

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.470 of 2014

AGAINST THE JUDGMENT OF CONVICTION DATED 23.5.2014 AS WELL AS
ORDER OF SENTENCE DATED 28.5.2014, PASSED BY THE SESSIONS JUDGE,
SHEOHAR IN SESSIONS TRIAL NO. 583 OF 2011, GR NO. 420/11, TR NO.1315/11,
ARISING OUT OF PS.CASE NO. -93 YEAR- 2011 THANA -PIPRAHI DISTRICT- SHEOHAR

- =====
1. Kavita Devi, wife of Santosh Sah &
 2. Awadhesh Sah, son of Ram Autar Sah, residents of village Basahiya Punrwash,
police station Piprahi, District Sheohar Appellants
- With

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Criminal Appeal (DB) No. 479 of 2014

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1. Ram Autar Sah Son of Shahdev Sah
 2. Sanjha Devi Wife of Ram Autar Sah Both resident of village - Basahiya
Punrwash, P.S. - Piprahi, District – Sheohar Appellants
- With

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Criminal Appeal (DB) No. 601 of 2014

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Ram Pravesh Sah, Son of Ram Autar Sah, resident of Village- Basahiya Punarwash,
P.S.- Piprahi, District- Sheohar Appellant

Versus

The State of Bihar Respondent in all the three appeals.

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Appearance :

For the appellants : Mr. Ajay Kumar Thakur, Advocate
Mr. Imtiyaz Ahmad, P. Kumar, B.Kumari and
Mr. S.Shekhar, Advocates
For the State : Mr. Satya Narain Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
And
HONOURABLE MR. JUSTICE MADHURESH PRASAD

CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE MADHURESH PRASAD)
Date: 10th January, 2018.

Challenge in these appeals is to the judgment of
conviction dated 23.5.2014, passed by the Sessions Judge, Sheohar,
whereby the appellants who are in-laws of the deceased were held
guilty under section 304B/34 IPC and sentenced them to suffer RI
for life vide order dated 28.5.2014.

2. Appellant Kavita Devi (accused no.1) is Gotini (sister-



in-law), appellant Awadhesh Sah (accused no.2) is Dewar (brother-in-law), appellant Ram Autar Sah (accused no.3) and Sanjha Devi (accused no.4) are the father-in-law and mother-in-law of the deceased respectively. Appellant Ram Pravesh Sah (accused no.5) is the husband of the deceased.

3. Prosecution case, as disclosed in the fard beyan (Exhibit 8) made by PW 6 (Ram Chandra Sah), father of the deceased and recorded by PW 7 (Somal Kant Jha) SI of police at the place of occurrence on 29.8.2011 at 8 AM is that the marriage of Seema Devi was solemnized with accused no.5 Ram Pravesh Sah on 1.5.2009. The informant had gifted ornaments etc. at the time of marriage. When the victim went to her Sasural for the first time the appellants started torturing her as the demand of motorcycle was not fulfilled by the informant. The daughter used to communicate such torture to her father and mother. The further allegation is that the informant called his son-in-law (accused no.5) and Samdhi (accused no.3) to his house in presence of witnesses and gave Rs.45,000/- for purchase of motorcycle. The daughter had come to Naihar. Four months prior to the incident, accused no.5 took her back to the Sasural. Again a demand was made for giving She-buffalo and a cash of Rs. 1 lac in the name of starting business by the husband. As the said demand was not met by the parents, the victim was being tortured/harassed. It has also been alleged that owing to the illicit relationship between the husband of the victim (accused no.5) and



appellant Kavita Devi (accused no.1) which was being protested by the victim, she was also being physically assaulted by accused nos.1, 4 and 5. Merely a week before the incident, the informant along with PWs. 2, 3 and 4 had gone to Sasural of the victim for a panchayati in which the informant had forbade them from assaulting/torturing his daughter and also requested to permit her to come to Naihar which was refused on the plea that Bidagri would be done after few months. Subsequently, the informant got the information about the death of his daughter at Sasural. Such information was given to him on telephone by accused no.5, wherein it was disclosed that Seema Devi was seriously ill. The prosecution case is that in the night itself, the informant along with the witnesses proceeded to the Sasural of the victim and reached in the morning only to find Seema Devi lying dead on a mat in one of the outer rooms of the house of the appellants. Blood stain marks were seen on her face, nose and legs. On query, the appellants gave an explanation that while scaling from the stairs she had fallen down and received injuries which resulted in her death. The informant immediately informed the police. The I.O. reached the place of occurrence before 8 AM in the morning and recorded the fard beyan (Exhibit 8) of PW 6 which was witnessed by PW 2 (Ash Naryan Sah). Being the officer-in-charge of the police station, he took up the investigation and conducted the death inquest proceeding (Exhibit 7) witnessed by PWs 2 and 4 who had



accompanied the informant to the Sasural of the victim. Lathi having blood stain was found near the dead body. The IO seized the Lathi under a seizure memo which again was witnessed by PWs 2 and 3. The signatures on the seizure memo have been proved as Exhibits 3 and 3/1 respectively. Re-statement of the informant was recorded at the site of the occurrence. The dead body was dispatched for post mortem examination. On receiving the post mortem report and after completing the investigation he laid the charge sheet which gave rise to the present trial on the file of the learned trial court.

4. To bring home the charges, prosecution examined 8 PWs. PW 1 Dharikshan Sah is the own brother of the informant. He had accompanied the informant to the place of occurrence on hearing homicidal death of Seema Devi. PW 2 Ash Narayan Sah is the cousin of the informant. He too had accompanied the informant to the place of occurrence. He is also a witness to the recording of the fard beyan as also witness to the seizure of the incriminating articles from the scene of occurrence. PW 3 Navin Kumar had also reached the place of occurrence with the informant. He is also a witness to the seizure. PW 4 Banshidhar Singh is Ex-sarpanch of the Panchayat and co-villager of the informant. He had also visited the house of the appellants in connection with Panchayati which was held only a week prior to the incident. He is also a witness to drawing up of the inquest report. Dr. Sachidanand Singh (PW 5)



was then posted as the Medical officer of the Sadar Hospital, Sitamarhi. He conducted autopsy on the cadaver on 29.8.2011 at 2.40 PM. In his post mortem report (Exhibit 4), the doctor found asphyxia leading to cardiac respiratory failure as the cause of death. PW 6 Ram Chandra Sah is the father of the victim and the informant of the present case. PW 7, Samolkant Jha is the officer-in-charge of the police station. He conducted the investigation and submitted charge sheet. He had inspected the place of occurrence, drew up the inquest report, recorded the statement of the witnesses and after conclusion of the investigation laid the charge sheet. PW 8 is the villager and is a formal witness. He produced the Malkhana register and the material exhibit (lathi) which was lying near the dead body. The relevant entry in the Malhana register has been proved by him as Exhibit 10. The defence took the plea of false implication and explanation was offered by each of them that the victim had sustained injuries while coming down on the stairs of the house.

5. On appreciation of the evidence adduced by the prosecution, learned trial court found all the necessary ingredients to constitute the offence under section 304B IPC have been amply proved by the evidence of PWs. 1, 2, 3, 4, 5 and 6 and hence in the light of the statutory provision of law under section 113 B of the Evidence Act the appellants were declared guilty of the charge.



6. Mr. Ajay Kumar Thakur, learned counsel for the appellants submits that the evidence on record do not conclusively prove beyond doubt warranting conviction under section 304B IPC. He drew attention of the Court to the evidence of PW 1 (brother of the informant), PW 2 (cousin of the informant), PW 6 (the informant) with regard to the time and manner of demand of dowry. It is stated that they suffer from several inner contradiction. He next submits that the prosecution is not very sure about the death occurring due to non-payment of dowry. The prosecution has come out with another motive that husband of the victim (accused no.5) had soft corner for his Bhabhi Kavita Devi (accused no.1) which was being protested by the victim. The evidence with regard to the demand of dowry and the specific manner of torture against Kavita Devi, accused no.2 Awadhesh Sah and accused no. 4 Sanjha Devi are scanty. Save and except the general and omnibus allegation, the prosecution has not stated about the demand made by them and the torture perpetrated on the victim by them. Assailing the conviction of accused no.2 and 3 as well as accused 5 similar contention has been raised by him. He relied in case of **Shyam Lal and anr Vs. State of Haryana and others**, reported in (1997) 9 SCC 759, and **Baijnath Versus State of Madhya Pradesh**, reported in AIR 2016 SC 5313. Mr. Thakur would also urge that the finding of the doctor PW 5 in the post mortem report (exhibit 4) do not fully support the prosecution case. The allegation is of causing death by pressing her



neck with hard and blunt substance which resulted in asphyxia but the doctor did not find the trachea fractured.

7. Mr. S.N.Prasad, in contra, submits that the evidence adduced by the prosecution towards the circumstances under which the presumption of having committed the dowry death, as been raised under section 113B of the Evidence Act, has been clearly established. Except immaterial/natural contradiction in the evidence, they have withstood the test of cross examination. To support his contention, he has relied on the decision rendered in the case of **Trimukh Maroti Kirkan Vs. State of Maharashtra**, reported in **(2006) 10 SCC 681** wherein in the context of the facts present there, the Apex court has held that the direct evidence is unlikely in a case where the lady was killed within four walls of the Sasural. If the explanation of the death of the victim given by the accused is wholly deficient and not sustainable from the evidence on record, the same would be considered yet another incriminating circumstance against the defence. Mr. Prasad also contended that the evidence of the doctor fully supports the prosecution case so as to death by strangulation or pressing the neck of the deceased with hard and blunt substance. In this connection, he also submits that lathi used by the accused was found near the dead body and was seized by the I.O.

8. The presumption as to the dowry death under section 113B of the Evidence Act is founded on the proof of cruelty or



harassment of the woman causing death or in connection with any demand for dowry by the person charged with the offence. As such, presumption as to the dowry death stems only upon the proof of other fact that the deceased had been subjected to cruelty or harassment or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death.

9. PWs 1,2 3, 4 and 6 are the relevant witness who have spoken about the demand of dowry and torture on the victim. They have specifically deposed that she went to the Sasural after marriage, where she was assaulted and tortured in many ways for demand of motorcycle. On coming to her parents' house, she had disclosed the same. From their deposition, it is clear that the deceased was married about two years prior to her unnatural death. It has been deposed by the said witnesses including the informant, that as recently as about one week before the homicidal death of the victim, they had gone to the house of the accused, and in their presence the informant (PW 6) expressed inability to fulfil further dowry demand of a she calf and cash of Rs. 1 lac and only when he assured and fulfilled the demand by giving Rs.45,000/- for purchase of motorcycle then they agreed to perform the Bidagri. All these witnesses have consistently stated that the deceased was subjected to cruelty and torture in connection with demand of dowry. PW 1 and PW 4 not being the family members of the informant have supported the prosecution case on material particular regarding demand of dowry and perpetration of physical



harassment on her by all her in laws.

10. The submission of the counsel for the appellants that the other motive regarding the accused no. 5 having a soft corner for his Bhabhi Kavita Devi (accused no.1), and that the same was being protested by the victim makes the prosecution case doubtful, does not appear to be tenable. The relationship between the accused no. 5 and accused no. 1, who were husband and Bhabhi of the deceased respectively, is only an additional form of cruelty which was being perpetrated upon the deceased. The consistent evidence of PWs. 1, 2, 3, 4 and 6 is that the deceased was being subjected to all sorts of cruelty and torture in relation to demand of dowry by the accused/appellants. Thus relationship of accused no.1 and accused no.5, in the facts and backgrounds of the case, can only be considered to be a form of cruelty and torture being perpetrated upon the deceased as she had been isolated by all the accused persons so as to coerce her to make demand of dowry from the informant.

11. The other argument made by the counsel for the appellants as regards evidence with respect to the manner and torture being scanty, it must be borne in mind that the informant by no means can be in a position to give specific details with respect to the manner of torture that had been perpetrated upon the deceased as the same was within the four walls of her Sasural (matrimonial home). In this case, it would be relevant to note the specific evidence of PWs. 1, 2, 3, 4 and 6 regarding one week prior to the death of the



victim when they had gone to the house of the accused persons, the demand for dowry in the form of a she calf and cash of Rs. 1 lac had been made in their presence.

12. The evidence of PW 5, the doctor, also supports the prosecution case as the death of the deceased was homicidal. PW 5 who was the Medical officer at Sadar Hospital, Sitamarhi and had conducted post mortem examination on the body of the deceased on 29.8.2011 has found anti mortem injuries on her body which are as follows:-

“External findings:-Both eyes closed mouth partially opened, blood stains present over face, bruise and swelling around left eye. Swelling of face over right side, lacerated wound below lower lip size 1/2” x 1/2” skin deep, bruise over left shoulder 2” x 1/2” bruise and abrasion over front of neck, size 2” x 1/2” on right side, bruise over left leg at middle size 1/2” x 1/2” x skin deep.

Internal findings:- Opening of skull cranium intact. Brain matter congested, opening of neck muscle ecchymosed and lacerated trachea depressed. On opening of thorax, both lungs intact and congested, heart intact and chambers filled with dark blood, opening of the abdominal cavity all abdominal viscera in tact and congested except liver which lacerated over lower lobe right side lower surface.”

13. Said PW 5 has opined the cause of death to be asphyxia leading to cardiac respiratory failure as a result of strangulation by a hard object and other injuries to have been caused by hard and blunt object. Such findings of PW 5 support the prosecution case and completely demolish the defence version as the cause of death being attributed to fall from stairs. The findings of the I.O. with respect to



the blood stained lathi lying near the dead body and presence of blood stains on the face, nose and ear of the deceased are incriminating circumstances which point only towards the homicidal death of the deceased as having been caused by the assault and strangulation by hard and blunt object.

14. In case of dowry death there can hardly be direct evidence when the victim has been done to death secretly within the four walls of her matrimonial home. The aforesaid circumstances fulfil the presumption as to dowry death as the consistent demand of dowry as well as subjecting her to cruelty and torture ever since after marriage up to as recently as one week before the death of the victim has been narrated by the prosecution witnesses PWs. 1, 2, 3, 4 and 6. The homicidal death within the four walls of her matrimonial home within two years of her marriage has also been proved by those prosecution witnesses. Other documentary evidence on record such as the post mortem report fully supports the homicidal death. The recovery of blood stained lathi next to the dead body as well as blood stains on the floor in the room and the blood stain marks on the face, nose, ear and the neck of the deceased goes to establish the factum of homicidal death of the deceased.

15. It has been strenuously urged by Mr. Thakur, appearing for the appellants that the most recent demand for a she calf and cash of Rs. 1 lac cannot come within the scope of demand of dowry as the same was for doing business. This argument is being noted to be



rejected as the consistent demand of dowry ever since marriage of the deceased in 2009 up till as recently as one week prior to the death of the victim was of various kinds including the demand for motorcycle about one week prior to her death. All these constitute consistent demand for dowry. Merely because one in the series of demand has been made for the sake of starting and carrying on business, the same cannot be isolated so as to give the accused persons any benefit of doubt. Had there been only one such demand for aid in establishing or carrying on business sans no torture, cruelty and the other demand made by the accused persons, this Court may have had the option of seeing it otherwise. In the instant case, such plea, in the facts and backgrounds of the case cannot give any benefit to the accused persons.

16. In Trimukh Maroti Kirkan case, the Apex court considering a case of death of the wife in the matrimonial home held as under in para 21 and 22 of the judgment:

“21. In a case based on circumstantial evidence where no eye- witness account is available, there is another principle of law which must be kept in mind. The principle is that when an incriminating circumstance is put to the accused and the said accused either offers no explanation or offers an explanation which is found to be untrue, then the same becomes an additional link in the chain of circumstances to make it complete. This view has been taken in a catena of decisions of this Court. [See [State of Tamil Nadu v. Rajendran](#) (1999) 8 SCC 679 (para 6); [State of U.P. v. Dr. Ravindra Prakash Mittal](#) AIR 1992 SC 2045 (para 40); [State of Maharashtra v. Suresh](#) (2000) 1 SCC 471 (para 27); [Ganesh Lal v. State of Rajasthan](#) (2002) 1 SCC 731 (para 15) and [Gulab Chand v. State of M.P.](#) (1995) 3 SCC 574 (para 4)].



22. Where an accused is alleged to have committed the murder of his wife and the prosecution succeeds in leading evidence to show that shortly before the commission of crime they were seen together or the offence takes place in the dwelling home where the husband also normally resided, it has been consistently held that if the accused does not offer any explanation how the wife received injuries or offers an explanation which is found to be false, it is a strong circumstance which indicates that he is responsible for commission of the crime. In *Nika Ram v. State of Himachal Pradesh* AIR 1972 SC 2077 it was observed that the fact that the accused alone was with his wife in the house when she was murdered there with 'khokhri' and the fact that the relations of the accused with her were strained would, in the absence of any cogent explanation by him, point to his guilt. In *Ganeshlal v. State of Maharashtra* (1992) 3 SCC 106 the appellant was prosecuted for the murder of his wife which took place inside his house. It was observed that when the death had occurred in his custody, the appellant is under an obligation to give a plausible explanation for the cause of her death in his statement under [Section 313 Cr.P.C.](#) The mere denial of the prosecution case coupled with absence of any explanation were held to be inconsistent with the innocence of the accused, but consistent with the hypothesis that the appellant is a prime accused in the commission of murder of his wife. In *State of U.P. v. Dr. Ravindra Prakash Mittal* AIR 1992 SC 2045 the medical evidence disclosed that the wife died of strangulation during late night hours or early morning and her body was set on fire after sprinkling kerosene. The defence of the husband was that wife had committed suicide by burning herself and that he was not at home at that time. The letters written by the wife to her relatives showed that the husband ill-treated her and their relations were strained and further the evidence showed that both of them were in one room in the night. It was held that the chain of circumstances was complete and it was the husband who committed the murder of his wife by strangulation and accordingly this Court reversed the judgment of the High Court acquitting the accused and convicted him under [Section 302 IPC](#). In *State of Tamil Nadu v. Rajendran* (1999) 8 SCC 679 the wife was found dead in a hut which had caught fire. The evidence showed that the accused and his wife were seen together in the hut at about 9.00 p.m. and the accused came out in the morning through the



roof when the hut had caught fire. His explanation was that it was a case of accidental fire which resulted in the death of his wife and a daughter. The medical evidence showed that the wife died due to asphyxia as a result of strangulation and not on account of burn injuries. It was held that there cannot be any hesitation to come to the conclusion that it was the accused (husband) who was the perpetrator of the crime.”

17. The appellants in their respective statements under section 313 of the Cr. P. C. have offered no explanation. In course of investigation, they had given an explanation which is convincingly dispelled through the evidence both oral and documentary laid at the trial. As noted above, the prosecution has been able to prove by reliable evidence about the continued physical harassment and ill treatment of the deceased while staying in the Sasural. On few days ago, she was subjected to torture. The necessary ingredients raising the presumption under law have been proved.

18. On careful scrutiny of the relevant evidence, the Court is convinced that the appellants were guilty of the charges levelled against them. The husband of the deceased in such matters bears greater responsibility. He is supposed to be the protector of his wife, the deceased. Unfortunately, he (appellant Ram Pravesh Sah of Cr.Appeal No. 601 of 2014) had failed. As such, his conviction under sections 304B IPC and sentence of life imprisonment imposed on him vide orders dated 23.5.2014 & 28.5.2014 respectively, passed by the trial court, are upheld. Cr. Appeal No.601 of 2014 is dismissed.



19. In respect of Accused Nos. 1 and 2, namely, Kavita Devi and Awadhesh Sah (appellants of Cr. Appeal (DB) No.470 of 2014) as well as Accused Nos. 3 and 4, namely, Ram Autar Sah and Sanjha Devi (appellants of Cr. Appeal (DB) No. 479 of 2014), we uphold their conviction under section 304B/34 IPC awarded to them by the trial court vide order dated 23.5.2014. However, their sentence of rigorous imprisonment for life imposed upon them by the trial court vide order dated 28.5.2014 is reduced to eight years of rigorous imprisonment. Cr. Appeal (DB) Nos. 470 and 479 of 2014 are dismissed with the aforesaid modification.

I agree.

Kishore Kumar Mandal, J.

(Madhuresh Prasad, J)

(Kishore Kumar Mandal, J)

Shashi.

NAFR/AFR	
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