

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.944 of 2012

Arising Out of PS. Case No.-79 Year-2010 Thana- Laheri District- Nalanda

=====

Ajit Kumar son of Sri Bhagwat Prasad, resident of
Village- Bari Pahari, Behind State Bank, P.S- Laheri, Distt- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

with
Criminal Appeal (DB) No. 881 of 2012

Arising Out of PS. Case No.-79 Year-2010 Thana- Laheri District- Nalanda

- =====
1. Bhagwat Prasad Son of late Tek Narayan Mahto resident of
Mohalla – Baripahari, Police Station Laheri, District – Nalanda
 2. Malti Devi W/o Bhagwat Prasad resident of Mohalla –
Baripahari, Police Station Laheri, District - Nalanda

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

=====

Appearance :

(In Criminal Appeal (DB) No. 944 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh & Mr. Upendra Kumar
Advocates

For the Respondent/s : Mr. Satya Narain Prasad , APP

(In Criminal Appeal (DB) No. 881 of 2012)

For the Appellant/s : Mr. Vikram Deo Singh & Mr. Rabindra Prasad
Singh, Advocates.

For the Respondent/s : Mr. Satya Narain 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 : 17-10-2017

Three appellants of these appeals are father-in-law,
mother-in-law and husband respectively of the deceased. They
were charged of having committed offence punishable under



Sections 304B/34, 498A/34 and 302/32 of the IPC. The learned Trial Court, vide judgment dated 17th August, 2012 passed in Sessions Trial no. 780 of 2010 held them guilty under Section 304B/34 and 498/34 of the IPC. They were acquitted of the charge under Section 302/34 of the IPC. Taking exception to the judgment of their conviction and sentence two appeals by three appellants have been filed.

2. Pinki Rani (deceased) was married to appellant Ajit Kumar barely two years ago on 11.07.2008. While living at 'Sasural' she was being tortured by the appellants as the demand of a sum of Rs. 1,00,000/- from the father of the deceased for running a business by the husband was not fulfilled. On 23.05.2010 at 11 A.M., the mother of the deceased (PW4) received an information about the death of her daughter at 'Sasural'. Within few hours, she reached the 'Sasural' of her daughter along with her son PW2. Her brother Mithilesh Prasad (PW1) also arrived there. The police received an information about the incident and reached the place of occurrence immediately. The 'Fardbeyan' (Ext.3) of PW-4 was recorded at the place of occurrence itself. The inquest proceeding was also carried out in the room of the house where the dead body was lying on a 'chowki' which was witnessed by PW-1 and the



informant (PW4). The dead body was dispatched for the postmortem examination. PW-7 who recorded the '*Fardbeyan*' returned to the Police Station along with the '*Fardbeyan*' and the inquest report whereafter a formal FIR (Ext.2) was drawn and he was made the Investigating Officer. On the same day, he again went to the place of occurrence and recorded the C.D. statement of the informant and some other witnesses. The investigation was subsequently taken over by the PW-9 who laid the charge-sheet against the appellants whereon cognizance was taken and the case was later committed to the Court of Session on 01.09.2010. On transfer, the case came on the file of learned Trial Judge for trial. The appellants abjured the guilt and claimed a trial. A specific defence was taken that the father-in-law and the mother-in-law were residing separately. A dispute had arisen between the deceased and her husband over the disposition of gold chain whereafter the deceased committed suicide.

3. At the trial the prosecution discharged the burden of proving the case beyond shadow of doubt by adducing oral as well as documentary evidence. The gist of the evidence produced by the prosecution is as follows:-

4. PW-1 Mithlesh Prasad is the *Mama* of the deceased. He had reached the place of occurrence soon after the



arrival of his sister (informant). He has deposed with respect to the demand of dowry being made by the in-laws of the deceased followed by persistent torture on her. His CD statement was recorded by the IO(PW7) on the same day. PW-2 is the brother of the deceased. He had accompanied his mother PW4 to the place of occurrence. PW-3 (father of the deceased) was not present in the house. He is a police constable and was posted at Aurangabad. He too has deposed profusely on the relevant aspects of the case which includes the year in which the marriage of the deceased with the appellant Ajit Kumar was solemnized and thereafter the demand of a sum of Rs. 1,00,000/- was made by the appellants and on non-fulfillment thereof the deceased being subjected to torture at her 'Sasural'. On getting information, he travelled all the way from Aurangabad to his rented house in Biharsharif and thereafter to the '*Sasural*' of his daughter. His evidence also supports the prosecution case with regard to the persistent demand of dowry made by the appellants and the torture continuously perpetrated on the deceased. PW-4 is the informant herself. She has supported her statement made in the '*Fardbeyan*'. PW-5 Bishokhanand Prasad is a formal witness who has identified the signature of the Station House Officer (SHO) on the formal FIR (Ext.2). PW-6



Manab Prasad is distantly related to the prosecution. According to him, the victim was being tortured by the husband as she was not able to bring hefty amount enabling him to start a business. PW-7 Rakesh Ranjan is the Police Officer who recorded the '*Fardbeyan*' of the informant at the place of occurrence and later investigated the case, which was taken over by PW-9 (second I.O.), who, ultimately, filed the charge sheet. PW-8 Dr. Krishna Kumar Mani who was then posted as the Medical Officer at Sadar Hospital, Bihar Sharif. On 23.05.2010 he held the autopsy on the cadaver and prepared the postmortem report (Ext.5).

5. Considering the charge for which the appellants have been held guilty, it shall be incumbent to notice the findings of the autopsy surgeon which is/are as follows:-

“On external examination

Both eyes partially open, white frothy material coming from both nostrils, abrasion over chin of size $\frac{3}{4}$ ”x $\frac{1}{2}$ ”, bruise of size $2\frac{1}{2}$ ” x $1\frac{1}{2}$ ” over upper part of front of neck left side, bruise of size $1\frac{1}{2}$ ” x 1” over upper part of front of neck at right side, abrasion over dorsum of right wrist of size $\frac{1}{2}$ ”x $\frac{1}{2}$ ”, abrasion over left wrist palmar side of size $\frac{1}{2}$ ” x $\frac{1}{2}$ ”.

On dissection

All cranial bones intact, brain and its meninges intact and congested, neck beneath the bruised part, of neck blood clots present in the tissues hyoid bone fractured, tracheal mucosa congested, tracheal rings fractured. Chest both lungs intact and congested. Heart-blood present in all the four chambers of heart, Abdomen-



stomach about 1½ ounce mucosa material present. All other abdominal viscera are intact and congested. Urinary bladder-empty, uterus non gravid.

Cause of death-Asphyxia due to strangulation. Time elapsed since death -6 to 36 hours. The postmortem report is in his pen and signature which has been marked as Ext. 5.”

6. The findings of the doctor leave no room to doubt that the death of deceased was homicidal. She was strangled to death. The hyoid bone was found fractured. The trachea ring was also found fractured. The ultimate cause of death opined by the doctor is asphyxia due to strangulation. The defence in view of the clear findings of the doctor has not much disputed those findings of the autopsy surgeon.

7. Heard Mr. Vikram Deo Singh, assisted by Kumari Sujata Sinha as well as Ravindra Prasad Singh, for the appellants of these appeals as well as Mr. S.N.Prasad, APP for the State.

8. While criticizing the judgment of conviction, counsel for the appellants, submits that the allegation with regard to the demand of a sum of Rs. 1,00,000/- from the in-laws of the deceased would not constitute dowry. He further submits that the learned Trial Court erred in convicting the appellants of Cr. Appeal (DB) No. 881 of 2012 as there was no convincing evidence against them of having tortured the



deceased on account of non fulfillment of the demand of dowry. The prosecution also admits that appellant the father-in-law was employed as a teacher in a distant school. The defence witness examined in this case have stated that the father in-law and the mother-in-law used to reside at the place of work of appellant Bhagwat Prasad. If there is no convincing evidence with regard to the torture against the father- in - law and mother-in- law then the presumption under Section 113-B of the Evidence Act (for short 'the Act') would not arise against them. Our attention in this regard is drawn to the 'Fardbeyan', the evidence of the father of the deceased (PW3) and the evidence of PW6. The conviction of the husband has similarly been challenged contending that the demand of a sum of Rs. 1,00,000/- for starting a business shall not constitute a demand of dowry. If that goes then his conviction under Sections 304B/34 and 498/34 of the IPC would also not be sustainable in law.

9. Learned counsel for the State has conversely submitted that several witnesses have specifically spoken about the demand of dowry in the sum of Rs. 1,00,000/- which began few months after the marriage. PWs 1,2,3,4 and 6 have deposed on this aspect. Some of the witnesses, in course of cross examination , of course, have stated that the demand was made



on the plea that the husband-appellant wanted to start a business. Some reasons or the other can be stated to justify every demand. The marriage was solemnized only two years before the occurrence. As per the evidence, such demand started within few months of the marriage which continued. The evidence, on record, is that the appellants had insisted on such demand continuously. It is also submitted that the conduct of the appellants preceding the incident and post incident would also be relevant consideration.

10. In order to constitute an offence under Section 304B IPC the prosecution is required to prove by cogent and trustworthy evidence the following :-

(i) The death is caused by any burns or bodily injury or occurs otherwise than under normal circumstances.

(ii) The death must have occurred within seven years of the marriage.

(iii) It must be shown that soon before her death the deceased was subjected to cruelty or harassment by her husband or any relative of her husband, and that such cruelty or harassment was in connection with any demand for dowry.

11. We have minutely gone through the evidence on record. The medical evidence is clear to the extent that the death was homicidal (caused by strangulation). It is also very clear that the death has occurred while she was living in her



‘Sasural’ within two years of her marriage. The first two of the above noted three conditions are clearly established.

12. As regards the deceased being subjected to cruelty or harassment and demand for dowry soon before her death, we consider it appropriate to examine the submissions made by the learned counsel for the defence. In this regard we have gone through the evidence on record.

13. We would first advert to the fardbeyan (Ext. 3). The specific allegation made in the fardbeyan is with respect to fulfillment of dowry at the time of marriage. Few months after the marriage there is general allegation in the fardbeyan of demand of more money for running a business by the husband. It is also alleged that about 5 days earlier the deceased had called the informant on telephone to reiterate the general allegation regarding demand of dowry. While making such complaint on telephone the deceased had specifically stated regarding torture and assault at the hands of the husband (appellant of Cr. Appeal (DB) No. 944 of 2012). The said phone call is stated to be the last communication as per the fardbeyan.

14. PWs 1 and 2 have stated about such demand which started soon after the marriage resulting in torture or harassment perpetrated on the victim by the in-laws appellants,



is general as also the husband, the allegations are general in nature.

15. P.W. 3 has also deposed specifically that it was the husband who used to torture and physically assault his wife to pressurize her to demand Rs. 1 lac from her father he was unable to fulfill. P.W. 6 is yet another important witness, who is not closely related to the prosecution side. His evidence is in accord with the evidence of P.Ws. 1, 2 and 3 with respect to perpetration of cruelty, harassment and demand of dowry by the husband, and convinces us for sure that it was the husband of the deceased who used to torture and assault his wife to pressurize her to demand the said amount from her parents. On a careful appreciation of the evidence of the aforesaid four witnesses, it is quite clear that against the in-laws the allegations of demand of dowry and harassment to the victim are general in nature. No specific allegation as regards perpetration of cruelty, harassment or demand of dowry emerges against them. On the other hand, as regards the husband, appreciation of the aforesaid four witnesses, however, conclusively prove that it was the husband who was perpetrating the cruelty, harassment and making the demand for dowry.



16. In **Amar Singh v. State of Rajasthan** reported in **AIR 2010 SC 3391**, on which reliance has been placed by the counsel for the appellant, the Apex Court dealt with this aspect of the matter. If the allegations of harassment or torture is described in general without stating the exact conduct of the accused, the Apex Court held, that the Court should be slow in accepting the guilt of the accused(s). Dealing with the case of **Kans Raj v. State of Punjab and Ors., reported in (2000) 5 SCC 207** the Apex Court in paragraphs 23 and 24 of the judgment in **Amar Singh** (supra) has observed as follows :-

“23. A prosecution witness who merely uses the word "harassed" or "tortured" and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Section 498A and 304B IPC.

24. This Court cautioned that in cases where accusations of dowry deaths are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt and by mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. In the aforesaid case, this Court further observed that a tendency has developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits.”

17. Mr. Prasad APP for the State has submitted



that in the case like this where the offence is committed secretly within the four walls of the 'Sasural', there is the presumption of guilt raised under Section 113(b). Section 106 of the Evidence Act also burdens the accused(s) to prove their innocence by explaining the circumstances leading to the death of the victim. The said submission of Mr. Prasad must be considered in the background of the pronouncement of the Apex Court in the case of **Amar Singh** (Supra).

18. Having considered the aforesaid, we again advert to the case of appellant Ajit Kumar (husband). We find the evidence replete with requisite circumstances constituting the offence under Section 304(B) IPC inasmuch as the specific allegation of cruelty, harassment, physical assault and demand of dowry commencing few months after the marriage till soon before the occurrence are well proved from the evidence on record. Further the homicidal death of the victim within two years while living at the 'Sasural' is also clearly established. Evidence of PW2 and PW3 clearly establish that the victim was being tortured and assaulted by the appellant Ajit Kumar (husband) to pressurize her to bring Rs. One lac from her parents for starting a business. The death being homicidal in nature and the appellant Ajit Kumar having not explained the



circumstances which led to her death, in our view, establish the prosecution case against the appellant husband. There is convincing evidence on record that the victim used to complain to her family members about the physical assault on her by the husband-appellant. Thus, on the consideration of evidence on record the case of demand of dowry followed by cruelty on her by the appellant husband is clearly proved.

19. The another limb of the submission of the defence was that the death in question was a case of suicide. We find no force in the said proposition of the defence. The responsibility of the husband is paramount for maintaining the dignity and safety of the wife. The duty and care expected from the husband was surely not discharged by him. The evidence on record points only towards the guilt of the appellant Ajit Kumar (husband) and does not leave any scope for any other conclusion.

20. Section 113-B of the Act raises a statutory presumption as to the dowry death. Noticeably, this presumption is also founded on the proof of cruelty or harassment of the women dead for or in connection with any demand for dowry by the persons(s) charged with the offence. Such presumption as to the dowry death would get attracted



only upon the proof of the fact that the deceased had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of the death. To support the aforesaid proposition of law, we may usefully refer to the case of **Baijnath and others vs. State of Madhya Pradesh (2017) 1 SCC 101**.

21. In the case of two appellants of Cr. Appeal (DB) No. 881 of 2012 i.e., mother-in-law and father-in-law, we find no such specific overt act even attributed to them, let alone being established at the trial. On the basis of evidence on record it is difficult for the Court to hold beyond reasonable doubt that they were guilty of the offences under Sections 498A and 304B IPC. This Court is mindful of the caution underlined by the Apex Court in **Amar Singh** (supra) and therefore, merely by the use of word such as “harass or torture” used by the prosecution, without describing the exact conduct of the said two accused(s) which amounted to harassment or torture would not be believed. The evidence on record against them is in general terms. How the victim was subjected to torture by the in-laws has not been specifically stated.

22. In view of the discussions of the relevant evidence made above, the judgment of conviction dated



17.08.2012 and order of sentence dated 18.08.2012 recorded by the learned Trial Court against the appellant no.1, namely, Ajit Kumar in Cr. Appeal (DB) No. 944 of 2012 is upheld. Accordingly, Cr. Appeal (DB) No. 944 of 2012 is dismissed.

So far as the appellant nos.2 and 3, namely, Bhagwat Prasad and Malti Devi in Cr. Appeal (DB) No. 881 of 2012 are concerned, the findings of guilt recorded against them are set aside. They are acquitted of the charge. Accordingly, Cr. Appeal (DB) no. 881 of 2012 is allowed. The appellants of Cr. Appeal (DB) No. 881 of 2012 are on bail. They are discharged from the liabilities of their bail bonds.

(Kishore Kumar Mandal, J)

I agree

(Madhuresh Prasad, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	14.09.2017
Uploading Date	17.10.2017
Transmission Date	17.10.2017

