

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.358 of 2015

Arising Out of PS.Case No. -100 Year- 2005 Thana -BIKRAM District- PATNA

- =====
1. Phul Kumari Devi Wife of Hazari Yadav
2. Hazari Yadav Son of Ram Chandra Yadav Both residents of Village -
Dharampur Kharwa, P.S. - Dulhin Bazar, District - Patna.

... Appellant/s

Versus

1. The State of Bihar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Ramakant Sharma, Sr. Advocate
Mr. Rajesh Kumar, Advocate
Mr. Arun Kumar Pandey, Advocate
For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

ORAL JUDGMENT

Date: 10-05-2018

Appellants Phul Kumari Devi, Hazari Yadav have been found guilty for an offence punishable under Section 304B I.P.C and appellant Hazari Yadav has been sentenced to undergo S.I for 10 years while appellant Phul Kumari Devi has been sentenced to undergo S.I for 7 years, under Section 498A of the I.P.C whereunder both the appellants have been sentenced to undergo S.I for 3 years as well as to pay fine appertaining to Rs. 10,000 in default thereof, to undergo S.I for three months additionally, with a further direction to run the sentences concurrently vide judgment of conviction and sentence dated 26.05.2015 passed by Additional District and Sessions Judge-IV, Danapur, Patna in Sessions trial no. 1566 of 2005.

2. Informant, Lal Bahadur Yadav (PW-7) gave his fard-beyan on 06.04.2005 at about 4 P.M before the O/C, Dulhin



Bazar P.S divulging the fact that his daughter Shobha Devi was married with Yogendra Yadav, son of Ram Chandra Yadav of village Dharampur Kharwa P.S- Dulhinbazar in the month of May, 2003 and, had gone to her *sasural* where she was staying. She visited his place occasionally. Whenever she came to his place, she disclosed that her Bhaisur Hazari Yadav, husband Yogendra Yadav and wife of Hazari Yadav were torturing her for procurement of a Television. For the last 10 months, she was staying at his place in the aforesaid background. About five days prior to *Holi*, Hazari Yadav came and took Rukhsati of his daughter. At that very time also, he had insisted upon T.V, whereupon he disclosed that on account of financial constraint he is not able to give the same at the present moment. As soon as he is out of, will provide the same. Today, i.e. on 06.04.2005 at about 2 P.M he received an information with regard to commission of murder of his daughter as well as concealment of her dead body whereupon, he along with others rushed to the *sasural* of his daughter where none was present. His daughter was also not present. On query, he came to know that after causing her death, her *sasuralwala* concealed her dead body in order to screen themselves.

3. After registration of Bikram (Dulhin Bazar) P.S Case No. 100/2005, investigation taken up, and during course thereof, dead body was traced out, recovered from a Septic Latrine tank, sent



to mortuary for postmortem, received the P.M. report as well as after examination of the witnesses finding the case true, both the appellants were charge-sheeted keeping investigation against the husband pending as remained absconder, consequent thereupon, faced the trial meeting with the ultimate result, subject matter of instant appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C is that of complete denial. It has also been pleaded that appellants happen to be separate in mess and business from the family of the deceased and her husband, Yogendra Yadav and that being so, they could not be arrayed nor could be identified to be responsible for causing dowry death of the deceased. However, neither oral nor documentary evidence has been adduced in defence.

5. In order to substantiate its case, prosecution had examined altogether 9 PWs, who are PW-1, Bhagnarayan Yadav, PW-2, Indar Yadav, PW-3, Satyendra Kumar, PW-4, Raj Nath Prasad, PW-5, Kumar Jeet Kumar, PW-6, Amarjeet Kumar, PW-7, Lal Bahadur Yadav, PW-8, Kapur Nath Sharma and PW-9, Ashok Kumar. Side by side had also exhibited Ext.1, signature of Bhagnarayan Yadav over fard-beyan, Ext.1/1, signature of informant Lal Bahadur over fard-beyan, Ext.2, fardbeyan, Ext.3, formal F.I.R, Ext.4, inquest report, Ext.5, letter no. 677 dated 24.06.2014, Ext.4/A attested carbon



copy of inquest report, Ext.5/A letter no.363 dated 25.04.2015, Ext.6, carbon copy of post mortem report and, Ext.7, photocopy of dead body challan. As stated above, defence had not adduced oral as well as documentary evidence.

6. While assailing the judgment of conviction and sentence, the learned senior counsel for the appellant had bifurcated the case of the appellants in two parts. With regard to appellant, Hazari Yadav, it has been submitted that he virtually saturated the period of sentence on account of being under custody from 01.2.2006 to 07.7.2015. He had been sentenced under section 304B of the I.P.C for 10 years while under Section 498A of the I.P.C for three years, with a further direction to run the both the sentences concurrently therefore, the result of appeal is not going to give any kind of impact against him, so he is not emphatically pressing his plea relating to him.

7. While arguing the case on behalf of appellant no.1, Phul Kumari Devi, who happens to be the wife of appellant Hazari Yadav, the learned counsel for the appellant strenuously argued on each and every aspect coupled with over emotional plank. The first and foremost argument happens to be that she happens to be mother of six children and during course of trial, remained under custody, and so, there should be sympathetic approach in the background of the



fact that (a) she happens to be Gotni of the deceased (b) There happens to be absence of specific positive evidence against her over demand as well as torture having been inflicted at her end. So, even if case is found duly substantiated then maintaining the conviction, sentence be modified as period already undergone.

8. Then coming over merit of the case, it has been submitted that from bare perusal of the L.C record, it is apparent that prosecution has miserably failed to substantiate its case in the background of the fact:

- (1) There happens to be no conclusive evidence of jointness.
- (2) There happens to be no detail with regard to activity having at the end of the appellant over demand as well as torture.
- (3) No incriminating material has been confronted to her during course of her statement recorded under Section 313 of the Cr.P.C.

9. Though there happens to be negligence at their end during conduction of trial before learned lower court, whereunder majority of the witnesses were not at all cross-examined but, that was



on account of financial crunch which they are facing and in spite of ample material to discredit the version of the prosecution, their poverty restrained them to contest the case and further out of ignorance they could not get learned counsel at the end of the state and in likewise manner, the court was also not so sensitized on that very score, therefore prosecution became illegal, trial vitiated, hence she be acquitted.

10. Learned counsel for the appellant also relied upon (2014) 10 SCC 270[Sukhjit Singh v. State of Punjab] (2007) 12 SCC 341 [Ajay Singh v. State of Maharashtra], (2016) 12 SCC 331[State of Karnataka v. Dattaraj & Ors.], 1951 AIR SC 441[Tara Singh v. The State], 1953 AIR SC 468 [Hate Singh Bhagat Singh v. State of Madhya Bharat] , (1972) 3 SCC 869 [State of Punjab v. Tarlok Singh], AIR 1976 SC 2423 [Ishwar Singh v. State of U.P.

11. Learned Additional P.P while refuting the submissions made on behalf of learned senior counsel for the appellants has submitted that material witnesses were not at all cross-examined at the end of the appellants whereupon, they were discharged. So, their testimony remained intact. That means to say, nothing adverse has been found over reliability of their evidences, whereupon, considering the evidence, the case of the prosecution is found duly substantiated.



12. From the L.C record, it is evident that PW-1 was cross-examined while PW-2 was declared hostile. PW-3, PW-4 and PW-5 have not been cross-examined and so, they were discharged and that happens to be with regard to status of PW-7, the informant. PW-6, who happens to be one of the sons of informant was cross-examined and in likewise manner, PW-8, I.O. PW-9 is the peon of the Health Department posted at Sub Divisional Hospital, Danapur and he was also duly cross-examined, though happens to be formal in nature.

13. First of all, evidence of those witnesses are being taken who have not been cross-examined.

14. PW-3 had stated that he knew Shobha Devi. In the year 2005, while he was in the market there was rumour with regard to commission of murder of Shobha Devi whereupon he had gone to *sasural* of Shobha Devi where she was not present. Police came subsequently. Gone in search of dead body and during course thereof, recovered the dead body from the septic latrine tank of one Indal Yadav, he had also stated that Shobha Devi was being tortured for procurement of T.V. Claimed identification of father-in-law, husband of Shobha Devi. PW-4 had stated that Shobha Devi was married with Yogendra Yadav. She is dead. Her dead body was recovered from a septic tank and for that, paper was prepared over which he had put his



signature.

15. PW-5, is one of the sons of informant, who had deposed that deceased Shobha Devi was his sister who was married with Yogendra Yadav about five years ago. After marriage his sister used to remain at her *sasural* where dowry in lieu of T.V was advanced and for that she was being tortured. As TV was not provided, his sister was ever been physically assaulted. Then had stated that he had gone to *sasural* of his sister where he found Hazari Yadav and Fhul Kumari. She asked from him whether, he has brought T.V. He stated that he wants to meet with his sister whereupon, she disclosed that she had gone to Paliganj along with her husband for treatment. Then thereafter, he returned back. Later on they came to know that his sister has been murdered. His father was informed whereupon his father along with villagers has gone to the *sasural* of his sister but, failed to trace her out. Then thereafter, P.S was informed. During course of search police had recovered the dead body of his sister from the septic tank. Then had said that his sister was murdered. Claimed identification.

16. PW-7 is the informant. He had deposed that he happens to be the informant. His daughter Shobha Devi was married with Yogendra Yadav in the month of May, 2003. After marriage his daughter had gone to her *sasural* where she was residing. She



occasionally visited her place. Whenever she came, she divulged that her *Sasuralwala* is demanding T.V and for that, she was being physically assaulted. He had informed that for the present he is unable to provide the same but, as soon as money comes to his hand, he will provide the same. TV was being demanded by Hazari Yadav, Phul Kumari and her husband. Then had stated that even after *Gauna* when his daughter returned back, narrated the same. Due to poverty, he failed to fulfill their demand. For the last one year, his daughter was staying at his place. Hazari Yadav came to effect *bidai* which was fixed and then thereafter, he took away deceased Sobha to her *sasural*. Even at that very moment, Hazari Yadav had demanded T.V. Then had stated that about 10-15 days thereafter his son Kumar Jeet Kumar (PW 5) had gone to the place of his daughter. After returning from there, he disclosed that his daughter was not there. Then got information regarding death of his daughter whereupon he along with others rushed to her place where none was present. He had gone inside the house. He had not found his daughter. Then had gone to police station, lodged the case by way of recording fard-beyan. Police swung into action and during course thereof, dead body was found and recovered from the Septic tank of one Indal Yadav.

17. Now second set of evidence happens to be those who were cross-examined. PW-1 happens to be the maternal uncle of



the deceased. He had deposed that Lal Bahadur (informant) happens to be his brother in law, (Bahnoi). Shobha Devi was married in the year 2003 with Yogendra Yadav. Shobha Devi was murdered whereupon, he along with his brother-in-law and others had gone to *Sasural* of Sobha Devi and found all the members absconding. Shobha Devi was also not present inside the house. Police was informed, police came and during course of investigation recovered dead body from the Septic Tank of one Indal Yadav. He had, further stated that he had put his signature over the fard-beyan having recorded by his brother-in-law at the police station. He had also identified his signature over inquest report. Then had stated that her *Sasuralwala* were torturing her for fulfillment of demand of dowry in lieu of TV. Claimed identification.

18. During course of cross-examination he had stated that deceased had gone to her *sasural* about 1- ¼ year ago since before the date of her death. Then had stated that Hazari Yadav had instructed him to arrange for T.V., whereupon he declined. He had further stated that he had gone to the *sasural* of the deceased. After death, he had gone there, and then he was cross-examined over the recovery of the dead body. He had also stated that he had seen black spot over the neck of the deceased. Then had said that one month after *bidai*, this occurrence took place. He had further denied the



suggestion that deceased met with death as was suffering from illness. He also denied that she was mad. Then had denied that no such kind of occurrence had taken place rather, being brother-in-law (*sala*) of the informant, he had deposed falsely.

19. PW-6 is another son of informant namely, Amarjeet Kumar. He had deposed to the effect that Shobha Devi, his sister was married with Yogendra Yadav in the year 2003. After marriage, his sister had gone to her *sasural*. Whenever she came, she used to complain that her Sasuralwala was adamant over TV and for that, she was being physically tortured. They were demanding TV in lieu of dowry. Yogendra, Hazari and Phul Kumari were demanding and further were torturing for the same. In the aforesaid background, his sister was brought up to his place. Hazari Yadav took her away on *Bidai* five days prior to *Holi* in the year 2005. Then thereafter his younger brother had gone to her *sasural* where they have disclosed that your sister is not present. Then thereafter, he came to know that his sister has been murdered. His brother immediately returned back and disclosed the same whereupon he along with his father and others have gone to *sasural* of his sister where none was present. On query, the neighbours had disclosed that after murdering her, her dead body had already been disposed of. They, on their own, searched the dead body but could not succeed. Thereafter, his father had instituted the



case, police came and during course of investigation, recovered the dead body from the Septic tank of one Indal Yadav. Identified the accused.

20. During cross-examination at para-5, he had stated that for the first time, he is deposing in the court. He had further stated that his sister was being assaulted by Yogendra, Hazari and his wife for procurement of TV. These three persons were insisting upon procurement of TV in lieu of dowry. At Para-6, he had stated that he is not remembering on which date *bidai* of his sister was affected. His brother Kumar Jeet had brought his sister. Hazari Yadav took away his sister on *Bidai* in the year 2005, 5 days prior to *Holi*. His brother had gone to place of his sister on 06.4.2005 and after returning therefrom who disclosed regarding the aforesaid mishappening. They have not disclosed the date and time of death. In Para 9, he had stated that he along with his father Satyendra Yadav had made statement before the Police. His brother had also made statement before the police.

21. PW-8 is the I.O, who had deposed that on 06.4.2005, he was O/C of Dulhin Bazaar P.S. On the fard-beyan of Lal Bahadur, he registered Bikram (Dulhin Bazaar) P.S. case no. 100/2005 and took up investigation (exhibited relevant document). He recorded further statement of informant and then proceeded to place



of occurrence. In para-3, he had detailed the place of occurrence which happens to be the house of accused, consisting of three rooms at eastern side which are under construction. At western side, two rooms were also found which is also under construction. Only one room is habitable wherein the deceased was living. Then had shown the boundary. The second P.O has been identified as the septic tank of Indal Yadav lying 100 yards east to the house of the accused.

22. During course of investigation, dead body was recovered therefrom and then identified the said place with the boundary. Recorded statement of the witnesses. Prepared inquest report and sent the dead body for post mortem (exhibited). Then had submitted charge-sheet against the accused. During course of cross-examination at Para 7, he had stated that with regard to presence of dead body in the septic tank of Indal, he got the information during course of investigation. At Para 8, he had stated that he had not mentioned the length, breadth of the aforesaid tank and further, whether it was covered or not. In para 9, he had further stated that he had not investigated over the mental condition, physical condition of the deceased as there was no such kind of complaint. In Para 10, he had stated that he had not mentioned in the case diary with regard to the actual date of death of Shobha Devi, the last date on which she was seen by the people. In para- 11, he had further stated that he had



not mentioned in the case diary as to who had firstly seen the dead body in the septic tank and who had taken it out. However, inquest report was prepared at that place itself. Then had also stated that he had not mentioned in the diary that vermillion was over her head, bangle was over her hands. He had further stated that there was scratch mark over elbow of the deceased while black spot over the neck. Then had denied the suggestion that Hazari Yadav and his wife happen to be older persons. Then had denied the suggestion that his investigation happens to be collusive one.

23. PW-9, is the peon who had brought up the attested photocopy of inquest report, post mortem report, dead body *challan* as well as letter having at the end of the Deputy Superintendent, Sadar Hospital, Danapur addressed to the court and in likewise manner he was cross-examined.

24. Admittedly, post mortem report is not a classified document in terms of Section 293 of the Cr.P.C and that being so, it would have been exhibited in a manner as required under the Evidence Act. Doctor has not been examined. Original post mortem report has not come up. Therefore, post mortem register would have been before the court and in likewise manner, there should have been evidence at the end of the prosecution in terms of Section 32(1) of the Evidence Act disclosing the fact that either the doctor was dead or it



was very difficult or without inordinate delay, his appearance could not have been procured or his whereabouts was not known, then in that circumstances, secondary evidence would have been led. Therefore, post-mortem report would not be admissible in the eye of law. However, from the mode of cross-examination, it is apparent that death is not under dispute.

25. Now coming to other aspect, it is needless to say that for substantiating a case under Section 304B IPC as well as before having the onus shifted upon the accused in terms of section 113B of the Evidence Act, the prosecution has to prove (a) death has occurred within seven years of marriage, (b) death should be on account of burn or bodily injury or otherwise than normal circumstance (c) there should be demand of dowry and for that she has been tortured soon before her death (d) by her husband or by relative of the husband.

26. In case, prosecution succeeds in substantiating the aforesaid ingredients, then in that circumstance, the onus shifts upon the accused to explain the same. At the present moment, the controversial aspect happens to be with regard to the interpretation of 'soon before' and on that very score, learned senior counsel for the appellant has relied upon the case of *'State of Karnataka v. Dattaraj & ors. reported in (2016) 12 SCC 331* whereunder the aforesaid issue



has been taken up under the following paragraphs:- 15, 16.

15. During the course of hearing, learned counsel representing the State of Karnataka vehemently contended, that the acquittal of the accused by the High Court, was in clear violation of the declaration of law, with reference to the provisions under which the accused were charged. Insofar as the instant aspect of the matter is concerned, reliance in the first instance was placed on the decision rendered by this Court in [Kans Raj v. State of Punjab & Ors.](#), (2000) 5 SCC 207. Learned counsel invited our pointed attention to the following observations recorded therein:- “15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not be termed to be cruelty or harassment by the husband soon before her death. “Soon before” is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term “soon before” is not synonymous with the term “immediately before” and is opposite of the expression “soon after” as used and understood in [Section 114](#), Illustration (a) of the [Evidence Act](#). These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which,



under the circumstances, be treated as having become stale enough.” (emphasis supplied) Learned counsel submitted, that the view expressed in the Kans Raj case (supra) had been reiterated in another decision rendered by this Court in [Tummala Venkateswar Rao v. State of Andhra Pradesh](#), (2014) 2 SCC 240.

16. Reliance was also placed by the learned counsel for the appellant, on a recent judgment rendered by a three-judge Bench of this Court in [Rajinder Singh v. State of Punjab](#), (2015) 6 SCC 477, wherein [Section 304B](#) has been explained to the effect, that the term “dowry” expressed therein, would not be limited to the traditional meaning attached to the aforesaid expression, but would include a demand for money for other purposes as well. In this behalf it would be relevant to mention, that the three-judge Bench did not accept the position expressed in [Appasaheb v. State of Maharashtra](#), (2007) 9 SCC 721, in connection whereof, this Court had first explained the position in the Appasaheb case (supra), as under:-

“11. This Court has spoken sometimes with divergent voices both on what would fall within "dowry" as defined and what is meant by the expression "soon before her death". [In Appasaheb v. State of Maharashtra](#), (2007) 9 SCC 721, this Court construed the definition of dowry strictly, as it forms part of Section 304-B which is part of a penal statute. The Court held that a demand for money for defraying the expenses of manure made to a young wife who in turn made the same demand to her father would be outside the definition of dowry. This Court said: (SCC p. 727, para 11) “11. ...A 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 as the said word is normally understood. The evidence adduced by the prosecution does not, therefore, show that any demand for ‘dowry’ as defined in Section 2 of the [Dowry Prohibition Act](#) was made by the Appellants as what was allegedly asked for was some money for meeting domestic expenses and for purchasing manure.” And thereupon, having examined the object and intent of the legislation, this Court held in the Rajinder Singh case (supra), as under:- “26. The facts of this appeal are glaring. Demands for money were made shortly after one year of the marriage. A she-buffalo was given by the



father to the daughter as a peace offering. The peace offering had no effect. The daughter was ill-treated. She went back to her father and demanded money again. The father, then, went along with his brother and the Sarpanch of the village to the matrimonial home with a request that the daughter be not ill-treated on account of the demand for money. The father also assured the said persons that their money demand would be fulfilled and that they would have to wait till the crops of his field are harvested. Fifteen days before her death, Salwinder Kaur again visited her parents' house on being maltreated by her new family. Then came death by poisoning. The cross-examination of the father of Salwinder Kaur has, in no manner, shaken his evidence. On the facts, therefore, the concurrent findings recorded by both the courts below are upheld. The appeal is dismissed.” Based on the above decision it was the vehement contention of the learned counsel for the appellant, that the demands made by the accused for purchase of agricultural land, as also, with reference to a sewing machine, were liable to be treated as demands constituting “dowry”.

27. That means to say, ‘soon before’ her death is a flexible term could not be accepted in its rigidity, however, should be identified with proximity but, varies on fact of case to case. So far present case is concerned, there happens to be no challenge at the end of the appellants that there was *Bidai* of deceased 5 days prior to Holi in the year 2005. So, Holi happens to be in the last day of *Falgun* identifying invariably in the English Calender as month of March and the death had occurred in the first week of April. In likewise manner, as the contention of the prosecution witness, more particularly, the informant PW-7, has not been challenged as the defence could not be able to cross-examine him so, demand by Hazari Yadav on the date of



Bidai itself is found uncontroverted and in likewise manner, the demands having previously made and having substantiated at the end of both the sons of the informant i.e., PW-5, PW-6. Surprisingly, while cross-examining, PW-6, he had not been tested in a manner as was expected at the end of appellant although he had spoken demand of dowry as well as torture on that very pretext. Furthermore, from the statement of accused recorded under Section 313 CrPC, it is evident that the gist of allegation has been put to them, moreover, they faced trial and were duly acknowledged with the incriminating material having been produced against them. Apart from this, during course of arguments, the appellants failed to show how they have been prejudiced.

28. Consequent thereupon, the judgment of conviction recorded by the learned lower court did not attract interference. However, considering the facts that appellant, Phul Kumari Devi happens to be mother of six children inconsonance with her status, being illiterate, coming from lower strata of the society, patriarchal approach deprived her to defend herself in proper way, needs some sort of consideration over her sentence having been inflicted by the learned lower court whereupon, reduced to 5 years instead of 7 years inflicted by the learned lower court under Section 304B IPC maintaining the sentence relating to Section 498A IPC with a further



direction to set off against the period having undergone during course of trial.

29. With the aforesaid modification in sentence, appeal is dismissed.

30. Appellants are on bail, hence their bail bonds are, hereby, cancelled directing them to surrender before the learned lower court within a fortnight to serve out remaining part of sentence failing which the learned lower court will proceed in accordance with law.

31. However, it is made clear that learned lower court as well as the Jail Superintendent will calculate whether the appellant, Hazari Yadav, on account of his being under custody for 9 years and odd months had completed the tenure of sentence as per Jail Manual, if so, he will be released forthwith.

perwez

(Aditya Kumar Trivedi, J)

AFR/NAFR	AFR
CAV DATE	N/A
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