

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1008 of 2012

Arising Out of PS. Case No.-94 Year-2008 Thana- KAMTAUL District- Darbhanga

1. Naresh Yadav, S/o Late Hiralal Yadav

2. Bechani Devi, W/o Late Hiralal Yadav

Both are R/o Village-Mohammadpur, Tailiya Pokhar, Police Station-Kamtaul, District-Darbhangha.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mrs. Meena Singh, Advocate Ms. Prakritita Sharma, Amicus Curiae
For the State	:	Mr. A.K. Sinha, APP

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

06-04-2018

Heard Mr. Krishna Prasad Singh learned counsel for the appellants, Ms. Prakritita Sharma learned Amicus Curiae for the appellants and Mr. A.K. Sinha learned APP for the State.

2. This appeal has been preferred against the judgment and order of conviction dated 30.08.2012 and order of sentence dated 05.09.2012 passed by Adhoc Additional Sessions Judge-IV, Darbhanga in Sessions Trial No. 449 of 2010 arising out of Kamtaul P.S. Case no. 94 of 2008, whereby the learned trial court convicted the accused Naresh Yadav and Bechani Devi for the offence punishable under



Section 304(B) of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for life under the aforesaid Section.

3. The factual matrix of the case is that Kamtaul P.S. Case no. 94 of 2008 was instituted under Section 304(B)/34 of the Indian Penal Code against accused Naresh Yadav and Bechani Devi on the basis of written report of Gopal Kant Yadav S/o Late Nathuni Yadav dated 13.08.2008 with the allegation, in succinct that the informant performed marriage of his daughter namely, Ratna Devi with Naresh Yadav four years back. The couple had been blessed with a son namely, Vipin Kumar aged about one year. On 13.08.2008 at around 9:00 AM, his grandson Ranjan Kumar informed him about some mishappening with Ratna Devi in her marital house. On the said information, he rushed to the marital house of his daughter and found his son-in-law, Naresh Yadav and his mother Bechani Devi absconding and his grandson Vipin Kumar missing. On making search of his daughter, he found his dead body lying on the cot in the eastern room of the house bearing ligature mark on her neck and her nose bleeding. Further allegation is that his daughter had arrived at her marital house ten days back. His son-in-law



and mother-in-law of the deceased had demanded she-buffalo and palang from him. He learnt that his son-in-law and mother-in-law of the deceased had strangled his daughter to death due to not coughing up their demand.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused namely, Naresh Yadav and Bechani Devi under Section 304(B)/34 of the Indian Penal Code showing them absconding.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused persons and committed the case to the court of sessions and after commitment and on transfer finally the case came in *seisin* of the Adhoc Additional Sessions Judge-IV, Darbhanga for trial.

6. The aforesaid accused persons put their appearance in the case and charge against them was framed under Section 304(B)/34 of the Indian Penal Code. Charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence,



the prosecution has examined altogether nine prosecution witnesses namely, Sanjay Kumar Yadav as PW-1, Sita Ram Yadav as PW-2, Manoj Kumar Sah as PW-3, Urmila Devi as PW-4, Ram Naresh Yadav as PW-5, Bimal Devi as PW-6, informant Gopal Kant Yadav as PW-7, I.O. Md. Abdul Lais Khan as PW-8 and Dr. Vijay Pratap Singh, who conducted autopsy of the cadaver of the deceased as PW-9. The prosecution has also filed and proved some documents by way of documentary evidence.

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. The accused persons have neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts have preferred the present 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 appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants and learned amicus curiae that the informant neither in his fardbeyan nor in his testimony has taken the case of subjecting the deceased to torture over demand of she-buffalo and palang by the appellants and also subjecting her to cruelty and torture over the said demand soon before her death by the appellants. Thus, the prosecution has utterly and miserably failed to substantiate subjecting the deceased to torture over demand of dowry and also subjecting her to cruelty and torture over the said demand soon before her death by the appellants. The aforesaid two ingredients happen to be *sine qua non* for holding conviction under Section 304(B) of the Indian Penal Code and as the prosecution has failed to substantiate the aforesaid two essential ingredients of dowry death, no conviction of the appellants can be made for dowry death. It is further submitted that so far as the demand of dowry by the appellants is concerned, the informant in his testimony has stated that no demand of aforesaid dowry had been made by



the appellants from him rather his daughter (deceased) had divulged him about the same. While in quite contradiction to the aforesaid statement of the informant, his wife (PW-6) has stated that the appellants had made the aforesaid dowry demand from them. It is further submitted that though the witnesses have stated about making demand of dowry by the appellants, but they have not stated about any date, time and period of the aforesaid demand. Thus, the demand of dowry by the appellants from the prosecution party also does not stand established by the prosecution. It is further submitted that as the prosecution has failed to substantiate the aforesaid two ingredients of Section 304(B) I.P.C. i.e. subjecting the deceased to cruelty over dowry demand and subjecting her to cruelty over the aforesaid dowry demand soon before her death by the appellants, no presumption can be made under Section 113-B of the Indian Evidence Act about commission of dowry death of the deceased by the appellants. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case by adducing trustworthy, consistent and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial court is liable to be set aside and the



appellants are entitled to be acquitted.

13. On the other hand, learned APP advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that the informant has fully supported the prosecution case and other material witnesses examined by the prosecution, have also corroborated the prosecution case, and the ocular evidence also stand corroborated by the medical evidence and after correctly appreciating the facts and material available on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and this appeal is shorn of merit and is liable to be dismissed.

14. In order to seek conviction under Section 304(B) I.P.C. against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances (b) such death should have occurred within seven years of her marriage (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband (d) such cruelty or harassment should be for or in connection with demand of



dowry (e) to such cruelty or harassment the deceased should have been subjected to soon before her death. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment over dowry demand can be presumed to be guilty of offence under Section 304(B) I.P.C. While as per Section 113-B of the Evidence Act, when the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused dowry death. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment over dowry demand. Presumption under Section 113-B would be operative only if it is shown that soon before death the deceased was subjected to cruelty by her husband or any relative for or in connection with demand of dowry.

15. Regarding the aforesaid ingredients i.e. death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances and such



death has occurred within seven years of her marriage. It is the admitted case of the parties that death of deceased (Ratna Devi) had occurred four years back of her marriage in her marital house. As per prosecution case, on getting information about some mishappening with his daughter, when the informant and others arrived at the marital house of his daughter, he found the dead body of his daughter lying on the cot in the eastern room of the house bearing ligature mark on her neck and her nose bleeding.

16. The informant (PW-7) and other witnesses in their respective testimonies have corroborated the aforesaid case of the prosecution. It is claimed by the informant that the accused persons have strangled to death his daughter over dowry demand. The inquest report (Ext-5) of the deceased indicates that the police has found ligature mark around neck of the deceased and her nose bleeding. The doctor has also found ligature mark on the neck of the deceased and has opined the cause of death as asphyxia as a result of ligature. Though, the defence has taken the case that Ratna Devi always remained sick and has died due to ailment by giving suggestion to the informant and PW-1, PW-4, PW-5 and PW-6, which has been denied by the said witnesses. The defence



has not adduced any ocular or documentary evidence in substantiation of its aforesaid case and it is settled law that mere suggestion does not take the shape of evidence. In the aforesaid facts and circumstances of the case, I find and hold that Ratna Devi has died in her marital house due to strangulation within seven years of her marriage.

17. So far as the demand of dowry and tormenting the deceased by the appellants for the dowry and that too soon before her death is concerned, as per prosecution case, the appellants had demanded she-buffalo and palang from the informant. There is no case of prosecution in the written report that the appellants used to pester the deceased over the said demand and also tormented her over the said demand soon before her death.

18. From perusal of testimony of the informant (PW-7) it appears that in his examination-in-chief, he has stated that husband and mother-in-law of his daughter namely, Ratna Devi used to make demand of she-buffalo and palang and their behavior towards Ratna Devi was not good. But, in the said examination-in-chief, he has not even whispered about subjecting the deceased (Ratna Devi) to cruelty over the said dowry demand by the appellants. He has also not



whispered that appellants subjected the deceased to torture over the said demand soon before her death. Moreover, in paragraph-5 of his cross-examination, he has stated that the appellant (Naresh Yadav) and others had not made any demand of dowry at the time of marriage of Ratna Devi rather it was an ideal marriage. More so, as per prosecution case, as adumbrated in the written report, the appellants had demanded she-buffalo and palang from the informant, but informant in paragraph 5 of his cross-examination has stated that Ratna Devi herself had divulged him, for the first time, that her husband and mother-in-law used to make demand of she-buffalo and palang from her. He has also failed to disclose the date of divulgence of the aforesaid fact to him by deceased (Ratna Devi). In the said cross-examination, he has not stated about making demand of the aforesaid dowry by the appellants directly from him as per the case of prosecution as stated in his written report. Though, the informant has not stated about making any demand of dowry by the appellants at the time of marriage, but PW-6 (Bimal Devi) who happens to be wife of the informant and mother of the deceased has stated in paragraph 3 of her cross-examination that the appellants had demanded she-buffalo and palang even at the time of



marriage. In quite contradiction to the statement of the informant (PW-7), PW-6 (Bimal Devi) has stated in paragraph 2 of her cross-examination that the appellants used to make demand of she-buffalo and palang, besides her daughter from them as well. PW-6 (Bimal Devi), though, has stated in her examination-in-chief that the appellants used to torment Ratna Devi for the aforesaid demand of dowry contrary to the statement given by the informant in his written report and in his examination-in-chief, but she has not divulged the date, time and period of pestering Ratna Devi by the appellants. She has also not stated about subjecting the deceased to cruelty over the said dowry demand by the appellants soon before her death. Though, PW-1 (Sanjay Kumar Yadav) has stated in his examination-in-chief that in laws of Ratna Devi always used to harass her over dowry demand of she-buffalo and palang. But, in paragraph-2 of his cross-examination, he has stated that no demand of dowry was made before him rather father of Ratna Devi (informant) used to divulge him about making of the aforesaid demand by the appellants. But, the informant has not corroborated the factum of divulgence of the aforesaid aspects of the case to PW-1. Hence, for want of corroboration, the aforesaid statement of PW-1 (Sanjay



Kumar Yadav) who happens to be hearsay witness of the case is not admissible in the evidence. Said witness has also not divulged the date, time and period of pestering the deceased (Ratna Devi) by the appellants and subjecting the deceased to cruelty over the said demand soon before her death.

19. PW-2 (Sita Ram Yadav) who happens to be nephew of the informant though has stated in his examination-in-chief that his cousin Ratna Devi used to divulge him that Naresh Yadav and his mother used to make demand of she-buffalo and palang and subjected her to torture over the said demand and used to extend threatening of dire consequences to her, but in his cross-examination, he has stated that no demand of dowry was made before him. Said witness has also not divulged any time, date and period of making any demand by the appellants and subjecting the deceased to cruelty over the said demand and also tormenting her soon before her death.

20. PW-4 (Urmila Devi) who happens to be aunt of the deceased has stated in her examination-in-chief that Naresh Yadav and Bechani Devi used to make demand of she-buffalo and palang in dowry from the very beginning and subject Ratna Devi to torture. But, no demand of dowry was



ever made by the appellants before her as in paragraph-3 of her cross-examination, she has stated that Ratna Devi used to divulge her about making of the aforesaid demand of dowry by the appellants. Said witness has also not stated about date, period and time of making the aforesaid demand of dowry and subjecting the deceased to cruelty over the said demand by the appellants. She has also not divulged about subjecting the deceased to cruelty over the aforesaid dowry demand by the appellants soon before her death. Likewise, PW-5 (Ram Naresh Yadav) who happens to be cousin of the deceased (Ratna Devi) has stated in his examination-in-chief that husband and in-laws of Ratna Devi always used to torment her over the demand of she-buffalo and palang, but in paragraph-2 of his cross-examination, he has vented his ignorance about making demand of dowry by the appellants after marriage. In paragraph 4 of his cross-examination, he has stated that the appellants had never made any demand before him. Then the question arises, as to once the demand of dowry by the appellants was not made before him, then how he came to know about making of the aforesaid demand by the appellants? The aforesaid question remains unanswered. The said witness has also not stated about the date, time and period



of making the demand of dowry and tormenting the deceased by the appellants. He has also not divulged about subjecting the deceased to cruelty over the aforesaid dowry demand by the appellants soon before her death.

21. Thus, from perusal of prosecution case, testimony of the aforesaid witnesses and discussion made by me hereinabove, I find and hold that the prosecution has utterly and miserably failed to substantiate that there was any dowry demand by the appellants and deceased was subjected to cruelty over the said demand and that too soon before her death by the appellants by adducing consistent, trustworthy, reliable and cogent evidence. As the prosecution has miserably failed to prove the aforesaid important ingredients of Section 304(B) of IPC, burden does not stand shifted on the shoulder of the appellants to prove that they have not caused dowry death of the deceased.

22. Hon'ble Apex court in *Major Singh & Another Vs. State of Punjab reported in (2015) 5 Supreme Court Cases 201* has been pleased to rule that when there is no evidence as to demand of dowry or cruelty and that deceased was subjected to dowry harassment "soon before her death" by the appellant-accused parents-in-law conduct of father and



brother of deceased, not natural, the conviction of the appellant under Section 304-B cannot be sustained and is liable to be set aside. It has further been pleaded to rule that to attract conviction under Section 304-B I.P.C. prosecution should adduce evidence to show that “soon before her death”, the victim was subjected to cruelty or harassment. There must always be a proximate and live link between effects of cruelty based on dowry demand and death concerned.

23. Hon’ble Apex Court in *Baijnath & Ors. Vs. State of Madhya Pradesh (2017) 1 Supreme Court Case 101* has been pleaded to rule that mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Sections 304-B and 498-A I.P.C. Only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under Section 113-B can be invoked. Section 113-B of the Act enjoins a statutory presumption as to dowry death. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated



only upon the proof of the fact that the deceased lady 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 death. A conjoint reading of these three provisions, thus predicates the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the aboveresferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

24. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to bring home the charge levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and



order of conviction and sentence passed by learned trial court is set aside and the appellants are acquitted of the charge levelled against them. As the appellant no. 1 (Naresh Yadav) is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. While the appellant no. 2 (Bechani Devi) is on bail, she is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

25. Let a copy of the first and last page of this judgment be handed over to the learned *amicus curiae*, Ms. Prakritita Sharma, and learned *amicus curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J.)

Dr. Ravi Ranjan, J.- I agree.

(Dr. Ravi Ranjan, J.)

rohit/-

AFR/NAFR	AFR
CAV DATE	20-03-2018
Uploading Date	06-04-2018
Transmission Date	06-04-2018

