

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.1143 of 2012

Arising Out of PS. Case No.-227 Year-2009 Thana- FORBESGANJ District- Araria

1. Bibi Hushana Wife of Late Wahab.
2. Md. Sajid S/o Late Wahab
Both R/o Village-Purandaha, Police Station-Simraha (Forbesganj) District-
Araria.

... .. Appellant/s

Versus

The State of Bihar.

... .. Respondent/s

Appearance :

For the Appellant/s : Ms. Prakritita Sharma, Amicus Curiae
For the Respondent/s : Mr. Satya Narayan Prasad (APP)

CORAM: HONOURABLE DR. JUSTICE RAVI RANJAN

And

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

01-02-2018

Heard Ms. Prakritita Sharma *amicus curiae* for the
appellants and Mr. Satya Narayan Pd. APP for the State on this
criminal appeal.

2. This appeal has been preferred against the
judgment and order of conviction dated 03.10.2012 and order of
sentence dated 09.10.2012 passed by the Adhoc Additional
Sessions Judge-4th, Araria in Sessions Trial no. 304 of 2010
arising out of Forbesganj (Simraha) P.S. Case No. 227 of 2009,
whereby the learned trial court convicted the accused Md. Sajid
and Bibi Hushana for the offence punishable under Section
304(B)/34 of the Indian Penal Code and sentenced them to
undergo R.I. for life under Section 304(B)/34 of the Indian



Penal Code.

3. The factual matrix of the case is that Forbesganj (Simraha) P.S. Case No. 227 of 2009 was instituted under Section 304(B)/34 of the Indian Penal Code against accused persons, namely, Md. Sajid, Bibi Hushana, Md. Rasul, Md. Nasim, Md. Jasim, Bibi Nasiba, Bibi Afsar and Bibi Bechni on the basis of written report of Md. Kafil S/o Late Md. Muslim with the allegation, in succinct that marriage of his younger sister namely, Bibi Kuresa was performed with Md. Sajid around five years back. She was blessed with one daughter out of the aforesaid wedlock. On 15.07.2009 at around 07:00 AM, he got information from the marital village of his sister about her death. On the said information, he along with his villagers rushed at her marital house and found his sister lying dead in the *Baranda* of the house while the accused persons were absconding. The dead body of his sister indicated that she was strangled to death. Further allegation is that in-laws of his sister used to make demand of dowry and always subjected her to torture for which Panchayati was also convened. The villagers divulged him that on 15.07.2009 at 03:AM, Md. Sajid along with other accused persons named in the written report had strangled to death his sister.

4. The aforesaid case was investigated by the



police and on conclusion of investigation, I.O. submitted charge-sheet against the accused Md. Sajid and Bibi Hushana under Section 304(B)/34 of the Indian Penal Code.

5. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the court of sessions and on transfer finally the case came in seisin of the Adhoc Additional Sessions Judge-4th, Araria for trial.

6. Charge against accused Md. Sajid and Bibi Hushana was framed under Section 304(B)/34 of the Indian Penal Code. Charge was read over and explained to them to which they pleaded not guilty and claimed to be tried.

7. To substantiate its case, in ocular evidence, the prosecution has examined altogether eleven prosecution witnesses namely, Sheikh Maheboob as PW-1, Md. Hasim as PW-2, Urfan as PW-3, Bibi Masuda Khatton as PW-4, Md. Sultan as PW-5, Sarila as PW-6, Abdul Subhan as PW-7, informant Md. Kafil as PW-8, I.O. Ramashankar Singh as PW-9, Dr. Jitendra Prasad who conducted autopsy of cadaver of the deceased as PW-10 and Dr. Rajesh Kumar who was the observer of process of conducting postmortem of the deceased as PW-11. Out of the aforesaid witnesses PWs-2 and 4 turned hostile. In documentary evidence, the prosecution has filed and proved



some documents by way of documentary evidence.

8. The statement of the accused was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence. In buttress of their case, the accused persons have neither adduced any ocular nor documentary evidence.

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 Md. Sajid and Bibi Hushana have preferred the present Criminal Appeal.

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 informant in his written report has not disclosed about nature of dowry demanded by the appellants. He has simply made shaky statement regarding the aforesaid aspect of the case. Likewise, witnesses examined by the prosecution have



also given flimsy statement regarding demand of dowry by the appellants. Neither the informant nor the witnesses have stated about period and time of demanding the aforesaid dowry by the appellants. The informant and witnesses have also not stated that deceased was subjected to torture over the said dowry demand soon before her death. It is further submitted that though as per the prosecution case, the deceased was strangled to death by the accused persons, but doctor has not found any injury on the person of the deceased as *anti-mortem* injury. Likewise, I.O. has also not reported finding any injury on the person of the deceased in the inquest report rather the inquest report indicates that nose of the deceased was frothing and the entire body turned blue. Though, doctor has opined the cause of death due to asphyxia (smothering), but he has not reported about finding any sign of asphyxia (smothering) on the person of the deceased. On the other, it is the case of appellants that deceased had died due to snake biting and prosecution witnesses namely, PW-2 and PW-5 have themselves unanimously supported the aforesaid case of defence of death of deceased due to snake biting. Thus, the prosecution has utterly and miserably failed to substantiate the prosecution case against the appellants beyond all reasonable doubts by adducing convincing, cogent and worth credence ocular and documentary evidence. Hence,



the impugned judgment and order of conviction and sentence passed against the appellants 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 informant and several other material witnesses examined by the prosecution have supported the prosecution case intoto. The prosecution case also stand corroborated by the medical evidence and after correctly appreciating the facts and evidence on record, the learned trial court has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and this appeal is shorn of any merit and is liable to be dismissed.

14. In order to seek conviction under Section 304B 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 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 aforesaid ingredients i.e. death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances and such death has occurred within seven years of her marriage. It is the admitted case of the parties that death of deceased (Bibi Kuresa) had



occurred within five years of her marriage. It is also not denied that such death had occurred in the marital house of the deceased. Regarding cause of death of the deceased, it is the case of prosecution that the deceased was strangled to death by the appellants while as per defence the deceased had died due to snake biting.

16. To substantiate its aforesaid case, the prosecution has examined the informant (PW-8) and four other material witnesses. The informant in his written report has stated that on quizzing the marital villagers of his sister, they divulged that the accused persons including the appellants have strangled the deceased to death in the night of 15.07.2009 at 03:00 AM and dead body of the deceased also indicated that she was strangled to death. The informant in his examination-in-chief has also stated that on quizzing the villagers, he learnt that Bibi Kuresa was strangled to death. PW-1 in paragraph 9 of his cross-examination has stated that his daughter namely, Vakila divulged him the occurrence and PW-8 in paragraph 3 of his examination-in-chief and in paragraph 16 of his cross-examination has stated that daughter of his maternal uncle (PW-1) namely, Vakila had divulged him that Bibi Kuresa was strangled to death and in paragraph 17 of his cross-examination he has stated that Vakila is the next door neighbour of the



appellants. So Vakila happens to be material and important witness of the case, but she has not been examined by the prosecution rather withheld by it without assigning any plausible reason for her non-examination. Hence, adverse inference is drawn against the prosecution. PW-8 (informant) in paragraph 16 of his cross-examination has further stated that non-else of Purandaha (in-laws village of deceased) divulged him about the occurrence. As per the statement of PW-1 and PW-8, only Vakila had divulged the occurrence of strangulating the deceased to death by the appellants and said Vakila has not been examined by the prosecution to corroborate the factum of divulgence of the aforesaid aspect of the case by her to PW-1 and PW-8 and none else has divulged the occurrence to the informant. So, the aforesaid testimonies of PWs-1 and 8 even as hearsay evidence is not admissible in evidence. PW-1 namely, Sheikh Maheboob who happens to be maternal uncle of the deceased though has stated that Bibi Kuresa was murdered by her in-laws and PW-7 Abdul Subhan who happens to be cousin of the deceased has stated in his examination-in-chief that he found the deceased murdered ruthlessly at the place of occurrence but they have not stated about manner of murder of the deceased in their respective examination-in-chief.

17. From perusal of inquest report (Ext.3) of the



deceased, it appears that the police has also not found any mark of ligature on the neck of the deceased or any other symptom of strangulating the deceased. Likewise, from perusal of postmortem report (Ext. 4) it appears that the doctor has not found any external injury present on the person of the deceased as anti mortem injury, though, he has opined the cause of death due to asphyxia (smothering) as a result of above mentioned injuries. As per 25th edition of MODI's Medical Jurisprudence and Toxicology, in case of homicidal smothering, affected by the forcible application of the hand over the mouth and the nostrils, bruises and abrasions are often found on the lips and on the angles of the mouth, and alongside the nostrils. The inner mucosal surface of the lips may be found lacerated from pressure on the teeth. The nose may be flattened, and its septum may be fractured from pressure of the hand. There may be bruises and abrasions on the cheeks and the molar regions, or on the lower jaw, if there has been a struggle. But no local signs of violence will be found, if a soft cloth or pillow has been used to block the mouth and nostrils. But in that case, the face may be pale or suffused. The eyes are open, the eyeballs are prominent and the conjunctivae are congested and sometimes there are petechial haemorrhages. The lips are livid, and the tongue sometimes protruded. Bloody froth comes out of the mouth and



the nostrils. The skin shows punctiform ecchymoses with lividity of the limbs. Rupture of the tympanum may occur from a violent effort at respiration. But doctor conducting the autopsy of the cadaver of the deceased has not found any such appearance on the person of the deceased. Thus, from the aforesaid ocular and documentary evidence of the prosecution, it appears that the prosecution has utterly failed to substantiate that the deceased (Bibi Kuresa) was strangled to death by the appellants.

18. On the other hand, the defence has taken the case that the deceased had died due to snake biting by giving suggestion to PW-1 in paragraph 16, PW-7 in paragraph 30 and PW-8 in paragraph 25 of their respective cross-examination. PW-3 (Urfan) and PW-5 (Md. Sultan) who happen to be neighbours of the appellant (Md. Sajid) examined as prosecution witnesses have supported the case of defence that deceased had died due to snake biting and PW-2 (Md. Hasim) who also happens to be neighbour of the appellants in paragraph 8 of his cross-examination has stated that he listened that deceased had died due to snake biting. In paragraphs 10, 11, 12, and 14 of his cross-examination, he has further stated that Bibi Kuresa had died in rainy season and there was deluge around the hamlet, bone fire and kitchen articles were kept in the bed



room of Bibi Kuresa, several persons in the area were bitten by snake at that time. Locals were uttering that Bibi Kuresa had died due to snake biting. PW-5 (Md. Sultan) in paragraph 2 of his examination-in-chief has stated that he went to marital house of Bibi Kuresa, where he learnt that Bibi Kuresa was bitten by snake while PW-6 (Sarila) who also happens to be co-villager of appellant (Md. Sajid) has vented her ignorance about manner and perpetrator of murder of deceased. The inquest report of deceased (Ext. 3) indicates that while preparing the said inquest report, the police had found nose of the deceased frothing and her face and entire body turned blue. Thus, from perusal of testimonies of aforesaid witnesses who happen to be the prosecution witnesses itself and inquest report adduced by prosecution by way of documentary evidence, it appears that the deceased had died due to snake biting. In the aforesaid facts and circumstances, we find that the deceased had died in her marital house within five years of her marriage not due to strangulation rather due to snake biting.

19. So far as the demand of dowry and tormenting the deceased by the appellants that too soon before her death is concerned, the informant in his written report has stated that there was Panchayti over dowry and in-laws of his sister always used to torment her for dowry but he has not disclosed the



nature of dowry demanded by the appellants and also the period of demand. He also not disclosed as to when the deceased was tormented for dowry. The aforesaid statement of the informant regarding the aforesaid case of the prosecution appears to be quite shaky and flimsy.

20. PW-1 (Sheikh Maheboob) though in paragraph 4 of his examination-in-chief has stated that occurrence of murder took place due to dowry demand and in paragraph 12 of his cross-examination, he has stated that accused persons used to torment the deceased for dowry since two years preceding to occurrence, but he has also not stated about nature of dowry demanded and period of demand and specific time of tormenting the deceased by the appellants. PW-7 (Abdul Subhan) in paragraph 2 of his examination-in-chief has stated that in-laws of Bibi Kuresa used to inter into spat with her over dowry. In paragraph 17 of his cross-examination, he has further stated that her in-laws used to pester her for dowry, but he has also not disclosed the nature of dowry demanded and period of torture and spat. Likewise, PW-8 (informant) though in paragraph 2 of his examination-in-chief has stated that Md. Sajid and his mother used to make dowry demand, but he has not disclosed the nature of dowry demanded. For the first time, in paragraph 12 of his cross-examination, he has stated that Md.



Sajid and his mother used to make demand of bicycle, watch and bed in dowry and he had got written the aforesaid demand in his written report, but the aforesaid statement of the informant appears to be false as the factum of demand of aforesaid articles has not been mentioned in his written report. Moreover, none of the witnesses examined by the prosecution has corroborated the demand of aforesaid articles in dowry by the appellants. In paragraph 14 of his cross-examination, the informant has stated that his sister had arrived at his house fifteen days preceding to the occurrence, but he has not stated that on her arrival there, she had made any complain regarding demand of dowry and tormenting her by the appellants for the same. PW-2 (Md. Hasim) in paragraph 9 and PW-5 (Md. Sultan) in paragraph 6 of their respective cross-examination have unanimously stated that relation between Md. Sajid and Bibi Kuresa was cordial.

21. Informant (PW-8) has stated in paragraph 13 of his cross-examination that Panchayati was held at the house of appellant (Md. Sajid) at Purandaha, but he has not disclosed the name of Panches. While PW-1 in paragraph 12 of his cross-examination has stated that Surpanch of Lakshmipur has chaired the Panchayati of excruciation of the deceased but said Surpanch has not been examined by the prosecution and no



plausible reason has been assigned for his non-examination. Hence, adverse inference is drawn against the prosecution. Moreover, the informant has not even whispered in his testimony regarding tormenting the deceased over dowry demand and that too soon before her death by the appellants. Hence, from perusal of aforesaid evidence of the prosecution, we find and hold that the prosecution has utterly and miserably failed to substantiate that there was any dowry demand by the appellants and the deceased was ever subjected to cruelty over the said demand and that too soon before her death by the appellants by adducing consistent, trustworthy, reliable and cogent evidence and moreover as discussed by us hereinabove, the deceased has died in her marital house not due to burns or bodily injury or otherwise than under normal circumstances rather due to snake biting. Hence, burden does not stand shifted on the shoulder of the appellants to prove that they have not caused dowry death of the deceased.

22. 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.

23. 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 abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

24. In the aforesaid facts and circumstances of the case, we 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 no. 2 (Md. Sajid) is in custody, he is directed to be released forthwith from the custody, if not wanted in any other case. While as the appellant no. 1 (Bibi Hushana) is on bail, she is discharged from the liability of the bail bonds. Accordingly, this Criminal Appeal is allowed.

25. Let a copy of the first and last page of this judgment be handed over to the learned *amicus curiae*, Ms. Prakritita Sharma and learned *amicus curiae* be paid prescribed fee by the Patna High Court Legal Services Committee.

(Dr. Ravi Ranjan, J)

rohit/-

(Prakash Chandra Jaiswal, J)

AFR/NAFR	AFR
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