

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.1154 of 2012

Arising Out of PS.Case No. -null Year- null Thana -null District- -

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Ajay Ram, son of Ashok Ram, resident of village- Rampur, P.S. Matihan, District – Begusarai. Appellant.

Versus

The State of Bihar. Respondent.

WITH

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Criminal Appeal (DB) No. 919 of 2012

Arising Out of PS.Case No. -101 Year- 2008 Thana -null District- BEGUSARAI

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1. Ahilya Devi, wife of Ashok Ram, resident of Village- Rampur, P.S.- Matihani, District- Begusarai.
 2. Vijay Ram, son of Ashok Ram, resident of Village-Rampur, P.S.- Matihani, District- Begusarai.

.... Appellants.

Versus

The State of Bihar. Respondent.

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Appearance :

(In CR. APP (DB) No.1154 of 2012 & In CR. APP (DB) No.919 of 2012)

For the Appellants : Mr.Ajay Kumar Thakur, Advocate.

Mr. Nilesh Kumar, Advocate.

Mr. Amit Kumar, Advocate.

For the Respondent : Mr. Ashwani Kumar Sinha, A.P.P.

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CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date: 27-03-2018

As both these criminal appeals have cropped up from the same judgment and order of conviction and sentence, hence they are taken up together for consideration and disposed of by this common judgment.

2. Heard learned counsel for the appellants and learned A.P.P. for the State on these criminal appeals.

3. These criminal appeals have been preferred



against the judgment and order of conviction dated 28.08.2012 and order of sentence dated 31.08.2012 passed by the Additional Sessions Judge-I, Begusarai in Sessions Trial No.560 of 2009, arising out of Matihani P.S. Case No.101 of 2008, whereby the learned trial Court convicted accused Ajay Ram, Vijay Ram and Ahilya Devi under Section 304 B/34 and 498 A Indian Penal Code (hereinafter in short referred to as the 'IPC') and under Section 4 of the Dowry Prohibition Act and sentenced Ahilya Devi to undergo rigorous imprisonment for 10 years under Section 304-B of IPC, further sentenced to undergo rigorous imprisonment for two years under Section 498-A of the IPC and further sentenced to undergo rigorous imprisonment for six months under Section-4 of the Dowry Prohibition Act, while accused Ajay Ram and Vijay Ram were sentenced to undergo rigorous imprisonment for life under Section 304-B IPC, further sentenced to undergo rigorous imprisonment for two years under Section 498-A IPC and further sentenced to undergo rigorous imprisonment for six months under Section-4 of the Dowry Prohibition Act. All the sentences were directed to run concurrently.

4. The factual matrix of the case is that Matihani P.S. Case No.101 of 2008 was instituted under Section 304-B/34



of the Indian Penal Code against Ajay Ram, Vijay Ram and Ahilya Devi, on the basis of written report of Bambam Ram son of Jagarnath Ram with the allegation in succinct that the informant has performed marriage of his sister, namely, Chandani Devi with Ajay Ram of village Rampur four years back. Her in-laws used to thrash and drive her of her marital house over demand of motorcycle since the marriage. Resultantly she used to pay visit to her maternal house, whereupon he used to drop her to her marital house. Her mother-in-law Ahilya Devi, father-in-law, Ashok Ram, husband Ajay Ram and brother-in-law Vijay Ram used to demand motorcycle from him in lieu of keeping his sister in their house else they would eliminate her. He used to regress his house after persuading them. Further allegation is that on 07.10.2008 on telephonic information about murder of his sister, he arrived at her marital house and learnt from the locals that Ashok Ram, Ajay Ram, Ahilya Devi and Vijay Ram after eliminating his sister dumped her dead body in the toilet in the past night.

5. The aforesaid case was investigated by the police and on conclusion of the investigation I.O. submitted chargesheet under Sections 498-A and 304-B of the IPC and Section 4 of the Dowry Prohibition Act against the accused



persons. The learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions. After commitment and on transfer, finally the case came in seisin of Additional Sessions Judge-I, Begusarai for trial.

6. Charge under Sections 498-A and 304-B/34 of the IPC and Section 4 of the Dowry Prohibition Act was framed against the accused persons. 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, prosecution has examined altogether 13 prosecution witnesses, namely, Suresh Ram as P.W.1, Prakala Devi as P.W.2, Ram Nandan Rai as P.W.3, Chunchun as P.W.4, Batoran Mahton as P.W.5, Panchu Ram as P.W.6, Dr. Gopal Mishra, who conducted the autopsy of cadaver of the deceased, as P.W.7, Jagarnath Ram as P.W.8, Ram Chandra Ram as P.W.9, Pravin Singh as P.W.10, Tetri Dev alias Teto Devi as P.W.11, informant Bambam Ram as P.W.12 and Manoj Ram as P.W.13. Out of the aforesaid witnesses P.Ws.1 to 6, 8 and 10 turned hostile, while P.W.9 happens to be formal witness. In documentary evidence, the prosecution has also filed and proved some documents.



8. The statement of the accused persons was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming themselves to be quite innocent. The defence has not adduced either any ocular or documentary evidence in buttress of its 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 earlier paragraph.

10. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the convicts have preferred these criminal appeals.

11. The point for consideration in this case is, as to whether the prosecution has been able to prove the charge levelled against the appellants beyond all shadow of doubt or not.

12. It is submitted by learned counsel for the appellants that the informant neither in his written report nor in his testimony nor mother of the informant has taken the case of subjecting the deceased to cruelty over demand of motorcycle by the appellants soon before her death. The prosecution has utterly and miserably failed to substantiate the aforesaid aspect



of the case. The aforesaid ingredient happens to be *sine qua non* for holding conviction under Section 304-B of the IPC and as the prosecution has failed to substantiate the aforesaid essential ingredient of dowry death, no conviction of the appellants can be made for dowry death. Though the informant, the mother of the informant and the mother of the deceased have stated about making demand of dowry and excruciating the deceased over the said dowry demand but they have not stated about the date, time and period of the said demand and subjecting the deceased to the cruelty. Thus, the demand of dowry by the appellants from the prosecution party and subjecting the deceased to cruelty over the said dowry demand also does not stand established by the prosecution. It is further submitted that as the prosecution has failed to substantiate the aforesaid essential ingredients of Section 304-B of the IPC i.e. subjecting the deceased to cruelty over dowry demand and subjecting her to cruelty for the aforesaid demand soon before her death by the appellants, no presumptions under Section 113-B of the Evidence Act about commission of dowry death of the deceased by the appellants can be made. It is further submitted that the father and the uncle of the deceased, who happens to be the witnesses of the case, have been examined by the prosecution



but they have turned hostile and it was in full knowledge of the informant but despite the aforesaid knowledge the informant has knowingly and deliberately denied that his father and uncle to be the witnesses of the case. Thus, the informant happens to be dam lier and his testimony is not worth credence and reliable. It is further submitted that P.W.13-Manoj Ram, who happens to be co-villager of the appellants and prosecution witness of the case, has also not supported the prosecution case as in his cross-examination, he has stated that appellant-Ajay Ram used to keep and maintain his wife properly. He never heard about making any demand of dowry by him and subjecting his wife to torture. Thus, the prosecution has utterly and miserably failed to substantiate its case beyond all reasonable doubt by adducing trustworthy, reliable and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, advocating the correctness and validity of the impugned judgment and order of conviction and sentence learned A.P.P. for the State submitted that the informant and his mother have unanimously and consistently stated that the appellants used to make dowry demand of



motorcycle from the prosecution party and torment the deceased over the said demand and finally they have eliminated the deceased over the said demand and dumped her dead body in the toilet. The medical evidence adduced by the prosecution also corroborated the aforesaid ocular evidence. The learned trial Court, after correctly appreciating the case and material available on record, 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 (Chandani Devi) had occurred within seven years of her marriage in her marital



house. As per prosecution case, when on getting information about murder of his sister, the informant and others arrived at the marital house of his sister, he learnt from locals that the appellants had eliminated and dumped the dead body of his sister in the toilet in the past night and he found the dead body of his sister near the toilet. Informant-Bambam Ram (P.W.12) has stated in his examination-in-chief that when he arrived at the marital house of his sister he found the dead body of his sister on the gate of the toilet bearing ligature mark on her neck and abrasion on the cheek and bruise on its head. Mother of the informant, namely, Tetri Devi alias Teto Devi (P.W.11) in consistent with the aforesaid statement of the informant has also stated in her examination-in-chief that when she arrived at the marital house of her daughter she found the dead body of her daughter on the gate of the toilet bearing ligature mark on her neck. Dr. Gopal Mishra (P.W.7), who conducted the autopsy of the cadaver of the deceased, has also stated about finding of ligature mark on the neck of the deceased, abrasion over the right angle of mouth, cheek and face and left mandible, abrasion over face right side below left eye with blood clot in nostril, bruise of the dimension of 2" x 3" on the left side of the skull and has opined the cause of death due to asphyxia as a result of



strangulation and neurosanic shock as a result of trauma over skull. Though the defence has taken the case that the deceased was fond of ornaments and wearing the ornaments she had gone to the toilet where she had become victim of some unsocial elements by giving suggestion to the informant and P.W.11 but mere suggestion does not take the shape of evidence. The defence has failed to substantiate the aforesaid case by adducing any ocular or documentary evidence such as filing of the F.I.R. regarding the aforesaid occurrence etc. Thus, from perusal of the aforesaid case of the prosecution and the evidence adduced by it, we find and hold that the prosecution has fully succeeded to substantiate that the death of Chandani Devi was caused by strangulating her neck and assaulting her within seven years of her marriage in her marital house.

16. So far as the demand of dowry and tormenting the deceased by the appellants over the said demand and that too soon before the death is concerned, albeit the informant in his written report and in his examination-in-chief has stated that accused persons used to make demand of motorcycle in dowry and subject his sister Chandani Devi to cruelty over the said demand and drive her out of the marital house for the same, but he used to drop her at her marital house persuading the



appellants and finally the appellants have eliminated the deceased by strangulating her neck and assaulting her over the said dowry demand but the informant neither in the written report nor in his examination-in-chief has divulged any specific date, time and period of demand of motorcycle in dowry and subjecting the deceased to cruelty by the appellants. He has also not stated about subjecting the deceased to cruelty over dowry demand by the appellants soon before her death. Though as per the prosecution case and the statement of the informant, appellants used to make demand of dowry and subject the deceased to cruelty over the said demand and drive her out of her marital house since marriage and the informant used to drop her at her marital house persuading the appellants, but Tetri Devi alias Teto Devi (P.W.11), who happens to be the mother of the deceased, has not supported the aforesaid case of the prosecution and the statement of informant regarding frequently driving the deceased from her marital house, thrashing over dowry demand by the appellants and dropping the deceased at her marital house by the informant persuading the appellants since marriage as in her examination-in-chief she has simply stated that after marriage her daughter went to her marital house and after staying there for couple of days she regressed to her



house and divulged her that her husband, mother-in-law, brother-in-law and father-in-law used to ask her to fetch motorcycle from the maternal house. She has not stated about subjecting the deceased to cruelty over the said dowry demand by the appellants. She has also not divulged about subjecting the deceased to cruelty and harassment over the said demand soon before her death. She has also not stated about any specific date, time and period of making the aforesaid dowry demand by the appellants.

17. As per the prosecution case and the statement of the informant given in his examination-in-chief appellants used to drive the deceased out of her marital house over demand of motorcycle, thrashing her since marriage but, in quite contradiction to the aforesaid statement informant has stated in para-3 of his cross-examination that after marriage his sister stayed at her marital house for three months then she regressed to her maternal house and stayed there for one month. Thereafter, she went to her marital house and stayed there for six months and then regressed to her maternal house and lived there for 10-15 days. Thereafter, she went to her marital house. He felt his ignorance about her visit to the maternal house thereafter. In para-6 of his cross-examination, he has further stated that he



himself used to take back her sister. The aforesaid statement of the informant goes to rule out the prosecution case and the statement of the informant as given in the examination-in-chief regarding driving the deceased out of her marital house by the appellants and dropping her to her marital house by the informant since the marriage frequently. The aforesaid statement of the informant also indicates that deceased was living in her marital house for around three years two months preceding to her death. P.W.11 has stated in para-4 of her cross-examination that immediately after marriage her daughter went to her marital house. She stayed there for four years and regressed to her house from her marital house after four years and stayed there for 1-2 days then her son, Bambam Ram dropped her at her marital house. In para-5 of her cross-examination, she has further stated that her daughter did not regress to her house from her marital house for the second time. As per the statement of P.W.11, the deceased was living in her marital house four years preceding to her death but neither the informant nor the P.W.11 has whispered about subjecting the deceased to cruelty over the said demand of dowry by the appellants during her aforesaid stay at her marital house. Thus, the prosecution has failed to establish any proximate and live link between the effect of cruelty based



on dowry demand and her death.

18. As per the case of the prosecution, the appellants used to make demand of motorcycle in dowry and torment the deceased over the said demand but the informant in para-5 of his cross-examination has stated that neither he gave any Sanha regarding demand of motorcycle nor organized any panchayati in the village.

19. From perusal of the records, it appears that Ram Nandan Ram (P.W.3), who happens to be uncle of the deceased and the F.I.R. named witness and Jagarnath Ram (P.W.8), who happens to be father of the deceased, have been examined by the prosecution but they have turned hostile and not supported the prosecution case but the informant in para-9 of his cross-examination has stated that his father and uncle are not witnesses of this case. He has negated the suggestion given by the defence about concealment of the examination of the aforesaid witnesses by him as they have not supported the occurrence. The aforesaid aspect of the case eloquently indicates that informant has full knowledge of examination of his uncle and father as prosecution witnesses in the case and turning hostile by them but as they have turned hostile and not supported the occurrence, he appears to have intentionally,



knowingly and deliberately denied them to be the witnesses of the case. Hence, the informant appears to be a dam lier and is not worth credence and reliable.

20. Manoj Ram, who happens to be neighbour of the appellants, has been examined by the prosecution as P.W.13 but the said witness in his cross-examination has candidly stated that the appellant-Ajay Ram used to keep and maintain his wife properly. He never heard about making of any dowry demand and subjecting his wife to torture over the said demand by him. Thus, the aforesaid witness, who happens to be prosecution witness itself, has not supported the prosecution case.

21. In the aforesaid facts and circumstances of the case, we find and hold that the prosecution has utterly and miserably failed to substantiate that the appellants used to make demand of motorcycle in dowry and torment the deceased over the said demand and also torment her over the said demand soon before her death by adducing consistent, trustworthy, cogent and reliable evidence. Hence, the 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 pleased 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 pleased 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 inspire 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 above referred 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, we 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 worthcredence 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-Ajay Ram is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. While as the appellant-Ahilya Devi and appellant-Vijay Ram are on bail, they are discharged from the liability of the bail bonds. Accordingly, both these Criminal Appeals are allowed.

(Dr. Ravi Ranjan, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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