

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.601 of 2013

Arising Out of PS. Case No.-410 Year-2010 Thana- BANKA District- Banka

=====

Pankaj Sah @ Pankaj Kumar Gupta, S/o Ram Charitar Sah, R/o Village
Purani Bus Stand, Banka, P.S. & District Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

with

CRIMINAL APPEAL (DB) No. 294 of 2013

Arising Out of PS. Case No.-410 Year-2010 Thana- BANKA District- Banka

=====

Rekha Devi, W/o Ram Charitra Sah, R/o Village Purani Bus Stand, Banka,
P.S. & District- Banka

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

=====

Appearance :

(In CRIMINAL APPEAL (DB) No. 601 of 2013)

For the Appellant/s : Sri Achintya Anand, Advocate
Sri Ashok Kumar Verma, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

(In CRIMINAL APPEAL (DB) No. 294 of 2013)

For the Appellant/s : Sri Achintya Anand, Advocate
Sri Ashok Kumr Verma, Advocate

For the Respondent/s : Sri Ajay Mishra, A.P.P.

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA)

Date : 29-04-2019

1. The appellants in both the appeals were tried
together in Sessions Trial No. 119 of 2011 by learned Adhoc
Additional Sessions Judge IV, Banka and convicted by a



common judgment and as such both the appeals were taken up together for hearing and are being disposed of by us by this common judgment.

2. The appellants have preferred the appeal under Section 374 (2) of the Code Of Criminal Procedure, 1973 [hereinafter referred to as the “Cr.P.C.”] against the judgment dated 12.03.2013 passed by Shri N.K. Lall, learned Adhoc Additional Sessions Judge -IV, Banka [hereinafter referred to as the “trial court”] in Sessions Trial No. 119 of 2011 whereby by judgment dated- 12.03.2013 all the appellants were convicted under Section 304 -B, 498-A and 201 of the Indian Penal Code, 1860 (hereinafter referred to as the “I.P.C.”) and vide order dated -15.03.2013 under Section 304B of the I.P.C. the sole appellant- Pankaj Sah @ Pankaj Kumar Gupta in Cr. Appeal (D.B.) No. 601 of 2013 has been sentenced to undergo imprisonment for life and under Section 498A of the I.P.C. he has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 5000/- and further under Section 201 of the I.P.C. he has been sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs. 3000/- and in case of default in payment of fines he has further been



directed to undergo simple imprisonment for three months and two months respectively. Similarly, Cr. Appeal (D.B.) No. 294 of 2013 was filed by two appellants namely: Ram Charitra Sah and Rekha Devi however, appellant no. 1 - Ram Charitra Sah died during pendency of appeal and an interlocutory application vide I.A. No. 4 of 2019 was filed by learned counsel for the appellants informing us that appellant no. 1 has left for heavenly abode and accordingly by order dated 23.04.2019 in Cr. Appeal (D.B.) No. 294 of 2013 in respect of appellant no.1 namely Ram Charitra Sah the appeal stood abated and was disposed of. The remaining appellant in Cr. Appeal (D.B.) No. 294 of 2013 namely Rekha Devi was convicted and by order dated 15.03.2013 was sentenced under Section 304B of the I.P.C. to undergo rigorous imprisonment for ten years and further under Section 498A of the I.P.C. she was sentenced to undergo rigorous imprisonment for two years with a fine of Rs. 5000/- and under Section 201 of the I.P.C. she has been sentenced to undergo rigorous imprisonment for two years with a fine of Rs. 3000/- and in case of default in payment of fines she has been directed to undergo further simple imprisonment for three months and



two months respectively. All the sentences were directed to run concurrently by the learned trial court.

3. Short fact of the case is that on 17.11.2010 in the night at 9.35 P.M. *fardbyan* of Awadh Bihari Sah (P.W. 5), S/o Jagadish Prasad Sah resident of village- Gadi Devali, P.S. - Jama, District -Dumka (Jharkhand) was recorded by S.I. Arun Kumar Rai (P.W. 6), S.H.O., Banka P.S. at Banka Bazar in the house of Pankaj Kumar (appellant), S/o Ram Charitra Sah. It was disclosed that his daughter - Mamta, aged about 21 years was married to Pankaj Sah @ Pankaj Gupta (appellant), S/o Ram Charitra Sah of Banka Bazar about three years back. At the time of marriage to the best of the capacity of the informant gifts were given to the son-in-law of the informant but the informant's son -in-law was a greedy person and used to demand dowry regularly. It has further been stated that apart from the son-in-law of the informant, his father -Ram Charitra Sah and wife of Ram Charitra Sah were also used to demand dowry. On non fulfillment of demand of dowry they used to torture the daughter of the informant namely Mamta Devi and upon being fed up with the torture meted to Mamta Devi by her in-laws she had come to the informant's house at



Gadi Devali. Before *Diwali* the son-in-law of informant took his daughter after *bidai* to her matrimonial home and torture by mother- in- law, father- in- law and son -in- law of the informant again started. At about 6.00 O' Clock in the evening on the fateful day the mother -in- law of Mamta informed the informant on phone that Mamta has died due to gas cylinder burst and this information was also given by the son- in- law and his father to the informant. The informant has further stated that when he reached the house of his son -in- law at Banka he found his daughter -Mamta was lying near the stairs. Despite burn injury there was sign of wound apparent on the body of his daughter. On the scalp there was injury and in the mouth clothes were pushed. The informant got impression that Mamta was brutally assaulted first and thereafter clothes were pushed in her mouth and she was done to death and in order to conceal the evidence her entire body was put to flame. The informant asserted that in the death of her daughter, his son- in- law (Pankaj Gupta) , his father -Ram Charitra Sah and mother of Pankaj were involved and in order to mislead the informant wrong information was passed upon him. The informant after recording of the *fardbyan* read the same and



the same was also read over to him and after finding it correct in presence of his brother -Mohan Prasad Gupta (P.W. 4) he put his signature. As a witness to the *fardbyan* Mohan Prasad Gupta (P.W. 4) also put his signature.

4. On the basis of the said *fardbyan* a formal F.I.R. was registered on 17.11.2010 at 22.35 Hours (10.35 P.M.) vide Banka P.S. Case No. 410 of 2010 under Sections 304(B)/498(A)/201 of the I.P.C. read with Section 34 of the I.P.C. against three accused persons. After investigation Police submitted charge sheet on 22.01.2011 under Section 304B/498A and 201/34 of the I.P.C. against all the accused persons and cognizance of the offence was taken by learned Chief Judicial Magistrate, Banka by his order dated 27.01.2011. The case was committed to the court of Sessions on 03.02.2011 and charges were framed jointly on 28.03.2011 under Section 304(B), 201, 498“A” /34 of the I.P.C.

5. To establish its case prosecution examined nine witnesses. Out of which, P.W. 1 (Usha Devi) is the neighbour of accused persons, P.W. 2 (Bal Mukund Sah) is the uncle of deceased, P.W. 3 (Arun Prasad Sah) is another uncle of the deceased, P.W. 4 (Mohan Prasad Gupta) is uncle of deceased



being in village relation, P.W. 5 (Awadh Bihari Sah) is the father of the deceased and informant of the case. P.W. 2 to P.W. 4 after getting information had arrived along with P.W. 5- Awadh Bihari Sah at the place of occurrence. P.W. 7 (Shashi Bhushan Prasad Sah) and P.W. 8 (Navin Kumar Bhagat @ Ajeet Kumar Bhagat) are witnesses to the inquest report. P.W. 9 (Dr. Madan Kumar Pathak) has produced the post mortem report and has also proved the post mortem report. P.W. 6 (Arun Kumar Rai) is the Investigating Officer of the case.

6. After conclusion of the prosecution evidence incriminating circumstances and evidences collected during the trial were explained to the accused persons and accused persons were examined under Section 313 of the Cr.P.C. on 07.02.2013 in which they claimed to be innocent.

7. After placing evidence of all the witnesses Shri Achintya Anand, learned counsel, assisted by Sri Ashok Kumar Verma, learned counsel for the appellants has argued that prosecution has failed to establish the case beyond all reasonable doubts against the appellants and the learned trial court has committed error in passing the judgment of conviction and sentence against them. Learned counsel for the



appellants has vehemently stated that P.W. 1, P.W. 2 and P.W. 3 are hearsay witnesses and as such their evidence cannot be relied upon. He has further submitted that the doctor who had conducted post mortem examination has not been examined nor any explanation has been given as to whether the doctor is dead or alive. Accordingly it is submitted that cause of death is not certain. He further submitted that in view of the evidence of P.W. 3 (Arun Prasad Sah) in paragraph 8 of his cross examination it is evident that marriage was solemnized without dowry and it was a kind of model marriage. Accordingly learned counsel for the appellants submitted that it was not a case of dowry death and no body has seen the occurrence. He further submitted that while giving benefit of doubt this court may consider to pass an order of acquittal in favour of the appellants.

8. On the other hand Shri Ajay Mishra, learned Additional Public Prosecutor has submitted that there are enough material and evidence on record to convict the appellants and during the course of trial the prosecution has clearly established and proved the charges as against the



appellants and the learned trial court has rightly passed the judgment convicting the appellants in the present case.

9. After having heard learned counsel for the parties and minutely going through the evidences and materials on record we are *prima facie* satisfied that prosecution has established the case beyond all reasonable doubts and there is no reason for us to interfere with the impugned judgment of conviction and order of sentence however before giving our conclusive finding it is necessary to analyze the evidence on record.

10. P.W. 5 (Awadh Bihari Sah) is the informant and father of the deceased who in his evidence has stated in paragraph 1 that the occurrence had taken place on 17.11.2010 in the house of his son-in-law and mother -in-law (Rekha Devi) of the deceased had informed this witness on phone that his daughter has died due to gas cylinder burst. He further stated that marriage of Mamta was solemnized about three years back with Pankaj Kumar Gupta (appellant) as per Hindu Rites and at the time of marriage a lot of gifts were also given. In paragraph no. 2 of his evidence this witness has stated that after marriage Mamta (deceased) went to *Sasural* and about



one year she stayed over there. Subsequently Pankaj Gupta (appellant) started pressurizing his daughter to demand money from her parents and he used to quarrel with the daughter of this witness. In the process of making demand of dowry this witness stated that his daughter was being assaulted also. This witness stated that after his daughter being assaulted he took her to his place at Gadi Devali and after some time his son-in-law (Pankaj Gupta) came and told that he would not indulge in further assault and requested for *bidai* of his daughter -Mamta. *Bidai* of Mamta was just before *Diawali* and she stayed at Sasural from *Diwali* to *Chhath* and on 17.11.2010 the witness got the information regarding this occurrence on phone. The witness rushed to his son -in -law place and saw that Police personnel were there at Pankaj's house. In -laws family members of Mamta were not available at home. The witness along with Police party saw the dead body of Mamta on the stairs at first floor lying which was in naked condition with sign of burning. Hair was also burnt and clothes were pushed inside the mouth. There was wound behind the head and blood was clotted. There was smell of kerosene oil near the dead body and the information regarding death due to gas



cylinder burst was found to be incorrect. The reason behind the death was due to not meeting the demand of money made by the accused persons. The witness claimed that his son-in-law (Pankaj Gupta), mother of Pankaj Gupta i.e. Rekha Devi and his father -Ram Charitra Sah were involved in this case. The witness has identified his signature on the *fardbyan*, which has been marked as Ext. 1/1 and he also proved signature of his brother -Mohan Prasad Gupta (P.W. 4) which has been marked as Ext. 1. In paragraph 8 of his deposition the witness has stated that after marriage Mamta gave birth to three children out of which one is twins. When the witness reached the house of his son -in- law, elder son of deceased was sleeping and nobody else was available over there. The witness was cross examined at length but nothing could be extracted to raise doubt on the credibility of his evidence. On the contrary in cross -examination this witness has reiterated that the cloth which was in mouth of the deceased the outer portion of the same was burnt.

11. P.W. 2, P.W. 3 and P.W. 4, who all accompanied P.W. 5 up to the house of the appellant on the date of occurrence, have deposed in similar manner and we found



their statement to be consistent corroborating the statement of the informant- P.W. 5. Besides this, P.W. 2 (Bal Mukund Sah) in paragraph 8 of his cross examination has stated that Mamta had informed this witness about the torture made to her for dowry. Accordingly there is no need to elaborately discuss evidence of those witnesses who have already deposed like P.W. 5.

12. P.W. 1 (Usha Devi) is the neighbour of the deceased who in her deposition has stated that Mamta had got married with Pankaj about three years back and their house is adjacent to the house of this witness. She has further stated that two children of Mamta were crying near the house of Moti Sharma, who were taken by the daughter of this witness. Subsequently they were taken by the grandmother of the children in the night.

13. P.W. 7 (Shashi Bhushan Prasad Sah) and P.W. 8 (Navin Kumar Bhagat @ Ajeet Kumar Bhagat) are witnesses to the inquest report, who have proved their signature on the inquest report, which have been marked as Ext. 5 and 5/1 respectively. P.W. 8 has further stated that in the mouth of the deceased clothes were pushed.



14. P.W. 6 is the Investigating Officer of the case namely Arun Kumar Rai, who was posted on 17.11.2010 as the Officer-in-charge of Banka Police Station. He in his deposition has stated that information regarding occurrence was given by the father of the deceased Awadh Bihari Sah and *fardbyan* by him was recorded at the matrimonial house of the deceased on 17.11.2010 itself. This witness has proved the formal F.I.R. as well as endorsement on the *fardbyan* which are marked as Ext. 2 and 3 respectively. This witness further stated that after having got the information he visited the place of occurrence which was the house of Pankaj Sah @ Pankaj Kumar Gupta at Banka Bazar, Bhagalpur road where the dead body of the deceased was lying near the staircase. The body was badly burnt and was in naked condition. There was wound at the back of the head and clothes were pushed in the mouth of the deceased. He further stated that it looked like that the deceased was firstly killed and thereafter her dead body was burnt. The mobile phone of the relative of the deceased was found near the dead body and upon contact the relative of deceased informed that Pankaj Gupta had informed regarding the occurrence that the deceased had died due to



cylinder burst. The witness has proved the inquest report which has been marked as Ext. 4. The Investigating Officer had also examined the place of occurrence which has been explained in paragraph 6, 7 & 8 of his examination in chief. In paragraph 9 of his examination in chief the Investigating Officer has stated that there was no sign of any gas cylinder burst near the place of occurrence nor any smell of gas was felt. This witness was cross- examined but nothing could be extracted to demolish the evidence of the Investigating Officer.

15. It has been the case of appellants that deceased had died due to burn injury therefore it is necessary to elaborately deal with the medical evidence.

16. P.W. 9 (Dr. Madan Kumar Pathak), who on 18.11.2010 was posted as Medical Officer, Sadar Hospital, Banka and was present along with the doctor who had conducted post mortem examination on the dead body of Mamta Devi (deceased). This witness has proved the post mortem report, which is marked as Ext. 6. Ext. 6 i.e. post mortem examination report is reproduced hereinbelow:

“External



(i) singeins of the scalp hair and blackening of the skin whole body and both upper limb and both lower limb (except below ankle joint)

(ii) Kerosene oil odor (burn cloth preserved and sent to FSL, Patna)

(iii) Superficial burn whole body except ('L' shoulder up to 'L' arm) deep burn

(iv) vessication absent and erytheratone reatron absent

(v) face swollen

(vi) tight pack cotton cloth on the mouth

(vii) abrasion on 'R' side arm from (1) 1 1/2" x 1/2" (ii) 2" x 1 1/2"

(viii) abression on 'R' forsum above ankle joint 1/4" x 1/4"

Internal

(i) Extradural haemorrhage absent no skull bone

(ii) aspirated coal particle absent in nose, mouth, larynx and trachea (soot particle)

(iii) heart filled with blood 'R' side & 'L' empty

(iv) laryngeal oedema absent

(v) uterus - non gravid

Cause of death – Cardio respiratory arrest due to asphyxia. **This is a case of post mortem burn.**

Time since death – Approx more than 24 to 20 hours (due to hypostasis and R.M. not assessed)."

17. On examination of the post mortem examination report it is evident that the cause of death mentioned by the doctor is cardio respiratory arrest due to asphyxia. The doctor has further opined that this is a case of post mortem burn. On perusal of external injury no. (vi), (vii) and (viii) it is evident that on the scalp there was injury and tight pack cotton clothes were found in the mouth of the deceased. The medical evidence upon close scrutiny indicates that the deceased was



first murdered and thereafter effort was made to burn the dead body.

18. On close examination of oral as well as medical evidence we are of considered opinion that prosecution has been able to prove the charges against the appellants beyond all reasonable doubts in as much as the death had occurred within seven years of marriage. The deceased was found dead in the matrimonial house i.e. the house of the appellants and death was unnatural and it has been established by medical evidence that the daughter of the informant was firstly murdered and thereafter her body was burnt. It has also been established by the evidence that the deceased was being tortured for demand of dowry and was murdered and after committing murder all accused persons had fled away which establishes their involvement in the present case.

19. Under Section 113-B of the Evidence Act there is presumption as to dowry death. Section 113-B of the Evidence Act is quoted hereinbelow:-

“113-B. Presumption as to dowry death-
When the question is whether a person has committed the 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 the dowry death.



Explanation.- For the purposes of this section, “dowry death”, shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860).”

20. From the evidence discussed hereinabove it is evident that soon before the death of the victim she was subjected to torture and harassment for demand for dowry and the witnesses have clearly stated that soon after the marriage torture for demand for dowry had started and the husband of the deceased appellant – Pankaj Sah @ Pankaj Kumar Gupta in Cr. Appeal (D.B.) No. 601 of 2013 as well as father -in-law and mother-in-law namely: Ram Charitra Sah and Rekha Devi started demanding dowry regularly. The informant (P.W. 5) who is father of the deceased has categorically stated in his deposition that his daughter was being assaulted for dowry due to which she was taken to her *maika* by the father at Gadi Devali and after some time his son-in-law (Pankaj Gupta) came and told that he would not indulge in any further assault upon her and requested for *bidai* of the deceased (Mamta). *Bidai* of Mamta was just before *Diwali* and she stayed at Sasural from *Diwali* to *Chhath* and soon thereafter on 17.11.2010 the informant got information regarding the present occurrence on phone. It is common knowledge that



Diwali and *Chhath* is celebrated in the month of October -November and soon after *bidai* the deceased was done to death on 17th November 2010. The marriage was solemnized three years back from the date of occurrence and evidence has come that accused persons started demanding dowry immediately after the marriage which resulted in the death of the deceased in the house of appellants. Based upon the evidence and material on record we are convinced that the appellants have failed to rebut the presumption of law regarding dowry death of the deceased as enshrined in Section 113-B of the Evidence Act and hold the appellants responsible for the occurrence.

21. In the facts and circumstances as discussed hereinabove it is evident that the trial court has rightly passed the judgment of conviction and sentence and there is no reason to interfere with the same. Accordingly, judgment of conviction and order of sentence dated: 12.03.2013 and 15.03.2013 respectively passed by Shri N.K. Lall, learned Adhoc Additional Sessions Judge -IV, Banka in Sessions Trial No. 119 of 2011 [arising out of Banka P.S. Case No. 410 of



2010, G.R. No. 1764 of 2010] are hereby approved and both the appeals are dismissed.

22. Appellant - Rekha Devi in Cr. Appeal (D.B.) No. 294 of 2013 was earlier granted bail vide order dated 12.04.2013 by a Co-ordinate Bench and since judgment of conviction has been approved the bail bond of Rekha Devi is hereby cancelled and she is directed to surrender before the court below forthwith for serving remaining part of the sentence failing which the learned trial court shall be at liberty to take all steps for securing her presence for serving the sentence.

(Rakesh Kumar, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10-05-2019
Transmission Date	10-05-2019

