

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Appeal (SJ) No.536 of 2013

Arising Out of PS.Case No. -122 Year- 2008 Thana -KHANPUR District- SAMASTIPUR

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1. Shivnath Sahni.

2. Baijnath Sahni.

Both sons of Tahal Sahni, resident of village Bikrampatti, Police Station-
Khanpur, District- Samastipur.

.... Appellants.

Versus

The State of Bihar.

.... Respondent.

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Appearance :

For the Appellant/s : Mr. Rajesh Kumar, Advocate.

For the Respondent/s : Mr. Bipin Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

Date: 06-11-2018

Heard learned counsel for the appellants as well as
learned APP for the State on this criminal appeal.

2. This criminal appeal has been preferred
against the judgment and order of conviction dated
03.07.2013 and order of sentence dated 17.07.2013 passed by
1st Additional Sessions Judge, Samastipur, in Sessions Trial
No. 166 of 2009, arising out of Khanpur P.S. Case No. 122 of
2008, whereby the learned trial Court convicted the accused
Shivnath Sahni and Baijnath Sahni under Section 304-B and
Section 201 of the Indian Penal Code (hereinafter in short
referred to as the 'IPC') and sentenced convict Shivnath Sahni
to undergo rigorous imprisonment for ten years under Section
304-B IPC and further sentenced him to undergo rigorous
imprisonment for three years under Section 201 IPC and



sentenced Baijnath Sahni to undergo rigorous imprisonment for seven years under Section 304-B IPC and also sentenced him to undergo rigorous imprisonment for three years under Section 201 IPC. All the sentences were directed to run concurrently.

3. Factual matrix of the case is that Khanpur P.S. Case No.122 of 2008 was instituted under Sections 304-B/201/34 of the Indian Penal Code against the accused Shivnath Sahni, Mankia Devi, Baijnath Sahni, Anita Devi, Ramnaresh Sahni, Vinod Kumar Sahni, Raghunandan Sahni, Mahabir Sahni, Ramlagan Ram, Ramnarayan Ram, Dinesh Sahni and Bilat Sahni on the basis of written report of Rita Devi, wife of Late Jagdish Sahni with the allegation in succinct that she had performed marriage of her daughter, namely, Lovely Kumari with Shivnath Sahni on 05.07.2006 according to Hindu rites and rituals and accorded gift in the marriage as per her capacity but at the time of Bidai her son-in-law demanded Hero Honda motorcycle or Rs.50,000/- in cash. On giving assurance by her to fulfill his demand in future on becoming her financial condition sound, her daughter went to her marital house on Bidai. She lived in her marital house for 6-7 months happily. Thereafter, her



husband, mother-in-law, Manakia Devi, brother-in-law, namely, Baijnath Sahni and sister-in-law, namely, Anita Devi started passing comments and tormenting her for non-fulfillment of demand of motorcycle. Her son-in-law also used to mount pressure upon her for the said demand. She called her daughter to her house on performing Bidai. Her daughter lived in her house for six months but the accused persons did not take care of her during the aforesaid period. Then after tendering apology her son-in-law, Shivnath Sahni and his elder brother Baijnath Sahni took her to her marital house performing Bidai but they also extended threatening of dire consequences in case of non-fulfillment of dowry demand at that time. On visit of any person to her marital house, her daughter used to make complain with him about tormenting her by the accused persons over the aforesaid demand. On 29.09.2008 there was hulla in her village about eliminating Lovely Kumari by administering her poison or by any other mode by the accused persons. She got telephonic information of the same in Orissa and then regressed her village on 01.10.2008 and sent her brother-in-law, Chameli Sahni to the marital house of her daughter who found the inmates of the house absconding locking the door. He learnt from the locals



that the accused persons had committed her murder by administering poison or by strangulating in the night of 28.09.2008 over the aforesaid dowry demand and disposed of her dead body in association of the villagers named in the written report.

4. Aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against Shivnath Sahni, Baijnath Sahni and Manakia Devi under Section 304-B and 201/34 IPC. As the accused Manakia Devi absconded, hence the case record of Manakia Devi was spilt up.

5. On receiving the charge-sheet 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 the seisin of 1st Additional Sessions Judge, Samastipur for trial.

6. Charge against the accused, namely, Shivnath Sahni and Baijnath Sahni was framed under Sections 304-B and 201 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. During the course of trial, in ocular evidence, the prosecution has examined altogether seven prosecution witnesses, namely, Kanchan Kumari as P.W.1, informant Rita Devi as P.W.2, Yogendra Sahni as P.W.3, Amerika Devi as P.W.4, Tilo Devi as P.W.5, Sanju @ Sanjeeta Kumari as P.W.6 and I.O. Vijay Kumar Singh as P.W.7. The Prosecution has also filed and proved several documents by way of documentary evidence in the case.

8. 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. The accused persons neither adduced any ocular nor documentary evidence in buttress of their case.

9. After hearing the parties and perusing the record, the learned trial court passed the aforesaid 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 have preferred this Criminal Appeal.

11. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charges levelled against the appellants beyond all reasonable doubts or not.

12. It is submitted by learned counsel for the appellants that there is no eye-witness of the occurrence of tormenting the deceased over dowry demand and eliminating her by strangulation or by administering poison. The prosecution itself is not certain regarding the cause of death. It is further submitted that as per the written report on arrival of the informant at her village from Orissa she sent her brother-in-law, Chameli Sahni to the marital house of her daughter in verification of the matter who found the house of the appellants locked and the appellants and other accused persons absconding and he learnt about eliminating the deceased by strangulation or by administering poison and disposing of her dead body by the appellants in association of the locals but the aforesaid Chameli Sahni has not been examined by the prosecution and no plausible and convincing reason has been assigned for his non-examination which



creates serious doubt about the prosecution case. It is further submitted that P.W.4-Amerika Devi has stated in her testimony that Lovely Devi used to pay visit to her maternal house and living there 2-4 days, she used to regress to her marital house *suo motu* which indicates that the deceased Lovely Devi had no trouble in her marital house and she was living there happily and her relation with her in-laws was cordial. P.W.4 has also stated that on arrival of Lovely Devi from her marital house she used to meet her but she has not stated about making any complain by the Lovely Devi about subjecting her to torture over the dowry demand by the accused persons with her. It is also submitted that the prosecution has failed to substantiate that the deceased Lovely Devi was subjected to torture and cruelty over dowry demand soon before her death, which is *sine qua non* for shifting the burden on the accused under Section 113-B of the Evidence Act to prove his innocence. It is also submitted that the informant had got information of the occurrence at Orissa and on learning the same she had regressed to her village from Orissa and on 01.10.2008 but she has lodged the F.I.R. on 03.10.2008, i.e. after an abnormal delay and the prosecution has not assigned any plausible and convincing explanation for



the aforesaid delay which creates serious doubt about the prosecution case. It is also submitted that as a matter of fact deceased had died due to ailment and the information of her death was given to her maternal people but as they were living in Orissa they did not join cremation of the deceased so the accused persons cremated her dead body to avoid decomposition. It is also submitted that the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants by adducing consistent, trustworthy, worth credence evidence hence the judgment and order of conviction and sentence passed 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 the informant has supported the prosecution case in toto and rest witnesses have also corroborated the prosecution case by giving their consistent and unblemished testimonies and the learned trial Court correctly appreciating the facts and evidence available on record has rightly passed the aforesaid judgment and order of conviction and sentence which is liable to be upheld and



this appeal is shorn of merit and is 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 death of the deceased within seven years of marriage, it is the case of the prosecution that the marriage of the deceased was performed on 05.07.2006 and she was eliminated on 28.09.2008. The time of death of the deceased has not been denied by the defence. P.W.2-Rita Devi has stated in her testimony recorded on 02.08.2010 that marriage of Lovely Kumari was performed with Shivnath Sahni four years back. PW-1 Kanchan Kumari and P.W.6-Sanju @ Sanjeeta Kumari have stated in para-1 of their respective examination-in-chief that marriage of Lovely Devi was performed with Shivnath Sahni on 05.07.2006. PW 5 Tilo Devi has stated in para 1 of her examination-in-chief that marriage of Lovely Devi was performed with Shivnath Sahni in the year 2006. Thus from perusal of the aforesaid testimonies of the prosecution witnesses, and aspect of the



case I find that the marriage of the deceased Lovely Kumari was performed with appellant Shivnath Sahni on 05.07.2006 and she has died on 28.09.2008. Thus the death of the deceased has taken place within seven years of her marriage.

16. Regarding the cause of death, from perusal of the written report of the informant, it appears that the prosecution is not certain about the cause of death as informed in her written report has stated that the deceased Lovely Devi has been eliminated either by administering poison or by strangulation. While she has stated in para-1 of her examination-in-chief that before her arrival at her house from Orissa her Gotani, Bhaisur and others had rushed to the marital house of her daughter who were told that Lovely Devi has committed suicide P.W.1-Kanchan Kumari, P.W.3-Yogendra Sahni, P.W.4-Amerika Devi, P.W.5-Sanju @ Sanjeeta Kumari and P.W.7-Vijay Kumar Singh have not stated about the cause of death of Lovely Devi. Though the defence has taken the case that the deceased had died due to ailment and after giving information about her death to the informant they had cremated her dead body but they have not filed any document regarding treatment and death of the deceased due to ailment. As the deceased Lovely Devi had



died in her marital house within around two years and two months of her marriage and dead body has been disposed of by the appellants and other accused persons in haste without giving any information to the prosecution party. Hence in the aforesaid facts and circumstances of the case, I find that though the prosecution has failed to establish the cause of death but the aforesaid aspect of the case indicates that the deceased has died in her marital house in otherwise than under normal circumstances.

17. Regarding demand of dowry, it is the case of the prosecution that Shivnath Sahni started demanding motorcycle or cash of Rs.50,000/- at the time of her Bidai after marriage and Shivnath Sahni and Baijnath Sahani had also extending threatening of dire consequence in case of non-fulfilment of dowry demand by the informant at the time of performing bidai of deceased later on at her house. Though, P.W.1-Kanchan Kumari has stated in her examination-in-chief that her brother-in-law Shivnath Sahni had demanded motorcycle at the time of marriage. But the informant in her testimony has not supported the aforesaid occurrence and likewise P.W.3-Yogendra Sahni, P.W.4-Amerika Devi, P.W.5-Tilo Devi and P.W.6-Sanju @



Sanjeeta Kumari have not supported the occurrence of demand of motorcycle by appellant-Shivnath Sahni or by any other accused persons at the time of Bidai of deceased either at the time of marriage or later on at the house of informant. Though the witnesses have stated in their respective examination-in-chief about demand of dowry by the accused persons at the marital house of the deceased but the aforesaid statements appears to be vague as no period and time of making the aforesaid demand has been disclosed by them.

18. So far as subjecting the deceased to cruelty or torture over the dowry demand by the accused persons soon before her death is concerned, though the prosecution witnesses have stated that the accused persons used to torment the deceased over the dowry demand but they have not stated about the time of tormenting the deceased for the aforesaid demand in the marital house. Moreover, P.W.1-Kanchan Kumari has stated in para-2 of her cross-examination that she had visited the marital house of her sister (deceased) 8-10 months preceding to her death. In para-3 of her cross-examination, she has further stated that she had stayed there for 8 days but she has not stated about witnessing of any occurrence of tormenting the deceased



Lovely Devi by the accused persons over the aforesaid dowry demand during her stay at her marital house. She has also not stated that during the aforesaid period of her stay the deceased has ever made any complain with her against the accused persons about tormenting her by them over the dowry demand. Informant P.W.2-Rita Devi has stated in para-2 of her cross-examination that her daughter had visited her house three times preceding to her death and she used to confabulate with her on her visit to her house but she has not stated about making any complain by the deceased with her about tormenting her by the accused persons over the dowry demand during interaction. P.W.3-Yogendra Sahni has stated in para-2 of his cross-examination that neither any dowry demand was made nor the Lovely Devi was subjected to torture before him. P.W.4-Amerika Devi who happens to be cousin sister of the deceased has stated in para 2 of her cross-examination that she used to meet with Lovely Devi on her arrival at her maternal house and after staying at her maternal house she used to regress to her marital house in 2-4 days. From the testimony of the aforesaid witnesses, it appears that the relation of the deceased with her in-laws was cordial and she was happily living in her marital house as she used to pay



visit to her maternal house from her marital house and after living there 2-4 days she *suo motu* used to regress to her marital house and she had not made any complain about subjecting her to torture by the accused persons in her marital house to the aforesaid witnesses. P.W.3-Yogendra Sahni has even denied of making any demand of dowry and tormenting the deceased by the accused persons over the said demand. Though P.W.5-Tilo Devi has stated in para-3 of her cross-examination that when Lovely Devi arrived at her maternal house she divulged her about tormenting her by her in-laws. She divulged the aforesaid facts to her six months later to the marriage but the aforesaid witness happens to be simple villager of the informant and in view of not disclosure of the aforesaid facts to her relatives by the deceased the aforesaid statement of P.W.5 does not appear to be reliable and convincing. Moreover, she has stated that Lovely Devi had divulged her about subjecting her to torture by the accused persons in her maternal house after six months of the marriage but the deceased has died around two years and two months later to the marriage i.e. after long interval of alleged disclosure to P.W.5 and the said disclosure does not happen to be in close proximity to the death of the deceased. P.W.6-



Sanju @ Sanjeeta Kumari has stated in para-4 of her cross-examination that her sister Lovely Devi had gone to Orissa twice since the marriage to her death. She used to divulge about demand of motorcycle and tormenting her over the said demand on her visit but the aforesaid statement of the said witness also does not appears to be convincing and reliable as the informant, who also used to live in Orissa and happens to be mother of the deceased, has not corroborated the aforesaid aspect of the case. Moreover, the said witness in para-4 of her cross-examination has stated that she had orally informed the aforesaid occurrence to the Mukhiya and Sarpanch of her village in the year 2006 but no Mukhiya and Sarpanch of her village has come forward in corroboration of the divulgence of the aforesaid occurrence to them by the said witness. The aforesaid statement of said witness also does not indicate about tormenting the deceased over the dowry demand by the accused persons in close proximity to her death.

19. Hon'ble Apex court in *Major Singh & Another Vs. State of Punjab reported in (2015) 5 Supreme Court Cases 201* has been pleased to rule that when there is no evidence as to demand of dowry or cruelty and that



deceased was subjected to dowry harassment “soon before her death” by the appellant-accused parents-in-law conduct of father and brother of deceased, not natural, the conviction of the appellant under Section 304-B cannot be sustained and is liable to be set aside. It has further been pleaded to rule that to attract conviction under Section 304-B I.P.C. prosecution should adduce evidence to show that “soon before her death”, the victim was subjected to cruelty or harassment. There must always be a proximate and live link between effects of cruelty based on dowry demand and death concerned. Hon’ble Apex Court in *Baijnath &Ors. Vs. State of Madhya Pradesh (2017) 1 Supreme Court Case 101* has been pleased to rule that mere factum of unnatural death in matrimonial home within seven years of marriage not sufficient to convict accused under Sections 304-B and 498-A I.P.C. Only when prosecution proves beyond doubt that deceased was subjected to cruelty/harassment in connection with dowry demand soon before her death, presumption under Section 113-B can be invoked. Section 113-B of the Act enjoins a statutory presumption as to dowry death. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry



by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. A conjoint reading of these three provisions, thus predicates the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

20. In view of the aforesaid facts and circumstances of the case, I find and hold that the prosecution has utterly and miserably failed to substantiate that the appellants and other accused persons demanded motorcycle or



Rs.50,000/- in cash in dowry and subjected the deceased Lovely Devi to torture over the said dowry demand soon before her death by adducing convincing, trustworthy and worth credence evidence. Thus, the prosecution has failed to substantiate the aforesaid important ingredients of Section 304-B IPC beyond all reasonable doubt. Under Section 113-B of the Evidence Act, the burden of prove of innocence of the accused persons shift upon them only on establishing the aforesaid ingredients of demand of dowry and subjecting the deceased to cruelty or torture soon before her death by the accused persons but as the prosecution has utterly and miserably failed to establish the same, hence, in my considered opinion, the aforesaid burden does not stand shifted upon the shoulder of the appellants and the appellants are not bound to establish their innocence.

21. From perusal of the testimony of the informant (P.W.2) and the prosecution case, it appears that she got the information of the death of her daughter at Orissa and on getting the said information she regressed to her village and sent her brother-in-law, Chameli Sahni to the marital house of her daughter in verification of matter and who on regression informed her that the accused persons were



absconding locking their house and locals divulged him about committing murder of the deceased by the accused persons over the dowry demand and disposing of her dead body but the said Chameli Sahni has not been examined by the prosecution and no plausible and convincing reason has been assigned by the prosecution for his non-examination. Hence, an adverse inference is drawn against the prosecution.

22. As per the prosecution case and the statement of the informant, she got information of the occurrence of committing murder of her daughter by the accused persons in Orissa and regressed to her village on 01.10.2008 and sent to her brother-in-law Chameli Sahni in verification of the matter and as per her account given in para-5 of her cross-examination, the marital house of her daughter is located at 2-3 Kosh of her house and as per the account of P.W.6 as given by her in para-1 of her examination-in-chief Chameli Sahni regressed to the house of the informant after verification of the matter on 01.10.2008 itself at 4 PM. From perusal of the formal F.I.R., it appears that the place of occurrence is located at 8 KM from the P.S. Khanpur but the aforesaid information of the death of the deceased was given to the police on 03.10.2008 i.e., after an inordinate delay of two days and no



plausible and convincing reason has been assigned by the prosecution to explain the aforesaid delay, which creates serious doubt about the prosecution case.

23. As per the account of the informant, as given by her in para-4 of her cross-examination she had not given the information of making demand of motorcycle in dowry after marriage and tormenting her daughter over the said demand to the police or in the Court. Though she has stated in said para that she had informed the matter to the Mukhiya and Sarpanch of her village after 6-7 months later to the marriage but no Mukhiya and Sarpanch has been examined by the prosecution in corroboration of the aforesaid aspect of the case and the aforesaid aspect of the case of not giving information of occurrence of the dowry demand by the accused persons and tormenting the deceased on the said demand either in the Court or to the police by the informant and non-examination of Mukhiya or Sarpanch by the prosecution also creates serious doubts about the prosecution case.

24. In the aforesaid facts and circumstances of the case and discussions made by me in foregoing paragraphs, I find and hold that the prosecution has utterly and miserably



failed to bring home the charge levelled against the appellants beyond all reasonable doubts by adducing convincing, cogent, consistent and worth credence ocular and documentary evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial Court is set aside and the appellants are acquitted of the charge levelled against them. As the appellant- Baijnath Sahni is on bail he is discharged from the liability of bail bond and as the appellant- Shivnath Sahni is in custody, he is directed to be released forthwith, if not wanted in any other case. Accordingly, this criminal appeal is allowed.

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	AFR
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