

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.472 of 2003

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

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1. Birendra Chauhan son of Bhyikhari Chauhan
2. Bhikhari Chauhan son of Late Lakhichand Chauhan
3. Lakshmina Dvi wife of Bhikhari Chauhan
All resident of village- Samsuddinpur P.S. Rivilganj, District Saran at Chapra
..... Appellants

Versus

State of Bihar

..... Respondent

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Appearance :

For the Appellants :

For the Respondent :

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 15-03-2018

Heard the parties.

2. All the appellants stand convicted under Sections 304B/34 of the Indian Penal Code and sentenced to undergo R.I. for ten years.

3. The prosecution case as stands from the FIR lodged by Singheshwar Prasad before Sri Lalan Singh, I/C Revilganj Police Station that about two years prior his daughter Sanju Devi was married with Birendra Chauhan son of Bhikhari Chauhan as per the hindu rites and customs and thereafter, a daughter was also borne and he had also given gifts as per his capacity. It is also the case that about five months prior, he brought his daughter Sanju Devi on *Bidai* and she told that husband and in-laws are torturing her stating that she has



given birth to a daughter as such bring dowry of Rs.20,000/- to be kept in the name of the daughter; otherwise she would be killed, in the meantime, her daughter suffered from some lady disease and her husband came for *bidai*; on which he told that her treatment is going on but appellant no.1 had taken her forcibly on 25.5.1998 and on 29.5.1998 in the evening he came to know through relatives that on 27.5.1998, husband, in-laws and others have killed her by burning and his family members have not been informed.

4. On the basis of statement of the informant, Revilganj P.S.Case no.561 of 1998 was registered, the police after investigation submitted charge-sheet against them and the cognizance of the offences was taken, as the case was triable by the Sessions Judge, the same had been committed to the court of sessions, which ultimately traveled to the file of Sri Jamilur Rahman, 5th Addl. Sessions Judge, Saran at Chapra for trial and disposal.

5. The accused persons stand charged under Section 304B/34 of the IPC for committing murder of Sanju Devi within seven years of her marriage for demand of dowry.

6. During trial altogether seven witnesses have been examined. They are P.W.1 Singeshwar Prasad informant and father of the deceased, P.W.2 Sanjay Kumar brother of the deceased, P.W.3 Rukmini Devi mother of the deceased, P.W.4 Surya Nandan Prasad



relative not supported the prosecution case, P.W.5 Mohan Prasad uncle of the deceased not supported the prosecution version, P.W.6 Shashi Shekhar Sharma who registered fardbayan and investigated the case and P.W.7 Dr. Ram Ekwil Prasad who conducted autopsy of the deceased.

7. Apart from the above, following documents have been brought on the record : Ext. 1 Fardbeyan, Ext.2 statement of Singheshwar Prasad under Section 164 Cr.P.C., Ext.3 signature of Sachidanand Prasad on the statement under Section 164 Cr.P.C., P.W.4 Statement of Sachidanand Prasad under Section 164 Cr.P.C. and Ext. 3/1 statement under Section 164 Cr.P.C. of Mohan Prasad, Ext.5 FIR, Ext.6 seizure list and Ext.7 Postmortem report.

8. On behalf of the defence, one witness has been examined and he is D.W.1 Ramesh Prasad.

9. As per the trend of cross examination and the evidence of D.W.1, Sanju Devi met with an accident due to over burning of the stove and caught fire and her relationship with in-laws and husband was good and there was no dispute between them and further that she was taken to Revilganj Primary Health Centre for treatment but later on she died. The learned trial court on conclusion of the trial has convicted the appellants under Section 304B/34 of the IPC and sentenced as staged above.



10. The above judgment has been assailed by the appellants on the ground that P.W.5 is uncle of the deceased and he has not supported the prosecution case and so far P.W.4 is concerned, he is father of the informant and P.W.2 is the brother of the deceased and P.W.3 is the mother of deceased but their evidence does not inspire confidence and they are full of contradictions but in spite of that learned trial court has convicted the appellants. It has further been submitted that the prosecution has failed to establish the death within seven years of marriage as P.W.1 who is informant in this case has stated that she was married in the year, 1990 and his death was occurred in the year, 1998 and evidence is also not consistent on the point of demand of dowry and torture and also not consistent on the point that she was subjected to cruelty soon before her death with respect of demand of dowry as the witnesses have stated that they were themselves interested to deposit Rs.20,000/- in favour of the daughter of the deceased and even if this allegation is believed the demand of Rs.20,000/- even according to prosecution is for depositing the same in the name of daughter of the deceased, as such it will not come under the purview of dowry, but in spite of inconsistencies and infirmities the learned trial court has convicted the appellants under Section 304B of the IPC, which can not be maintained rather appears to be bad in law.



11. On the other hand learned counsel for the State has defenced the judgment on the ground that evidence shows that she was killed within seven years of marriage and prior to that Rs.20,000/- was demanded by the appellants and the girl was subjected to cruelty and she was done to death by burning within seven years of marriage and in such a situation conviction of the appellants under Section 304B of the IPC doesn't suffers from any infirmities.

12. Heard both sides and on perusal of the evidence available on the record it appears that P.W.1 who is father of the deceased and informant of the case has himself sated in chief in court that she was married in the year, 1990 and according to the prosecution case, the occurrence occurred on 27.5.1998 and his evidence further shows that her *Sasural* people were not demanding anything nor they were subjected to her for cruelty. Her in-laws used to tell that as a daughter was born, as such Rs.20,000/- shall be deposited by her father or mother in her name. His evidence further shows that he brought her daughter to her *Maike* 4 to 5 months prior to occurrence and her son-in-law came for *Bidai* on 22.5.1998 but he told that as she is ill allow her to live in the *Maike* for some period. On 25.5.1992 her in-laws had taken her on *Bidai*. His evidence also shows that she died and he came to know that his daughter died on 25.5.1998 and on informantion he went there on 30.5.1998 and he



came to know from the villagers that his daughter died due to burn injuries. Nobody stated as to how she received injuries. In his cross examination, this witness has stated in para 12 that since marriage till death, the girl had not made any complaint against her *sasural* and there was good relation between the in-laws and his daughter. His evidence in para 15 also shows that he came to know that when her daughter was burning the stove, she caught fire due to over flaming of the stove and his eminence further shows that the police has also seized the stove. If the evidence of this witness is examined in totality it will appear that this witness has not supported the factum of the case within seven years of marriage nor there is any evidence to show that there was any demand and she was subjected to cruelty soon before her death with respect to demand.

13. P.W.2 is also brother of the deceased and he has also stated that marriage was solemnized in the year, 1990, though this witness has stated that she was killed for demand of dowry of Rs.20,000 and he has stated that he works as Chemist in Barauni Refinery but his evidence in para 4 he has stated that his sister never sent a letter to him and he has no proof regarding demand of Rs.20,000/-. His contraction has also been taken from the statement before the police and he has stated that he told before the police about the demand of Rs.20,000/- in his statement. Further in his statement in



para 8 he has stated that he and his father never made any complaint about the torture of his sister and there was no demand of Rs.20,000/- rather he has stated such on hearsay.

14. P.W.3 is the mother of the deceased and she has stated that deceased was married ten years prior and she used to tell that her mother-in-law was not happy since a daughter was borne to her but she has not made demand of Rs.20,000/- from her she has further stated that she might have told to her *Chachi* and her *Chachi* stated in her statement also that her *sasural* people made *bidai* in good atmosphere and she heard that she was killed by her husband and in-laws by burning her. She has also stated in her statement that the deceased never made any complaint about her *Sasural*.

15. P.W.4 is also a relative of the deceased and an advocate in the Civil Court, Begusari and he has stated in his chief that he had heard about the killing of the deceased but later on he came to know that while she was preparing food due to over burning of the stove she caught fire and received injuries. In his cross examinations he has stated that he had no knowledge about the dowry.

16. P.W.5 has also stated that the marriage was solemnized in the year, 1990 and her *sasural* people were not demanding anything from the deceased but as to how she died he can not say.

17. P.W.6 is the I.O. in this case and he has investigated the



case and submitted the charge-sheet also.

18. P.W.7 is the Doctor who has conducted the postmortem report on her and stated that she received 90% injuries which was sufficient to cause of death in ordinary course of nature. It may be homicidal and accidental.

19. One witness has also been examined as D.W.1 and the defence has tried to show from his evidence that there was good relation between the parties and there was no demand of dowry, however, on consideration of the evidence of the prosecution itself, it appears that there is no consistent evidence so as to show the death within seven years of marriage rather the informant is the father of the deceased, P.W.2 is the brother, P.W.5 is the uncle and their evidence discloses that the marriage was not within seven years and it was solemnized in the year, 1990 and death was caused in the year, 1998. So far evidence of the cruelty soon before her death due to demand of dowry is concerned, as discussed above, there is no consistent evidence about cruelty for the demand of dowry though there are demand of Rs.20,000/- for depositing in the name of the daughter of the deceased but it shall not come under definition of the dowry whereas the evidence as discussed above shows that there was cordial relationship between the parties and she was not making any complaint about the *sasural* people, hence, as evidence of cruelty



soon before her death is also not consistent, rather the evidence also shows that she was not making any complain against her in-laws as such it has also not been established by the prosecution beyond all shadow of doubt. It is well settled that the prosecution in order to prove the case under Section 304B of the IPC has to prove the death within seven years of her marriage and subjecting her to cruelty soon before her death with respect to demand of dowry and then only there shall be a presumption under Section 113B of the Evidence Act.

20. In the present case though death occurred due to burn injuries and it is said that it can be said to be as unnatural but so far other circumstances are considered that she died within seven year of her marriage and she was subjected to cruelty with respect to demand of dowry is concerned, the prosecution has failed to establish those circumstances with cogent and reliable evidence, as such in this case there shall be not any presumption against the appellants and on the other hand there is no direct evidence to show that she was killed and conviction is also not under Section 302 of the IPC.

21. Learned trial court has failed to consider all these infirmities and inconsistency in the prosecution case and also failed to consider that the prosecution has not been able to establish its case under Section 304B of the IPC against appellants beyond all reasonable doubts and even no ingredients of Section 304B IPC has



been put to the appellants in their examination under Section 313 of the Cr.P.C in spite of that the appellants have been convicted under Section 304 B of the IPC which appears to be perverse and can not be maintained.

22. Accordingly, this Appeal is allowed, the impugned judgment and order are set aside and the appellants are on bail, they are discharged from their bail bonds.

(Vinod Kumar Sinha, J)

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