

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.658 of 2017

Arising Out of PS. Case No.-288 Year-2014 Thana- UCHKAGAON District- Gopalganj

Amrendra Ram, Son of Late Raghubar Ram, resident of village- Dahibhatta,
P.S.- Uchkagaon, District - Gopalganj

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Uday Pratap Singh-Advocate Mr. Irshad Ahmad Khan-Advocate
For the Respondent/s	:	Mr. Binod Bihari Singh-A.P.P.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

18-07-2019

Appellant Amrendra Ram has been found guilty for an offence punishable under Section 304B/ 34 of the I.P.C. and sentenced to undergo R.I. for seven years, Section 201/34 of the I.P.C. and sentenced to undergo R.I. for three years as well as to pay fine appertaining to Rs.10,000/- and in default thereof, to undergo S.I. for three months, additionally, with a further direction to run the sentences concurrently by the 2nd Additional Sessions Judge, Gopalganj in Sessions Trial No.262 of 2015 arising out of Uchkagaon P. S. Case No.288 of 2014 vide judgment of conviction dated 18.01.2017 and order of sentence dated 21.01.2017.

2. Salhanta Kunwer (PW-6) filed written report on 10.12.2014 disclosing therein that her daughter Reena Devi,



since deceased, was married with Amrendra Ram about four years ago as per Hindu rites and rituals and since thereafter, she was residing at her sasural. Even having gifted according to means at the time of marriage, the husband and other family members persistently continued with demand of Rs.50,000/- as dowry and for that, they used to threat that in case of non-payment of the aforesaid amount, she will not be allowed to stay. Anyhow, on 28.11.2014, she had transferred Rs. ten thousand to the account of Amrendra Ram bearing A/c No.11817506767. Even then, Amrendra Ram, his elder brother Murari Ram and wife of Murari Ram continued with torturing her in the background of the fact that why such meager amount has been deposited. All of a sudden, neighbour of her daughter informed over mobile on 10.12.2014 disclosing death of Reena Devi, whereupon they all rushed. After arrival, they found dead body of her daughter had already been burnt.

3. After registration of Uchkagaon P. S. Case No.288 of 2014, investigation commenced and after concluding the same, chargesheet has been submitted only against the appellant on the pretext of being under judicial custody keeping investigation pending against Murari Ram as well as his wife, facilitating the trial, meeting with the ultimate result, subject



matter of instant appeal.

4. Defence case, as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. However, neither ocular nor documentary evidence has been adduced on behalf of defence.

5. In order to substantiate its case, prosecution has examined altogether six PWs, who are PW-1, Ramayan Singh, PW-2, Ram Pravesh Singh, PW-3, Rama Shankar Ram, PW-4, Chhotan Ram, PW-5, Mohan Ram and PW-6, Salhanta Kunwer. No documentary evidence has been exhibited at the end of the prosecution. In likewise manner, neither oral nor documentary evidence has been adduced on behalf of defence.

6. While assailing the judgment of conviction and sentence, it has been submitted at the end of the appellant that prosecution has miserably failed to substantiate its case on account thereof, the finding so recorded by the learned lower Court could not survive. In order to substantiate such plea, it has been submitted that I.O. has not been examined. On account of non-examination of the I.O., the defence has sustained serious prejudice. In likewise manner, it has also been argued that co-villager of the appellant, who are PW-1 and PW-2 have not



supported the case of the prosecution. The remaining witnesses, PW-3, PW-4, PW-5 and PW-6 are kith and kin of the deceased on account thereof, being interested, their evidences should not be accepted.

7. Apart from this, it has also been submitted that when their evidences are minutely scrutinized, it is apparent that they have not proved and satisfied the mandatory requirement of law in order to attract the offence under the dowry death much less in terms of presumption as prescribed under Section 113B of the Evidence Act. Consequent thereupon, the judgment impugned should be set aside.

8. On the other hand, learned Additional Public Prosecutor while supporting the finding recorded by the learned lower Court has submitted that after going through the same, it is evident that the learned lower Court had meticulously examined the evidences having on the record in consonance with the ingredients attracting Section 304B of the I.P.C. That being so, the judgment is fit to be confirmed.

9. Before coming to the evidences, it looks desirable to have a glance over *Section 304-B of the I.P.C.* in order to properly identify the ingredients prescribed therefor. After having proper scrutiny of Section 304B of the I.P.C., it is



apparent that following ingredients are to be satisfied:-

I) The death should be within seven years of marriage.

II) By burnt or bodily injury or otherwise than in natural circumstance.

III) Before death, the deceased was subjected to cruelty/ torture.

IV) The aforesaid cruelty/ torture should be in the background of demand of dowry.

V) By the husband or relative of the husband.

If those ingredients are satisfied, then in that circumstance, it could be considered as a dowry death in accordance with Section 113B of the Evidence Act subject to rebut at the end of the accused.

10. Now, coming to evidence available on the record, it is needless to say that all the witnesses PW-1 to PW-6 have shown the deceased Reena Devi to be the wife of the appellant/ accused and death within seven years of marriage. Though, PW-1 and PW-2 being co-villager deflected from their earlier statement, whereupon were declared hostile, but out of them, PW-1 has admitted the death, but by way of stomachache. From the suggestion having given to the respective PWs, it is evident that appellant had not challenged the factum of death within seven years of marriage and for that, PW-3, PW-4, PW-5 and PW-6 were suggested that she died of an ailment. Nothing is



on the record in order to substantiate the same. Even then, the death otherwise than in normal circumstance is on the record. That means to say, two ingredients, the death within seven years of marriage and death otherwise than normal circumstance is found duly admitted/ substantiated.

11. Now, the remaining ingredients have to be seen. **PW-3** has stated that there was demand of Rs.50,000/- and for that, deceased was being tortured. His sister had given Rs.10,000/-. Even then, the demand continued and lastly, deceased was done to death on that very pretext. On that very score, at Para-16, he was cross-examined wherein he had stated that the demand was orally, which his sister had disclosed to him, but he is unable to disclose the exact time. In Para-17, he had stated that what he had seen with regard thereto, he has deposed. Rest will be disclosed by his sister. **PW-4**, during his examination-in-chief has stated that after marriage, demand originated, continued and for that, deceased was tortured. The accused persons were demanding Rs.50,000/-. Anyhow, his Mausi had deposited Rs.10,000/- in the account of Amrenda Ram. The accused persons became furious on deposit of such meager amount, whereupon they began to adorn severe kind of cruelty over the deceased and lastly, they caused murder of the



deceased. During cross-examination at Para-3, he has stated that Mausī had deposited the amount after informing him. Rest part of allegation having at the end of the PW-4 was not at all tested by way of cross-examination. **PW-5**, during his examination-in-chief, has stated that when deceased had gone to her sasural after marriage, the accused persons began to advance demand of Rs.50,000/-, out of the same, Rs.10,000/- was paid. Even then, the accused persons continued with torture, which lastly culminated in murder of the deceased. During cross-examination, it is evident that this part of disclosure has not been tested by way of cross-examination. **PW-6** is the informant, who has deposed that after the marriage, the accused persons advanced Rs.50,000/- in lieu of dowry and on account of non-fulfilment thereof, they caused murder of the deceased. During cross-examination, she has stated at Para-2 that victim visited her place only after having been subjected to cruelty by causing assault over her. She has further stated that she had paid Rs.10,000/- through ATM to the appellant/ accused Amrendra Ram. She has further stated that her daughter used to telephone her and that part of evidence has not been challenged.

12. From the evidence available on the record, it has become crystal clear that witnesses have not been properly



cross-examined over the demand of dowry to a tune of Rs.50,000/- and further, there happens to be no denial nor even been suggested that no demand of dowry was there and Rs.10,000/- was not paid in lieu of demand. Consequent thereupon, that part of evidence is found admitted one. In ***Gian Chand & others vs. State of Haryana reported in 2013(4) P.L.J.R. 7 (S.C.)***, the Hon'ble Apex Court considering the complex question having been arisen on account of non-cross-examination of a witness on a particular point and explained the same:-

“11. The effect of not cross-examining a witness on a particular fact/circumstance has been dealt with and explained by this Court in Laxmibai (Dead) Thr. L.Rs. & Anr. v. Bhagwanthuva (Dead) Thr. L.Rs. & Ors., AIR 2013 SC 1204 observing as under:

“31. Furthermore, there cannot be any dispute with respect to the settled legal proposition, that if a party wishes to raise any doubt as regards the correctness of the statement of a witness, the said witness must be given an opportunity to explain his statement by drawing his attention to that part of it, which has been objected to by the other party, as being untrue. Without this, it is not possible to impeach his credibility. Such a law has been advanced in view of the statutory provisions enshrined in Section 138 of



the Evidence Act, 1872, which enable the opposite party to cross-examine a witness as regards information tendered in evidence by him during his initial examination in chief, and the scope of this provision stands enlarged by Section 146 of the Evidence Act, which permits a witness to be questioned, inter-alia, in order to test his veracity. Thereafter, the unchallenged part of his evidence is to be relied upon, for the reason that it is impossible for the witness to explain or elaborate upon any doubts as regards the same, in the absence of questions put to him with respect to the circumstances which indicate that the version of events provided by him, is not fit to be believed, and the witness himself, is unworthy of credit. Thus, if a party intends to impeach a witness, he must provide adequate opportunity to the witness in the witness box, to give a full and proper explanation. The same is essential to ensure fair play and fairness in dealing with witnesses.” (Emphasis supplied)

(See also: Ravinder Kumar Sharma v. State of Assam & Ors., AIR 1999 SC 3571; Ghasita Sahu v. State of Madhya Pradesh, AIR 2008 SC 1425; and Rohtash Kumar v. State of Haryana, JT 2013 (8) SC 181).”

13. After giving anxious consideration to the materials available on the record, it is abundantly clear that the prosecution has succeeded in substantiating the case on account



thereof, the instant appeal sans merit and is accordingly, dismissed. Appellant is under custody, which he will remain till saturation of the period of the sentence.

(Aditya Kumar Trivedi, J)

Vikash/-

AFR/NAFR	A.F.R.
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