

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.118 of 2013

Arising Out of PS.Case No. -140 Year- 2010 Thana -BANIAPUR District- SARAN

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1. Rekha Devi @ Rekha Giri, wife of Sri Araznath Giri, R/O Village - Karahi, P.S. Baniyapur, District - Saran at Chapra.
 2. Araj Nath Giri, son of Late Jagdish Giri, R/O Village - Karahi, P.S. Baniyapur, District - Saran at Chapra.

.... Appellants.

Versus

The State of Bihar

.... Respondent.

WITH

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Criminal Appeal (SJ) No. 158 of 2013

Arising Out of PS.Case No. -140 Year- 2010 Thana -BANIAPUR District- -

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Dharmendra Giri, son of Araj Nath Giri, Resident of Village- Karahi, P.S.- Baniyapur, District- Saran at Chapra.

.... Appellant.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

(In CR. APP (SJ) No.118 of 2013 and In CR. APP (SJ) No.158 of 2013)

For the Appellants : Mr. Ranveer Singh, Amicus Curiae.

For the Respondent : Mr. Binod Bihari Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL
ORAL JUDGMENT

Date: 12-10-2018

Heard Mr. Ranveer Singh learned amicus curiae for the appellants and Mr. Binod Bihari Singh learned APP for the State on these criminal appeals. As both these appeals have cropped up of a common judgment, hence they are heard together and disposed of by this common judgment.

2. Both these criminal appeals have been preferred against the judgment and order of conviction dated 23.01.2013 and order of sentence dated 24.01.2013 passed by 1st Additional Sessions Judge, Saran at Chapra in Sessions



Trial No.584 of 2011, arising out of Baniyapur P.S. Case no. 140 of 2010, whereby the learned Trial Court convicted the accused Rekha Devi, Araj Nath Giri and Dharmendar Giri for the offence punishable under Section 304-B of the Indian Penal Code and sentenced accused Rekha Devi and Araj Nath Giri to undergo R.I. for seven years under Section 304-B/34 IPC and sentenced Dharmendar Giri to undergo R.I. for 10 years and also slapped him with a fine of Rs.20,000/- and in default of payment of fine to undergo R.I. for 2 years under Section 304-B/34 IPC.

3. The factual matrix of the case is that Baniyapur P.S. Case no.140 of 2010 was instituted under Section 304-B/498-A/34 of the Indian Penal Code against the accused Rekha Devi, Araj Nath Giri and Dharmendar Giri on the basis of fardbeyan of Narayan Giri son of Late Bindeshwari Giri recorded by A.S.I. Badruddin Ansari on 10.08.2010 at 8:40 AM at Burn Ward, Sadar Hospital, Chapra with the allegation in succinct that informant had performed marriage of his daughter, namely, Pratima Devi with Dharmendar Giri on 19.06.2010 and had accorded gift in the marriage as per his capacity. After marriage his daughter went to her marital house and started living there.



On 01.08.2010 his daughter informed him on mobile that her husband had been demanding motorcycle in dowry and subjecting her to torture over the said demand and also extended threatening of dire consequence. On the aforesaid information, he had rushed to the village Karahi i.e. her in-law village and got the matter compromised. Further allegation is that on 09.08.2010 one of his relatives of village Karahi informed him that his daughter had been set ablazed by pouring kerosene oil by her father-in-law, Araj Nath Giri, mother-in-law, Rekha Devi and the husband Dharmendra Giri and they had taken her to the Sadar Hospital, Chapra to accord her treatment. On the said information, he along with his sister, namely, Kanti Devi, wife, Elaichi Devi and daughter, Pramila Devi arrived at Sadar Hospital, Chapra and found her daughter badly burnt. He interacted with her but she could not spell out anything clearly rather was only demanding water. In course of treatment his daughter succumbed to her injury on 09.08.2010 at 6:30 PM.

4. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted chargesheet against the accused, namely, Rekha Devi, Araj Nath Giri and Dharmendar Giri under Section 304-B/498-



A/34 of the Indian Penal Code.

5. On receiving the chargesheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence against the aforesaid accused persons and committed the case to the Court of Sessions and after commitment and on transfer finally the case came in *seisin* of the 1st Additional Sessions Judge, Saran at Chapra for trial.

6. Charge against the accused persons was framed under Section 304-B/34 of the Indian Penal Code. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses namely, Shila Nath Giri as P.W.1, Nagendra Giri as P.W.2, Sunaina Devi as P.W.3, Elaichi Devi as P.W.4, Dr. Vinod Kumar Sinha who has treated the victim as P.W.5, Informant Narayan Giri as P.W.6 and I.O. Raghunath Prasad as P.W.7. Out of the aforesaid witnesses, P.W.-1 turned hostile. One more witness, namely, Madheshwar Prasad, Officer-in-Charge of Ishwapur P.S. was examined as C.W.1.



The prosecution has also filed and proved some documents by way of documentary evidence in the case.

8. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. In ocular evidence accused persons also examined one witness, namely, Panchanand Giri as D.W.1 in buttress of their case.

9. After hearing the parties and perusing the record, the learned Trial Court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

10. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convicts, namely, Rekha Devi and Araj Nath Giri have preferred Cr. Appeal No. 118 of 2013 (SJ), while convict Dharmendra Giri has preferred Cr. Appeal No. 158 of 2013 (SJ).

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all



reasonable doubts or not.

12. It is submitted by learned amicus curiae for the appellants that as per the prosecution case itself the appellants had rushed the victim to Sadar hospital, Chapra to accord her medical treatment and P.W.6 Narayan Giri (informant) and P.W.2-Nagendra Giri had also found the appellants present in the hospital at the time of their arrival there. The aforesaid case and evidence of the prosecution itself rules out the prosecution case. As had the appellants torched the deceased they would have disposed of the dead body or fled away from the place of the occurrence and had not rushed the victim to the hospital to accord her medical aid. It is further submitted that the fardbeyan of the victim was recorded preceding to her death in the Sadar Hospital, Chapra and in the said fardbeyan she has divulged that during the course of sleeping burnt, Dibri (lamp) fell on her person resultantly her attire caught fire. She made alarm, whereupon her mother-in-law and others rushed there and doused the fire and rushed her to Sadar Hospital, Chapra to accord her medical aid. The aforesaid statement of the victim itself indicates that it was not a homicidal rather accidental death and rules out the occurrence. It is further submitted that



the demand of dowry and cruelty in connection with said demand should be just before the death but the prosecution has utterly and miserably failed to substantiate the aforesaid material aspects of the case. Hence, the important ingredients of Section 304-B IPC do not stand substantiated by the prosecution and the appellants cannot be convicted under Section 304-B IPC. It is further submitted that there is vital contradiction between the statements of the witnesses regarding the manner of occurrence and demand of dowry etc. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned Trial Court is liable to be set aside and the appellants are entitled to be acquitted.

13. On the other hand, learned APP, advocating the correctness and validity of the impugned judgment and order of conviction and sentence, submitted that witnesses have unanimously supported the factum of demand of dowry and subjecting the deceased to torture for the said demand by the appellants. It is further submitted that the death had occurred within a very short span of time of marriage and earlier to death the victim was subjected to torture over dowry demand. The aforesaid short span of time



is sufficient to indicate that the aforesaid dowry demand and subjecting the deceased to cruelty over said demand was made 'soon before her death'. 'Soon before death' does not mean that it should be in one or two days preceding to death rather there must be reasonable proximity and live link between the death and the aforesaid occurrence of demand of dowry and subjecting to cruelty in connection with said demand and as the deceased has died within the very short span of two months of marriage there has been reasonable proximity and live link between the aforesaid demand and cruelty and death of the deceased. It is further submitted that it is the admitted case of the defence that the deceased has died due to burn injury though as per the case of the defence she was burnt by catching fire from the Dibri (lamp), fallen upon her during night while she was asleep. But the I.O. has not found any Dibri (lamp) etc. at the place of occurrence in substantiation of the aforesaid case of the defence. It is further submitted that as per the prosecution case, the appellants rushed the victim to the hospital but that aspect is not sufficient to rule out the complicity of the appellants in the occurrence as it was the *modus operandi* of the appellants to rush the victim after setting her ablaze in order to create



evidence in their favour. It is further submitted that all the witnesses examined by the prosecution have supported the prosecution case. The doctor has found 70% burn injury on the person of the deceased. The learned Trial Court correctly appreciating the facts and evidence available on record has rightly passed the impugned judgment and order of conviction and sentence, which is liable to be upheld and both these appeals are shorn of merit and are liable to be dismissed.

14. In order to seek conviction under Section 304-B I.P.C. against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances (b) such death should have occurred within seven years of her marriage (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband (d) such cruelty or harassment should be for or in connection with demand of dowry (e) to such cruelty or harassment the deceased should have been subjected to soon before her death. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment over dowry



demand can be presumed to be guilty of offence under Section 304-B I.P.C. While as per Section 113-B of the Evidence Act, when the question is whether a person has committed dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused dowry death. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment over dowry demand. Presumption under Section 113-B would be operative only if it is shown that soon before death the deceased was subjected to cruelty by her husband or any relative for or in connection with demand of dowry.

15. Regarding the demand of dowry by the appellants and tormenting the deceased over the said demand and that too soon before her death is concerned, to substantiate the aforesaid case informant (P.W.6) has stated in his examination-in-chief that after marriage his daughter went to her marital house. She oftenly informed him on phone about demand of motorcycle in dowry by her husband and parents-



in-law. On the said information, he along with his brother-in-law Nagendra Giri (P.W.2) rushed to her marital house and assured the appellants to accord the motorcycle later on venting her financial crisis. Despite his persuasion, they extended threatening of burning the Pratima to death in case of not according them motorcycle. Few days later of regression from her marital house, his daughter gave him telephonic call and divulged him that the appellants were subjecting her to torture over the demand of motorcycle. The informant was subjected to lengthy cross-examination by the defence over the aforesaid aspect of the case but nothing cogent and convincing has been elicited in his cross-examination having potential to rule out his aforesaid testimony regarding the aforesaid aspects of the case. P.W.2-Nagendra Giri, who happens to be uncle of the deceased, has stated in his examination-in-chief that he alongwith his brother-in-law (informant) had rushed to the marital house of the Pratima (deceased). Where Pratima divulged him about demand of motorcycle and subjecting her to torture by the aforesaid accused persons. They had interacted with the accused persons but even then they had extended threatening of dire consequences in case of non-fulfillment of the aforesaid demand of motorcycle. Then they



regressed to their house taking 6 months to 1 year time to fulfill their demand and one week later to their regression they got information about torching Pratima Devi by her in-laws and rushing her to Sadar Hospital, Chapra for treatment. On the said information he, Narayan giri and his family members rushed to Sadar hospital, Chapra and found her badly burnt and she succumbed to her injury during the course of treatment. P.W.3-Sunaina Devi, who happens to be the aunt of the deceased, has stated, in her examination-in-chief, that the accused persons used to demand motorcycle since the time of marriage and on her arrival to marital house after Bidai her husband and parents-in-law used to spat with her over the aforesaid motorcycle. Pratima had informed her father on telephone about the aforesaid occurrence. On the aforesaid information, her brother-in-law (informant) had rushed to marital house of Pratima and on regression he divulged that the in-laws of Pratima were tormenting her for motorcycle. He had persuaded her in-laws and had assured to provide the same later on and had taken time to comply the same. Later on, she learnt that husband and parents-in-law of Pratima set her ablazed and rushed her to the Sadar Hospital Chapra and she is lying in the Sadar Hospital. Whereupon they had rushed to



Sadar hospital, Chapra and found her badly burnt. Pratima succumbed to her injury during course of her treatment in the hospital. P.W.4-Elaichi Devi, who happens to be mother of the deceased, has stated in her examination-in-chief that after marriage her daughter went to her marital house. Her son-in-law, Samadhi and Samadhin used to mount pressure upon her daughter to fetch motorcycle from her father else she would be eliminated. They used to subject her to torture every day. Her daughter had telephonically informed them that the accused persons were demanding motorcycle and in case of non-fulfillment of demand they would eliminate her. Whereupon her husband had gone to her marital house alongwith 4-5 persons and on regression he informed that her Damad (son-in-law), Samadhi and Samadhin were demanding motorcycle and he had taken time of six months to fulfill their demand. Two months later to the marriage she had got information about torching Pratima by pouring kerosene oil upon her by the accused persons and lying Pratima in the Sadar Hospital, Chapra. On the said information she had rushed to hospital and found Pratima badly burnt. She succumbed in the hospital twenty minutes later to her arrival there. The aforesaid witnesses were also subjected to cross-examination but from



perusal of the aforesaid cross-examination of the witnesses, I find that nothing cogent and convincing has been elicited in their cross-examination having potential to rule out their aforesaid testimony. Thus, from perusal of the aforesaid testimony of the said witnesses, it appears that the prosecution has successfully substantiated that the appellants used to make demand of motorcycle in dowry and subjected the deceased Pratima to cruelty over said demand and even on assurance given by the informant (P.W.6) to fulfill their demand later on they torched the deceased and rushed her to the Sadar Hospital, Chapra for treatment where she succumbed to her injury during course of treatment.

16. The marriage was performed on 19.06.2010 and the death of the deceased has occurred on 09.08.2010 i.e. within one month and twenty days of the marriage i.e. within a very short span of time. P.W.2-Nagendra Giri has stated in para-3 of his examination-in-chief that on getting information of subjecting the Pratima to torture over the demand of motorcycle he and Narayan Giri (PW-6) rushed to her marital house where Pratima divulged them about the demand of motorcycle and subjecting her to torture over the said demand and they had taken six months to one year time to fulfill the



demand of accused persons but the accused persons had extended threatening of dire consequences in case of non-fulfillment of the demand and one week later to their regression from the marital house of Pratima, he got information about torching her by her in-laws. Informant P.W.-6 has also stated in his examination-in-chief that after marriage his daughter went to her marital house. She oftenly informed him on phone about demand of motorcycle in dowry by her husband and parents-in-law. On the said information, he along with his brother-in-law Nagendra Giri (P.W.2) rushed to her marital house and assured the appellants to accord the motorcycle later on venting her financial crisis. Despite his persuasion, they extended threatening of burning the Pratima to death in case of not according them motorcycle. Few days later of regression from her marital house, his daughter gave him telephonic call and divulged him that the appellants were subjecting her to torture over the demand of motorcycle. The aforesaid statement of P.W.2 and P.W.-6 also goes to indicate that the deceased was subjected to torture over the aforesaid demand of motorcycle by the accused persons within seven days of her death. To attract the provisions of Section 304-B, 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 of dowry”. The expression “soon before her death” used in Section 304 B IPC and Section 113 B of the evidence Act is present with the idea of proximity test. 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. Thus in the case under hand, there has been close proximity and live link between the death and subjecting the deceased to torture over the dowry demand and the deceased has also died due to burn



injury sustained in her marital house in one month and twenty days to her marriage.

17. So far as the aforesaid ingredients i.e. death of the victim was caused by burn or bodily injury or had occurred otherwise than under normal circumstances and such death occurred within seven years of her marriage are concerned, it is the admitted case of the parties that the deceased was rushed to the Sadar Hospital, Chapra in burnt condition to accord her treatment and the deceased died due to burn injury in the said hospital. Though as per the prosecution case, the appellants set the deceased ablaze over dowry demand by pouring kerosene oil upon her, while as per the defence case the deceased caught fire from Dibri (lamp), which fell on her person while she was asleep in the night and she sustained burn injury in the said fire but the defence has failed to substantiate its aforesaid case by adducing any cogent evidence in this regard. I.O. has also not found any Dibri (lamp) at the place of occurrence. Though I.O. has also not reported about finding any mark of burning at the place of occurrence such as burnt bed, stain of smoke and kerosene oil etc. but that appears to be due to faulty investigation and aforesaid fault and laches on the part of the I.O. in my



considered opinion is not going to affect the merit of the case by any stretch of imagination.

18. It is the case of the prosecution that the marriage of the deceased-Pratima Devi was performed with the appellant-Dharmendar Giri on 19.06.2010. P.W.2-Nagendra Giri and informant Narayan Giri P.W.6 have unanimously stated that the marriage of the deceased was performed with appellant-Dharmendar Giri on 19.06.2010 and admittedly the deceased had died due to burn injury on 09.08.2010. It is also admitted case of the parties that the deceased had received burn injury in her marital house which resulted into her death.

19. In the aforesaid facts and circumstances of the case, and evidence of prosecution I find and hold that the prosecution has successfully substantiated its case that the deceased Pratima has died due to burn injury sustained by her in her marital house within one month twenty days of her marriage. She was subjected to cruelty over the demand of motorcycle and that too soon before her death by the appellants. As the prosecution has succeeded to substantiate the aforesaid ingredients of Section 304-B IPC i.e. demand of dowry and subjecting the deceased to torture and cruelty over the said demand of dowry soon before her death by the



appellants under Section 113-B of the Evidence Act, the burden stands shifted on the shoulder of the defence to prove their innocence.

20. To discharge the aforesaid burden, the defence has examined one witness, namely, Panchanand Giri as D.W.1 to prove the factum of giving fardbeyan by the deceased marked as Ext.C/1. Said witness has stated in his examination-in-chief that Pratima had caught fire due to lamp which had fallen upon her person. Two persons were dousing the fire then he learnt about the aforesaid occurrence. She was rushed to Sadar Hospital where her statement was recorded by the police. At the time of giving her statement she was in right condition. She had divulged that she caught fire due to falling of lamp upon her by cat and the accused persons are innocent. She had also divulged the aforesaid fact to her parents in the hospital, but in para-9 of his cross-examination he has stated that he has not seen the occurrence rather he has given statement on the premise of utterance of the deceased. From perusal of the aforesaid statement of the witness, it appears that he has not seen occurrence of catching fire by the deceased by means of lamp rather he has learnt the aforesaid fact from the utterance of the deceased. There is nothing on record about



giving such statement by the deceased in the hospital barring her alleged fardbeyan Ext.C/1. From perusal of the aforesaid fardbeyan of the deceased Pratima Devi, it appears that it is said to have been recorded by C.W.1-Madheshwar Prasad. But from perusal of the aforesaid fardbeyan and handwriting of the C.W.1 as written by him on the foot of his deposition given before the court I found the same not matching with that of said fardbeyan. Moreover, the aforesaid fardbeyan has been written in some other ink and pen while the signature and other writing of C.W.1 on the fardbeyan is in different ink and pen and the said C.W.1 has failed to explain the aforesaid discrepancies. Moreover, the aforesaid fardbeyan was recorded in Burn Ward No.2, Sadar Hospital, Chapra but it does not bear any certificate of the doctor to the effect that the Pratima Devi was mentally fit for giving such statement before the police though the doctors remain present in the emergency ward (burn ward) of the hospital round the clock. The said fardbeyan does not bear the signature of D.W.-1 to indicate his presence in the hospital at the relevant time and giving alleged fardbeyan by the deceased before him rather it bears the signature of one Rekha Devi but the aforesaid Rekha Devi has



not been examined in substantiation of giving of the aforesaid fardbeyan by the deceased. As per the account of D.W.1, as given by him in para-10 of his cross-examination at the time of recording statement of the deceased 2-4 persons, namely, Yogendra, Harendra and one another person were present there but the aforesaid persons have not been examined by the defence in corroboration of giving of the aforesaid fardbeyan by the deceased. Moreover, D.W.1 has stated in para-10 of his cross-examination that the fardbeyan of Pratima was recorded in the night at 2 PM but from perusal of the alleged fardbeyan of Pratima Devi, it appears that it was recorded on 09.08.2010 at 8:30 AM i.e. in the morning. Thus the aforesaid aspect of the case creates serious doubt about the recording of the fardbeyan and giving of the fardbeyan by the deceased to the police in the Sadar Hospital, Chapra and its sanctity. Thus, in the aforesaid facts and circumstances of the case, I find that the defence has utterly and miserably failed to discharge the aforesaid burden and prove their innocence.

21. Though as per the prosecution case itself, the deceased was rushed to the Sadar Hospital, Chapra by the appellants and P.W.2-Nagendra Giri has stated in para-10 of his cross-examination that when they arrived in the hospital



near Pratima he witnessed her husband and parents-in-law departing from there and informant P.W.6-Narayan Giri has stated in para-12 of his cross-examination that when he arrived at the Sadar Hospital, Chapra at 2 PM he had seen the mother-in-law of his daughter there but she had left the place witnessing him. But the aforesaid aspect of the case, in my considered opinion, is not having potential to rule out the aforesaid well established prosecution case as it might be the modus operandi of the appellants and premeditation to commit the occurrence and then rush the victim to the hospital to show their presence in the hospital in order to create evidence in their favour to avoid their conviction.

22. In the aforesaid facts and circumstances of the case, I find and hold that the prosecution has successfully substantiated its case and bring home the charge levelled against the appellants by adducing trustworthy, reliable and worth credence evidence and the impugned judgment and order of conviction and sentence passed by the learned trial Court does not warrant any interference by this Court and is upheld. Accordingly, both these appeals are dismissed. As the appellants are on bail their bail bonds are cancelled and are directed to be taken into custody forthwith.



23. Let a copy of the first and the last page of this judgment be handed over to the learned amicus curiae. Learned amicus curiae be paid prescribed fee by the Patna High Court Legal Services Committee.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	26.10.2018
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