

IN THE HIGH COURT OF JUDICATURE AT PATNA**Criminal Appeal (SJ) No.37 of 2009**

Arising out of P. S. Case No. -0 Year- null Thana -null District- MUNGER

- =====
1. Bijay Kumar Sah, son of Karu Sah
 2. Phool Devi, wife of Karu Sah
 3. Karu Sah, son of Late Lal Mohan Sah, all are resident of Mungoroura, P.S.-East Colony, Jamalpur, District-Munger.

.... Appellant/s

Versus

State of Bihar

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Tarun Kumar Sinha-Advocate

For the Respondent/s : Mr. Parmeshwar Mehta-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI**ORAL JUDGMENT****Date: 01-10-2018**

Appellants Bijay Kumar Sah, Phool Devi and Karu Sah have been found guilty for an offence punishable under Section 304B of the I.P.C. and each one has been sentenced to undergo R.I. for ten years with a further direction that the period so undergone during course of trial, will be subject to set off in terms of Section 428 of the Cr.P.C. vide judgment of conviction dated 18.11.2008 and order of sentence dated 20.11.2008 passed by the Additional Sessions Judge, Fast Track Court No.-IV, Munger in Sessions Trial No.12 of 2007.

2. Kiran Devi (PW-6) gave her fard-bayan on 27.05.2005 before the police official at village-Mungoroura at the house of Suresh Prasad Sah where her daughter Gunjan Devi (deceased) was residing along with her husband Bijay Kumar Sah, father-in-law, mother-in-



law along with other family members on tenancy, had disclosed inter alia that Gunjan Devi was married last year with Bijay Kumar Sah, son of Karu Sah. After marriage, she had gone to sasural wherefrom she was taken to the house of Suresh Prasad Sah where all the family members were residing under tenancy. Just after 4-5 days of marriage, Phool Devi (mother-in-law) came to her and asked for Rs.10,000/-, as dowry (due) and further, threatened that in case of non-payment, she will not allow her daughter to live peacefully. On account of financial crunch, she could not provide the aforesaid amount and in the aforesaid background, the mother-in-law, father-in-law, Dewar Ajay Kumar began to manhandle her daughter and by such activity, inflicted physical cruelty over her. Just about ten days, lastly the mother-in-law Phool Devi kicked her out along with Bijay Kumar Sah, her son-in-law. Thereafter, her son-in-law Bijay Kumar Sah, daughter Gunjan Devi were employed by Munna Sah, Gola Bazar where they began to discharge menial work in order to earn their livelihood. After an interval of 4-5 days, Phool Devi again approached them and then, forcibly brought them to her place where her son-in-law used to hand over the amount, which he earned in lieu of daily wages. Unfortunately, he could not get job for few days, whereupon again her son-in-law as well as daughter were ousted by Phool Devi. Thereafter, they both came to her place where they were allowed to



stay. Her son-in-law engaged in daily wages. They remained at her place for quite a long time about one and half months ago. Father-in-law Karu Sah, mother-in-law Phool Devi came to her place and anyhow, succeeded in taking away her son-in-law as well as her daughter to their place. Yesterday, i.e. on 26.05.2005, one rickshaw puller informed that their daughter has been murdered. While her dead body was being removed, same has been resisted by the local inhabitants. On account thereof, they rushed and came to the place of residence of her daughter where they found the dead body. None was present. In the aforesaid background, the informant had suspected murder of her daughter in the background of non-fulfilment of demand of dowry to a tune of Rs.10,000/- by her sasuralwala.

3. After registration of East Colony P. S. Case No.18 of 2005, investigation was taken up and after concluding the same, chargesheet was submitted facilitating 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 of the occurrence. It has also been pleaded that deceased was married since before with one Bablu and subsequently thereof, she has been married with accused Bijay Kumar Sah, whereupon she was not at all pleased with the affair and in the



aforesaid background, committed suicide. In order to substantiate the same, oral as well as documentary evidence has also been adduced.

5. In order to substantiate its case, prosecution had examined altogether eight PWs, who are PW-1, Manoj Sah, PW-2, Suresh Prasad Sah, PW-3, Chhotu Kumar Laheri, PW-4, Meena Devi, PW-5, Promod Sah Laheri, PW-6, Kiran Devi, PW-7, Shri Madan Mohan Prasad and PW-8, Dr. Rajiv Ranjan Verma. Side by side, had also exhibited as Exhibit-1, fard-bayan, Exhibit-2, formal F.I.R., Exhibit-3, inquest report, Exhibit-4, challan and Exhibit-5, post mortem report. On the other hand, defence had also examined two DWs, DW-1, Guria Kumari and DW-2, Permanand Prasad and had also exhibited, Exhibit-A, Exhibit-A/1, copy of the Sanha and Exhibit-B, B/1, U.P.C., respectively.

6. Learned counsel for the appellants while assailing the judgment of conviction and sentence impugned has raised manifold argument. The first and foremost is that no offence under Section 304B of the I.P.C. is made out in the background of the fact that the major ingredients of Section 304B of the I.P.C. has not been proved by the prosecution. In order to substantiate the same, it has been submitted that there happens to be no evidence available on the record that soon before her death, deceased was tortured with regard to demand of dowry by the husband or relative of the husband. There



happens to be an allegation that once upon a time, there was demand at the end of the appellant Phool Devi, but the same was just after five days of marriage and since thereafter, there happens to be no evidence having on behalf of prosecution to suggest that there was persistence of demand and for that, deceased was being tortured extending too the period soon before her death. So, the finding recorded by the learned lower Court is against the settled principle of law.

7. Furthermore, it has also been submitted that it was incumbent upon the prosecution to have substantiated its case beyond all reasonable doubt. From the evidence available on the record, it is apparent that prosecution has miserably failed. In its continuity, it has been submitted that it happens to be an admitted fact at the end of the prosecution that deceased along with appellants were residing in a room hired by them belonging to Suresh Pd. Sah. From the evidence of the PW-7 (I.O.), it is evident that house is occupied by so many tenants including the landlord. There happens to be evidence of PW-7 that he had recorded statement of all of them, but surprisingly neither the landlord nor any of the tenant has been examined at the end of the prosecution in order to substantiate the case. That being so, the conduct of the prosecution is found not above the board.

8. It has further been submitted that the probability of the deceased to have committed suicide was much more probable and for



that, the sister of the appellant Bijay Kumar Sah namely Guria Kumari has been examined as DW-1, who had categorically stated that deceased was earlier married with Bablu and then, she has been re-married with Bijay Kumar Sah and in the aforesaid background, she was suffering from some sort of depression, whereupon she committed suicide. In the aforesaid facts and circumstances of the case, it is evident that no case, as alleged, at the end of the prosecution with regard to dowry death is found and that being so, the conviction and sentence recorded at the end of the learned lower Court is fit to be set aside.

9. It has also been submitted that appellants were very much apprehensive with regard to dubious character of the prosecution and for that, they have already intimated the officials through postal processes and for that, the postal certificate along with copy of the Sanha have properly been exhibited. In an alternative, it has also been considered that in case, the case of the prosecution is found proved, then in that circumstance, considering the age of the appellants, considering the period of custody, sentence inflicted by the learned lower Court be reduced as already undergone.

10. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that from the judgment impugned, it is apparent



that learned lower Court had recorded finding adverse to the appellants after proper scrutiny of the materials having been adduced on behalf of respective parties. That being so, the judgment of conviction and sentence attracts no interference.

11. In order to attract Section 304B of the I.P.C., following ingredients are to be duly satisfied by the prosecution:-

- a) The death should be within seven years of marriage.*
- b) It should be by burn or by injury or other wise than normal circumstance.*
- c) The deceased would have been treated with torture or cruelty soon before her death by the husband or relative of the husband.*
- d) Such cruelty or harassment must be in connection with demand of dowry.*

If those ingredients are found properly surfaced, then in that circumstance, in terms of Section 113B of the Evidence Act, there would be presumption of dowry death and further, the accused would be under obligation to rebut the same.

12. The grey area as has been perceived under series of judicial pronouncement at the end of the Hon'ble Apex Court is with regard to the time "soon before her death" and lastly, it has been concluded that it varies case to case considering the facts thereof. There should not be straight jacket formula with regard thereto. In



Maya Devi and another v. State of Haryana reported in 2016 CRI.L.J. 629, it has been held:-

“16. To attract the provisions of [Section 304B](#), one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in [Section 304B](#) IPC and [Section 113B](#) of the Evidence Act is present with the idea of proximity test. In fact, learned senior counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death



concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

.....

20. With these principles in mind, let us analyse the evidence led in by the prosecution. The marriage of Kavita@Kusum (since deceased) was solemnized with Karamvir on 17.07.1994. Kavita died on 26.09.1996 after consuming some poisonous substance at her matrimonial home. The father of the deceased lodged a complaint against the accused persons that he had given dowry on the eve of marriage beyond his means but after 20-25 days of marriage, Karamvir-appellant No. 2 herein, Maya Devi-appellant No.1 herein and brothers Dharamveer and Paramveer and sister Sonika, started harassing his daughter for more money. When Kavita visited her father's house, she narrated the entire tale of woes to her parents and brother. When the complainant enquired about the matter, the appellants informed the complainant that the appellant No. 2 is in need of money and they also have to perform the marriage of Sonika. A sum of Rs. 20,000/- was paid to appellant No. 2 so that the daughter of the complainant is not harassed. It was further stated that the complainant received a letter of his daughter regarding



continuous demand for dowry and sufferings meted out to her. The complainant paid a further sum of Rs. 25,000/- for the purchase of refrigerator and gold chain to the appellant No. 2. Kavita was sent with her husband on the assurance that the accused family would not harass her in future. Even on the day of 'sagrant', when the brother of the deceased visited her matrimonial home, the accused threatened them that the household articles of Kavita will be thrown out. A further demand of Rs. 30,000/- was made to meet the kitchen expenses by the appellants. Since that demand was not fulfilled, the deceased was left with her father at Delhi. Subsequently, the complainant requested to compromise the matter and tendered his apology in writing. In June 1996, the deceased was brought to home by the accused persons. After some days, when the complainant visited her matrimonial home at Rohtak, he was informed that situation has not changed and whenever she brings money, the peace returns for 10-20 days otherwise she is beaten mercilessly by the accused persons. On 26.09.1996, the complainant got the information about the death of his daughter. The case was committed to the Court of Sessions and the accused were found guilty under [Section 304B](#) and [498A](#) of the IPC. There is ample evidence that the deceased was harassed, maltreated and was subjected to cruelty, for and in connection with the demands for dowry by the accused. Admittedly, appellant



No. 2 was present in his office on 26.09.1996 located at M.D. University Campus at Rohtak but he did not attend to his wife at the relevant time. The assertion made by learned senior counsel for the appellants that the deceased was suffering from moderate depressing episode and was having suicidal tendencies prior to her death is of no consequence. Dr. V.P. Mehla (DW-2) was apprised by the deceased about the harassment and the maltreatment by her in-laws a month prior to her death when she was taken to the aforesaid doctor for the alleged treatment. According to DW-2, the deceased was so much depressed as a result of the act of cruelty meted out to her at the hands of the appellants that she developed suicidal tendencies. The testimony of DW-2 shows that the accused had created such a charged environment in her matrimonial home that she developed suicidal tendencies. Except appellant No. 1 herein, all were living in the house at Rohtak. Appellant No. 1 herein was a frequent visitor to that house and she herself admitted this fact in her statement under [Section 313](#) of the Code. Thus, it is very much clear that accused persons maltreated, harassed and subjected the deceased to cruelty, after the solemnization of her marriage with the appellant No. 2 herein, during her life time and soon before her death, for and in connection with the demands for dowry, who died at her matrimonial home within seven years of her marriage otherwise than in normal



circumstances.

21) [Section 304B](#) IPC does not categorise death as homicidal or suicidal or accidental. This is because death caused by burns can, in a given case, be homicidal or suicidal or accidental. Similarly, death caused by bodily injury can, in a given case, be homicidal or suicidal or accidental. Finally, any death occurring “otherwise than under normal circumstances” can, in a given case, be homicidal or suicidal or accidental. Therefore, if all the other ingredients of [Section 304B](#) IPC are fulfilled, any death (homicidal or suicidal or accidental) whether caused by burns or by bodily injury or occurring otherwise than under normal circumstances shall, as per the legislative mandate, be called a “dowry death” and the woman’s husband or his relative “shall be deemed to have caused her death”. The section clearly specifies what constitutes the offence of dowry death and also identifies the single offender or multiple offenders who has or have caused the dowry death.”

13. In the aforesaid background, now the evidences are to be seen. From examination of DW-1 as well as from the evidences of PW-3, PW-4, PW-5 and PW-6, there happens to be no controversy with regard to marriage of the deceased Gunjan Devi with the appellant Bijay Kumar Sah, just a year prior to the date of occurrence.



That means to say, the death happens to be within seven years of marriage. So, the first ingredient is found duly substantiated.

14. Now, coming to cause of death, it also happens to be out of controversial issue as defence had also admitted it a case of suicide as DW-1, sister-in-law of the deceased had admitted the same. Be that as it may, whether it happens to be a case of suicide or homicide, for that, evidence of doctor (PW-8) is to be properly considered. PW-8 had conducted post mortem over the dead body of deceased Gunjan Devi on 27.05.2005 at about 11.30 A.M. and found the following:-

I) Protruded tongue and eye ball (left),

II) Skin blackens over neck and chest.

III) Peeling skin with blister on back and right arm.

On dissection, extra vexation of blood and blood clot. Trachea found to be fractured with blood clot in tracheal lumen. Death in the opinion of the doctor was due to asphyxia as a result of strangulation caused by hard blunt substance. Time elapsed since death more than 48 hours. Doctor was cross-examined on this score whether those injuries would be suicidal and the doctor blatantly refused the same. That being so, it happens to be a case of homicide that means to say, on account of ante mortem injury and so, the second limb of the requirement of Section 304B of the I.P.C. is also



found satisfied.

15. PW-1 is the rickshaw puller, who had admitted to have informed the prosecution party with regard to murder of the deceased. PW-2, though declared hostile, but admitted death of the deceased while she was staying along with accused persons. Now, coming to the evidence of remaining witnesses, PW-3, PW-4, PW-5 and PW-6 have categorically stated that just after spending 4-5 days of the marriage, the accused persons advanced demand of Rs.10,000/- in lieu of dowry and for that, deceased was subjected to torture, which the deceased also conveyed to the PW-5 and PW-6, who were parents after coming to her maika, whereupon they have gone there, talked and then, after consoling the deceased persuaded her to stay and during course of her stay, she was ultimately done to death. The most crucial aspect as is evident from their testimony is that those witnesses, more particularly PW-5 and PW-6, the parents have not been cross-examined over demand as well as torture inflicted at the end of the accused on account of non-fulfilment of demand of dowry. Non-cross-examination of a witness on a particular point speaks a lot even extending an admission at the end of the adversary. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, it has been held:-

“11. The effect of not cross-examining a witness on a



particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full



and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

12. The defence did not put any question to the Investigating Officer in his cross-examination in respect of missing chits from the bags containing the case property/contraband articles. Thus, no grievance could be raised by the appellants in this regard.”

16. PW-7 is the I.O. He, during his examination-in-chief, had categorically stated his presence at the place of accused where dead body of deceased was kept over “Ranthi”. Recorded fard-bayan, prepared inquest report, registered case, inspected P.O., detailed the same rented house of the accused. Received P.M. Repot, recorded statement of the witnesses and then, submitted chargesheet. During cross-examination, he had stated that he received information on the following day at about 5.30 a.m. He had not found incriminating article at the P.O. He had recorded statement of landlord, other tenants. When he reached at the P.O., large number of persons were present.

17. Now, coming to the legal fiction having allowed in



accordance with Section 113B of the Evidence Act, as disclosed above, once the prosecution succeeds in substantiating the case of the dowry death, then in that circumstance, there would be presumption though rebuttable at the end of the accused. In order to rebut, the DW-1 has come up over factual aspect and as stated above, she had introduced a new theme, which was never suggested to any of the PWs that deceased was earlier married to Bablu and then, she has been married to the appellant Bijay Kumar Sah. Furthermore, it is also evident after going through the evidence of DW-1 that she had not disclosed whereabouts of Bablu, proper identification of Bablu. Moreover, she raised the theme of suicide, which as per evidence of doctor, found completely disapproved.

18. In the aforesaid facts and circumstances of the case, it is found that the deceased died on account of homicidal death due to asphyxia caused by strangulation within one year of marriage and during the intervening period, there was demand of Rs.10,000/- as dowry, which the prosecution party were not able to fulfil and for that, she was subjected to cruelty at the hands of accused, which ultimately cost the life of the deceased. On the part of failure having at the end of the appellant in properly cross-examining the witnesses, more particularly having failed to cross-examine at least the parents PW-5 and PW-6, over the demand, torture and further, by way of examining



DW-1, did not succeed in discharging the liberty. So far Exhibit-B is concerned, the Hon'ble Apex Court has held that mode of process adopted through the U.P.C. is not at all presumptive one in the background of the fact that it could be manufactured. Apart from this, it is evident from Exhibit-A that though it bore the seal of the Chief Judicial Magistrate dated 28.06.2004, but surprisingly, it did not disclose presence of the signature of the Chief Judicial Magistrate and so, its authenticity has become doubtful and in likewise manner, is the status of Exhibit-A/1.

19. True, it is that PW-3 to PW-6 are Naiharwala of deceased. But simply because, they are related with deceased their evidences could not be brushed aside, as they are only the natural witness to depose over demand and cruelty. Moreover, when they were not at all tortured over demand and cruelty, and the defence could not be able to rebut the presumption as per Section 113B of the Evidence Act. So, there happens to be no ground to doubt over testimony of the witnesses.

20. After giving anxious consideration to the facts and circumstances of the case, it is evident that instant appeal lacks merit and is accordingly, dismissed maintaining the sentence, though pleaded that it should be reduced as undergone, in the background of activity having been played by them with the deceased even within a



year of her marriage. Appellants are on bail, hence, their bail bonds are hereby cancelled directing them to surrender before the learned lower Court within four weeks to serve out the remaining part of sentence, failing which the learned lower Court will be at liberty to proceed against the appellants in accordance with law.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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