

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.91 of 2003

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

- =====
1. Chandra Kant Jha, son of Late Dahu Jha
 2. Sita Devi, wife of Shri Chandra Kant Jha, both residents of Mohalla Shrikrishna Nagar, P.S. Begusarai, District Begusarai

.... Appellants

Versus

The State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 98 of 2003

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

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Sanjay Kumar Jha, son of Shri Chandra Kant Jha, resident of Mohalla Shrikrishna Nagar, P.S. Begusarai, District Begusarai

.... Appellant

Versus

The State of Bihar

.... Respondent

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Appearance :

(In both the appeals)

For the Appellant/s : Mr. Ranjan Kumar Jha with
Mr. Chaudhary Prem Kr. Thakur, Advocates

For the State : Mr. Bipin Kumar, APP
(In CR. APP (SJ) No.98 of 2003)
: Mr. Binod Bihari Singh, APP
(In Cr.App(SJ) No. 91 of 2003)

For the Informant : Mr. Rai Mukesh Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 09-04-2018

Since both the appeals arise out of the common judgment and order, they have been taken up together and are being disposed of by this common judgment.

2. Appellants Chandrakant Jha, Sita Devi in Cr.Appeal (SJ) No. 91 of 20013 and appellant Sanjay Kumar Jha in Cr.Appeal (SJ) No. 98 of 2003 have been convicted under Section 304B of the Indian



Penal Code and sentenced to undergo rigorous imprisonment for ten years vide judgment dated 4.2.2003 and order dated 5.2.2003 passed by Sri S.M.I.I.F. Alam, the then Presiding Officer, Additional Court-I, F.T.C., Begusarai in Sessions Trial No. 124 of 1994.

3. Prosecution case as per written report of Shakuntala Mishra (PW 6), mother of the deceased Anita lodged at the Town Police Station, Begusarai on 13.8.1993 at 6 P.M. is that her daughter Anita was married with appellant Sanjay Kumar Jha in the year 1988 and she went to her “sasural” after seven days of her marriage. It is alleged that her daughter was ill-treated in her sasural by her in-laws as demand was made for refrigerator, motorcycle, V.C.P., etc. and when the demand was not fulfilled she was subjected to cruelty. Further prosecution case is that in the month of June, 1991 her daughter came to her “Naiher” and complained about the ill-treatment meted to her by her husband and in-laws and thereafter on the intervention of informant’s husband and some respected persons a Panchayati was held and in Panchayati accused appellants accepted her daughter Anita for keeping her with them on the condition that no person from her parents’ side will meet her. It is further alleged that on 12.8.1992 at 11.30 P.M. accused appellant Chandrakant Jha went to the informant’s village by his car bearing No. BRQ 410 and asked about Anita’s presence and informed that she was traceless from the house since 7 P.M. and thereafter appellant Chandrakant Jha went



away. Further prosecution case is that the informant and her family members started searching Anita and in course of search they went to the house of Chandrakant Jha but Anita could not be traced out. It is alleged that on 13.8.1993 the informant met with the Dy.S.P. and enquired about her daughter and only then she could know that a dead body was found lying on a railway track and was sent to the hospital. The informant along with her relatives went to the hospital and found the dead body of her daughter Anita. It was alleged that the accused appellants killed her and threw her dead body to the railway track for want of dowry.

4. Earlier an U.D. case No.5 of 1993 was registered for the same offence on 13.8.1993 before Rail police on the information given by one Dasrath that a dead body of a woman was found near Gate No. 45-46. However, on the basis of above written report Begusarai P.S.Case No. 323 of 1993 was registered under Sections 302, 201/34 and 498A of the IPC.

5. Post investigation charge sheet was submitted, cognizance of the offence was taken and after commitment the case ultimately traveled to the file of learned Trial Judge for trial and disposal.

6. During trial, charges were framed earlier under Sections 498A and 306 IPC but later on charge under Section 304B read with Section 34 IPC was framed.

7. During trial prosecution has examined the following



witnesses in order to establish its case, they are PW 1 Govind Mishra, uncle of deceased, PW 2 Kamdeo Mishra, uncle of deceased, PW 3 Dharmendra Mishra, brother of deceased, PW 4 Dhirendra Mishra, brother of deceased, PW 5 Gopal Mishra, cousin of the deceased, PW 6 Shakuntala Mishra, informant and mother of deceased, PW 7 Ramjee Mishra, PW 8 Shymdeo Mishra, father of deceased, PW 8A Jaidev Mishra, PW 9 Shakti Kr. Verma, I.O., PW 10 Ramshankar Singh, I.O., PW 11, Dr. Birendra Singh, who held post mortem examination on the body of deceased.

8. Apart from that, the following documents have been brought on record on behalf of prosecution as exhibits, they are Exts. 1 to 1/ 4- signatures of Dhirendra Mishra, Shyamdeo Mishra, Gopal Mishra, Ramlji Mishra and Jaidev Mishra on the fardbeyan. Ext.2- written report, Exts. 3 to 3/2- letters purported to have written by deceased dated 8.4.1990, 22.6.1990 and 9.1.1991, Exts. 1/5 & 1/6- signatures of Shakuntala Devi on the protest petition and power, Exts. 4 to 4/1- signatures on FIR, Ext.5- inquest report and Ext.6- post mortem report.

9. On behalf of defence also five witnesses have been examined, they are DW 1 Josef Rajendera, DW 2 Shyamnandan Singh, DW 3 Janardan Singh, DW 4 Krishn Chandra Singh and DW 5 Satya Nr. Singh, who have been examined on the point that deceased Anita had cordial relationship with her husband and in-laws. That



apart, the defence has produced some letters written by deceased Anita to her husband in order to show that there was good conjugal life between the husband and wife.

10. After conclusion of trial learned trial court has acquitted the appellants from the charge under Section 306 IPC but convicted them under Section 304B IPC, as such found the charge under Section 498A IPC as redundant and appellants have been sentenced as stated above.

11. Learned counsel for the appellants has assailed the impugned judgment on the ground that though witnesses have stated about demand of dowry and subjected her to cruelty but the evidence of PWs 1, 2, 3, 4 and 5, if considered with the evidence of I.O. it appears that they have not stated about the demand of dowry and cruelty before the police and so far PW 6 is concerned, she has also not stated about demand of dowry and similarly PWs 7 and 8 have also not supported the demand of dowry and cruelty by the accused persons and PW 9 has not been examined by the police and as such there is absolutely no legal evidence available on record to show that soon before her death there was demand of dowry and she was subjected to cruelty for that. It has also been submitted that the evidence of PW 8 in paragraphs 13 and 15 disclosed that he has admitted that there was good relationship between the deceased and her in-laws members and evidence of PW 2 shows that deceased was



in her sasural before her death and evidence also disclosed that the information was given to her parents after her being traceless from the house and all these facts clearly show that allegation of demand of dowry or torture is false and concocted and, as a matter of fact, she fled away from the house and committed suicide in the railway track. It has also been submitted that if allegation of demand of dowry is accepted there is absolutely no evidence that she was subjected to torture because of demand of dowry soon before her death as according to prosecution, a Panchayati was held in 1991 and she remained in her sasural and thereafter there is no evidence to show that there was demand of dowry. Learned trial court has not considered this aspect of the matter and convicted the appellants under Section 304B IPC which is not sustainable in the eye of law.

12. Learned counsel for the appellants has relied upon a decision of Hon'ble Apex Court in the case of **Rajeev Kumar vs. State of Haryana : (2013) 16 SCC 640** in support of his contention that there was no evidence at all that soon before her death there was demand of dowry or she was subjected to cruelty as ingredient of Section 304B IPC is that soon before death of deceased woman she was subjected to cruelty or harassment for or in connection with demand for dowry and burden is upon the prosecution to prove this essential ingredient beyond reasonable doubt and the same has not been fulfilled in this case, as such no presumption will be there



against the appellants.

13. On the other hand, learned counsel for the State and informant submit that letters of the deceased, i.e., Exts 3 to 3/3 as well as evidence show that she was subjected to torture with respect to demand of motorcycle, refrigerator, V.C.P., etc. and for that Panchayati was held and after Panchayati being held she was not allowed to meet her family members, as such, cruelty was meted to her and conviction of appellants under Section 304B IPC is just and proper and does not require any interference by this Court.

14. On a consideration of the evidence it appears that PW 6 is the informant in this case and she has supported the prosecution case regarding demand of motorcycle, refrigerator, V.C.R., etc. and for that she was subjected to cruelty. Her evidence further shows that she came back to her “maike” and with the intervention of her well wishers a Panchayati was held and in Panchayati it was decided not to allow her to meet her family members. However, if evidence of this witness is considered along with the evidence of I.O. in paragraph 31 it appears that she has not stated before police about the demand. It further appears that other witnesses have also supported the prosecution case as stated in the FIR as well as in the evidence of PW 6 but if the evidence of PW 1 is considered along with the evidence of I.O. it appears that he has not stated before police about the demand of dowry and similarly if evidence of PWs. 3, 4, 5, 7 and 8 is considered



along with the evidence of I.O. in paragraphs 5, 11, 12, 14 and 15 respectively it will appear that story of demand of dowry does not appear to be free from reasonable doubt and they have not stated before the I.O. about the demand of dowry. From the evidence of PW 8A it appears that he was not examined by police and PWs. 9 and 10 are the I.Os. PW 11 is the Doctor who has conducted post mortem examination from his evidence it appears that he has conducted post mortem on 13.8.1993 and found the injuries on head, right leg and left arm on the person of deceased and the opinion of the Doctor was that injury could be caused by push of a hard substance and death was caused by brain injuries, shock and hemorrhage.

15. Apart from that, on perusal of the entire evidence it appears that prosecution case is that she was subjected to cruelty in 1991 and for that a Panchayati was held and after two years of the said Panchayati in 1993 her dead body was recovered from the railway track and for that an U.D. case was lodged and the evidence shows that Panchayati was held in 1991 and in Panchayati it was decided that people of her family would not be allowed to meet her. On close scrutiny of evidence it does not appear that any iota of evidence to show that there was demand of dowry after Panchayati or she was subjected to cruelty soon before her death, rather evidence shows that she had fled away from the house and her dead body was recovered from the railway track.



16. In this case, learned trial court has convicted the appellants under Section 304B IPC on the ground that prosecution has established its case that death was under abnormal circumstances caused within seven years of marriage, she was subjected to cruelty and harassment in connection with demand of dowry.

17. In the present case it appears from perusal of evidence that death was within seven years of marriage as marriage was solemnized in the year 1988 and dead body was recovered in 1993 and it further appears that death was under abnormal circumstances and dead body was recovered from the railway track. However, it appears that in this case no evidence is available on record to show that she was subjected to cruelty in connection with demand soon before her death. It is true that no straight jacket formula can be evolved for defining the word soon before her death and it has to be determined by the court depending upon the facts and circumstances of each case. However, it appears that there is absolutely no demand of dowry after 1991 nor is there any evidence available on record to show that she was subjected to cruelty to the proximity of time of her death. Even the letters purportedly to have been written by deceased (Exts. 3 to 3/3) were of the years 1990 and 1991. On the other hand, the defence has brought on record a large number of letters (Exts. E series) which show otherwise.

18. The decision cited by learned counsel for the appellants



in **Rajeev Kumar's case** (supra) is on the point that evidence should be that soon after demand or being subjected to cruelty she died. In the said decision Hon'ble Supreme Court has held in paragraph-18 of the judgment as follows :

“18. From the aforesaid evidence of PW 5, it is clear that the marriage between the appellant and the deceased took place on 28.1.1989 and the demand of dowry by the appellant and the beatings for more dowry was after the marriage. PW 5 has also stated that on 19.2.1991 the deceased came to him at Kartarpur and told him that two days prior to 19.2.1991, the appellant gave her merciless beating. PW 5 has, however, not stated that the beating that the appellant gave to the deceased on 19.2.1991 was in connection with demand of dowry. One of the essential ingredients of the offence of dowry death under Section 304B IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry soon before her death and this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the court will presume that the accused has committed the offence of dowry death under Section 113B of the Evidence Act. As this ingredient of Section 304B IPC has not been established by the prosecution, the trial court and the High Court were not correct in holding the appellant guilty of the offence of dowry death under Section 304B IPC.”

19. From perusal of the aforesaid decision of Hon'ble Supreme Court it appears that one of the essential ingredients of the offence of dowry death under Section 304B IPC is that the accused must have subjected a woman to cruelty in connection with demand of dowry soon before her death and the same has to be proved by prosecution itself beyond all reasonable doubts but in this case prosecution has not able to prove the essential ingredient that



deceased was subjected to cruelty in connection with demand of dowry soon before her death and there shall not be any presumption under Section 113B of the Evidence Act that accused appellants have committed the offence of dowry death, as such, the conviction of the appellants under Section 304B IPC appears to be not sustainable in the eye of law.

20. Accordingly, both the appeals are allowed. The impugned judgment and order are set aside. As 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	
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