

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.351 of 2014

Arising Out of PS.Case No. -102 Year- 2009 Thana -GHANSHYAMPUR District- DARBHANGA

Subhash Chandra Jha S/o Bankatesh Jha Resident of Village - Gonaun, P.S. - Ghanshyampur, District - Darbhanga

.... Appellant

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 295 of 2014

Arising Out of PS.Case No. -102 Year- 2009 Thana -GHANSHYAMPUR District- DARBHANGA

1. Hem Jha @ Hem Chandra Jha S/O Benkatesh Jha
2. Janki Devi W/O Benkatesh Jha
Both resident of village Gonaun, P.S. Ghanshyampur, District- Darbhanga

.... Appellants

Versus

The State of Bihar

.... Respondent

with

Criminal Appeal (SJ) No. 327 of 2014

Arising Out of PS.Case No. -102 Year- 2009 Thana -GHANSHYAMPUR District- DARBHANGA

Benkatesh Jha S/o Late Laxmi Narayan Jha @ Bulli Jha resident of village - Gonaun, P.S. Ghanshyampur, District - Darbhanga

.... Appellant

Versus

The State of Bihar

.... Respondent

Appearance :

(In all the Appeals)

For the Appellants : Mr. Krishna Pd. Singh, Sr. Adv
Mr. Manindra Kishore Singh, Adv.
For the Respondents : Mr. Bind Bihari Singh (APP)
M/S Bipin Kumar & Hoda, Advocates

CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
CAV JUDGMENT

Date: 19 -09-2017



All the above Appeals are directed against judgment dated 14.4.2014 and order dated 15.4.2014 passed by Shri Sudhakar Singh, Adhoc Additional District & Sessions Judge-II, Benipur, Darbhanga in Sessions Trial No.343 of 2009, by which the appellants have been convicted under Section 304(B) of the Indian penal Code (hereinafter referred to be as 'the IPC') and were sentenced to undergo rigorous imprisonment for ten years.

2. Prosecution case, in brief, based on the written application made by the informant (PW3) is that his sister Manika Devi (deceased) was married to accused Subhash Chandra Jha S/O Benkatesh Jha on 20.01.2005 Thereafter she started residing in her '*Sasural*'. On 28.06.2009, there was marriage of informant and the deceased and had come to participate in it. On 04.07.2009, the accused Subhash Chandra Jha forcibly brought her back to her '*Sasural*' against her will and left their two and half years old daughter at the house of informant. It has been further stated by the informant that the accused Subhash Chandra Jha and Benkatesh Jha always used to ask for money and on the same day i.e. on 4.7.2009 in the evening, accused Subhash Chandra Jha and Benkatesh Jha came and demanded all the items that the informant has got in his marriage and threatened that otherwise he would lose his sister. On 05.07.2009,



at around 5.30, Mithu Jha and Rehmat Ali came to informant and informed him that his sister i.e. the deceased is not well and asked the informant to come. When the informant reached at the '*Sasural*' of the deceased, he found her burnt and dead and the informant further came to know from the villagers that deceased was locked in the house and was burnt to death by her husband and her in-laws. The informant has further stated that he has firm belief that the accused Subhash Chandra Jha, Benkatesh Jha, mother in law of the deceased and Hem Jha had together burnt the deceased to death.

3. On the written application of informant, FIR was registered up and Ghanshyampur P.S. Case No. 102 of 2009 was instituted under Section 304 B/34 of Indian Penal Code against all the above mentioned four accused namely Subhash Chandra Jha, Benkatesh Jha, Hem Jha and mother in law of deceased, On completion of investigation, the Investigation Officer submitted charge sheet against all the above mentioned four accused under Sec 304 B/34 of Indian Penal Code.

4. The Chief Judicial Magistrate took cognizance on 27.07.2009 and on 31.08.2009, the case was committed to the Court of Sessions. Accordingly charge was framed out to which the appellants pleaded not guilty



5. Defence of the appellants as per the statement made under Section 313 Cr. P. C. is that they are not guilty and that they have been falsely implicated in the present case.

6. During trial altogether ten witnesses have been examined on behalf of prosecution, they are P.W.1. Dhruvnath Jha, P.W.2. Tarini Kumar Jha, P.W.3 Pankaj Kumar(informant), P.W.4 Chandrika Devi, P.W.5 Ramchandra Yadav, P.W.6 Ram Pukar Jha @ Mithu Jha, P.W.7 Rehmat Ali, P.W.8 Ashutosh Jha, P.W.9 Dr. Vedananda Jha and P.W.10 Subodh Choudhary (I.O.).

7. Apart from above, following documents have been admitted as exhibits in this case, they are Ext. 1- signature of informant on the written report and Ext. 2- post mortem report of the deceased prepared by P.W.9 Dr. Vedananda Jha.

8. On behalf of defence, only one witness, Hem Jha was examined. However, no documents have been produced and brought on record.

9. After conclusion of trial, the learned trial court has convicted all the appellants under Sec 304 B of Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years.

10. Being aggrieved by the aforesaid judgment and order,



the present appeals have been filed by the appellants on various grounds.

11. All the appeals, as mentioned above, have been directed against a common judgment and order, as such they have been taken together for disposal by common judgment.

12. Before considering the rival submissions made by appellants and state, let me to discuss first the oral evidence adduced on behalf of both the parties.

13. P.W.3 Pankaj Kumar is the brother of the deceased as well as informant of the present case and his evidence discloses that the deceased was married with the appellant (Subhash Chandra Jha) in the month of January, 2005, thereafter she went to her '*Sasural*' and at her '*Sasural*', the appellants used to assault her for demand of money and they were demanding money from him also but he was unable to fulfil their demand. His evidence further shows that on 28.6.2009 his marriage was fixed and as such his sister came to his house and appellants started demanding whatever has been given to him in his marriage and when the same was not fulfilled, the appellant, Subhash Chandra Jha took his sister against her will, leaving daughter of the deceased of about 2 ½ years old. His evidence further shows that the appellant, Subhash Chandra Jha and Benkatesh



Jha came in the evening of the same day and again demanded articles, which have been given to him in his marriage and also threatened to face consequences, if the same is not fulfilled. His evidence further shows that on the next day on 5.7.2009 in the morning Mithu Jha and Rahmat Ali came to his house and stated that the deceased is not well and asked him to come with them. His evidence further shows that he then went with them to village Ganauj and found his sister burnt and he came to know from the villagers that the appellants have killed his sister by setting her on fire about which he has informed to the police. This witness has been cross examined at length but in spite of cross examination, there is nothing in his evidence to disbelieve his evidence on either demand of dowry or torture to her sister and her death due to burning. It further appears that cross examination has been made to show the deceased was married by his grand father and mother ('Nana' and 'Nani') and there was no role of P.W.3 in marriage of deceased and he was also cross examined about his father, who solemnized second marriage with a muslim lady after his first marriage. However, the above fact is not at all relevant in the present case. On discussions made above, in spite of cross examination, it appears that evidence of P.W.3 remains unrebutted.

14. P.W.4 is the mother of the deceased and her evidence



also discloses that she was married five years and four months prior with appellant Subhash Chandra Jha and after the marriage he started demanding money to which she expressed her inability. Her evidence further discloses about the fact that the deceased and accused Subhash Chandra Jha had come in the marriage of her son and after marriage, the appellant Subhash Chandra Jha put a demand of Rs.50,000/- to do business and when she expressed her inability, he became angry and took away the deceased forcibly. Her evidence also discloses that the appellant, Subhash Chandra Jha and Bentakesh Jha came in the same evening and demanded articles which her son has got in marriage and when the demand was not fulfilled, they threatened of dire consequences and thereafter her daughter was killed. Next day two persons came from 'Sasural' of deceased and informed that her daughter is seriously ill and when his son went there, her daughter was found killed by setting her on fire. This witness has also been cross examined and her cross examination shows that she had seen the dead-body while taking away in dead condition. She has also admitted that her family members have not cremated her dead-body. She has also been cross examined about her husband performing marriage with a muslim lady, however, this is not at all relevant fact in this case. She has also denied a suggestion that she deposed falsely.



15. P.W.1 and P.W.2 are villagers and they have also corroborated the evidence of P.W.3 and 4 so far factum of marriage in the month of January of 2005 between Subhash Chandra Jha and deceased and also about demand of dowry as well as deceased being subjected to cruelty in connection with demand. P.W.2 has also stated about the demand in her '*sasural*' and also corroborated the evidence of demand of dowry and demand after marriage of P.W.3. P.W.1 and P.W. 2 have also stated that she had come in the marriage of Pankaj Jha (P.W.3) and the appellant demanded whatever has been given in the marriage of Pankaj Jha. They have also supported the evidence of P.W.3 and 4 so far factum of the deceased being forcibly taken by him and next day Rahmat Ali and Mithu Jha came and told that the deceased is ill and thereafter Pankaj Jha (P.W.3) went there with them. As such, they have fully supported the prosecution version in their chief. These witnesses have also been cross examined in detail and in his cross examination, P.W.1 has stated that the deceased had come on 27.6.2009 to participate in the marriage of Pankaj Jha, however, he has stated that he does not know as to whether Subhash Chandra Jha has participated in the marriage or not ? This witness has stated in para 14 of the cross examination that he had seen the dead-body in burnt condition at the time of taking the dead-body for post-mortem examination. P.W. 2 has stated in his cross examination that



he was also invited in the marriage of Pankaj Jha.

16. P.W.5 Ramchandra Yadav is the formal witness and has proved the formal FIR whereas P.W.6 Ram Pukar Jha , P.W.7 Rehmat Ali and P.W.8 Ashutosh Jha have been declared hostile by the prosecution as they have not supported the prosecution story.

17. P.W.9 is the Doctor, who has stated in his evidence that :

“The body found in moderate stage of decomposition. The tongue was protruded and both eyes balls was also protruded. Scalp hair and both eye brow were burn. The extensive dermo epidermal burn was seen involving head, face, chest, abdomen, both upper and lower limbs, genitalia back and buttock except soles with peeling of skin at different sizes of body.

On dissection both lungs were congested. All viscera of abdomen that is liver, spleen and both kidneys were congested. Both sides of the heart were empty. Soot was present in trachea. Brain matter was lignified the stomach was empty and the uterus was small in size. The bladder was empty.

Opinion : *All the above noted injury are ante mortem and dangerous to life in ordinary course of nature and caused by flames of fire. The death was due to dehydration and sock. The times since death was within 2 to 3 days from the time of P.M. examination. This P.M. report is in my pen and signature marked Ext.2.”*

18. This witness has been cross examined also and stated in his cross examination that early stage of de-composition of body



started after 24 hours and moderate stage started after 48 hours up to 72 hours. His evidence further shows that the dead body was brought to him at 11.30 P.M. on 6.7.2009 and he commenced postmortem at 12.15 A.M. and he has not found any external injury on dead body except burn injury.

19. P.W. 10 is I.O. in this case and his evidence shows that after registering the case he took up the investigation and recorded re-statement of informant and prepared details of occurrence. He further recorded evidence of Tarni Kumar Jha, Dhruvnath Jha, Mithu Jha, Rahmat Ali, Ashuthosh Jha, Ram Prakash Jha and other independent witnesses and also recorded statement of S.I. Babanji Yadav as well as obtained the post-mortem report and submitted charge sheet in this case. His cross examination in para 8 also shows that it was '*Jalawanghar*' where the dead body was found and the roof of that room was blacken with burning.

20. On behalf of the defence, the appellant Hem Jha has examined himself as D.W.1 and he has stated in his evidence that his brother Subhash Chandra Jha was working at Delhi in a private job and on the day of occurrence his brother was at Delhi and he had come on the marriage of his brother-in-law (informant) and returned back next day. He further stated that Pankaj Jha (P.W.3) and other



witnesses have brought the dead body and put the dead body in his '*Jalawanghar*' and said that in few minutes, the police would take them and thereafter lodged the case. He has also stated that the deceased has gone her '*Maike*' where her ornaments were snatched thereafter there was some quarrel due to which she committed suicide and no dowry was demanded by his family members. In his cross examination, this witness has stated that at the time when the dead body was brought in his house only his mother was present in the house and none else and he did not inform the same to the police.

21. The appellant has assailed the judgment on the ground as stated above that no such occurrence has taken place and they have been falsely implicated in this case and submission is that the prosecution evidence itself shows that even the marriage of the deceased was solemnized by her maternal grand father and mother ('*nana*' and '*nani*') and not by P.W.3 Pankaj Jha brother of the deceased and P.W.3 had not much income as such ornaments of the deceased were taken by the family members of P.W.3 in the marriage and when the deceased demanded these ornaments back, there was quarrel between them, due to which she has committed suicide. Further submission is that the evidence of demand of dowry as well as torture is very weak and no specific instance of torture in connection



with demand has been made there in the entire prosecution evidence. Only on the basis of vague and suspicious evidence of demand as well as torture, the appellants have been convicted in this case. Even the evidence of D.W. 1 shows that the appellant Subhash Chandra Jha was not present on the day of occurrence and evidence also shows that the appellant Subhash Chandra Jha was in job at Delhi as the Night-guard . Further there is absolutely no evidence against the other appellants so far demand as well as torture or cruelty soon before her death in connection with demand. Hence conviction of the appellants under Section 304 (B) of the I.P.C. is not sustainable in the eye of law.

22. On the other hand the learned counsel for the state has submitted that the prosecution evidence of P.W.1 to 3 clearly shows that the marriage was solemnized within seven years of her death and the death is due to burn injury that is admitted fact and the prosecution witnesses are also consistent on the point of demand of dowry and harassment to her after marriage in connection with demand of dowry and further evidence is available on the record to show that the appellants were demanding the articles which were given to the P.W.3 Pankaj Jha in marriage and when P.W.3 and his family members expressed their inability, they then threatened to dire



consequences. Evidence also shows that they have forcibly took the deceased back to her '*Maike*' where the dead body was found as such there are circumstances available on the record to show that death occurred within seven years of marriage and that too under the abnormal circumstances and she was subjected to cruelty and harassment soon before her death in connection with demand of dowry.

23. On careful scrutiny of evidences available on the record, it appears that no overact has been alleged against the appellant Janki Devi and so far appellant Hem Jha @ Hem Chandra Jha is concerned, only evidence that has come against him is that P.W.4 has stated in her evidence that Hem Jha and Benkatesh Jha had come to her home on the same day and demanded the articles received in the marriage of P.W.3 and they went away, threatening her. However, no specific allegation has been attributed against Hem Chandra Jha in the evidence of P.W.3 or in the earliest prosecution version i.e. F.I.R. From the evidence of P.W.3 (informant) it becomes clear that on 28.6.2009 his marriage was solemnized and his sister (deceased) had come to attend the marriage ceremony. Appellant Subhash Chandra Jha told him to give whatever he has got in marriage and when demand was not fulfilled, he forcibly took away



the deceased with him. His evidence further shows that on the same day in the evening both appellant Subhash Chandra Jha and Venktesh Jha came and repeated the demand and further threatened to dire consequences. Next day on 5.7.2009 both P.W.6 and 7 came to P.W.3 and told him that his sister (deceased) in serious condition and then P.W.3 and others were there and found his sister dead in burn condition and dead body was lying in the “*Jalawanghar*’ of appellants. Other P.Ws. i.e. P.Ws.1 & 2 have also stated in similar fashion. As such evidence of P.W.4 that appellant Hem Jha came with Benkatesh Jha in the evening, appears to be an improvement in prosecution story.

24. Both P.Ws.6 and 7 about whom it has come in evidence that they informed P.W.3 that deceased is not well and asked him to come are the co-villagers of appellants. They have been declared hostile as they did not support the prosecution version. They have been cross-examined by defence but nothing have been elicited from them as about defence version which has come from the mouth of D.W-1. Similar is the situation so far evidence of P.W-8 is concerned who also happens to be the co-villager of appellants.

25. From the materials discussed aforesaid, it is manifest that deceased was the wife of appellant Subhash Chandra Jha and her



death occurred within seven years of her marriage in unnatural circumstance. The dead body was found lying in the '*Jalawanghar*' of appellants and it was in severe burnt condition. The doctor (P.W-9) was found extensive dermo epidermal burn on almost all parts of the body except soles with peeling of skin at different sides of body and the cause of death is due to dehydration and shock. The evidence of Doctor also shows that death within 2-3 days and he has conducted postmortem on 6.7.2009 at 12.15 P.M. As such as per his opinion death is in between 3.7.2009 and 4.7.2009. He has also stated in his cross examination that if someone died, and his corpse was set on fire, after sprinkling k.oil, such type of injury can be caused. In this context, it is relevant to point out that her tongue was protruded, liver, spleen and both kidneys were also congested. All the above facts show that her death is not under normal circumstances.

26. P.W.1 to 4 have categorically stated about the demand made by the appellant Subhash Chandra Jha and he has forcibly taken away deceased with him. It is obvious that in the evening of 04.07.2009, appellants put forward demand and also gave threatening to dire consequence and next day, the dead body was found lying in burnt condition in the house of appellants. However, there is nothing in the evidence of P.Ws that appellant Janki Devi ever



made any demand, committed cruelty or harassments with deceased except there is general and omnibus allegation against her. No specific allegation is against her as to in what manner she participated in the occurrence. Except the fact that she is mother of appellant no.1, there is nothing to show involvement in the commission of crime as alleged.

27. Here, defence has come with a version that deceased committed suicide at the house of informant (P.W.3) and informant carried the dead body and kept in the house (*Jalawanghar*) of the appellants and on that day, appellant Subhash Chandra Jha was in Delhi, only D.W-1 has been examined to say so and he is one of the appellants. No other evidence has been adduced to probabilise this story. P.W-6,7 and 8 are the co-villagers of appellants and have not supported the case of prosecution by simply stating that they have no knowledge of the occurrence and the police did not record their statement. These PWs have stated nothing about defence version nor during cross-examination by defence anything as regards defence story has been asked to them. From all these, defence story appears not convincing, cogent and reliable at all.

28. On close scrutiny of the evidence of D.W.1 (appellant Hem Chandra Jha), it appears that he has categorically



stated in his cross examination that when the dead body was brought in the house only appellant Janki Devi was present there and none else and that makes his testimony unworthy of reliance, moreover, the appellant Hem Chandra Jha and other appellants have also been examined but they have not stated so in their statement under Section 313 of the Code of Criminal Procedure. Considering the above, defence story does not appear to be trustworthy and free from doubt.

29. From the entire discussions made above, I find that (i) there are cogent and consistent and reliable evidence available on record to show that the deceased died within seven years of her marriage and that too under abnormal circumstances, (ii) there was demand of dowry and the deceased was forcibly brought back from her '*maike*' (iii) appellant Subhash Chandra Jha and Benkatesh Jha threatened the informant and others of facing consequences, if the demand is not fulfilled and (iv) very next day, the informant received message about death of the deceased and she was found dead due to burning. However, so far appellant Janki Devi is concerned, as discussed above, there is no specific allegation against her to show her involvement in commission of crime. So far appellant Hem Jha @ Hem Chandra Jha is concerned, though P.W.4 (mother of the deceased) has named him as the person who came along with



Benkatesh Jha in the evening of the day, the deceased was taken forcibly but above evidence is contradictory to the evidence of P.W.3, who is informant of the case as well as the very initial prosecution story (F.I.R.), in which it is said that Subhash Chandra Jha and Benkatesh Jha both appellants came to the house of the informant and demanded the articles, which have been given to P.W.3 in marriage and also threatened the informant of dire consequences.

30. In view of discussions as made above, it appears that prosecution is able to establish circumstances as mentioned above against appellant Subhash Chandra Jha and Benkatesh Jha. Hence, there shall be presumption against them under Section 113 (B) of the Indian Evidence Act of committing “Dowry death” and as discussed above, though defence has come with a story that she was killed in her ‘*Maik*e’ and brought and kept in ‘*jalawanghar*’ in the house of the appellant Subhash Chandra Jha but that does not appear to be probable.

31. Under the facts and circumstances discussed herein above, so far conviction and sentence passed against appellant Hem Jha @ Hem Chandra Jha and appellant Janki Devi is concerned, in view of the facts nothing specific has been attributed against them, they are entitled to benefit of doubt, thus, their conviction and



sentence are set aside and they are discharged from the liabilities of their bail bonds and directed to be released forthwith if not required in any other case.

32. Further, in view of the discussions made above, I find conviction and sentence against appellant Subhash Chandra Jha and Benkatesh Jha appears to be just and proper and deserves no interference, thus, it is hereby affirmed.

33. Accordingly, Criminal Appeal (SJ) No.295 of 2014 is allowed whereas Criminal Appeal (SJ) No.351 of 2014 and Criminal Appeal (SJ) No.327 of 2014 are dismissed.

(Vinod Kumar Sinha, J)

chn/-

AFR/NAFR	AFR
CAV DATE	25/08/2017
Uploading Date	21.09.2017
Transmission Date	21.09.2017

