

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Appeal (DB) No.82 of 1995**

Arising out of judgment and order dated 25.04.1995 passed by learned 4<sup>th</sup> Additional Sessions Judge, Madhubani in Sessions Trial No. 100 of 1993/12 of 1993.

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1. Suman Jha son of Arun Kumar Jha (died)  
2. Arun Kumar Jha son of Late Jaideo Jha  
3. Prabha Devi alias Bijali, wife of Arun Kumar Jha  
All are residents of Village Birpur, Police Station Basopatti, District Madhubani

.... .... Appellant/s

Versus

The State of Bihar

.... .... Respondent/s

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**Appearance :**

For the Appellant/s : Mr. Ajay Thakur, Advocate  
Mr. Anjani Kumar No.1  
Mr. Dr. Anjani Prasad Singh  
Mr. Nilesh Kumar  
Mr. Kartik Kumar Sinha  
Mr. Murari Narain Choudhary

For the Respondent/s : Mr. Abhimanyu Sharma, A.P.P.

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**CORAM: HONOURABLE THE CHIEF JUSTICE**

**and**

**HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**

C.A.V. JUDGMENT

**(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)**

**Date: 06-04-2018**

There are three appellants in the present Criminal Appeal who moved this Court for setting aside the judgment dated 25<sup>th</sup> April, 1995 passed by learned 4<sup>th</sup> Additional Sessions Judge, Madhubani (hereinafter referred to as the learned 'trial court') in Sessions Trial No. 100 of 1993/12 of 1993, by which the learned trial court held the accused Suman Jha, Arun Kumar Jha and Prabha Devi @ Bijali guilty for commission of offence punishable under Sections 304B/34, 201 and 498A of the Indian Penal Code. During the pendency of this



appeal Suman Jha, appellant no. 1, who was on bail by virtue of order dated 03.06.1999 died. An affidavit to this effect enclosing his death certificate has been filed which is kept on the record, therefore, this appeal in so far as it relates to appellant no. 1 stands abated.

The prosecution case is based on the written report dated 13.02.1991 submitted by one Vivekanand Jha (PW 7) who alleged that his sister Marni Devi was married with Suman Jha (appellant no. 1) in May, 1990. At the time of her *duragaman (bidai)*, appellant no. 1 demanded one television and a Rajdoot motor cycle, the informant told him that he is not having this much financial capacity to fulfill the demand. He further told the appellant no. 1 that as and when he will be in a position to fulfill the demand it will be looked into. The informant (PW 7) has further stated that his sister was regularly telling her father and mother that she would be killed for non-fulfillment of the demand of television and motor cycle. This is what her sister was being told by the accused persons. The informant alleged that in the first night on 12.02.1991 he got an information that his sister Marni Devi has been killed by his brother-in-law (appellant no. 1), Arun Kumar Jha who is father of appellant no. 1, and the wife of Arun Kumar Jha. It is alleged that his sister was shot dead and the dead body was concealed somewhere. He allegedly enquired about the occurrence by visiting Village Birpur, Tola Loharpatti. On the



basis of the written report (Ext. 4), a formal F.I.R. (Ext. 5) was registered giving rise to Basopatti PS Case No. 002 of 1991.

After investigation, police submitted a charge-sheet and cognizance was taken accordingly. Thereafter, the records were committed to the court of sessions where charges were framed against all the accused persons under Sections 304B/34, 201 and 498A, IPC.

On behalf of the prosecution as many as 10 witnesses deposed whereas the defence examined 3 witnesses. The learned trial court found that out of all the Prosecution Witnesses, it is evidence of Vivekanand Jha (PW 7) who is the informant, he is the brother of the deceased and son of Kameshwar Jha. PW 8 is Binodanand Jha who is also the brother of the informant and deceased Marni Devi. PW 9 is Kameshwar Jha, father of PW 8 which are reliable for conviction of all the accused. PW 10 is Shree Bhagwan Singh who is the Investigating Officer of the case. Seizure list of ashes, burnt wooden piece, and blood-stained pieces of dhoti has been marked as Ext. 1. Another seizure lists are Ext. 1/A, Ext. 2 and Ext. 2/1 respectively. There are seizures of different letters marked Ext. 3 series. The different letters purported to be written by Marni Devi to her father Kameshwar Jha is Ext. 6 series. The report of forensic medicine is Ext. 7.



According to the prosecution case, it is Shobha Kant Thakur @ Shobhi Thakur (PW 6) who first of all came to know about the murder of Marni Devi. He is said to have informed PW 7. In his deposition, he has stated that while he was returning on 13.02.1991 at about 3.45 PM from Village Joki and had reached at Birpur Chowk, in a tea shop he heard some persons talking that Marni Devi, the wife of Suman Jha was murdered by Arun Jha and Suman Jha with fire-arm. Then he went to the house of Arun Jha, enquired about Marni Devi on which he was told that Marni Devi was ill and Suman Jha had brought her to hospital. He came to the house of his son-in-law (PW 7), met PW 7, and Uday Narain Jha, Pashupati Jha, Shivram Jha and Kuseshwar Jha and then he told them that Suman Jha, Arun Jha and the wife of Arun Jha had murdered Marni Devi. They all came to the house of Arun Jha, on interrogation Arun Jha told them that Marni Devi committed suicide. This witness has further stated that Suman Jha had told them that Marni Devi had committed suicide by setting herself on fire, whereas Arun Jha told that Marni Devi had committed suicide by strangulation by rope. He has further stated that wife of Arun Jha had told that Marni Devi had died of cholera. This witness has also said that when he entered into the room of Marni Devi, he did not find any fire or rope but the hook of the door plank was freshly broken. On being questioned as to why he killed Marni



devi, the accused Arun Jha is said to have confessed the guilt and begged apology and told that he would return the entire things of Marni Devi to her father.

The learned trial court accepted the submission of the defence that PW 6 has not disclosed about the name of the tea shop and the identity of the persons who were talking about the murder of Marni Devi and so under Section 60 of the Evidence Act this part of evidence is hit by hearsay, but the other part of the evidence, according to the learned trial court, cannot be discarded because the accused persons are also the relations of PW 7 and in a case of dowry death by husband and in-laws, generally, the relations of the deceased woman come for adducing evidence. The learned trial court found that PW 4 is the uncle of PW 7 who has supported the evidence of PW 7 and PW 3 to the effect that PW 6 had given information about the murder of Marni Devi and thereafter they went to the house of the accused persons and interrogated from the accused persons regarding the murder of Marni Devi but they gave different reply concerning the death of Marni Devi.

PW 10 is the Investigating Officer of the case who has stated in his evidence that on 13.02.1991 he received the first information regarding the murder of Marni Devi from PW 7, then he instituted the case and took up the investigation and also recorded



the statement of PW 7. He had visited the house of the accused in the night and had also inspected the room in which it was reported that Marni Devi was living. He had found that the ground of the room was freshly washed with dung in the flash of light. He had also taken charge of one broken hook and he tallied it with the attached broken hook of the door and found that a separate broken hook was the part of the attached broken hook and then he seized it. He has further stated that accused persons were not present at their house at that time. He had inspected the cremation place at Bachhbara river and seized ashes, soil, burnt wooden pieces and shari having blood mark. He has further stated that he smelt the smell of kerosene oil at the cremation place. The three letters which have been exhibited as Ext. 6, 6/1 and 6/2 have been discussed by the learned trial court, Ext. 6 shows that it had been written by PW 9 from Calcutta Hind Motor Company on 07.11.1990. The letter indicates that Marni Devi had written the letter by which she had informed that her husband was demanding motor cycle and television and her husband was also giving threat to her if his demand would not be fulfilled. Ext. 6/2 is another letter said to have been written by Marni Devi to her father to convey a message that her husband was demanding motor cycle and television and the same was made the pre-condition for her *duragaman*. The learned trial court rejected the contention of the



defence that Marni Devi was illiterate and the letters Ext. 6 and Ext. 6/2 were forged. The learned trial court in the concluding part of its judgment recorded a finding that there is no direct evidence on the point that Marni Devi was murdered with which weapon but the different stories set up by the accused persons regarding death of Marni Devi, the different statements of the accused persons regarding the manner of cremation and place of cremation, darkness in the house of the accused persons, absence of the accused persons from their house at the time of inspection of their house by the I.O., according to the learned trial court, these circumstances suggest that Marni Devi had not died due to cholera rather it creates suspicion with regard to the conduct of the accused persons. The learned trial court further held that it is quite apparent from the evidence of PWs 7, 8 and 9 as well as other material witnesses that the accused persons did not give any information to PWs 7, 8 and 9 regarding the death of Marni Devi. This circumstance, according to the learned trial court, also creates doubt in the conduct of the accused persons. For all these reasons the learned trial court convicted the accused persons as stated above.

In appeal, learned counsel representing the appellants Arun Jha and Prabha Devi, submits that the learned trial court has convicted both the appellants without there being any evidence much



less any evidence beyond all reasonable doubts. Pointing out the deposition of the informant (PW 7) learned counsel submits that in his examination-in-chief, this witness who is the most important witness for the prosecution has not stated that his brother-in-law had demanded T.V. and motor cycle at the time of *duragaman*. He has stated what he was told by his father-in-law Shobha Kant Thakur (PW 6) that his sister had been killed because he had not given the dowry of motor cycle and T.V. It is further pointed out that when the informant himself went inside the room of his sister he did not find any sign of burning or sign of her suspending herself by a rope. He alleged that his sister was shot dead but learned counsel submits that the Investigating Officer did not find any firm arm in the house nor any blood was found in the house of the appellants. Learned counsel further submits that the I.O. prepared a seizure list showing seizure of bone and bangles but no scientific test such as D.N.A. test was conducted to find out that the seized bone and bangles had any connection with the deceased. It is further submitted that the learned trial court has wrongly relied upon Ext. 6, 6/1 and Ext. 6/2 taking them as letters written by Marni Devi and her father because there was no proof of handwriting of Marni Devi and no scientific test was conducted in this regard.

On the other hand, learned A.P.P. representing the State



submits that the learned trial court has rightly relied upon the deposition of Prosecution Witnesses and recorded a finding that the accused persons have committed the offence as alleged.

We have heard learned counsel for the appellants as also learned A.P.P. representing the State and have perused the materials available on the record. The learned trial court has itself recorded that there is no direct evidence on the point that Marni Devi was murdered with which weapon but then for the circumstances narrated by the learned trial court in the impugned judgment a view has been taken that Marni Devi did not die due to cholera. The trial court got suspicious about the conduct of the accused persons and then relying upon the evidence of PWs 7, 8 and 9 as also the extra-judicial confession of the accused persons before PWs 6, 7, 3 and 4 regarding the murder of Marni Devi concluded that it proves the guilt of the accused persons. These two appellants who are father-in-law and mother-in-law, respectively, have also been convicted under Section 304B/34, 201 and 498, IPC by taking into consideration the aforementioned evidence.

We have examined the evidence of PW 7 hereinabove. PW 7 and PW 8 are own brothers. PW 8 has stated that when he visited the house of Marni Devi on 06.02.1991, he had not talked to the mother of Suman Jha and had not questioned her as to why they are



torturing Marni Devi. In his deposition also, we do not find any allegation of demand of dowry by these two appellants and we are further unable to accept the story made out by PW 8 that he had visited Birpur on 06.02.1991 where he had met Marni Devi and Marni Devi had handed over a letter to him which has been marked as Ext. 6/1. PW 8 did not disclose this to any independent person about what he could notice on 06.02.1991. The allegation of torture or demand of dowry against these two appellants cannot be believed once we peruse the letter Ext. 6/1 and Ext. 6/2, these letters which were exhibited in course of trial. The contents of these letters are not clear. Despite the fact that the defence raised a specific plea that Marni Devi was illiterate and these letters have been forged, the prosecution did not take any step to get the handwriting of Marni Devi examined scientifically through forensic expert. The benefit of doubt, in such circumstance, will go in favour of the present appellants. In the written complaint, the informant (PW 7) has specifically stated that his brother-in-law Suman Jha had demanded the T.V and Rajdoot motor cycle, there is no allegation at all in the written report that the father-in-law and mother-in-law of Marni Devi were also demanding dowry and/or they have ever threatened to kill Marni Devi in case of non-fulfillment of the demand of dowry. Even in his deposition in course of trial PW 7 has not come out with



specific allegation against these two appellants. There are defence witnesses who have deposed on behalf of the defence and have deposed that the letters Ext. 6/1 and 6/2 respectively brought by prosecution have been written by two different persons. Ext.A has been proved by one Shivendra Nath Mishra (DW 1) who is said to be an expert in examination of handwriting. DW 2 has proved the negatives of two photographs of Ext. 6/1 and 6/2, respectively. DW 3 is Pawan Kumar Jha who has stated that Marni Devi had died due to vomiting and at the time of *shradh* rituals her brother had come. This witness had deposed that the brother of Marni Devi was demanding the ornaments and *shari* as also other articles of Marni Devi on which Arun Jha told him that after the *shradh* all the articles will be returned, thereafter the informant left the house of Arun Jha and lodged the present case. The statement of the present appellants recorded in the trial under Section 313, Cr.PC would show that they were not informed of the incriminating materials which were brought by the prosecution in course of evidence. As usual, they were asked two questions about the allegation against them which they denied.

In the given facts and evidence which are available on the record we find that the learned trial court has convicted these two appellants being father-in-law and mother-in-law, respectively, only on suspicion. It is well settled that suspicion cannot take place of the



proof beyond all reasonable doubts.

On perusal of the evidences we have found that the prosecution has not been able to prove participation of these two appellants who are father-in-law and mother-in-law, respectively, in the matter of either demand of dowry or on the point of committing any act of torture. The prosecution has also not been able to prove their active participation in the matter of alleged occurrence of disposal of the dead body of the deceased. Recently, in the case of ***Kuna vs State of Odisha*** reported in **(2018) 1 SCC 296**, while dealing with an appeal arising out of conviction under Section 302 read with Section 34, IPC the Hon'ble Supreme Court had occasion to consider as to when a fact is said to be "proved", "disproved" or "not proved". Referring to the earlier judgment rendered by Hon'ble Apex Court in the case of ***Lokeman Shah vs. State of West Bengal*** reported in **(2001) 5 SCC 235**, the Hon'ble Supreme Court reproduced paragraph-17 of the judgment and we quote the same hereunder:-

“17. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist or considers its existence so probable that a prudent man ought under the circumstances of a particular case, to act upon the supposition that it exists (vide Section 3 of the Evidence Act). What is required is materials on which the court can reasonably act for reaching the supposition that a certain fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting on any important matter concerning him.....”



Further, on the concept of “reasonable doubt” and the standard of “burden of proof” the Hon’ble Supreme Court extracted paragraph-28 from the judgment in the case of *Vijayee Singh vs. State of U.P.* reported in (1990) 3 SCC 190. We reproduce paragraph-28 from the judgment of *Vijayee Singh* (supra) which reads as under:-

"28. It can be argued that the concept of 'reasonable doubt' is vague in nature and the standard of 'burden of proof' contemplated under Section 105 should be somewhat specific, therefore, it is difficult to reconcile both. But the general principles of criminal jurisprudence, namely, that the prosecution has to prove its case beyond reasonable doubt and that the accused is entitled to the benefit of a reasonable doubt, are to be borne in mind. The 'reasonable doubt' is one which occurs to a prudent and reasonable man. Section 3 while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or non-existence of the circumstances from the point of view of a prudent man. The section is so worded as to provide for two conditions of mind, first, that in which a man feels absolutely certain of a fact, in other words, "believe it to exist" and secondly in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption of its existence. The Act while adopting the requirement of the prudent man as an appropriate concrete standard by which to measure proof at the same time contemplates of giving full effect to be given to circumstances or condition of probability or improbability. It is this degree of certainty to be arrived where the circumstances before a fact can be said to be proved. A fact is said to be disproved when the court believes that it does not exist or considers its non-existence so probable in the view of a prudent man and now we come to the third stage where in the view of a prudent man the fact is not proved i.e. neither proved nor disproved. It is this doubt which occurs to a reasonable man, has legal recognition in the field of criminal disputes. It is something different from moral conviction and it is also different from a suspicion. It is the result of a process of keen examination of the entire material on record by 'a prudent man'."

In the present case, we are of the considered opinion that the prosecution has not been able to bring home guilt of the



appellants no. 2 and 3 beyond all reasonable doubts either on the point of demand of dowry or torture or on the point of their participation in the concealment or disposal of the dead body of the deceased. The investigation also lacks on scientific aspect of the matter, the benefit of such discrepancies in investigation would go to the present appellants.

In the result, the appeal is allowed, conviction of these appellants is set aside and the appellants are discharged from their liability of bail bonds.

**(Rajeev Ranjan Prasad, J)**

I agree.

**Rajendra Menon,  
C.J.**

**(Rajendra Menon, CJ)**

mrl./-

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