

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.1489 of 2019**

Arising Out of PS. Case No.-117 Year-2007 Thana- LAKHISARAI District- Lakhisarai

=====

Ram Swaroop Mahto @ Ram Swarup Mahto Son of Late Mishri Mahto @
Misree Mahto Resident of Village - Ward No. 22, Pachna Road, Near - Bharat
Mata, Kuil Basti, P.S.- Lakhisarai, Distt - Lakhisarai.

... .. Appellant/s

Versus

1. The State of Bihar
2. Upendra Mahto Son of Ram Bilash Mahto Resident of Village - Sarai
Padauli, P.S.- Bhagwanpur, Distt - Siwan.

... .. Respondent/s

=====

Appearance :

For the Appellant/s	:	Mr. Pankj Kumar Sinha, Advocate Mr.Rabi Bhushan, Advocate Ms. Rakhi Kumari, Advocate
For the Respondent/s	:	Mr.Ajay Mishra, APP

=====

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)**

Date : 07-01-2020

Heard Mr. Pankaj Kumar Sinha, learned counsel for the
appellant and Mr. Ajay Mishra, learned Additional Public
Prosecutor for the State.

2. This appeal under the proviso to Section 372 of the
Code of Criminal Procedure Code (for short ‘Cr.P.C’) has been
filed by the appellant challenging the judgment dated
25.11.2019 passed by the Fast Track Court no. II, Lakhisarai in
Sessions Trial No. 15 of 2014 whereby the respondent no. 2 has



been acquitted from the charges under Sections 304B and 498A of the Indian Penal Code (for short 'IPC')

3. Initially, the complainant filed Complaint Case No. 200 of 2006 in the Court of Chief Judicial Magistrate, Lakhisarai on 02.06.2016 wherein he had stated that his daughter namely, Anita Kumari was married to the respondent no. 2 about four years ago. She was kept well for about an year in her matrimonial home. Thereafter a demand of Rs. 50,000/- in cash and a motorcycle was made from her by her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law. She was being subjected to cruelty by them in various ways due to non-fulfillment of the aforesaid demand. When he received information in this regard, he brought back his daughter on 01.04.2015. Subsequently, his son-in-law, Samdhi and the elder brother of his son-in-law one Mukesh Mahto came to his house and requested him for performing her 'vidai'. They assured that his daughter would not be subjected to cruelty in future in her matrimonial home. Thereafter, on 01.04.2006, he sent his daughter to her matrimonial home. Later on, he came to know that on 25.05.2006 his daughter was taken to Maratha Nagar in Surat (Gujarat) and had been killed and her body was disposed off. He has further stated in the complaint that on enquiry he



came to know that his son-in-law was working in a factory at Maratha Nagar in Surat (Gujarat) where he had taken his daughter but when he went to his quarter he could not find anyone present there. On enquiry, he came to know that his daughter was being subjected to cruelty in various ways at Maratha Nagar in Surat (Gujarat) and was killed about one and a half months ago. In this regard, he informed Pandeysar Police Station but the police refused to register FIR whereafter he came back to Lakhisarai and informed the police. The Lakhisarai police also refused to register FIR and advised him to file complaint before the Court.

4. The said complaint filed under Section 200 of the Code of Criminal Procedure was referred to the police for investigation by the learned Chief Judicial Magistrate, Lakhisarai in exercise of powers conferred under Section 156(3) of the Cr.P.C pursuant to which Lakhisarai Police Station Case No. 117 dated 17.03.2007 was registered under Sections 304B and 201 of the Indian Penal Code against respondent no. 2 Upendra Mahto, his father Ram Bilash Mahto, brother Mukesh Mahto, mother Sodhni Devi, sister Munni Devi and wife of Mukesh Mahto.

5. Upon completion of investigation, the Investigating



Officer submitted his report under section 173(2) of the Cr.P.C on 30.09.2019.

6. A perusal of the police report would show that it was the respondent no. 2 alone who was sent up for trial for the offence punishable under sections 304B of the IPC.

7. The other accused persons, who are all relatives of the respondent no. 2 were found innocent during investigation. Thus, they were not sent up for trial.

8. The police report submitted by the Investigating Officer would further reflect that in course of investigation it was found that on the alleged date on which the daughter of the appellant died, the respondent no. 2 had gone to factory in discharge of his duty and when he came back he found that his wife had committed suicide by hanging. He informed the Pandeysar police station in this regard whereafter, the police arrived at the place of occurrence and an unnatural death case vide Pandeysar Police Station U.D. Case No. 39 of 2006 dated 24.04.2006 was registered on the basis of the statement of the respondent no. 2.

9. Upon receipt of the police report, the learned Chief Judicial Magistrate took cognizance of the offence and committed the case to the court of sessions for trial.



10. The trial court framed charges under Sections 304 B and 498A of the Indian Penal Code against the respondent no. 2.

11. Since the respondent no. 2 did not admit his guilt, the trial commenced.

12. During trial, the prosecution examined P.W. 1 Gayatri Devi, P.W. 2 Kunti Devi, P.W. 3 Dhaneshwar Tanti, P.W. 4 Sanjay Mahto, P.W. 5 Ramswaroop Mahto and P.W. 6 Mukesh Mahto.

13. After the prosecution case was closed, the statement of the respondent no. 2 was recorded under Section 313 of the Cr.P.C wherein he pleaded his innocence.

14. However, the respondent no. 2 did not examine any witnesses in support of his defence.

15. After the defence evidence was closed, arguments were advanced on behalf of the parties and vide impugned judgment dated 25.11.2019, the trial court acquitted the respondent giving him benefit of doubt.

16. Mr. Pankaj Kumar Sinha, learned counsel appearing for the appellant submitted that the trial Court failed to appreciate the evidence on record. He contended that the witnesses examined in support of the charges are reliable and have supported the prosecution case.



17. According to him, the witnesses are consistent on the point of alleged killing of the deceased for non-fulfillment of demand of dowry. He has urged that since the death of the daughter of the appellant had admittedly taken place in other than natural circumstances within seven years of marriage, the trial court ought to have held the respondent no. 2 guilty of the charges. He contended that the impugned judgment is perverse and hence fit to be set aside.

18. On the other hand, Mr. Ajay Mishra, learned counsel appearing for the State submitted that the impugned judgment passed by the trial court does not suffer from any illegality. The trial court has considered and appreciated the materials on record properly and has given cogent reasons for arriving at the conclusion that the prosecution failed to prove the case beyond reasonable doubt. He submitted that in the instant case, the place of occurrence falls within the local jurisdiction at Surat in the State of Gujarat. In that view of the matter, the court at Lakhisarai in the State of Bihar lacked the territorial jurisdiction to hold the trial. That apart, the evidences led on behalf of the prosecution are not at all reliable. The prosecution witness no. 6 has himself admitted that the body of the deceased was recovered by the police and in this regard an information was



given to the local police at Surat in Gujarat by the respondent no. 2 and the local police at Surat in Gujarat had registered an unnatural death case.

19. He contended that there is nothing to suggest that soon before death the victim was subjected to cruelty for non-fulfillment of dowry. He argued that in view of the inconsistent and unreliable evidence led on behalf of the prosecution, the trial court rightly gave benefit of doubt to the accused and acquitted him from the charges.

20. We have heard the learned counsel for the parties and carefully perused the materials on record as also the certified copy of the FIR, chargesheet and deposition of witnesses supplied by the learned counsel for the appellant during argument.

21. P.W. 5 Ramswaroop Mahto is the informant of the case. He has stated in his deposition that on 25.05.2006 he received information from his Nanihal that his daughter had died. Thereafter, he went to Surat and visited Pandeypur Police Station. The police officer present there said that he will give him documents relating to death of his daughter after few days. Though he stayed for 2-4 days, no document was given to him thereafter, he went to the police station but no case was



registered. Hence a complaint case was filed in the Court. He has reiterated the allegations made in the complaint in his examination-in-chief.

22. In cross-examination he has stated that in the month of 'Baisakh' in the year 2003 his daughter was married. She went to her Sasural and stayed there for 3-4 months. Thereafter, she came back to her Naihar and after 15-20 days she was taken back to her matrimonial home where she stayed for about 5-6 months. Thereafter, she again came back to her Naihar and stayed there for about one and a half month. Thereafter, her 'Bidai' was performed and she was taken to Sadikpur, Barh and after a day she went to Surat in Gujarat. She stayed at Surat for about one and a half year. He admitted that he did not visit Surat during her life time. He stated that he used to talk with his daughter on mobile phone of son and daughter of one Kapil. On enquiry he said that he does not know either the mobile number of his daughter or the mobile number on which he used to receive the call. On further cross-examination he contended that his daughter was living in the house of one Dilip Mahto on rent. He has stated that Daho Mahto is his maternal uncle in relation and his native place is Kanhaipur. When he went to Surat he met Daho Mahto who disclosed that his daughter had died about 10



days ago due to hanging. He admitted that in the complaint Daho Mahto was not made a witness. He denied the defence suggestion that deliberately Daho Mahto was not impleaded as a witness in the complaint.

23. He has further admitted in cross-examination that at Surat the respondent no. 2 Upendra Mahto had performed the last rites of his daughter. He further admitted that a police case was registered there and the police had taken the body of his daughter to police station. He has admitted that he is not a witness to the torture being meted out upon his daughter. He contended that his daughter was subjected to cruelty at Sadikpur, Barh but she died at Surat. He has further admitted that no complaint was ever made to the police or the court with regard to the alleged torture upon his daughter. On further cross-examination he has admitted that his statement was never recorded by the police during investigation. He has denied the defence suggestion that he has falsely deposed before the Court.

24. P.W. 2 Kunti Devi is the wife of the informant and mother of the deceased. She is not a witness to the occurrence. She has supported part of the complaint in her examination-in-chief wherein allegation of demand of Rs. 50,000/- in cash and a motorcycle was made and for non-fulfillment of the same her



daughter was being subjected to cruelty. She has stated that after 'Bidai' her daughter was taken to Surat where she was killed. She came to know about the alleged killing from the neighbours of her son-in-law at Maratha Nagar, Surat (Gujarat).

25. In cross-examination she has stated that after 'Bidai' her daughter was taken to Sadikpur, Barh and from there to Surat where she was killed. The information regarding her death was received after 20-25 days whereafter she along with her husband went to Surat and stayed there for eight days. She went to the house at Maratha Nagar mohalla in Surat where her daughter along with her husband was living but the house was locked. One resident of village Kanhaipur had shown them the house at Maratha Nagar in which her daughter and son-in-law lived. It was the same person who disclosed that her daughter was killed. She stated that she does not know the name of that person of village Kanhaipur. She has further stated that she went to the police station at Surat but the police did not disclose the address of her daughter. She expressed her unawareness about the fact that at Surat a case regarding unnatural death of her daughter was registered. She also expressed her unawareness about the fact that the police at Surat had found that her son-in-law was innocent. She denied the defence



suggestion that when her daughter died her son-in-law was on duty in a factory where he worked. She also denied the defence suggestion that when her daughter had died the police had come and had entered into the room after breaking open the main door. She admitted that the police had never recorded her statement during investigation.

26. P.W. 4 Sanjay Mahto is the brother of the appellant. In his examination-in-chief he has stated that after his niece was taken to Surat she died. He stated that he does not know the exact date on which she died.

27. In cross-examination he admitted that no information was given even to the police or the court earlier in respect of cruelty being meted out upon the deceased in her Sasural. He further stated that he came to know about the death of his niece from his cousin (mamera bhai) Dilip Mahto a resident of village Kanhaipur but he did not disclose as to how she died. The information about death was received two days after her death. He also admitted that the officer of administration had come from Surat who disclosed about the death of his niece. His brother's statement was recorded by them. He further admitted that his statement was never recorded by any police officer during investigation. He denied the defence suggestion that he



had falsely deposed before the court.

28. P.W. 1 and 3 are neighbours of the informant. P.W. 1 Gayatri Devi has admitted in cross-examination that she never visited Surat. She has also admitted that in her presence no demand of dowry was ever made. She denied the defence suggestion that she had deposed before the court at the instance of the appellant. However, she stated that she has deposed on the basis of hulla heard in this regard.

29. P.W. 3 is also a hearsay witness. In cross-examination he admitted that he works together with the brother of the appellant whose house is adjacent to his house. He also admitted that he had not stated before the police that from whom he came to know about the factum of cruelty upon the daughter of the informant or the demand of dowry from her or her death. He denied the defence suggestion that he has made a false statement before the court. He has also denied the defence suggestion that he had not heard anything from anyone as stated by him before the Court.

30. P.W. 6 Mukesh Mahto has stated that the respondent no. 2 was living in the house of one Mithun Mahto at Surat where his wife had died. He saw her body lying when he came back from duty. He has further stated in his examination-in-chief



that the respondent no. 2 was on duty with him on the date on which his wife died. In cross-examination he has stated that there are four rooms in the house of Mithun Mahto. He had taken three rooms on rent and in one room he himself was living. He has admitted that on the date of death of the daughter of the informant he had come back at his house at around 08-8.30 p.m and prior to him the respondent no. 2 and the police had already arrived. He admitted that the police took the body of the deceased to the hospital. He also admitted that the respondent no. 2 was not arrested by the police. He has further stated that the police had taken his statement at Maratha Nagar, Surat (Gujarat).

31. Upon scrutiny of the deposition of witnesses, we find that there is no eye witness to the death of the deceased. All the witnesses examined on behalf of the prosecution during trial are hearsay. The informant (PW-5), his wife (PW-2) and his brother (PW-4) have admitted during cross-examination that their statements were never recorded by the police during investigation. That would mean that they were examined as a witness for the first time during trial. It is surprising that if they were not examined by the police during investigation as to how they were cited as witness in the charge sheet.



32. The investigating officer of the case has not been examined during trial. The non-examination of the investigating officer has seriously prejudiced the case of the prosecution. It would be evident from the trend of evidence that immediately after death of the deceased, an information was given to the local police of Pandesar Police Station at Surat, Gujarat. The police as well as the respondent no.2 had arrived at the place of occurrence and the body of the deceased was taken to the police station as well as the local hospital. It would also be evident from the evidence of the witness that an unnatural death case vide Pandesar Police Station U.D. Case No.39 of 2006 dated 20.04.2006 was registered on the basis of the statement of the respondent no.2. It is not known what happened during inquiry in the unnatural death case reported to the police. It is also not known as to what was the cause of death of the deceased, as the postmortem examination report has also not been brought on record. The withholdment of these important documents by the prosecution casts a serious doubt on the prosecution case.

33. The prosecution has also failed to examine the doctor who had conducted the postmortem examination on



the body of the deceased.

34. We further find that there is no consistency in the evidence of the prosecution witnesses examined during trial. The death of the deceased had taken place on 24.04.2006 but the complaint was filed in the court of Chief Judicial Magistrate, Lakhisarai on 02.06.2016. The informant (PW-5) has stated in his deposition that he received information about death of his daughter on 25.05.2006 from his *nanihal*. His wife Kunti Devi (PW-2) has stated in her deposition that the information regarding the death of the deceased was received after 20-25 days of the occurrence whereafter she along with her husband went to Surat. However, the brother of the informant PW-4 Sanjay Mahto has admitted in cross examination that he came to know about the death of his niece from his cousin Dilip Mahto after two days of her death. He also admitted that the officer of administration had come from Surat would disclose about death of his niece and his brother's statement was recorded by them.

35. Thus, we find that the informant and his wife have contradicted materially by the prosecution witness no.4 on the point of knowledge about death of the deceased and recording of the statement of the informant.



36. If PW-4 is to be believed, then it is not known as to why the complaint was filed by the informant after more than a month from the date of knowledge of the death of the deceased.

37. We further find that the informant has stated that he received information about death of his daughter from his *nanihal* whereas PW-4 has stated that the information was given by administrative officers who had come from Surat, Gujarat after two days of the occurrence.

38. When we look to the deposition of the informant, we find that he has contradicted himself also in material particular on the point of knowledge about death of his daughter. In chief, he has stated that on 25.05.2006, he received information from his *nanihal* that his daughter has died and, thereafter, he went to Surat. However, in cross-examination, he admitted that when he went to Surat, he met Daho Mahto, who disclosed that his daughter died about ten days ago due to hanging. He has also admitted that he never visited Surat during lifetime of his daughter. If he had met Daho Mahto within ten days of death of his daughter at Surat, it is unbelievable that he received information about the death on 25.05.2006 when the death itself had taken place on



24.04.2006.

39. The informant has deposed that his daughter was living at Surat in the house of one Dilip Mahto on rent whereas PW-6 Mukesh Mahto has stated that respondent no.2 with his wife was living in his house of one Mithun Mahto at Surat where he saw her dead body lying when he came back from duty.

40. Further, PW-4 has stated that Dilip Mahto is his *mamera bhai*, as noted above, PW-4 is the brother of the informant.

41. Thus, it would appear that the informant has tried to develop the case by saying that the alleged victim had died in the house of Dilip Mahto, but he has been contradicted by PW-6 Mukesh Mahto, who has said that the deceased was living together with her husband in the house of Mithun Mahto.

42. Apparently, the informant and his wife are not a truthful witness. They are absolutely unreliable witness.

43. Moreover, neither Mithun Mahto nor Dilip Mahto nor Daho Mahto has been made witness in the present case. Their non-examination has also prejudiced the case of the defence.



44. We have seen PW-1 and 3 are neighbours of the informant. They never visited Surat. They admitted that in their presence no demand of dowry was ever made. They have simply stated that they heard about the death of daughter of the informant. Their evidence is of no help to the prosecution. Similarly, PW-4 has not stated anything in his examination in chief regarding the dowry death. He has also admitted that he never visited Surat. He has admitted that no information was given to the police or the court earlier in respect of the cruelty being meted out upon the deceased in her *sasural*. His evidence is also of no help to the prosecution.

45. The other witness examined on behalf of the prosecution is PW-6 Mukesh Mahto. In his deposition, he has stated that he was also living in the house of one Mithun Mahto in whose house the respondent no.2 together with his wife used to live. He has also stated that on the alleged date of occurrence, the respondent no.2 was on duty together with him at his work place. He has stated that he has not alleged that it was a case of dowry death. He has stated that after death the police had arrived and the respondent no.2 was also present. He has stated that his statement was taken by the police at Maratha Nagar, Surat, Gujarat.



46. Thus, the evidence of PW-6 does not incriminate the respondent no.2 in any manner rather the same goes to prove his innocence.

47. Apart from PW-6, there is no witness of the place of occurrence. Thus, from the evidence on record, it would be evident that no reliance can be placed on the case of prosecution.

48. We are of the opinion that the trial court rightly came to the conclusion that the prosecution had failed in proving his case beyond reasonable doubt and acquitted the respondent no.2 from the charges.

49. It is well settled position in law that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further re-enforced by the trial court.

50. In view of the evidence on record, as discussed above, and the fundamental principle of law in case of acquittal, we see no merit in this appeal.



51. The appeal is dismissed, accordingly.

(Ashwani Kumar Singh, J)

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	16.01.2020
Transmission Date	16.01.2020

