

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (DB) No.319 of 1995

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{Against the Judgment of conviction and sentence Order dated 20.09.1995 passed by the learned Sessions Judge, Nalanda (Bihar Sharif) in Sessions Trial No.105 of 1992, arising out of Noorsarai P.S. Case No.178 of 1990}.

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1. Surendra Prasad, son of Deo Narain Prasad alias Nuran Mahto.
 2. Sarjug Prasad alias Nuran Mahto, son of Meghan Mahto.
 3. Deo Narain Prasad alias Nuran Manto, son of Late Meghan Mahto.
 4. Sunil Prasad alias Soni Prasad, son of Deonarain Prasad alias Nuran Mahto.
 5. Sohagia Devi, wife of Deo Narain Prasad alias Nuran Mahto.
- All residents of village-Belsar, P.S. Noorsarai, District-Nalanda.

... .. Appellants.

Versus

The State of Bihar

... .. Respondent.

Appearance :

For the Appellants.	:	Ms. Surya Nilambari, Amicus Curiae.
For the State	:	Mr. Dilip Kumar Sinha, A.P.P.

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA

and

HONOURABLE MR. JUSTICE RAJENDRA KUMAR

MISHRA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA)

Date : 07-01-2019

This criminal appeal has been preferred against the Judgment of conviction and sentence Order dated 20.09.1995 passed by the learned Sessions Judge, Nalanda (Bihar Sharif) in Sessions Trial No.105 of 1992, arising out of Noorsarai P.S. Case No.178 of 1990, by which and whereunder he convicted the appellants for the offences punishable under Sections 498-A, 304-B and 201/34 of the Indian Penal Code and, accordingly, sentenced them to undergo rigorous imprisonment for life for the offence punishable under Section 304-B of the Indian Penal Code and to undergo rigorous imprisonment for seven years for



the offence punishable under Section 201 of the Indian Penal Code but no separate sentence was awarded for the offence punishable under Section 498-A of the Indian Penal Code. However, the learned Sessions Judge, Nalanda (Bihar Sharif) directed to run the sentences concurrently.

2. Originally, P.W.3, namely, Nandlal Prasad, filed Complaint Case bearing Complaint Case No.477(C) of 1990 on 04.10.1990 before the Chief Judicial Magistrate, Nalanda, who sent the aforesaid complaint petition to the concerned police station under Section 156(3) of the Code of Criminal Procedure for institution of the F.I.R.

3. In pursuant to the order of the learned Chief Judicial Magistrate, Nalanda, Noorsarai P.S. Case No.178 of 1990 was registered and, accordingly, formal F.I.R. for the offences punishable under Sections 498-A, 304-B and 201/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act was registered against the appellants.

4. The Investigating Officer took the charge of investigation and after completion of investigation, submitted the charge-sheet against the appellants for the above stated offences.

5. The cognizance of the offence was taken and case was committed to the court of sessions, in usual way, and, accordingly, the appellants were put on trial.



6. The appellants stood charged for the offences punishable under Sections 498-A, 304-B/34 and 201/34 of the Indian Penal Code but they denied the charges and claimed to be tried.

7. In course of trial, the prosecution examined, altogether, 5 prosecution witnesses and also got exhibited the signature of P.W.3 on complaint petition as Ext.1 and the entire complaint petition as Ext.2.

8. The statement of the appellants was recorded under Section 313 of the Code of Criminal Procedure, in which they reiterated their innocence and, again, denied the prosecution case. However, no evidence was adduced by the appellants in support of their defence but from perusal of the trends of cross examination of the prosecution witnesses, it is obvious that the appellants claimed before the trial court that the deceased died of cholera and her dead body was cremated in presence of P.W.3 and others but, subsequently, P.W.3 lodged the present false case with an object to extract money from the appellants.

9. The learned trial court having relied upon the testimonies of P.W.1, P.W.2 and P.W.3 came to the conclusion that the prosecution succeeded to prove all the ingredients of Section 304-B of the Indian Penal Code as well as Section 498-A of the Indian Penal Code and, accordingly, the learned trial



court convicted the appellants for the above stated offences.

10. Since it is an admitted position that the dead body of the deceased had already been disposed of, the learned trial court convicted the appellants for the offences punishable under Sections 201/34 of the Indian Penal Code as the learned trial court found the appellants guilty for the offence punishable under Section 304-B of the Indian Penal Code.

11. Ms. Surya Nilambari, Advocate, learned Amicus Curiae, appearing for the appellants assailed the impugned Judgment of conviction and sentence Order, arguing that the prosecution miserably failed to prove all the ingredients of Section 304-B of the Indian Penal Code. She further submitted that Section 113-B of the Indian Evidence Act comes into play when prosecution proved that a woman had been subjected to cruelty soon before her death but, in the present case, there is nothing in the entire evidence of the prosecution to show that the deceased was subjected to cruelty soon before her death, rather P.W.1 and P.W.3, who happen to be the full brothers of the deceased, very clearly stated that neither at the time of marriage nor at the time of Gauna any demand was made by the appellants. She further submits that, no doubt, P.W.3 stated in his deposition that after one year of solemnization of marriage, when the deceased came to her natal place, then she disclosed that the appellants were demanding Rs.20,000/- in cash and one



Scooter in dowry but, admittedly, not a single chit of paper has been brought in evidence to prove the aforesaid demand. She further submits that, however, it is admitted case of the prosecution that the deceased led her married life at her matrimonial home for near about 6 years and during the aforesaid six years, her natal people did not take any step to make any complaint before the police or Mukhiya of the village regarding the so-called demand as well as ill-behaviour of the appellants. She further submits that P.W.1 is also brother of the deceased but he admitted in his deposition that at the time of solemnization of marriage as well as at the time of Bidai of the deceased, no quarrel had taken place nor any demand was made. She further submits that P.W.1 also admitted that three months prior to the death of the deceased, he along with the deceased went to the in-laws' house of the deceased to drop the deceased but the appellants did not assault him, rather they had only abused, though he had not lodged any case in respect of the aforesaid occurrence. She further submits that P.W.1 also admitted in his deposition that neither he nor his other family members had lodged any case in respect of ill-behaviour of the appellants in police or before any competent authority. Ms. Surya Nilambari, learned Amicus Curiae, further submits that, as a matter of fact, the learned trial court convicted the appellants only on the basis of surmises and conjectures, which



is not in accordance with law, and the impugned Judgment of conviction and sentence Order cannot sustain in the eye of law.

12. On the other hand, learned Additional Public Prosecutor appearing for the State supports the impugned Judgment of conviction and sentence Order, submitting that the learned trial court has well discussed the evidences, available on the record, and there is no need to interfere into the impugned Judgment of conviction and sentence Order.

13. Having heard the rival contentions of both the parties, we went through the records as well as the Lower Court Records.

14. P.W.3 claimed in his complaint petition that the marriage of the deceased had taken place 6 years ago with the appellant no.1, namely, Surendra Prasad. After few months of the marriage, Gauna of the deceased was performed and after Gauna, she went to her in-laws' house. He further claimed that just after the solemnization of Gauna, the in-laws as well as the husband of the deceased started torturing and pressurizing her to make demand of Rs.20,000/- in cash and Scooter in dowry from her parents, otherwise she would be killed. P.W.3 further claimed that on account of poverty, he could not fulfill the aforesaid demand, as a result whereof deceased was subjected to cruelty and harassment. However, she continued leading her married life piously. P.W.3 further claimed that in the evening



of 02.10.1990, he got information that his sister was killed by the appellants and her dead body was got disappeared. P.W.3 further claimed that having got the aforesaid information, he along with P.W.2 went to the village of the in-laws of his sister but in-laws of his sister were found missing from their home. P.W.3 further claimed that he inquired from the nearby people and came to know that his sister was killed and her dead body was taken away by the appellants. P.W.3 further claimed that he went to Noorsarai Police Station for giving information in respect of the aforesaid occurrence and stated the entire occurrence to the Officer Incharge of Noorsarai Police Station but the concerned Officer Incharge did not pay any heed towards his statement nor registered any case and, after that, he filed the complaint case bearing Complaint Case No.477(C) of 1990.

15. P.W.1 and P.W.3 are, admittedly, full brothers of the deceased and both the aforesaid witnesses claimed that the marriage of the deceased had taken place 6 years ago prior to her death. The appellants claimed that the marriage of the appellant no.1 had taken place with one Sudha Devi in the year 1976 but, admittedly, no material was placed by the appellants to prove that the marriage of the appellant no.1 had taken place with one Sudha Devi in the year 1976. Therefore, there is ample material on the record to prove that the marriage of the



deceased had taken place with the appellant no.1, 6 years ago prior to her death. Admittedly, the deceased died within six years of her marriage and the aforesaid fact has been proved by the testimonies of P.W.1, P.W.2 and P.W.3.

16. P.W.3 has claimed in his deposition that after one year of solemnization of marriage when the deceased came to her parental home, she disclosed that the appellants were demanding Rs.20,000/- in cash and Scooter in dowry and due to non-fulfillment of the aforesaid demand, she was being harassed and tortured at the hands of the appellants. P.W.1 also claimed that when his sister came to his home, she disclosed that the appellants were demanding Rs.20,000/- in cash and one Scooter and she was being tortured by the appellants. However, P.W.1 and P.W.3, both the aforesaid witnesses admitted that neither at the time of marriage nor at the time of Gauna , any demand was made by the appellants and P.W.3 frankly admitted that after one year of solemnization of marriage, the deceased disclosed that the appellants made demand of Rs.20,000/- and one Scooter in dowry and at paragraph-7 of his cross-examination, P.W.3 admitted that after six months of Gauna, the deceased, for the first time, came to his house and at that time, she was accompanied by the appellant no.1. P.W.3 admitted that when, for the first time, after solemnization of Gauna, the deceased and the appellant no.1 came to his house, the appellant no.1 had



not made any demand. This witness further admitted that his sister came to his house twice or thrice and almost, all the times, appellant no.1 went to the house of P.W.3 to take the deceased back. This witness further admitted that when the deceased disclosed about the above stated demand, no altercation had taken place with the appellant no.1, though the appellant no.1 was present at his house at the time when the deceased had disclosed the factum of demand as well as torture. This witness further admitted that after the above stated disclosure, his sister went to her in-laws' house and remained there for near about one year but during the aforesaid one year, his sister did not sent any letter, making complaint against the appellants. However, after one year, when his sister again came to his house, she repeated the aforesaid complaint before him. P.W.3 has admitted that his father was alive at the time and his father was Karta of his family. P.W.1, who happens to be the full brother of P.W.3, also admitted that when his sister came to his house, his father was alive and this witness also admitted that his father was Karta of his family. Similarly, P.W.1 and P.W.3 also admitted that their mother was also alive at the time when the deceased disclosed before them about the illegal demand and torture.

17. Admittedly, the parents of P.W.1 and P.W.3 have not been examined by the prosecution nor P.W.1 and P.W.3



claimed that the deceased had disclosed the factum of demand of dowry and torturing before her parents. It is surprising that the deceased had not disclosed the factum of demand and torturing before her parents and, furthermore, it is also surprising that the parents of the deceased did not come before the court to claim that the appellants had demanded dowry and when the demand was not fulfilled, the deceased was subjected to cruelty. Therefore, non-examination of the parents of the deceased creates doubt about the claim of P.W.1 and P.W.3.

18. Although, learned Additional Public Prosecutor has argued that the prosecution succeeded to prove all the ingredients of Section 304-B of the Indian Penal Code but we are humbly not in agreement with the aforesaid submission of the learned Additional Public Prosecutor.

19. Section 304-B of the Indian Penal Code runs as follows:

“304B. Dowry death.”-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.-For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the



Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

20. From bare perusal of the aforesaid provisions of Section 304-B of the Indian Penal Code, it is obvious that one of the important ingredients of Section 304-B is that the prosecution must show that the deceased was subjected to cruelty or harassment soon before her death. In the present case, there is nothing in the entire evidence of the prosecution to show that the deceased was subjected to cruelty or harassment by the appellants soon before her death because P.W.1, P.W.3 as well as P.W.2 also frankly admitted that the deceased used to come to her natal place as well as to return her in-laws' house peacefully and sometime, appellant no.1 came along with the deceased to drop her at her paternal home. Furthermore, it is admitted case that the deceased led her married life at her in-laws' house for near about 6 years and during the aforesaid six years, not a single complaint was made by P.W.3 or his other family members either before the police or before any competent authority in respect of the so-called illegal demand and torture. Therefore, in our view, the prosecution could not succeed to prove this fact that the deceased was subjected to cruelty and harassment soon before her death and, therefore, one



of the important ingredients of Section 304-B of the Indian Penal Code is lacking in the present case.

21. Admittedly, the dead body of the deceased was not recovered in the present case and before institution of the present case, the dead body of the deceased had already been disposed of. P.W.1, P.W.2 and P.W.3 claimed that the deceased was killed and her dead body was disposed of on 02.10.1990.

22. P.W.2 claimed that on 02.10.1990, he along with P.W.3 had gone to the village of the appellants having got information about the killing of the deceased. This witness further claimed that P.W.3 made inquiry about the killing of the deceased and learnt that the deceased was killed and her dead body was disposed of. This witness further claimed that in the noon of 02.10.1990, he along with P.W.3 had gone to the village of the appellants. This witness further claimed that on the same day, written report was given at Noorsarai Police Station in respect of the killing of the deceased. However, this witness admitted at paragraph-7 of his cross-examination that his statement was never recorded by the police. This witness also admitted at paragraph-10 of his cross-examination that the deceased had not made any complaint against the appellants in his presence.

23. P.W.3 has admitted at paragraph-2 of his examination-in-chief that on 02.10.1990, one Devendra Prasad



gave information about the killing of the deceased as well as disposing of her dead body and having got the aforesaid information, on 03.10.1990, he along with P.W.2 went to the village of the appellants. This witness further admitted that he inquired from the villagers and came to know that the deceased was killed and her dead body was disposed of. This witness at paragraph-9 of his cross- examination stated that Devendra Prasad is the son of Ganauri Prasad and is co-villager of the appellants. This witness stated that he had given information about the killing of his sister at Noorsarai Police Station orally but he had not given any written report to the Officer Incharge of the concerned police station. At paragraph-10 of his cross-examination, this witness admitted that he had only made inquiry about the killing of the deceased from Ramjee Prasad but aforesaid Ramjee Prasad had gone in the camp of the appellants.

24. P.W.4 Ramdev Prasad is the son of Ganauri Mahto. P.W.3 has admitted at para-9 of his cross-examination that P.W.4 has alias name as Devendra Prasad. This witness has been declared hostile and has not supported the prosecution story. Moreover, this witness has, nowhere, stated that he had given information about the death of the deceased to P.W.3. In cross-examination, this witness admitted that he is cousin of the deceased.



25. P.W.5 is Ramjee Prasad. This witness, too, has been declared hostile and has, nowhere, stated that P.W.3 had made inquiry from him about the death of the deceased.

26. Therefore, it is obvious from the above stated evidence that P.W.3 claimed about the death of the deceased on the basis of the information given by Devendra Prasad alias Ramdev Prasad (P.W.4) but the aforesaid Devendra Prasad alias Ramdev Prasad (P.W.4) as well as Ramjee Prasad (P.W.5) from whom P.W.3 collected the information about the death of the deceased have not supported the prosecution case. Therefore, there is nothing on the record to show that the deceased died of unnatural death. In our view, in the aforesaid circumstance, prosecution could not succeed to prove that the death of the deceased was unnatural.

27. No doubt, under Section 113-B of the Indian Evidence Act, there is presumption of dowry death but Section 113-B of the Indian Evidence Act, comes into play when the prosecution succeeds to prove that soon before her death such woman has been subjected by such person to cruelty or harassment for, or in connection with any demand for dowry. In the present case, as we have already discussed that the prosecution could not succeed to prove that the deceased was subjected to cruelty and harassment by the appellants soon before her death in connection with demand of dowry.



Therefore, in our view, the prosecution cannot take any advantage of Section 113-B of the Indian Evidence Act.

28. On the basis of the aforesaid discussions, we are of the view that the prosecution could not succeed to prove the charges levelled against the appellants beyond all shadows of reasonable doubts and, in our view, the impugned Judgment of conviction and sentence Order cannot sustain in the eye of law.

29. Accordingly, this criminal appeal is allowed and the impugned Judgment of conviction and sentence order are, hereby, set aside. The appellants are acquitted of the charges. The appellants are on bail. They are discharged from the liabilities of their respective bail bonds.

30. Let the copy of the first page and last page of this Judgment be handed over to Ms. Surya Nilambari, learned Amicus Curiae, so that she could make claim for her remuneration before the appropriate authority.

(Hemant Kumar Srivastava, J)

(Rajendra Kumar Mishra, J)

Pradeep Srivastava/-

AFR/NAFR	AFR
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