

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.318 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Yasoda Devi wife of Ram Bilas Sah
2. Ram Bilas Sah son of Late Rattan Sah
Both resident of village Brahman Toli, P.S. Sasaram, District Rohtas

.... Appellant

Versus

State of Bihar

.... Respondent

with

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Criminal Appeal (SJ) No. 372 of 2003

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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Ashok Kumar @ Lallan Sah son of Ram Bilash Sah, resident of village Brahman Toli, P.S. Sasaram, District, Rohtas

.... Appellant

Versus

State of Bihar

.... Respondent

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Appearance :

For the Appellants : Mr. Rajendra Narayan, Sr. Adv.
Mr. Sanjay Kumar Tiwary, Adv.
For the State : Mr. Bipin Kumar, A.P.P.
For the Informant : Mr. Ashok Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA

ORAL JUDGMENT

Date: 18-05-2018

Appellant in Cr. Appeal No.318 of 2003 (Yasoda Devi & Ram Bilas Sah) and appellant in Cr. Appeal No.372 of 2003 (Ashok Kumar) have been convicted under Section 304B of the Indian Penal Code and sentenced to undergo R.I. for 10 years and they have further been convicted under Section 498A of the IPC and sentenced to undergo R.I. for three years under Section 201/34 of the IPC, vide judgment dated 17.5.2003 and order dated 19.5.2003 passed by Sri



Alok Chandra Prasad, 7th Additional Sessions Judge, Rohtas at Sasaram in Sessions Trial No.147/25 of 1999-99.

2. During pendency of the trial, as it has been informed that Ram Bilash Shah died, a report was called for with respect to life status of appellant Ram Bilash Shah of Cr. Appeal No.318 of 2003 and from perusal of the report, it appears that appellant no.2 Ram Bilash Shah died during the pendency of the appeal. In such view of the matter the appeal against appellant Ram Bilash Shah of Cr. Appeal No.318 of 2003 stands abated.

3. The prosecution case in short as per Fardbeyan of P.W.3 Bhola Nath Sah is that on 15.1.1998 he received information in the morning at about 08:00 A.M. from Ayodhya Sah a resident of Mandai Tola that his daughter was killed and after receiving information, the informant along with Bijay Kumar, Sudhir Kumar and some other villagers went to Brahman Toli, entered into the house of his son-in-law and found only his *Samdhin* present there who informed that the deceased died due to burn injury in the morning at about 4:00 A.M. while she was preparing tea and he saw that the dead body of his daughter was lying in the western room and his body was burned and lying naked and smell of K.oil was emitting from the room and he suspected that his daughter was killed and thereafter the dead body was burned. On the basis of the



aforesaid fardbeyan Sasaram (Town) P.S.Case No.21 of 1998 was registered, after investigation, the police submitted charge-sheet against the appellants, not sent up brother of the appellant for trial, cognizance of the case was taken and the case was committed to the court of sessions, which ultimately came to the file of Sri Alok Chandra Prasad, 7th Addl. Sessions Judge, Rohtas at Sasaram for trial and disposal.

4. During trial charges were framed under Section 304B/34, 201/34 and 498A/34 of the IPC and under Sections 3/4 of the Dowry Prohibition Act.

5. Altogether nine witnesses have been examined in this case. They are P.W.1 Kishore Kumar, P.W.2. Manoj Ku mar, P.W.3 Bhola Nath Sah (informant and father of the deceased) P.W.4 Sudhir Kumar, P.W.5 Rameshwar Mishra, P.W.6 Bijay Kumar, P.w.7 Dr. Shree Bhagwan Singh, P.W.8 Badri Narayan Prasad and P.W.9 Bhagwat Prasad Srivstava. Out of aforesaid witnesses P.W.1 and 2 are sons of the informant, P.W.3 is the informant, P.Ws. 4 to 6 are the neighbours and P.W.7 is the Doctor who has conducted post mortem examination and P.W.8 and 9 are formal witnesses. The I.O. has not been examined in this case.

6. On behalf of the defence neither ocular nor documentary evidence has been brought on record and their defence is only that



she died due to burn injury while preparing tea and there was no demand of dowry and she was not subjected to cruelty.

7. The learned trial court on conclusion of the trial has convicted the appellants under Section 304B, 498A and 201 of the IPC as well as under Section 3/4 Dowry Prohibition Act.

8. On perusal of the of the evidence it appears that P.W.3 is the informant in this case and he has supported the prosecution case in chief and has stated that his daughter was married with Ashok Kumar in April, 1996 and after that she went to her *Sasural* and he had given gifts as per his capability and after two months, her daughter came to her *Maike* and told that golden chain was demanded by her father-in-law, mother-in-law, *dewar* and her husband in dowry, on which he shown inability to fulfil the demand and her daughter was sent to her *sasural*. His evidence also discloses that after 6-7 months when his son went to the house of deceased (Sangeeta Devi) she started weeping and told that they used to assault her, on which he went to her *sasural* and asked from her and she told him while crying that she is alright. His further evidence shows that after 20-21 days when her son Kishore Kumar went to her *Sasural* she again asked him to fulfil the demand and give them Rs.30,000/-, which was disclosed by his son to him thereafter after 10 days her daughter came to her *maiike* on a rickshaw and told that



her husband, mother-in-law and others have thrown her out of the house. On which he went to the house of the appellants. It is also stated that her sasural people were not behaving well with his daughter and his daughter remained in his house for seven days and nephew of the appellant had taken her on *bidai* and on 15.1.1998 Ayodhya Sah informed about the death of her daughter and he went there and saw that she died due to burn injury and found the dead body in the room in the burnt condition. This witness has been cross examined at length and in cross examination he has stated that he does not know elder son Ram Bilash Sah was running Juice shop at Calcutta. His evidence further shows that he has not informed about the demand of dowry to the police personnel and in the court and there was a *panchayati* on 27.12.1997 at his *darwaza* in which appellants also participated. His evidence in cross examination further shows that when his daughter returned after two months, she stated that golden chain and Rs.30,000/- was demanded by the accused persons. His contradiction has also been recorded in para 9, 10, 11 and 12 of his cross examination, so as to show that the evidence of P.W.3 is not free from reasonable doubt as he has not stated to the police about the demand of dowry or other allegations.

9. P.Ws. 1 and 2 are the sons of the P.W.3 and brothers of the deceased and they have also supported the prosecution case but



their evidence is silent about the *panchayati*.

10. P.W.5 has been declared hostile, however his evidence shows that she died due to burn injuries.

11. Evidence of P.Ws.4 and 6 who are neighbour shows that on information they had gone there and they have also stated about the demand of dowry and P.W.4 has also stated that on 27.12.1997 Lalan Ram came to the house of Bhola Nath Sah and demanded motorcycle and Rs.30,000/- and he intervened in the matter. From their evidence it appears that they have not supported the evidence of P.W.3 about the *panchayati* and as per P.W.4 there was some altercation with respect to demand of motorcycle and Rs.30,000/- but there is no story of *panchayati*. P.Ws. 1 and 2 are the brothers of the deceased.

12. In this case the I.O. has not been examined and contradictions of P.Ws.1, 2 and 3 has been taken from the previous statement but in absence of examination of the I.O. the appellants could not confronted with the I.O.

13. P.W.7 is the Doctor who has conducted the post-mortem examination on the body of the deceased.

14. Considering the entire evidence as discussed above it appears that so far factum of marriage of Sangeeta Devi with



appellant Ashok Kumar Sah is concerned, the same is admitted and marriage was solemnised in 1996 and as per the evidence above, she died in the year, 1998 and according to the post-mortem report, the death of the deceased was caused due to strangulation and 90 % burn injuries as such so far factum of marriage within seven years and death in abnormal condition has been established by the prosecution.

15. Learned counsel for the appellants has argued that for establishing a case under Section 304 B of the IPC the prosecution has to establish the death within seven years of marriage under abnormal circumstances and further the demand of dowry and she was subjected to cruelty in connection with demand of dowry soon before her death and in that connection they have cited a decision in the case of **Baljeet Singh & Anr. Vrs. State of Haryana** reported in **AIR 2004 SC 1714 para 10** to show that the prosecution has to establish all the above circumstances, which may be read as follows :-

10. The explanation to said section says the word "dowry death" shall have the same meaning as in Section 304-B of the IPC which means such death should be otherwise than in normal circumstances and within 7 years of marriage. On a conjoint reading of these sections, it is clear that for drawing a presumption under Section 113-B of the Evidence Act firstly there should be a death of a woman otherwise than in normal circumstances, within 7 years of marriage and the prosecution having shown that soon before her death she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of



having committed the offence. Unless and until these preliminary facts are established by the prosecution, it is not open to the courts to draw a presumption against the accused invoking Section 113-B of the Evidence Act. We are supported in this view of ours by a judgment of a three-Judge Bench of this Court in the case of Ramesh Kumar vs. State of Chhattisgarh (2001 (9) SCC 618) wherein this Court held thus:

"Before the presumption may be raised, the foundation thereof must exist. A bare reading of Section 113-A shows that to attract applicability of Section 113-A, it must be shown that (i) the woman has committed suicide, (ii) such suicide has been committed within a period of seven years from the date of her marriage, (iii) the husband or his relatives, who are charged had subjected her to cruelty. On existence and availability of the above said circumstances, the court may presume that such suicide had been abetted by her husband or by such relatives of her husband. Parliament has chosen to sound a note of caution. Firstly, the presumption is not mandatory; it is only permissive as the employment of expression "may presume"suggests. Secondly, the existence and availability of the abovesaid three circumstances shall not, like a formula, enable the presumption being drawn; before the presumption may be drawn the court shall have to have regard to "all the other circumstances of the case". A consideration of all the other circumstances of the case may strengthen the presumption or may dictate the conscience of the court to abstain from drawing the presumption. The expression "the other circumstances of the case" used in Section 113-A suggests the need to reach a cause-and-effect relationship between the cruelty and the suicide for the purpose of raising a presumption. Last but not the least, the presumption is not an irrebuttable one. In spite of a presumption having been raised the evidence adduced in defence or the facts and circumstances otherwise available on record may destroy the presumption. The phrase "may presume" used in Section 113-A is defined in Section 4 of the Evidence Act, which says – "Whenever it is provided by this Act that the court



may presume a fact, it may either regard such fact as proved, unless and until it is disproved, or may call for proof of it."

16. As I have discussed there are ample evidence available on the record to show that she died due to burn injuries and also due to strangulation within seven years of her marriage, however, so far demand of dowry is concerned, the prosecution case is that there was demand of scooter and Rs.30,000/- by the accused persons, however, the learned counsel of the appellants has submitted that there is general and omnibus allegation of demand, no specific date or time has been mentioned and the evidence further shows that P.W.3 has himself stated that when she came after marriage she stated about the demand of golden chain and Rs.30,000/- and that is contrary to the prosecution case as such evidence of the prosecution so far demand of motorcycle and Rs.30,000/- is concerned it is not consistent on the record and also date and time is not mentioned. On the other hand learned counsel for the State has submitted that evidence of P.W.3 shows that there was *panchayati* in connection the demand of dowry on 15.1.1998, as such she was subjected to cruelty soon before her death. So far story of the *panchayati* is concerned that is not the prosecution case and even P.Ws. 1 and 2 who are brothers of the deceased have not stated so.

17. P.W.4 has stated that there was some hot discussion with respect to demand on 27.12.1998 and he intervened in the



matter but he had not stated about *panchayati* and not any cheat of paper has been produced in this connection.

18. So far evidence of cruelty subjected soon before her death is concerned, there is no evidence to show that she was subjected to cruelty soon before her death. No doubt cruelty includes mental and physical harassment both but there is no such evidence that she was subjected to cruelty soon before her death. The expression soon before her death can not be defined by any straight jacket formula but at best it relates to the occurrence. However, there is no evidence to come to such conclusion. As such prosecution has not able to establish the same by the cogent and reliable evidence.

19. Submission of the learned counsel for the State is that she was done to death and the Doctor has found that death is due to strangulation and there was 90 % burn injuries on her person and the death has occurred within the forewall of the house of the appellants, as such there is ample evidence available on the record that the appellants have killed the deceased in order to satisfy the demand of dowry, however, in this case the conviction is not under Section 302 and under Section 304B of the IPC. For establishing case under Section 304B, the prosecution has failed to prove the demand of dowry and she was subjected to cruelty soon before her death in connection with demand of dowry. In such a situation, appellants are entitled for benefit of doubt.



20. Accordingly, this appeal is allowed and the impugned judgment and order are set aside and appellants Yasoda Devi and Ashok Kumar are on bail, they are discharged from liabilities of their bail bonds.

(Vinod Kumar Sinha, J)

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AFR/NAFR	AFR
CAV DATE	N/A
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