

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (DB) No.956 of 2012

Arising Out of PS.Case No. -255 Year- 2009 Thana -null District- GAYA

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Satyendra Paswan, S/o Govind Paswan, resident of Village- Panchanpur, P.S-
Tekari in the District of Gaya. Appellant.

Versus

The State of Bihar Respondent.

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Appearance :

For the Appellant/s : Mr. Ranbir Singh, Amicus Curiae

For the Respondent/s : Mr. S.N. Prasad, 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: 30-01-2018

Heard Mr. Ranbir Singh, learned amicus curiae for
the appellant and learned A.P.P. for the State on this appeal.

2. This criminal appeal has been preferred against
the judgment and order of conviction dated 28.08.2012 and order
of sentence dated 31.08.2012 passed by the Ad hoc Additional
Sessions Judge-V, Gaya in Sessions Trial No.72 of 2011/46 of
2012, arising out of Tekari P.S. Case 255 of 2009, whereby the
learned trial Court convicted the appellant under Section 304 B
and 328/34 of the Indian Penal Code and sentenced him to
undergo life imprisonment under Section 304 B I.P.C. and further
sentenced to undergo rigorous imprisonment for 5 years and
slapped him with a fine of Rs.5000/- and in default of payment of
fine to further undergo simple imprisonment for two months under



Section 328/34 I.P.C. All the sentences were directed to run concurrently.

3. The factual matrix of the case is that Tekari P.S. Case No.255 of 2009 was instituted under Section 304 B/328/34 I.P.C. against Satyendra Paswan and Phulwa Devi on the basis of written report of Awadh Paswan, son of Tetar Paswan with the allegation in succinct that he had performed the marriage of his daughter Guriya Devi with Satyendra Paswan 10 months back. He had taken back his daughter on bidai four months back but 15-20 days back his son-in-law Satyendra Paswan took his daughter to his house. Satyendra Paswan and his mother Phulwa Devi used to demand cycle and money from him and on not coughing up of their demand they used to subject his daughter to torture. His daughter had given information of the same to him. On getting the information he had arrived at the marital house of his daughter and persuaded his daughter and son-in-law. On 23.11.2009 at around 7:30 AM he got information about indisposition of his daughter. On the said information he rushed to her marital house but did not found anyone in the house. On quizzing the locals, they divulged that the aforesaid persons poisoned his daughter to death in the night of 22.11.2009/23.11.2009 and taken her dead body to the river for



cremation. When he and his brother arrived at river the aforesaid persons absconded leaving the dead body.

4. The aforesaid case was investigated by the police and on conclusion of investigation I.O. submitted chargesheet against the accused Satyendra Paswan under Section 304 B and 328/34 of the I.P.C. keeping the investigation pending against accused Phulwa Devi.

5. On receiving the chargesheet and case diary, the learned Magistrate took cognizance of the case and committed the case to the Court of Sessions. After commitment of the case and on transfer, finally the case came in seisin of Ad hoc Additional Sessions Judge-V, Gaya for trial. Charge under Section 304 B and 328/34 of the I.P.C. was framed against the accused. Charge was read over and explained to the accused to which he pleaded not guilty and claimed to be tried.

6. To substantiate its case, in ocular evidence, the prosecution has examined altogether 9 prosecution witnesses, namely, Munna Paswan as P.W.1, Satyanarayan Ram as P.W.2, Malti Devi as P.W.3, Umesh Singh as P.W.4, Dr. Parmanand Sinha, who conducted the autopsy of the cadaver of the dead body of the deceased as P.W.5, Saryu Paswan as P.W.6, Lalsa Devi as P.W.7, Ganesh Paswan as P.W.8 and informant Awadhesh



Paswan as P.W.9. Out of the aforesaid nine witnesses P.W.1 turned hostile. In documentary evidence, the prosecution has filed and proved some documents.

7. Statement of the accused was recorded under Section 313 Cr.P.C. The case of the defence is complete denial of the occurrence claiming himself to be quite innocent. In buttress of his case in ocular evidence, the accused has also examined three witnesses, namely, Girija Choudhary as D.W.1, Gulabchand Paswan as D.W.2 and Sanjivan Yadav as D.W.3.

8. 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.

9. Being aggrieved and dissatisfied with the impugned judgment and order of conviction and sentence, the convict has preferred this criminal appeal.

10. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellant beyond all shadow of doubt or not.

11. It is submitted by learned amicus curiae for the appellant that the appellant has not made any demand of dowry. The alleged demand of dowry, as mentioned in the report,



is also very shaky in nature as it is said to be cycle and money without disclosing the quantum of money. The witnesses examined by the prosecution have also disclosed different nature of item allegedly demanded by the appellant in dowry. It is further submitted that though the informant in his written report has stated that the accused persons including the appellant used to subject her daughter to torture for dowry demand but barring the informant and one another witness, namely, Ganesh Paswan none has supported the aforesaid case of pestering the deceased over the said dowry demand by the appellant. The aforesaid witnesses have also not stated the period and time when the deceased was excruciated for the dowry demand. The informant and the daughter of the informant, namely, Lalsa Devi (P.W.7) who resides in the vicinity of the marital house of the deceased had paid visit to the marital house of the deceased on couple of occasions but they have not stated about making any demand of dowry by the accused persons from them at the time of their visit there and making any complain by the deceased with them about the said dowry demand and pestering her by the accused person in the marital house. Moreover, P.W.7 has stated that the deceased used to live in her marital house comfortably. Thus, the prosecution has utterly and miserably failed to substantiate that the



deceased was subjected to cruelty over dowry demand and was also tormented by the accused persons soon before her death over the said demand. Thus, the prosecution has utterly and miserably failed to prove the aforesaid two essential ingredients of the dowry death by adducing consistent, reliable and trustworthy ocular and documentary evidence hence the appellant is entitled to be acquitted.

12. On the other hand, learned A.P.P. for the State, advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the informant and other material witnesses have fully supported the prosecution case and ocular evidence also stand corroborated by the medical evidence and the learned trial Court correctly appreciating the facts of the case and the 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 has no substance in it and is liable to be dismissed.

13. 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.

14. 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 the death of the deceased Guriya Devi had occurred within one year of marriage. It is also not denied by the appellant that the deceased had died due to poisoning though as per appellant the deceased had died in her maternal house but he has failed to substantiate its aforesaid case by adducing consistent, cogent and reliable evidence. On the other hand, the prosecution by examining the informant and three other witnesses, namely, Malti Devi (P.W.3), Saryu Paswan (P.W.6) and Lalsa Devi (P.W.7) have successfully substantiated that the deceased had died in her marital house. Thus, we find that the deceased had died due to poisoning in her marital house within one year of her marriage.

15. So far as demand of dowry by the accused persons including the appellant is concerned, the informant in his written report has stated that the accused persons used to demand cycle and money from him but he has not disclosed the quantum of money demanded by them. He has also not stated about the period of demanding the aforesaid dowry. Moreover, in contradiction to the aforesaid case as given by informant Awadhesh Paswan (P.W.9) in his written report he has stated in



his examination-in-chief that Satyendra Paswan and Phulwa Devi used to demand Rs.50,000/- and motorcycle from him. Malti Devi (P.W.3), who happens to be aunt of the deceased, though has stated in her examination-in-chief that accused persons used to demand Rs.50,000/- from the deceased but in para-3 of her cross-examination she has stated that she only knows the factum of witnessing the dead body of Guriya Devi and she has candidly vented her ignorance regarding other aspects of the case. Saryu Paswan (P.W.6), who happens to be grandfather of the deceased, has stated that Satyendra Paswan started demanding Rs.50,000/- and vehicle after marriage in his presence and before Gagesh Paswan, Uma Paswan and Tetar Paswan but the aforesaid Gagesh Paswan, Uma Paswan and Tetar Paswan have not come forward to corroborate the aforesaid demand of dowry by the appellant. Lalsa Devi (P.W.7), who happens to be own sister of the deceased, has stated that Satyendra Paswan and Phulwa Devi used to demand motorcycle in dowry. Ganesh Paswan (P.W.8), who happens to be uncle of the deceased, has stated that Satyendra Paswan and Phulwa Devi used to demand scooter in dowry. Thus, the aforesaid witnesses have given contradictory statements regarding nature of dowry demanded by the accused persons. Moreover, the aforesaid witnesses have not stated as to when and where the



aforesaid demands were made by the accused person from the prosecution party. Thus, we find and hold that the prosecution has utterly and miserably failed to substantiate the demand of dowry by the appellant and his mother from the informant by adducing consistent, trustworthy and reliable evidence.

16. Regarding excruciating the deceased over the alleged dowry demand by the appellant and his mother, the informant in his written report has stated that the Satyendra Paswan and Phulwa Devi used to subject her daughter to torture due to not coughing up the aforesaid demand of dowry. Alike informant (P.W.9) Ganesh Paswan (P.W.8) have stated that Satyendra Paswan and Phulwa Devi used to thrash the deceased over the demand of scooter but he has not stated as to when they thrashed her over the said demand. He also appears to have given shaky statement regarding the aforesaid aspect of the case. The informant (P.W.9) has also stated that Satyendra Paswan and Phulwa Devi used to torment his daughter in her marital house after the marriage but he has not stated in specific as to when the accused persons subjected the deceased to torture rather has given shaky statement regarding harassment of his daughter at the hand of accused persons. But, Malti Devi (P.W.3), who happens to be the aunt of the deceased, Umesh Singh (P.W.4), Saryu Paswan



(P.W.6), who happens to be grandfather of the deceased, Lalsa Devi (P.W.7), who happens to be own sister of the deceased and resides in the vicinity of the marital house of the deceased i.e. after two house of her marital house, have not even whispered about subjecting the deceased to torture and cruelty by the accused persons over the dowry demand. Moreover, P.W.7 has stated in her examination-in-chief that after marriage her sister used to live in her marital house comfortably. In para-4 of her cross-examination, she has further stated that she had visited the marital house of the Guriya Devi twice preceding to her death but accused persons did not make any demand before her. She has not stated about making any complain by Guriya Devi regarding tormenting her by the accused persons over any dowry demand, to her. Likewise P.W.9 has stated in para-8 & 9 of his cross-examination that after marriage he had visited the house of Satyendra Paswan twice, once alone and on the second occasion with Musafir Paswan and Bhagwan Das Paswan, but the aforesaid Musafir Paswan and Bhagwan Das Paswan, who had accompanied the informant to the marital house of the deceased, have not come forward to corroborate any demand of dowry by the accused persons and subjecting the deceased to torture over the said demand before them and making any complain by the deceased



to/before them regarding the aforesaid demand and torture. The informant has further stated that he had visited alone to marital house of Guriya Devi seven days preceding to getting information about her death but he has not stated about making any demand of dowry by accused persons on the said occasions and of making any complain by his daughter regarding making dowry demand and pestering her by accused persons to him. Had the accused persons subjected the deceased to torture over the said dowry demand, the deceased would have divulged the same to the aforesaid witnesses in natural course of conduct. Though P.W.7 has stated in para-5 of his cross-examination that there was spat between Guriya Devi, Satyendra Paswan and Phulwa Devi two months preceding to death of the deceased which had been divulged to her by some boy, but she failed to disclose the name of the said boy. She has further stated that she has not given information of the said brawl to the police station rather informed her father immediately but her father (P.W.9) has not corroborated the factum of divulgence of the aforesaid brawl between the accused persons and Guriya Devi by P.W.7 to him rather in para-9 of his cross-examination he has vented his inability to disclose the source of getting information of the brawl and moreover he has denied to have been given any sort of information by Lalsa Devi



to him preceding to the death of Guriya Devi. Thus, the aforesaid statement of P.W.7 regarding any spar between the accused persons and Guriya Devi does not stand substantiated and is not admissible in evidence. Moreover, P.W.7 has not stated about the reason for the aforesaid brawl between them. In the aforesaid facts and circumstances, we find and hold that the prosecution has utterly and miserably failed to substantiate that the accused persons including the appellant subjected the deceased to torture and cruelty over dowry demand and that too soon before her death by adducing any consistent, trustworthy, worth credence and cogent evidence. As the prosecution has failed to substantiate the aforesaid important ingredients of Section 304 B I.P.C. burden to prove does not stand shifted on the shoulder of the appellant to prove that he had not caused dowry death of the deceased.

17. Hon'ble Apex court in **Mjor 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. 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.

18. In the facts and circumstances of the case and the discussions made by us hereinabove, we find and hold that the prosecution has utterly and miserably failed to substantiate the prosecution case beyond all reasonable doubts by adducing consistent, trustworthy and reliable ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by the learned trial Court is set aside and the appellant is acquitted from the charge levelled against him. As the appellant is in jail, he is directed to be released forthwith, if not wanted in any other case. Accordingly, this appeal is allowed.



19. Let a copy of first and last page of the judgment be furnished to the Amicus Curiae free of cost and the prescribed fee of the Amicus Curiae be paid by the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

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