issue and the deceased was his only daughter, so he had executed his share of four bighas of land in favour of his nephew, son of Ram Das Mahto (PW-3) and on objection made by the accused persons in this regard, a panchayati was organized and after that PW-3 deposited Rs. 10,000/- in the post office in the name of the deceased in lieu of her share in the said property obliging the verdict of the Panches.

18. In support of said case of prosecution, Harihar Singh (PW-1) who happens to be one of the panches of the said panchayati has stated in Para-4 of his examination-in-chief that the panchayati was held before the brother and father of the deceased. Panches gave verdict to deposit Rs. 10,000/- in the name of the



deceased, Bimla Devi making her husband as nominee. Then Rambriksh Singh deposited Rs. 10,000/- in the post office in the name of Bimla Devi. Thereafter, her gauna was performed. But the said witness was confronted with the statement given by him before the I.O. under Section 161 of the Code of Criminal Procedure by the defence by drawing his attention towards his statement given before the I.O. regarding depositing of Rs. 10,000/- in the post office obliging the verdict of the Panches in lieu of the share of Bimla Devi in the property executed by Rambriksh Singh, father of Bimla Devi in favour of his nephew, son of PW-3. I.O. of this case has not been examined by the prosecution to confirm or corroborate the aforesaid contradiction. On perusal of the statement given by the said witness before the I.O. under Section 161 of the Code of Criminal Procedure, it appears that the said witness had stated before the I.O. that Rambriksh Singh had only one daughter, namely, Bimla Devi. Rambriksh Singh executed his share in the joint property i.e. four bighas of land in favour of his nephew, Rajaram Singh. In-laws of her daughter were angry due to said execution of land by her father and were not fixing the date to perform gauna. So a panchayati was organized and the Panches gave verdict to deposit Rs. 10,000/- in the name of the deceased, Bimla Devi. Then gauna was performed. When attention of the witness has already been drawn towards his



earlier statements and the Investigating Officer could not be brought to give his evidence, then in my considered opinion, the Court can peruse the case diary and find out as to whether or not the attention of the witness towards his previous statement was correctly drawn and to satisfy itself as to whether or not he had given similar statement before police. There are two parts of the case diary. First part contains such portion of the diary in which the Police Officer has recorded statement of the witnesses, about the incident or about other relevant facts which to that Police Officer, would be hearsay. The Second party of the case diary contains that portion in which the Police Officer has himself seen or heard a particular fact and has recorded a fact out of his own perception. To this category would come recording about the inspection of place of occurrence making of seizure of certain incriminating articles or in some cases, when the Police Officer reaches the place of occurrence where the occurrence has not finished and he sees himself whole or part of the occurrence, recording of that. The latter part of the case diary cannot be used by the Court unless the Investigating Officer is examined because that would amount to using that portion of the case diary as evidence. Only the Investigating Officer can tell the Court in witness box as to what were his findings out of his own perception, so that he can be put to cross-examination over that. However the first part of the



case diary consists, as already noted, the statement recorded by the witnesses. If the Investigating Officer comes to the Court for evidence and if he is asked to confirm those portion of the statement of the witnesses to which the attention of the witnesses was drawn, the Investigating Officer will say only what he has recorded as his statement in the case diary and cannot go beyond that. Now, the question is, whether that portion of the case diary can be looked into by the Court and used in the trial to aid the Court in reaching at a correct decision when the Investigating Officer is not brought before the Court. Sub-Section (2) of Section 172 of Cr.P.C. provides that the Court cannot only call for the case diary but may also use such diary to take aid in such trial. If the Court only has the power to look into the case diary and whatever it peruses to keep it only in mind and then to proceed to record the judgment keeping such impression only in mind that, in my opinion, cannot be the intention of the legislation. In my considered opinion, if the Court peruses any such things and uses it to its aid in trial, this must go in black and white as part of the judgment. The only limitation is that the Court cannot use any portion of the case diary as evidence. In view of the aforesaid proposition of law and in view of the contradiction between the statement of PW-1, as recorded before the Court and that given before the I.O. under Section 161 Cr.P.C., the testimony of the



witness given before the Court does not inspire my confidence to hold the conviction of the appellant relying upon the same.

19. Ram Das Mahto (PW-3) in his cross-examination has stated that Rambriksh Singh is his own brother. He has only one son, namely, Rajaram Singh. Father of Bimla (deceased) had executed his share of land in favour of his nephew after marriage of Bimla Devi but preceding to her *gauna*. Father of Bimla Devi had executed four bighas of land in favour of his son. PW-3 in Para-8 of his cross-examination has further stated that the accused persons had organized panchayati at Kudra. Thus, aforesaid statement of PW-1 and PW-3 also goes to corroborate the aforesaid case of the defence. Moreover, depositing of Rs. 10,000/- in the post office in favour of the deceased by her father does not appear to be material in the case. As the said money was not the cause of elimination of the deceased because the said money was deposited preceding to the *gauna* and thereafter matter was pacified and *gauna* was performed. The deceased is said to have been eliminated only due to non-fulfillment of the demand of motorcycle in dowry.

20. PW-3 has stated in Para-10 of his cross-examination that after *gauna* of his daughter and 10-15 days preceding to her death, he had paid visit to her marital house of his own. He had met Bimla there. He had also gone there four days



preceding to her death on getting letter of Bimla and stayed there in the night. But he has not stated that during her visit at her marital house and stay there in the night, Bimla has made any complain with him regarding demand of dowry and subjecting her to torture over the said demand by her in-laws. Had the accused persons committed such occurrence, the deceased would have divulged the same to the informant (PW-3) and the said witness would have in turn certainly divulged the same to his family members and also before the court, but he has not stated so. This aspect of the case also goes to rule out the story of demand of dowry and subjecting the victim to torture over the said demand as alleged by the prosecution.

21. PW-1 happens to be the uncle of the deceased and PW-3 happens to be the informant as well as uncle of the deceased. Thus, the aforesaid witnesses happen to be the interested witnesses of the case. In view of the aforesaid contradictions between the prosecution case and statement of the witnesses and the statement of witness given before the court and that given to the I.O. under Section 161 of the Code of Criminal procedure testimonies of aforesaid witnesses do not appear to be trustworthy, reliable and worth credence. Thus, the prosecution has utterly failed to substantiate the aforesaid two essential ingredients of Section 304B of the Indian Penal Code that there was demand of dowry and



deceased was subjected to cruelty or harassment in connection with the said demand of dowry by her husband or by relatives of her husband soon before her death by adducing cogent, convincing, plausible, consistent and trustworthy evidence and for want of substantiation of aforesaid ingredients, the conviction cannot be made under Section 304B of the Indian Penal Code.

22. In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charges levelled against the appellant beyond all reasonable doubts by adducing convincing, cogent, consistent and wroth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned lower court is set aside and the appellant is acquitted of the charges levelled against him. As the appellant is on bail, he is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

(Prakash Chandra Jaiswal, J)

Mishra/-

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

