

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2523 of 2019

Arising Out of PS. Case No.-398 Year-2015 Thana- PARBATT A District- Khagaria

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Anrudh Das Son of Late Fudo Yadav @ Fudo Das Resident of Village-
Parbatta, Police Station- Parbatta, District- Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

WITH

CRIMINAL APPEAL (SJ) No. 2678 of 2019

Arising Out of PS. Case No.-398 Year-2015 Thana- PARBATT A District- Khagaria

=====

Birbal Das @ Birbal Yadav Son of Late Fudo Yadav @ Fudo Das Resident of
Village - Parbatta, P.S.- Parbatta, Distt - Khagaria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (SJ) No. 2523 of 2019)

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Advocte

For the Respondent/s : Mr. Binod Bihari Singh, APP

(In CRIMINAL APPEAL (SJ) No. 2678 of 2019)

For the Appellant/s : Mr. Syed Masleh Uddin Ashraf, Advocate

For the Respondent/s : Mr. Abhay Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
CAV JUDGMENT

Date : 28-09-2021

Both the appellants, above named, along with
others were arrayed as accused in Parbatta P.S. Case No.398 of
2015 registered under Sections 304B, 201/34 of the Indian Penal
Code on the written report of Arvind Yadav of village Ariya,
P.S. Parbatta, District- Khagaria. After investigation of the case



police exonerated several accused vide Charge-sheet No.175 dated 17.04.2016. However, sent to appellant Anrudh Das for trial and investigation against appellant Birbal Yadav and non-FIR accused Nandu Yadav was kept pending. Thereafter, another charge-sheet under Section 173 Cr.P.C. was filed vide Charge-sheet No.440 of 2016 dated 30.11.2016 against appellant Birbal Das @ Birbal Yadav and investigation against non-FIR accused Nandu Yadav was kept pending.

Due to filing of separate charge sheet the trial against the appellants were separately committed to the Court of Sessions.

Appellant Birbal Das faced trial in Sessions Trial No.139 of 2017/27 of 2018 for offences under Sections 304B, 302 and 201 of the Indian Penal Code. Appellant Anrudh Das faced trial in Sessions Trial No.364 of 2016/715 of 2019 for offences under Sections 304B/34 and 201/34 of the Indian Penal Code.

By judgment dated 29.05.2019 and order of sentence dated 31.05.2019 passed separately in two sessions trial by the same Presiding Officer of the Court of learned Fast Track Court No. I, Khagaria, the appellants were found guilty for the offences under Sections 304B/34 and 201/34 of the



Indian Penal Code and sentenced them to undergo rigorous imprisonment for ten years along with fine of rupees ten thousand for offence under Section 304B/34 of the Indian Penal Code and rigorous imprisonment for three years along with fine of rupees two thousand for offence under Section 201/34 of the Indian Penal Code. In default of payment of fine of rupees ten thousand the appellants were directed to undergo three months simple imprisonment and in default of payment of fine of rupees two thousand one month simple imprisonment was ordered. Appellant Birbal Das was acquitted of charge under Section 302 of the Indian Penal Code. The appellants have challenged herein their conviction and sentence passed in the aforesaid sessions trial.

2. The prosecution case, as disclosed in the first written report of Mr. Arvind Yadav submitted to Parbatta Police Station, is that his daughter K was married five years back with appellant Birbal Das of village Parbatta, P.S. Parbatta, District-Khagaria. The marriage was solemnized after giving gift (*Dan Dahej*). After marriage Birbal Das and his brother Anrudh Das (appellants above) always used to abuse and assault to K and asked her to bring rupees one lac from her father failing which she would be killed. The informant along with his relatives



several times visited and consoled the appellants Birbal Das and Anrudh Das; rather paid rupees sixty thousand. About five months back, a male child born of the wedlock of Birbal and K. On 23.12.2005 appellant Anrudh Das called the informant from the mobile of K and informed that K has already died. Thereafter, he disconnected the call. Thereafter, the informant and others came to the house of Birbal Das. Only Anrudh Das was found at the house. When the informant inquired whereabouts of K, Anrudh Das abused and informed that he has already killed K and the informant is free to do whatever he can. Thereafter, the informant and others caught Anrudh Das to take him to the police station. In the meantime, other accused persons came there and started assault against the informant and got forceful release of Anrudh Das. The villagers informed that the dead body of 'K' is lying in the Jhausa field area. The informant apprehended that the dead body of K was hidden by the appellant and others just to screen the evidence of crime.

3. Mr. S.M. Ashraf, learned counsel appearing for the appellants in both these appeals, submits that in Sessions Trial No.139 of 2017 wherein only appellant Birbal Das faced trial, only two prosecution witnesses were examined. One was Arvind Yadav, the informant of the case, and another Dr.



Birendra Kumar Sharma who had performed post mortem examination on the dead body of K. Thus, this is a case of solitary witness and conviction cannot be based on the sole testimony of the informant who is an interested witness. Learned counsel next contends that there is complete lack of evidence that the victim lady K was tortured for non-fulfillment of dowry demand before her death much-less “soon before” her death.

4. In the matter of Anrudh Das contention is that though the prosecution examined five witnesses. On totality the situation remained the same that the prosecution failed to prove that it was a case of dowry death inasmuch as the victim was treated with cruelty for non-fulfillment of dowry demand before her death. Reliance has been placed on the judgment of the Hon’ble Supreme Court in **Major Singh and another V. State of Punjab** reported in **2015(3) PLJR SC 263**, and in the case of **Baijnath and others V. State of Madhya Pradesh** reported in **2017(1) PLJR SC 269**.

5. Learned counsel for the respondent-State contends that the crime alleged against the appellants is a social crime. Hence, for minor infirmity, if any, the prosecution evidence cannot be thrown away. The prosecution has proved



that the victim had died within seven years of marriage in unnatural circumstances for non-fulfillment of dowry demand. The death was caused by the husband and other relatives of the husband. There is nothing on the record that the death might have taken place for some other reason.

6. Plurality of the prosecution witness to prove a criminal charge is not the requirement of law unless the solitary witness is not wholly reliable. The Informant Arvind Yadav examined as PW 1 in Sessions Trial No.139 of 2017 deposed that his daughter K was married with appellant Birbal Das of village Parbatta. Birbal Das and Anrudh Das killed her within five years of her marriage. The victim had given birth to a male child who was residing along with the informant. K was killed for dowry. Son-in-law Birbal Das had asked from this witness for rupees one lac. The witness had paid rupees sixty thousand and expressed his inability to make further payment. Appellant Anrudh Das informed on mobile call that daughter of the informant has been killed. Then the informant went to the matrimonial house of his daughter but she was not there. Anrudh Das told that he has already thrown away the dead body after killing her then informant and others caught Anrudh Das to take him to the police station but other named accused persons



got him released. The witness admitted that he had signed on the first written information. Thereafter the police went to Jhaui Bahiar where dead body of his daughter was found in the water. During cross-examination, the witness denied that he has any knowledge that the victim died due to drowning in the water.

PW 2 Dr. Birendra Kumar Sharma found a case of asphyxial death due to throttling which resulted in cardiac failure. The throttling was an ante mortem injury.

7. Ordinarily, such offences are committed within the four corners of a house, hence, direct and independent evidence regarding cruelty or harassment on the victim by her husband or relatives of her husband may not be available. However, the prosecution cannot be absolved of its duty to prove the charge beyond all reasonable doubts.

Section 304B of the Indian Penal Code reads as follows:

“Section 304B. 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.

Explanation.- For the purpose of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2)Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

Thus, the ingredients of offence under Section 304B of the Indian Penal Code are (i) Death of the woman concern is by burn or bodily injury or occurs otherwise than in normal circumstances and, (ii) Is within seven years of her marriage and, (iii) 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 of dowry.

8. In the case on hand there is complete lack of evidence that the victim was subjected to cruelty or harassment by her husband or any of the relative of the husband for or in connection with any demand of dowry. The informant is not an eyewitness on cruelty to the deceased nor it is case of the



informant that deceased had ever complained about harassment at the hands of the appellants in connection with any demand of dowry nor any other witness has been produced by the prosecution to substantiate that they had occasion to see torture to the victim by the husband or relatives of the husband in connection with any dowry demand. Thus, the prosecution has failed to prove the most important ingredient of charge under Section 304B. Only for death of a woman otherwise under normal circumstances within seven years of her marriage would not attract the mischief of Section 304B unless there is acceptable evidence that the woman was subjected to cruelty or harassment in connection with demand of dowry by her husband or other in-laws.

9. In the case of **Amar Singh V. State of Rajasthan** reported in **AIR 2010 SC 3391**, convicts Jagdish and Gordhani were acquitted by the High Court. The State challenged the acquittal before the Supreme Court and the Supreme Court refused to interfere with acquittal because there was lack of evidence against Jagdish and Gordhani regarding nature of harassment and torture meted out by them and the Hon'ble Supreme Court in para-23 of the judgment observed as follows:



“..... a prosecution witness who merely uses the word “harassed” or “tortured” and does not describe the exact conduct of the accused which, according to him, amounted to harassment or torture may not be believed by the Court in cases under Sections 498A and 304B IPC...”

In this case, the sole prosecution witness has not even used the words that the victim was “harassed” or “tortured” much less the nature of harassment and torture, before her death.

10. Therefore, charge under Section 304B of the Indian Penal Code against appellant Birbal Das does not stand proved. There is no evidence that anyone saw the appellants involved in making the evidence of commission of the offence to disappear with intent to screen the offender from legal punishment. Only on conjectures and surmises it cannot be assumed that the appellants were involved in screening the evidence of the crime. Therefore, in my view, the prosecution has failed to prove the charge under Section 201 of the Indian Penal Code as well.

11. In the trial of appellant Anrudh Das prosecution



examined altogether five witnesses. PW 1 Mukesh Yadav is a witness on the inquest report which was prepared in his presence. The inquest was on the dead body of K. According to this witness 'K' his niece was married five years ago with appellant Birbal Das. Though the witness has deposed that K was being assaulted in her matrimonial house for non-fulfillment of dowry demand but he is not specific that he had seen such assault or the deceased had reported to him about such assault or any other person reported about the physical assault to the deceased before her death for non-fulfillment of demand of dowry.

PW 2 Manish Kumar is brother of the informant. He had gone to the matrimonial village of the deceased along with the informant. The witness is specific that appellant Birbal Das was demanding rupees one lac as dowry and for non-fulfillment of the same K was done to death. This witness is also not on the point that the victim was treated with cruelty by the appellants before her death for non-fulfillment of dowry demand.

PW 3 Rudal Yadav has deposed that K was killed for non-fulfillment of dowry demand. Rupees one lac was being demanded from informant by Anrudh Das. However,



this witness is also silent to prove that the victim was tortured by the husband and other relatives of the husband before her death for non-fulfillment of the dowry demand.

PW 4 Arvind Yadav, the informant of the case, deposed in the same manner as he has deposed as PW 1 in trial of Birbal Das. PW 5 is Dr. Birendra Kumar Sharma who had found ligature mark on the dead body of K which was ante-mortem in nature.

12. Thus, on careful scrutiny of the prosecution evidence brought in the trial against Anrudh Das shows that the prosecution failed to prove that the victim was being tortured for non-fulfillment of dowry demand by the husband or relatives of her husband before her death. The law is well settled that unless the prosecution proves the ingredients of Section 304B of the Indian Penal Code. The presumption under Section 113B of the evidence Act would not come into play. In **Baijnath's case** (supra) the Hon'ble Supreme Court observed in para-32 of the judgment as follows:

“Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get



activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death.

Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.”

In **Major Singh’s case** (supra) the prosecution had failed to prove that the deceased was treated with cruelty by her husband or relatives of her husband before her death as there was no direct evidence on the point. The information about cruelty was gathered from Panchayatdars but none of the participants in panchayat was produced as prosecution evidence to prove the aforesaid ingredients nor there was any other evidence. The ratio in **Major Singh’s case** is applicable in the present facts and circumstances of this case especially when there is complete lack of evidence that the deceased was treated with cruelty before her death for non-fulfillment of dowry demand by the in-laws.



13. Likewise, there is no direct evidence that appellant Anrudh Das was involved in screening the evidence of crime with intent to save the real culprit of the crime. Hence, charge under Section 201 of the Indian Penal Code also fails.

14. Consequently, both the appellants are entitled to benefit of doubt and they, accordingly, deserve acquittal. Hence, the impugned judgment and order of sentence are hereby set aside and both these appeals are allowed. Appellant Anrudh Das is on bail. He is exonerated from the liability of bail-bonds. Appellant Birbal Das is in jail. Let him be set free at once.

(Birendra Kumar, J)

Mkr./-

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