

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.256 of 2003

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

- =====
1. Gupteshwar Mahto, son of Late Kashi Mahto
 2. Jirwa Devi, wife of Kashi Mahto
 3. Malo Devi, wife of Gupteshwar Mahto, all residents of village Mahabirganj,
P.S. Barun, District Aurangabad

.... Appellants

Versus

The State of Bihar

.... Respondent

with

=====

Criminal Appeal (SJ) No. 339 of 2003

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

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Awadhesh Mahto, son of Late Kashi Mahto, resident of village Maharajganj, P.S.
Barun, District Aurangabad

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In both the appeals)

For the Appellant/s : Mr. Krishna Pd. Singh, Sr.Advocate with
Ms. Meena Singh, Advocate

For the Respondent/s : Mr. Bipin Kumar, APP in both the appeals

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 23-02-2018

Both the appeals arise out of the judgment and order dated 7.5.2003 and 8.5.2003 passed by Sri Vishwambhar Upadhyay, the then 1st Additional Sessions Judge, Aurangabad in Sessions Trial No. 6/95/28/96 whereby and whereunder he has convicted the appellants in both the appeals under Sections 304B/34, 498A and 201/34 of the Indian Penal Code and sentenced appellant Awadhesh Mahto to



undergo rigorous imprisonment for ten years under Sections 304B/34 IPC whereas other appellants were sentenced to undergo rigorous imprisonment for seven years under Sections 304B/34 IPC and all the appellants were further sentenced to undergo rigorous imprisonment for three years under Section 201 IPC and no separate sentence was passed for the offence under Section 498A/34 IPC and all the sentences were directed to run concurrently.

2. Prosecution case, which was initiated on the basis of written report of P.W.9 Ghanshyam Prasad (informant), in short, is that he got her daughter Malti Devi married with appellant Awadhesh Mahto according to Hindu rites and rituals and after marriage she was living in her matrimonial house and whenever she came to her parents' house she disclosed her grief and also disclosed about assault, torture and threat meted out to her with dire consequence if demand of Rs.10,000/- as dowry was not fulfilled. Further prosecution case is that on 27.2.1992 she was killed at her matrimonial house and informant came to know regarding her death after one week of her death from the villagers and thereafter informant went to give application to the Officer-in-Charge of Barun Police Station but the same was not accepted and, as such, he filed a written report to the Superintendent of Police, Aurangabad on 7.3.1992 on which Barun P.S.Case No. 41 of 1992 was registered and police after



investigation submitted charge sheet against all the appellants in both the appeals and after cognizance the case was committed to the court of sessions which ultimately traveled to the file of Sri Vishwambhar Upadhyay, the then 1st Additional Sessions Judge, Aurangabad for trial and disposal.

3. Charges were framed under Sections 304B/34, 498A and 201 IPC against all the appellants.

4. In support of its case the prosecution has examined altogether nine witnesses, they are P.W.1 Janeshwar Mahto, P.W.2 Bali Mahto, P.W.3 Ramprasad Mehta, P.W.4 Urmila Devi, P.W.5 Pramila Devi, P.W.6 Sitaram Mahto, P.W.7 Ramji Singh, P.W.8 Surendra Singh and P.W.9 Ghanshyam Mahto is the informant of the case, out of them P.Ws. 7 and 8 are formal witnesses who have proved formal FIR and written report of P.W.9, informant as well as father of the deceased. I.O. has not been examined in this case.

5. Apart from that the following documents have been admitted into evidence on behalf of prosecution, they are Ext.1 formal FIR, Ext.2 written report and Ext.3 is a letter purported to have been written by appellant Awadesh Mahto on 20.7.1989 demanding Rs.5000/- for running a business.

6. On behalf of defence also four witnesses have been examined, they are D.W.1 Dilip Kumar, D.W.2 Mithilesh Kumar,



D.W.3 Bishundeo Mahto and D.W.4 Surajdeo Mahto on the point of cause of death of Malti Devi due to diarrhoea while she was taken to hospital for treatment.

7. Learned trial court after conclusion of trial has convicted the appellants under Sections 304B/34, 201/34 and 498A IPC and sentenced them as stated above.

8. Contention of learned counsel for the appellants is that evidence of P.Ws. 1 to 6 clearly shows that deceased died due to diarrhoea while she was taken to hospital for treatment but they have not been declared hostile by the prosecution and P.Ws. 7 and 8 are formal witnesses and there is nothing in their evidence in support of prosecution case and the whole prosecution case is based on the solitary evidence of P.W.9, who has stated in his evidence about demand of dowry and torture and though the letter purported to have been written by appellant Awadhesh Mahto has been produced before the court as Ext.3 but the informant has himself admitted that he has not produced the same during investigation and, as such, the veracity of the same is also under cloud as the handwriting has not been compared with the original handwriting of the appellant. Further contention of learned counsel is that the letter written by the appellant clearly shows that the demand is with respect to opening of shop and does not relate to the demand of dowry and so far evidence of torture



is concerned, there is vague statement and nothing specific has been alleged as to when she was subjected to torture and what type of torture she was given and so far demand of dowry and torture are concerned, there is nothing specific on record and there is consistent evidence regarding death of the deceased who died due to diarrhoea.

9. On the other hand, learned counsel for the State has submitted that though the case is based on solitary evidence of P.W.9 but the evidence of P.W.9 remains unrebutted which shows that she was subjected to torture due to demand of dowry and furthermore though it is alleged that she died of diarrhoea but no chit of paper has been produced on behalf of defence to show that she died due to diarrhoea and, as such, the conviction of the appellants appears to be just and proper and does not require any interference by this Court.

10. Considering the rival submissions of both sides and on perusal of evidence it appears that except P.W.9 none of the witnesses has supported the prosecution case, rather P.Ws. 1 to 6 have stated that she died due to diarrhoea on way to hospital and they have not been declared hostile by the prosecution. On the other hand, P.W.9 has stated in his evidence that accused persons have burnt the deceased and he is not an eye-witness and he has not stated about source of information to him. Regarding submission of learned counsel for the State that no chit of paper has been produced by the



defence in order to show that deceased died due to diarrhoea, to my opinion, the prosecution has to establish the existence of all ingredients of Section 304B IPC before invoking the presumption clause of Section 113B of Indian Evidence Act by cogent and reliable evidence and it cannot take the benefit of lacuna in defence story. In the present case the prosecution has failed to prove that she died in unnatural circumstances, rather prosecution evidence shows that she died of diarrhoea.

11. So far demand of dowry is concerned, except evidence of P.W.9 there is nothing available on record to show that deceased died due to demand of dowry and torture. On the other hand, a letter has been produced on behalf of defence purported to have been written by appellant Awadhesh Mahto showing that he demanded Rs.5000/- for opening a shop and to my opinion such demand will not come within the purview of demand of dowry as has been held by Hon'ble Apex Court in the case of **Appasaheb and another vs. State of Maharashtra : (2007) 9 SCC 721** that demand for money on account of some financial stringency or for meeting some urgent domestic expenses or for purchasing manure cannot be termed as a demand for dowry. Further Hon'ble Apex Court in the case of Vipin Jaiswal vs. State of Andhra Pradesh : (2013) 3 SCC 684 has held in paragraphs 9, 10 & 11 of the judgment as follows :



“9. We have perused the evidence of PW 1 and PW 4, the father and mother of the deceased respectively. We find that PW 1 has stated that at the time of marriage, gold, silver articles, ornaments, TV, fridge and several other household articles worth more than Rs.2,50,000 were given to the appellant and after the marriage, the deceased joined the appellant in his house at Kagaziguda. He has, thereafter, stated that the appellant used to work in a Xerox-cum-typing institute in Nampally and in the sixth month after marriage, the deceased came to their house and told them that the appellant asked her to bring Rs.50,000 from them as he was intending to purchase a computer and set up his own business. Similarly, PW 4 has stated in her evidence that five months after the marriage, the appellant sent her away to their house and when she questioned her, she told that the appellant was demanding Rs.50,000 and that the demand for money is to purchase a computer to start his own business. Thus, the evidence of PW 1 and PW 4 is that the demand of Rs.50,000 by the appellant was made six months after the marriage and that too for purchasing a computer to start his own business. It is only with regard to this demand of Rs.50,000 that the trial court has recorded a finding of guilt against the appellant for the offence under Section 304B IPC and it is only in relation to this demand of Rs.50,000 for purchase of a computer to start a business made by the appellant six months after the marriage that the High Court has also confirmed the findings of the trial court with regard to guilt of the appellant under Section 304B IPC. In our view, both the trial court and the High Court failed to appreciate that the demand, if at all made by the appellant on the deceased for purchasing a computer to start a business six months after the marriage, was not in connection with the marriage and was not really a “dowry demand” within the meaning of Section 2 of the Dowry Prohibition Act, 1961.

10. This Court has held in Appasaheb v. State of Maharashtra : (SCC pp. 726-27, para 11)

“11. In view of the aforesaid definition of the word ‘dowry’ any property or valuable security



should be given or agreed to be given either directly or indirectly at or before or any time after the marriage and in connection with the marriage of the said parties. Therefore, the giving or taking of property or valuable security must have some connection with the marriage of the parties and a correlation between the giving or taking of property or valuable security with the marriage of the parties is essential. Being a penal provision it has to be strictly construed. Dowry is a fairly well-known social custom or practice in India. It is well-settled principle of interpretation of statute that if the Act is passed with reference to a particular trade, business or transaction and words are used which everybody conversant with that trade, business or transaction knows or understands to have a particular meaning in it, then the words are to be construed as having that particular meaning. (See Union of India v. Garware Nylons Ltd. And Chemical and Fibres of India Ltd. V. Union of India).

11. In any case, to hold an accused guilty of both the offences under Sections 304B and 498A IPC, the prosecution is required to prove beyond reasonable doubt that the deceased was subjected to cruelty or harassment by the accused. From the evidence of the prosecution witnesses, and in particular PW 1 and PW 4, we find that they have made general allegations of harassment by the appellant towards the deceased and have not brought in evidence any specific acts of cruelty or harassment by the appellant on the deceased.”

12. Furthermore, so far allegation of torture is concerned, there is general allegation which will appear from evidence of P.W.9 and there is nothing specific as to when she was subjected to torture and as to what type of torture she was given. In such a situation, prosecution has failed to prove the charges under Sections 304B,



498A as well as 201 IPC leveled against the appellants but learned trial court without appreciating the aforesaid aspect of the matter has convicted the appellants, which does not appear to be sustainable in the eye of law.

13. Accordingly, both the appeals are allowed. The impugned judgment of conviction and order of sentence are set aside. As all the appellants are on bail, they are directed to be discharged from the liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

spa/-

AFR/NAFR	
CAV DATE	
Uploading Date	27.2.2018
Transmission Date	27.2.2018

