

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.422 of 2003

(Appeal against judgment of conviction dated 08.07.2003
and order of sentence dated 09.07.2003 passed in Sessions Case No.937
of 2001 by learned 3rd Additional Sessions Judge, Jamui).

Subodh Sao, Son of Late Gopal Sao, Resident of Village-Aliganj, Chandradip
(Sikandra), District-Jamui.

... .. Appellant/s

Versus

State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr.Umesh Prasad, Adv
	:	Mr.Mrityunjay Kumar,Adv
For the Respondent/s	:	Mr.Sunil Kumar Pandey, APP.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 14-05-2019

Heard learned counsel for the parties.

2. The sole appellant faced trial for offences under Sections 304B and 498A I.P.C. and was found guilty by the learned Trial Judge and ordered to undergo rigorous imprisonment for 10 years for offence under Section 304B I.P.C. and rigorous imprisonment for 3 years for offence under Section 498A I.P.C. The sentences have been directed to run concurrently.

3. The prosecution case as disclosed in the written report (Ext.2) of Manohar Sao (P.W.4) is that the daughter of the informant was married in Baisakh (April-May, 1998) with the appellant. After few months, the daughter-Punam informed that her inlaws including the appellant demand different articles as dowry. The informant went to her matrimonial house and pacified



the matter. After few days, the informant again got information that the inlaws are torturing her for non-fulfillment of dowry demand and the daughter is leading a life of torture and suffocation. The informant again went to his daughter, she detailed the demand by inlaws and was weeping, she stated that the inlaws are demanding scooter and threatens to kill her on non-fulfillment of dowry demand. Thereafter, the daughter of the informant came back to the house of the informant and she disclosed what was happening with her to all the family members. However, the informant again consoled her and sent her to her Sasural. On 25.04.1999, the informant got information that his daughter is ill in her matrimonial house. Since strike of the public transport was going on on that day, the informant could not visit there rather in the next morning, received information that his daughter has died in Jamui hospital. When the informant reached at Jamui Hospital, he found the dead body. Postmortem examination was done on the dead body and thereafter dead body was handed over to the informant. The informant alleges that the inlaws including the appellant have committed her murder by poisoning. The inlaws, who were available in the hospital, fled away as soon as the informant reached there.



4. On the basis of written report dated 08.05.1999, Chandradeep P.S. Case No.67 of 1999 was registered under Sections 498A, 304B/34 I.P.C. and 3/4 of the Dowry Prohibition Act against six FIR named accused person including the appellant. After investigation, the police submitted chargesheet only against the appellant on 03.10.2000 for offences under Sections 304B and 498A I.P.C. only and investigation was kept pending against other named accused person. On the same day i.e. 03.10.2000, the learned Magistrate took cognizance for offences aforesaid wherein the chargesheet was submitted. The case was triable by a court of Sessions, hence, it was committed for trial on 12.10.2001 and separate record was opened for those accused, against whom, the investigation was pending.

5. The learned Trial Judge framed charges for offences under Sections 304B and 498A I.P.C. on 11.01.2002.

6. The prosecution examined altogether five witnesses, P.W.1, Dr.S.K. Chaudhary had performed postmortem examination on the dead body of Punam Devi. The postmortem report is Ext.I. P.W.2-Manish Kumar is brother of the deceased. P.W.3, Radha Kumari is sister of the deceased and P.W.4-Manohar Sao, the informant of the case as well as father of the deceased. P.W.5-Madan Rai is a formal witness, who has proved the writing of the



police on the formal FIR and formal FIR has been marked as Ext.6.

7. After examination of the prosecution witnesses, the incriminating materials coming in the prosecution evidence was put to the appellant in his examination under Section 313 Cr.P.C. to which the appellant denied and claimed that he has been falsely implicated in this case. From the trend of cross examination to the witnesses of the occurrence, it appears that the suggestion of the defence is that there was dispute between accused and a co-villager of the informant and for that reason, false case was lodged. However, no defence evidence was produced in the trial.

8. The learned Trial Judge examined in details the prosecution evidences and came to the conclusion that the prosecution has established the charges against the appellant.

9. Learned counsel for the appellant submits that the learned Trial Judge did not consider the serious lacunae in the prosecution case inasmuch as the death took place on 26.04.1999. The postmortem examination was already performed on the same day and the written report was submitted to the police on 08.05.1999 and for this delay, there is no explanation rather suspicion is there that after deliberate thought over the matter, the FIR was lodged, just to pressurize the appellant and others. Next



contention is that there is lack of material on the record that death was result of cruelty or harassment “soon before” her death. Next contention is that the statement of the victim lady cannot be treated as dying declaration in the facts and circumstances of this case because there is no relation between the statement of the victim and her death. In the circumstance, the learned court below should not have relied on the statement of the victim lady. Further contention is that Investigating Officer of the case was not produced and examined by the prosecution, which has prejudiced the defence of the accused.

10. Per contra, learned counsel for the State contends that the learned Trial Judge has discussed and held that all the ingredients of offences under Sections 304B and 498A I.P.C. clearly established during the trial. The learned Trial Judge has further found that the aforesaid delay in lodging of the FIR is immaterial in view of the trustworthy and impeccable prosecution evidence available on the record.

11. P.W.4, the informant of this case, has deposed that victim Punam Devi was her daughter, she was married in the year 1998 with the appellant. After marriage, she went to her Sasural (matrimonial home) at Aliganj. After two months of stay thereat, the informant got information that the inlaws are demanding a



scooter as dowry. The information was given by victim Punam Devi. On receipt of the aforesaid information, the informant went there. The victim was weeping and stated that the inlaws are demanding a scooter. The informant consoled her and returned back. He further stated that on 25.04.1999, he got information of illness of Punam, but due to strike of public conveyance, he went to Jamui on 26.04.1999, where dead body of her daughter was there. Postmortem was performed. Thereafter, he lodged the case before the police. During cross examination, he stated that Punam had disclosed him that the female inmates of the house sometimes compelled her to live in the cowshed. Nothing material is there in further cross examination, wherein the informant stated that he does not remember the date of the individual incident of meeting with the daughter and her complaints. He further admitted that dead body was cremated by the informant and others and not by the inlaws. The witness denied the suggestion that due to some dispute between Sanjay Sao and the accused person, the false case has been lodged.

12. P.W.2, Manish Kumar, the brother of the deceased, has deposed that when the deceased was in her matrimonial home, the inlaws used to assault her. He specifically named the accused person including the appellant that they were demanding Scooter



and T.V. and on non-fulfillment of demand, they had threatened to kill to Punam. He further deposed that the accused person had demanded T.V. and Scooter, when this witness had gone to the Sasural of his sister. They had threatened to kill the victim on non-fulfillment of dowry demand. Thereafter, he has narrated the occurrence of 25.04.1999 when the family members got information of illness of Punam, however, due to strike of public transport, he could not go there and on 26.04.1999, got information that Punam is already dead now. Thereafter, his father and uncle had gone to the hospital. There is nothing in other paragraphs of cross examination of this witness to disbelieve his veracity and trustworthiness.

13. P.W.3-Radha is sister of the deceased. She has supported that the victim was married in the year 1998 with the appellant. When the victim was residing in her matrimonial house, she had informed on phone that inlaws demand a Scooter. When the victim returned to her father's house, she disclosed to everyone that the inlaws demands Scooter and they assault her for non-fulfillment of the demand. In the cross examination, she stated that Punam had disclosed her miseries to her friend also, who was already married thereafter and was residing in her Sasural.



14. P.W.1, Dr. S.K.Choudhary, has deposed that on 26.04.1999, he was posted at Sadar Hospital Jamui and on that day, the Civil Surgeon, Jamui constituted a Board of Doctors for conducting postmortem examination on the dead body of Punam, wife of Subodh Sao, R/o Village-Aliganj (Sonkhar), P.S.-Chandradeep, District-Jamui and the Board consisted of three Doctors namely Dr.Jawahar Prasad Singh, Dr.Binod Kumar Singh and P.W.1. The Board found the following:

(A) Rigourmortis partially present, inpassing of stage-greenish colour of abdominal skin in both eliac fossa, Neck and both legs.

(B)(i)Blood stained cloth with foul smell present in mouth and both nostril.

(ii)Fecal matter with foul smell present around genital and anal region.

(iii) Face was congested.

(iv)2"x 3"x abrasion present on the right knee in front.

(v) Abrasion present on the right elbow each measuring 1 ½"x 1" and 1"x ½".

(vi) Postmortem blisters were present over both thighs and buttocks.



Injury No.IV and V were antemortem in nature caused by hard and blunt substance.

(C) Cause of death was due to insertion of organo phosphorous compound, leading to cardio respiratory failure.

(D) Viscera were preserved for chemical examination for confirmation of cause of death.

(E) Viscera of liver, spleen, heart, lungs, kidney, uterus and stomach with its contents were preserved.

(F) Time elapsed since death till postmortem between 24 to 36 hours.

15. The witness stated that the opinion was opinion of the Board and organo phosphorous compound is a poisonous substance which may cause death. In the cross examination, he clarified that Organo Phosphorous is an insect killing compound. Diarrhoea is not one of the important symptoms in case of organo phosphorous compound. He further stated that he had not mentioned in the report about finding on any kerosene or garlic like smell. He further disclosed the viscera report was not received by him.

16. Thus from evidence of P.W.1, it is evident that death of Punam was not under normal circumstances.

17. Section 304B(1) defines dowry death as follows:



304-B. 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.”*

18. In the present case, (a) the death of Punam was result of bodily injury found by P.W.1 and certainly occurred otherwise than under normal circumstances. (b) The death took place within a year of her marriage. (c) The prosecution evidence shows that soon before her death, she was subjected to cruelty or harassment by her husband and relatives of the husband. (d) The cruelty or harassment was for and in connection with, demand of dowry.

19. In **Kans Raj Vs. State of Punjab**, reported in (2000)5 SCC 207, the Hon’ble Supreme Court in paragraph-10 of the judgment said that “as and when the aforesaid circumstances



are established, a presumption of dowry death shall be drawn against the accused under Section 113-B of the Evidence Act. It has to be kept in mind that presumption under Section 113-B is a presumption of law. We do not agree with the submissions made by Mr Lalit, learned Senior Counsel for the accused that the statement made by the deceased to her relations before her death were not admissible in evidence on account of the intervening period between the date of making the statement and her death.”

20. In **Kans Raj** Case, the victim was married on 09.07.1985 and was found dead on 23.10.1988 at the residence of her inlaws. The death was found to have occurred not under ordinary circumstances. The evidence of the brother of the deceased disclosed that demand of cash and Scooter as well as a Refrigerator was raised by the accused person and the victim had expressed danger to her life.

21. Hon’ble Supreme Court further held;

“16. No presumption under Section 113B of the Evidence Act would be drawn against the accused if it is shown that after the alleged demand, cruelty or harassment the dispute stood resolved and there was no evidence of cruelty, and harassment thereafter. Mere lapse



of some time by itself would not provide to an accused a defence, if the course of conduct relating to cruelty or harassment in connection with the dowry demand is shown to have existed earlier in time not too late and not too stale before the date of death of the woman. The reliance placed by the learned counsel for the respondents on Sham Lal v. State of Haryana [1997 (9) SCC 579] is of no help to them, as in that case the evidence was brought on record to show that attempt had been made to patch up between the two sides for which Panchayat was held in which it was resolved that the deceased would go back to the nuptial home pursuant to which she was taken by the husband to his house. Such a Panchayat was shown to have held about 10 to 15 days prior to the occurrence of the case. There was nothing on record to show that the deceased was either treated with cruelty or harassed with the demand of dowry during the period between her having taken to the nuptial home



and her tragic end. Such is not the position in the instant case as the continuous harassment to the deceased is never shown to have settled or resolved.”

22. In the case in hand, evidence has come that demand of dowry and torture for the same continued till death without any break. Thus, the presumption of law is there against the appellant and the appellant has failed to rebut the said presumption.

23. The statement of the victim regarding demand of dowry and torture for the same is relevant and admissible under Section 32(1) of the Evidence Act inasmuch as the statement relates to the circumstances of the transaction which resulted in her death. The application of Section 32 of the Evidence Act was also considered in **Kans Raj** Case aforesaid. The Hon'ble Supreme Court referred to the earlier judgments on the issue and paragraph-21 of one of the judgments was reproduced as follows:

“21. Thus, from a review of the authorities mentioned above and the clear language of Section 32(1) of the Evidence Act, the following propositions emerge:



(1) Section 32 is an exception of the rule of hearsay and makes admissible the statement of a person who dies, whether the death is a homicide or a suicide, provided the statement relates to the cause of death, or exhibits circumstances leading to the death. In this respect, as indicated above, the Indian Evidence Act, in view of the peculiar conditions of our society and the diverse nature and character of our people, has thought it necessary to widen the sphere of Section 32 to avoid injustice.

(2) The test of proximity cannot be too literally construed and practically reduced to a cut-and-dried formula of universal application so as to be confined in a straitjacket. Distance of time would depend or vary with the circumstances of each case. For instance, where death is a logical culmination of a continuous drama long in process and is, as it were, a finale of the story, the statement regarding each step directly connected with the end of the drama would be admissible because the entire statement would



have to be read as an organic whole and not torn from the context. Sometimes statements relevant to or furnishing an immediate motive may also be admissible as being a part of the transaction of death. It is manifest that all these statements come to light only after the death of the deceased who speaks from death. For instance, where the death takes place within a very short time of the marriage or the distance of time is not spread over more than 3-4 months the statement may be admissible under Section 32.

(3) The second part of clause (1) of Section 32 is yet another exception to the rule that in criminal law the evidence of a person who was not being subjected to or given an opportunity of being cross-examined by the accused, would be valueless because the place of cross-examination is taken by the solemnity and sanctity of oath for the simple reason that a person on the verge of death is not likely to make a false statement unless there is strong



evidence to show that the statement was secured either by prompting or tutoring.

(4) It may be important to note that Section 32 does not speak of homicide alone but includes suicide also, hence all the circumstances which may be relevant to prove a case of homicide would be equally relevant to prove a case of suicide.

(5) Where the main evidence consists of statements and letters written by the deceased which are directly connected with or related to her death and which reveal a tell-tale story, the said statement would clearly fall within the four corners of Section 32 and, therefore, admissible. The distance of time alone in such cases would not make the statement irrelevant.”

24. In **Sharad Birdhichand Sarda** Case reported in **(1984)4 SCC 116**, the Hon’ble Supreme Court observed in paragraph-15 of the judgment as follows:

“15. It is enough if the words spoken by the deceased have reference to any circumstance which has connection with any of the



transactions which ended up in the death of the deceased. Such statement would also fall within the purview of Section 32(1) of the Evidence Act. In other words, it is not necessary that such circumstance should be proximate, for, even distant circumstances can also become admissible under the sub-section, provided it has nexus with the transaction which resulted in the death.”

25. In view of the legal position discussed above, the statement of victim-Punam relating to circumstances leading to her death, made to her father, brother and sister and other friends before her death are admissible in evidence under Section 32 of the Evidence Act. Moreover the dying declaration is corroborated by P.W.2 so far demand of dowry was there.

26. In paragraph-15 of the judgment in **Kans Raj** Case, the Hon’ble Supreme Court examined scope and applicability of the term “soon before” appearing in Section 304B I.P.C. and held as follows:

“15. It is further contended on behalf of the respondents that the statements of the deceased referred to the instances could not



be termed to be cruelty or harassment by the husband soon before her death. "Soon before" is a relative term which is required to be considered under specific circumstances of each case and no straitjacket formula can be laid down by fixing any time-limit. This expression is pregnant with the idea of proximity test. The term "soon before" is not synonymous with the term "immediately before" and is opposite of the expression "soon after" as used and understood in Section 114, Illustration (a) of the Evidence Act. These words would imply that the interval should not be too long between the time of making the statement and the death. It contemplates the reasonable time which, as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but



normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be “soon before death” if any other intervening circumstance showing the non-existence of such treatment not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough”.

27. The evidences available on the record clearly establish that daughter of the informant died an unnatural death in her matrimonial home within a year of her marriage and she was



persistently subjected to cruelty and harassment for dowry during this short period. Hence, the onus shifted on the appellant to produce evidence to rebut the aforesaid presumption. In this case, there is no evidence brought on the record in rebuttal, hence, I am also of the opinion that this is a fit case for conviction of the appellant.

28. Though learned counsel for the appellant contended that Investigating Officer was not brought in court by the prosecution, however learned counsel has failed to point out any prejudice for non-examination of the I.O. There is no serious contradiction in the evidence of the witnesses of the occurrence before the Court to that of made before the police. Since dead body was first found at the hospital and the postmortem report reveals a case of homicidal death or at least unnatural death not occurring in normal circumstances, hence, place of occurrence was immaterial to prove the charge under Section 304B and 498A I.P.C. Therefore, in my view, non-examination of the I.O. has not prejudiced the defence of the appellant and the law is well settled that non-examination of the I.O. does not prove necessary fatal to the prosecution case unless prejudice is shown by the accused. Reference may be made to the case of **Dashrath Mandal and 3 Ors Vs. The State of Bihar**, reported in **1993 (1) PLJR 737**.



29. There is no need to emphasize that there is ample evidence that the victim was subjected to cruelty by the appellant and others. Hence, punishment under Section 498A I.P.C. is also well justified.

30. Though the learned Trial Judge has not taken into consideration the mitigating and aggravating circumstances while awarding sentences nor there is material brought on the record to prove mitigating and aggravating circumstances, however, the learned Trial Court has adopted middle way in choosing the sentences for the appellant. Hence, this Court is not inclined to interfere with the sentences awarded.

31. Accordingly, this appeal stands dismissed. Bail bond of the appellant stands cancelled. Appellant is directed to immediately surrender to serve out the remaining sentences. The learned Trial Judge shall take suitable step for apprehension of the appellant to serve out the remaining sentence.

(Birendra Kumar, J)

Nitesh/-

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