

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Appeal (SJ) No.892 of 2016

Arising Out of PS. Case No.-10 Year-2010 Thana- PAROO District- Muzaffarpur

-
1. Ram Awadhesh Tiwary, son of Late Raghunath Tiwary.
 2. Gayatri Devi, wife of Sri Ram Awadhesh Tiwary
 3. Subhash Tiwary, son of Sri Ram Awadhesh Tiwary.
- All resident of Village Bishunpur Jeevnarain, Police Station Paroo, in the district of Muzaffarpur.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Akhileshwar Prasad Singh, Sr. Adv. Mr. Bimal Kumar, Adv. Mr. Surendra Prasad Singh, Adv.
For the State	:	Mr. Binod Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date : 29-01-2019

1. Appellants, Ram Awadhesh Tiwary, Gayatri

Devi and Subhash Tiwary have been found guilty for an offence punishable under Section 304B/34 of the IPC and each one has been sentenced to undergo R.I. for 10 years as well as to pay fine appertaining to Rs.25,000/- in default thereof to undergo R.I. for two years vide judgment of conviction dated 30.08.2016 and order of sentence dated 03.09.2016 passed by Additional Sessions Judge-XII, Muzaffarpur in Sessions Trial No.680/2003.

2. Madhusudan Tiwari (PW.7) gave his fardbeyan on 27.01.2010 at about 10:00 PM at the house of Ram Awadhesh Tiwari (appellant no.1) near the dead body of his daughter Rinku, wife of Subhash Tiwary disclosing therein that his daughter Rinku Devi has been married with Subhash Tiwary in the year 2004 and



at that very occasion he had gifted the valuables according to his means. After marriage, his daughter come to her Sasural. Spending short span of time at her Sasural her husband, mother-in-law, father-in-law, Bhaisur and Debar began to torture her for procurement of demand of dowry and having non-fulfillment thereof lastly, they ousted her and for that, his daughter had instituted a case of torture against them which is still pending. However, at the intervention of Panches, his daughter was taken away to her Sasural and during course of stay, she begotten a daughter. Subsequently thereof, his daughter has again been subjected to torture by her husband, father-in-law, mother-in-law, Bhaisur, Debar along with other family members and at that very moment, they demanded Rs.50,000/- in cash as well as a splendor motorcycle. Because of the fact that he was unable to fulfill their demand and on account thereof, his daughter was severely tortured. Lastly, his son-in-law, Subhash Tiwary, got himself remarried. Even thereafter, his daughter was continued with torture and cruelty. Today about 04:00 PM his daughter telephonically informed that her mother-in-law, father-in-law, Bhaisur and Debar are severely assaulting her. After few hours, at about 06:00 PM somebody from her Sasural village has informed him telephonically that her husband, mother-in-law, father-in-law,



Debar, Bhaisur caused her murder by burn after sprinkling K.oil as well as litting fire. He along with his family members rushed to the place. After arrival, they have seen all the family members absconding. Dead body of his daughter was lying over chowki in burnt condition. On query he came to know that his daughter has been murdered by her husband Subhash Tiwary, mother-in-law Gayatri Devi, father-in-law Ram Awadhesh Tiwary, cousin Ram Pravesh Tiwary, Ramadhar Tiwary, Anita Devi, Shekhar Tiwari, Baby Devi, second wife of Subhash Tiwary.

3. After registration of Paru P.S. Case no.10/2010 investigation commenced and after concluding the same, charge sheet has been submitted 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 of complete denial of the occurrence. It has further been pleaded that deceased died of natural death but, the prosecution party being frustrated as they failed to squeeze the exorbitant demand, got this case filed with false and frivolous allegation. Then there happens to be specific plea with regard to other accused (since acquitted) that they were separate in mess and business from the family of these accused persons and on that



very score two witnesses that means to say DW.1 Rajesh Kumar and DW.2 Dinesh Kumar Pathak have been examined.

5. In order to substantiate its case altogether eleven Pws have been examined on behalf of prosecution who are PW.1-Harendra Singh, PW.2-Narendra Singh, PW.3-Sanjay Kumar Singh, PW.4-Shambhunath Tiwary, PW.5-Devendra Singh, PW.6-Kabindra Singh, PW.7-Madhusudan Tiwary, PW.8-Shyam Nandan Jha, PW.9-Dr. Bipin Kumar, PW.10-Krishna Nand Tiwary, PW.11-Muneshwar Das. Side by side has also exhibited the Ext.1 Series-Signature of relevant officials informant over the fardbeyan, formal FIR, Ext.1/1-is fardbeyan, Ext.2-Formal FIR and Ext.3-postmortem report. As stated above, two Dws DW.1-Rajesh Kumar, DW.2-Dinesh Kumar have been examined but their evidences are worthless for the present purpose.

6. The learned counsel for the appellant has submitted that virtually it happens to be a case of no evidence and that being so, the judgment of conviction and sentence recorded by the learned lower court is not at all maintainable. In order to buttress such plea, it has been submitted that right from PW.1 to PW.6 have been declared hostile. They have not supported the case of the prosecution. PW.8 is the formal witness and the same status also happens to be with regard to PW.9 Dr. Bipin Kumar,



PW.11-Muneshwar Das is the part I.O. who had simply submitted charge sheet. That means to say apart from aforesaid status of the witnesses as indicated herein above, the doctor who held postmortem has not been examined nor the I.O. In the aforesaid background, it has been submitted that only two witnesses that means to say PW.7 the informant and PW.10 his son-in-law remain who too, after going through their cross-examination, failed to substantiate the same. That being so, the judgment of conviction and sentence recorded by the learned lower court is fit to be set aside.

7. On the other hand, the learned APP while controverting the submission having been made at the end of the appellant has submitted that there happens to be no denial at the end of the appellant that deceased died at their place by burn, within seven years of marriage. It has also been submitted that PW.7 and PW.10 have visited the place of the accused persons and they found the dead body of the deceased in burnt condition. In likewise manner appellants have not controverted the pendency of criminal case having at the end of the deceased under section 498A along with other allied section prior to present episode and that being so, all the ingredients prescribed for attracting the section 304B of the Evidence Act is found duly satisfied.



Furthermore, in the aforesaid background the appellants were under obligation in terms of Section 113B of the IPC to rebut the allegation which they failed and on account thereof, the judgment of conviction and sentence recorded at the end of the learned lower court is fit to be confirmed.

8. In Jagjit Singh v. State of Punjab reported in **AIR 2018 SC 5719**, it has been held:

“24. A reading of Section 304-B of the IPC along with Section 113-B of the Evidence Act would establish that once the prosecution shows that soon before the death of the wife, she has been subjected to cruelty or harassment for or in connection with any demand for dowry, the court shall presume that such person caused the dowry death within the meaning of Section 304-B IPC. The words 'shall presume' in Section 113-B of the Evidence Act, while it mandates that the Court is duty bound to proceed on the basis that the person has caused the dowry death, the presumption is rebuttable and it is open to the relative to prove that the ingredients of Section 304-B IPC are not satisfied. See in this regard, the following statement of law contained in the case of G.V. Siddaramesh v. State of Karnataka 2010 (3) SCC 152:

"26. Section 113-B of the Evidence Act raises a presumption against the accused and reads:

"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)."

A reading of Section 113-B of the Evidence Act shows that there must be material to show that soon before the death of woman, such woman was subjected to cruelty or harassment for or in connection with demand of dowry, then only a presumption can be drawn that a person has committed the dowry death of a woman. It is then up to the appellant to discharge this



presumption."

25. We may also notice the statement of law contained in the decision of this Court in the case of Ashok Kumar v. State of Haryana reported in 2010 (12)SCC 350 which reads as under:

"24. Of course, deemed fiction would introduce a rebuttable presumption and the husband and his relatives may, by leading their defence and proving that the ingredients of Section 304-B were not satisfied, rebut the same. While referring to raising of presumption under Section 304-B of the Code, this Court, in Kaliyaperumal v. State of T.N.:(2004) 9 SCC 157: 2004 SCC (Cri) 1417, stated the following ingredients which should be satisfied: (SCC p. 162, para 4)

"(1) The question before the court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence under Section 304-B IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

9. In the aforesaid background, the obligation having over the prosecution is to tender evidence with regard to an offence punishable under section 304B of the IPC on following aspect.

(a) death should be within seven years of marriage

(b) By bodily injury or burn or otherwise than normal circumstance.

(c) Soon before her death she was subjected to torture.

(d) The aforesaid torture should be with regard to demand of dowry.



(e) By her husband or relative of the husband.

If the aforesaid ingredients are found duly substantiated at the end of the prosecution then, in that circumstance, in terms of Section 113B of the Evidence Act, it would be deemed to be a dowry death and such presumption is to be rebutted by the accused persons to the extent of preponderance of probability. If succeeds then in that circumstance, they would be entitled for acquittal otherwise, under the banner of legal fiction presumption, will go against them whereunder they are to be convicted and sentenced for the dowry death.

10. Now coming to the facts of the case the learned counsel for the appellant rightly pointed out that PW.1 to PW.6, the co-villager of the appellants did not support the case of the prosecution so, declared hostile but, they have not even cross-examined by the appellants in order to procure cause of death of deceased. Being co-villager it was expected at their end at least at the end of the appellant to have a positive evidence during course of cross-examination that deceased died of natural death/accidental death.

11. Admittedly doctor has not been examined. The postmortem report has been brought up on record through PW.9, a doctor of the same institution. However, during course of his evidence, prosecution failed to bring on record the ingredients



whereunder his evidence could have been admissible in the eye of law more particularly under section 32 of the Evidence Act, and those are Prosecution could not bring on record that doctor Mustaque Ahmad had retired, whereabouts is not known whether he died and so, postmortem report could not be said to be admissible in the eye of law. However, from the evidence, statement recorded under Section 313 Cr.P.C, it is evident that death by burn at their place is not at all denied by the appellants. That being so, non-examination of doctor is not at all found effaceable to the prosecution. Furthermore, it is evident that I.O. has not been examined. Defence could not be able to bring on record, even during course of argument that due to non-examination of the I.O. their interest has been prejudiced. Contrary to it, it is evident that on account of witnesses turning hostile, the interest of the prosecution is found prejudiced. Apart from the same, from the evidence of PW.7 as well as PW.10 who had deposed on merit of the case, there happens to be no contradiction or embellishment and so non-examination of I.O. could not be found a dent in the prosecution case coupled with the fact that neither manner nor P.O. has been disputed. In **Baldev Singh v. State of Haryana** reported in **2016 Cr.L.J. 154**, it has been held:



“16. Contention at the hands of the learned Senior Counsel for the appellant is that non-examination of Chander Singh-SI who prepared rukka and who investigated the case raises serious doubts about the prosecution case. Material on record would show that Chander Singh-SI who investigated the case was not examined by the prosecution in spite of several opportunities. No doubt, it is always desirable that prosecution has to examine the investigating officer/police officer who prepared the rukka. Mere non-examination of investigating officer does not in every case cause prejudice to the accused or affects the credibility of the prosecution case. Whether or not any prejudice has been caused to the accused is a question of fact to be determined in each case.”

12. Now remains the evidence of PW.7 and PW.10.

PW.7 is the informant. During his examination-in-chief he has stated that Rinku was his daughters he was married with Subhash Tiwary in the year 2004. After marriage, she had gone to her Sasural. She stayed for six months in congenial atmosphere at her Sasural but, thereafter, father-in-law, Ram Pravesh Tiwary, his wife, Ram Awadhesh Tiwary, Ramadhar Tiwary advanced and began to insist upon cash, articles as well as a vehicle and for that fact they began to torture her. His daughter informed him. He shown his inability to fulfill the demand on account of financial crunch. During midst thereof, his daughter begotten a girl child. After 3-4 months of birth of girl, his son-in-law Subhash Tiwary remarried with a girl of village-Bangra Paharpur. Subhash Tiwary remarried after three years of marriage with his daughter. Even



then his mother-in-law, father-in-law and husband continued with severely torturing her whereupon, his daughter in order to save herself, came at his place. Then thereafter his daughter had filed a case at Hajipur court against them. After institution of the case, the accused persons undertook to keep her in cordial, congenial, harmonious atmosphere whereupon, Bidai was effected. 5-6 months after the Bidai, somebody of her Sasural village informed over phone that she has been murdered. Then thereafter, he along with others rushed to the Sasural of his daughter where, he found all the family members absconding. Dead body of his daughter was inside a gunny bag over a chowki. That bag was opened and then, the dead body of his daughter was taken out. She was naked. Hands and legs were tied. Then he gone to police station. Gave fardbeyan to the Darogaji (exhibited) identified the accused. During cross-examination at para-2 he has stated that he is unable to disclose the day as well as date of the marriage of his daughter but it was month of *Asardh*. He is unable to disclose the date of his daughter's death as, he is not remembering. Then has stated that in his presence also accused persons have demanded dowry. In para-3 he has stated that he is unable to disclose the date, time and the year of demand. He had not reported the matter to anybody regarding demand of dowry. The case having instituted at



Hajipur was compromised. Since the day of remarriage by Subhash Tiwary there was no demand. Ram Pravesh lives with his son-in-law. At para-4 he has denied the suggestion that Ram Pravesh Tiwary happens to be separate from his son-in-law for the last 20 years. He further stated that he is unable to disclose who had informed regarding death of his daughter. When he reached at the Sasural of his daughter at that very time, none of the villagers were present. In para-5 he said that he had not stated before the police that his daughter was naked and his dead body was confined in a bag. Then had denied the suggestion that it is wrong to say that accused persons have not demanded dowry as well as tortured the deceased. Then had denied the suggestion of meeting with natural death and on account of extraneous consideration, this case has been instituted.

13. PW.10 has stated that deceased Rinku Devi was his sister-in-law who was married with Subhash Tiwary on 27.06.2004. After marriage, she had gone to her Sasural where she was allowed to stay in congenial atmosphere only for short time. Then thereafter, Ram Aadhar Tiwary, Ram Awadhesh Tiwary, Ram Pravesh Tiwary, Gyatri Devi, Anita Devi, Baby all began to physically torture her for dowry. About one and half years-two years after her marriage Rinku Devi was ousted from her Sasural



on account of non-fulfillment of demand of dowry whereupon she came to her Maika. Subsequently thereof, Rinku Devi filed a case against the accused persons at Hajipur court with regard to torture having inflicted upon her for procurement of dowry. Later on, that case was compromised and in pursuance thereof, Rinku gone to her Sasural. Rinku Devi had begotten a girl. On 27.01.2010 at about 06:00 PM there was a telephonic call from her Sasural to his father-in-law with regard to commission of murder of Rinku after tying her leg, hands. Maksudan Tiwary, his father-in-law informed him whereupon he rushed to place of his father-in-law and then, they all came to the Sasural of Rinku Devi, where they have seen dead body of Rinku Devi in burnt condition, kept over chowki. One bag was kept there. None of her Sasuralwala was present. One old female was carrying daughter of Rinku Devi. Police was informed. Police came, recorded fardbeyan of his father-in-law over which he had put his signature, identified. (exhibited). Identified the accused. During cross-examination at para-2 he has stated that the house of Subhash lies at village Bishanpur lying under Paru P.S. while his house at village Manikpur Pakri under Lalganj police station. In para-3 he has stated that occurrence had not taken place in his presence. He got information from his father-in-law regarding the occurrence over phone. Then has



disclosed the mobile number of his father-in-law. He had received information at about 06:00 pm and within 15-20 minutes he reached at his Sasural. Then has stated that he met with Rinku 3-4 times after the marriage. Firstly he met 3-4 days after the marriage at her Sasural. At that very time Rinku was happy. He returned back on the same day. She had not complained on that day. About a month thereafter he had gone to her Sasural. At that very time also Rinku had not complained anything. Lastly, he had gone there after her death. Then has disclosed that he has got knowledge that all the accused persons are joint. At para-4 he denied the suggestion that they are separate in mess and business. In para-5 he has stated that when he had gone to Sasural of deceased on getting an information, he had not met with any villagers. He has further stated that Rinku had begotten a girl about one and half month and two months after her escape. In para-6 he has stated that at the time of death of Rinku, her daughter was aged about 3 years. He has further stated that the case which was instituted at Hajipur was compromised. He has further stated that he is not possessing relevant document. He has further stated that he had seen the chowki which was not burnt over which burnt dead body was kept. He is unable to disclose name of old lady who was carrying daughter of the deceased. He has further stated that he



was present at the time of recording of fardbeyan. Then has denied the suggestion that on account of being son-in-law of the informant, he has deposed falsely. He has again denied the suggestion that Rinku was never tortured for demand of dowry.

14. From the evidence available on the record it is evident that institution of a case by the deceased at Hajpur court has not been denied nor event of compromise and then thereafter, the Bidai. In likewise manner there happens to be no denial that after 5-6 months thereafter she died. There is no denial that Subhash Tiwary had not remarried during lifetime of Rinku Devi. There happens to be no denial that Rinku Kumari had not died due to burnt within seven years of marriage. Further from the evidence of PW.10, it is evident that the chowki over which dead body of Rinku was kept was not burnt that means to say P.O. was else where and then dead body was taken to chowki. There happens to be no denial/controvert that at the time of arrival of prosecution party, police officials, they were present (conduct). There happens to be no explanation with regard to death. Furthermore, there happens to be no cross-examination over the demand of dowry save and except from the evidence of PW.7 at para-3 that he is unable to disclose the date year of the demand and further, he had not informed anybody with regard thereto. However, that part



could not be found averse to prosecution as, subsequently thereof she was kicked out from her Sasural on account of non-fulfillment of demand of dowry and for that case was instituted which, later on compromised.

15. In *Gian Chand & others v. State of Haryana* reported in 2013(4) PLJR 7 (SC) it has been held it has been held:

“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)”

That means to say, in order to demolish the evidence of a particular witness on a particular point, that witness has to be cross-examined on that very score otherwise it will tantamount to an admission at the end of the adversary.

16. In the aforesaid background, now the evidence of DWs have to be seen. DW.1 is the Rajesh Kumar who claimed to be Samiti Sadasya of the aforesaid panchayat and on that very score, he has come to depose that the family of accused were separate in mess and business but he has not spoken a word with regard to the occurrence in question. Even during course of cross-examination he has stated that he has got no knowledge with regard to the present occurrence.

17. DW.2 Dinesh Kumar Pathak has, during course of examination-in-chief has admitted that Rinku was married with Subhash Tiwary in the year 2004. He was one of the negotiator. He talked with Awadhesh Tiwary who happens to be father of the boy. He has further stated that brother of Awadhesh Tiwary, Ram Pravesh Tiwary, Ramadhar Tiwary have not indulged themselves in negotiation. He has further stated that brother of Ram



Awadhesh Tiwary are separate. He has further stated that Ram Awadhesh Tiwary had not demanded dowry at the time of negotiation but he is unable to disclose how Rinku died. His father had not disclosed to him. During cross-examination, he has stated that he is unable to disclose how many brothers Madhusudan has. In likewise manner he is unable to say how many children Madhusudan has. In para-3 he has stated that he was not told by any body with regard to the occurrence. Then has denied the suggestion that in order to help accused persons, he has deposed the same. From evidence of both the DWs, it has become abundantly clear that they did not stood test to the extent of rebuttal.

18. In Rupinder Singh Sandhu vs The State Of Punjab and Ors. reported in **2018 Cr.L.J. 2935**, it has been held:

“38. The fact that PWs 3 and 4 are related to the deceased Gurnam Singh is not in dispute. The existence of such relationship by itself does not render the evidence of Pws 3 and 4 untrustworthy. This Court has repeatedly held so and also held that the related witnesses are less likely to implicate innocent persons exonerating the real culprits.”

19. In Kuna @ Sanjaya Behera vs The State of Odisha reported in **2018 Cr.L.J 1143**, it has been observed as follows:

“17. That conviction can be based on a testimony of a single eye witness if he or she passes the test of reliability and that it is not the



number of witnesses but the quality of evidence that is important, have been propounded consistently in Anil Phukhan(AIR 1993 SC 1462), Ramji Surya (AIR 1983 SC 810, Patnam Anandam (AIR 2005 SC 764) and Gulam Sarbar (2013 AIR SCW 5848) with the apparent emphasis that evidence must be weighed and not counted, decisive test being whether it has a ring of truth and it is cogent, credible, trustworthy or otherwise.”

20. From the evidence as discussed herein above the case is found duly proved. Consequent thereupon, this appeal sans merit and is accordingly dismissed. All the appellants are under custody which they will remain till saturation of the sentence inflicted by the learned lower court.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	05.02.2019
Transmission Date	05.02.2019

