

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4273 of 2018

Arising Out of PS. Case No.-218 Year-2013 Thana- KARAKAT District- Rohtas

1. Shivjee Sah, Son of Late Ram Sakal Sah

2. Manju Devi, Wife of Sri Sheojee Sah,

Both resident of Village- Jaishree, P.S.- Karakat, District- Rohtas.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 126 of 2019

Arising Out of PS. Case No.-218 Year-2013 Thana- KARAKAT District- Rohtas

Prashant Kumar, Son of Shivjee Sah, Resident of Village - Jayshree, P.S.-
Karakat, District-Rohtas

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 4273 of 2018)

For the Appellant/s : Dr. Amarendra Kumar, Advocate.
Mrs. Surya, Advocate.

For the Informant : Mr. Mithilesh Kumar Singh, Advocate.

For the State : Mr. Sujit Kumar Singh, APP.

(In CRIMINAL APPEAL (SJ) No. 126 of 2019)

For the Appellant/s : Mr. Vikram Deo Singh, Advocate.

For the Informant : Mr. Mithilesh Kumar Singh, Advocate.

For the State : Mr. Sujit Kumar Singh, APP.

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

C.A.V. JUDGMENT

Date : 15-04-2021

Appellants Shivjee Sah and Manju Devi are parents
of appellant Prashant Kumar. All the appellants faced trial for
offence under Section 304-B of the Indian Penal Code before
learned Fast Track Court-I, Rohtas, Sasaram in Sessions Case



No. 86 of 2014 arising out of Karakat P.S. Case No. 218 of 2013. The appellants were found guilty for the aforesaid offence by judgment dated 25.09.2018. Appellant Prashant Kumar was sentenced to undergo rigorous imprisonment for 10 years and other appellants were sentenced to undergo rigorous imprisonment for 7 years by the order of sentence dated 29.09.2018. The judgment of conviction and order of sentence are challenged in these appeals.

2. The prosecution case as disclosed in the written report of PW-3 Ramesh Prasad Gupta is that Namita Devi, the sister of the informant was married with appellant Prashant Kumar on 09.12.2012. After marriage, Namita went to her sasural in village Jayshree, P.S.-Karakat, District – Rohtas. After few days, Namita left for Visakhapatnam along with her husband Prashant where Prashant was a locomotive driver. From Visakhapatnam, Namita used to inform that she was being tortured even by physical assault by the husband for dowry. On request of Namita, her mother (PW-5) gave a gold chain to Prashant, however torture continued.

On 20.09.2013, Namita along with Prashant came to the house of the informant in village Dihri. Namita stayed there-at and Prashant left to appear in some examination at



Patna. After return from Patna, on 23.09.2017 Namita and appellant Prashant left for village Jayshree. On 24.09.2013, Namita telephonically informed that her husband and other family members have bitterly assaulted her and have threatened to kill her. Thereafter, mother of Namita tried to contact her on phone, but no one was receiving the call. In the night at about 09:20, a call came that Namita is serious. Again at 09:30, a call came that Namita is dead now. According to informant, for non-payment of money, the in laws, eleven in number, named in the F.I.R., allegedly committed murder of Namita by throttling her.

3. After investigation of the case, the police submitted chargesheet against the appellants aforesaid and investigation against the rest was kept pending.

4. Mr. Vikram Deo Singh, learned counsel for the appellant Prashant Kumar would contend that there is no acceptable evidence of demand of dowry and torture for the same after fulfillment of the demand of a gold chain as alleged by the prosecution. For the first time during trial, some of the prosecution witnesses claimed that there was further demand of a motorcycle. Learned counsel next contends that PW-2 Suresh Kumar Gupta and PW-4 Umesh Kumar Gupta are full brothers of the informant as well as of deceased Namita and these



witnesses have not stated that there was any further demand after fulfillment of demand of gold chain. PW-4 has not stated at all that there was any demand of dowry and torture for non-fulfillment of the demand. The prosecution case suffers from non-corroboration of claim of the prosecution that the victim was throttled to death by the medical evidence. The doctor (PW-6) has found the case of 'hanging'. Learned counsel contends that there is complete lack of evidence that Namita was being tortured by her in-laws at any point of time due to non-fulfillment of dowry demand. Learned counsel contends that specific question on incriminating material as to nature of dowry demand and nature of torture is missing in the statement of accused under Section 313 Cr.P.C. Hence prosecution evidence, if any, cannot be relied upon.

Dr. Amrendra Kumar, learned counsel for the appellants Shivjee Sah and Manju Devi contends that the prosecution has not alleged about any demand of dowry against these appellants specifically nor there is any evidence that these appellants were involved in torture to Namita.

5. Mr. Sujit Kumar Singh, learned counsel for the State-respondent contends that plurality of the witness on any specific point is not the requirement of law. PW-3 and PW-5



have specifically deposed that even after fulfillment of earlier demand of gold chain, further demand of motorcycle continued. The victim died within a year of her marriage in unnatural circumstances in the matrimonial house. Hence, the burden was on the appellants to dispel the presumption that this was not a case of dowry death.

6. To prove the charge, the prosecution examined altogether seven witnesses.

PW-1 Ravishankar is a hearsay witness as he stated that he heard about death of Namita from the informant and about demand of dowry and torture from the parents of Namita.

PW-3 Ramesh Prasad Gupta supported what he had stated in the written report with improvement that after fulfillment of demand of gold chain and locket, a motorcycle was being demanded after 2-3 months of the fulfillment of the aforesaid demand.

To the same extent, PW-5 Chinta Devi, the mother added to the allegation by saying that she carried a gold chain and locket to Visakhapatnam and handed over to Prashant and returned back. Later on demand of motorcycle started.

PW-3 and PW-5 were confronted with their statement under Section 161 Cr.P.C. and attention of the



investigating officer (PW-7) was also drawn that the aforesaid witnesses had not made any statement before him regarding demand of motorcycle after fulfillment of the demand of gold chain and locket.

If such improvement of allegation is allowed at the belated stage of trial, it would open a pandora gate to improve the prosecution allegation and make any suitable allegation against the accused to be harassed.

PW-2 Suresh Kumar Gupta and PW-4 Umesh Kumar Gupta are also full brothers of the informant. PW-2 does not say that after fulfillment of demand of gold chain, there was further demand of motorcycle. Moreover, this witness was confronted with his other statements as prosecution witness to that of his statement before the police under Section 161 Cr.P.C. and attention of the investigating officer was also drawn to that. PW-4 Umesh Kumar Gupta who is full brother of the deceased does not speak at all about any demand of dowry and torture to Namita for non-fulfillment of the aforesaid demand. PW-4 is a family member of the deceased and he is not a hostile witness.

7. In Raja Ram V. The State of Rajasthan reported in **(2005) 5 SCC 272**, the Hon'ble Supreme Court said that if a witness is not declared hostile by the prosecution, the



defence can rely upon the evidence of such witness and it would be binding on the prosecution.

8. The aforesaid view was reiterated in **Mukhtiar Ahmed Ansari V. The State (NCT of Delhi)** reported in **(2005) 5 SCC 258**. Paragraphs 29 to 31 of the judgment are being reproduced below:

“29. The learned counsel for the appellant also urged that it was the case of the prosecution that the police had requisitioned a Maruti car from Ved Prakash Goel. Ved Prakash Goel had been examined as a prosecution witness in this case as PW 1. He, however, did not support the prosecution. The prosecution never declared PW 1 “hostile”. His evidence did not support the prosecution. Instead, it supported the defence. The accused hence can rely on that evidence.

30. A similar question came up for consideration before this Court in **Raja Ram V. State of Rajasthan** (supra). In that case, the evidence of the doctor who was examined as a prosecution witness showed that the deceased was being told by one K that she should implicate the accused or else she might have to face prosecution. The doctor was not declared “hostile”. The High Court, however, convicted the accused. This Court held that it was open to



the defence to rely on the evidence of the doctor and it was binding on the prosecution.

31. In the present case, evidence of PW 1 Ved Prakash Goel destroyed the genesis of the prosecution that he had given his Maruti car to the police in which the police had gone to Bahai Temple and apprehended the accused. When Goel did not support that case, the accused can rely on that evidence.”

9. Thus, the evidence of PW-2 and PW-4 would go against the prosecution case and the accused would be entitled to rely on that which makes the prosecution case doubtful.

There is no prosecution witness who claims to have seen the appellants committing any torture against the deceased or making any demand from the deceased or any other family members.

10. Coupled with the aforesaid drawback in the prosecution evidence, the appellants have come up with a probable case that at the time of leaving for Visakhapatnam by train, the deceased handed over her ornaments to her mother as mother suggested that it would not be safe to carry ornaments on train journey. When she returned from Visakhapatnam and was in her mother's house, on 20.09.2013 she asked for her ornaments from her mother and bhabhi and for not returning the



ornaments, a quarrel took place. The deceased was very infuriated and had locked herself inside the room, but the appellant Prashant who was present there, anyhow pacified the matter and took his wife to his own village and on the very same night, she committed suicide by hanging herself. The aforesaid evidence has come as suggestion to the prosecution witnesses as well as in the testimony of DW-1 Shyama Devi, DW-2 Satendra Chaudhary, DW-4 Ritesh Kumar and DW-5 Prashant Kumar, the appellant himself. In his statement under Section 313 Cr.P.C., the appellant specifically made disclosure of the aforesaid incident.

DW-3 Gopal Chand Sawant is Chief Manager of Life Insurance Corporation of India. He has proved the two certificates of life insurance, one taken in the name of appellant Prashant Kumar in which deceased Namita Devi is nominee and another taken in the name of Namita Devi in which appellant Prashant Kumar is nominee. Both the policies were taken on 28.04.2013.

11. To prove the charge under Section 304-B IPC, only factum of unnatural death in matrimonial home within seven years of marriage would not by itself suffice to hold the accused persons guilty of the offence under Section 304-B IPC



rather the prosecution has to prove that the woman was subjected to cruelty or harassment in connection with any demand for dowry and such cruelty or harassment was soon before her death. On proof of all these ingredients, the presumption under Section 113-B of the Evidence Act would arise. Reference may be made to **Bakshish Ram's case** reported in **(2013) 4 SCC 131**.

12. Even if the prosecution allegation is assumed to be correct that there was demand of a gold chain and a locket, the said demand was already fulfilled. Therefore, allegation of any torture for non fulfillment of dowry demand loses its surface. Some of the prosecution witnesses for the first time stated in Court that there was further demand of motorcycle which is not believable nor acceptable as this allegation of demand never surfaced before the trial.

13. Moreover, the prosecution allegation that death of Namita was a homicidal death is inconsistent with the prosecution evidence of Dr. Rajesh Kumar Singh who has found the case of suicidal death by hanging. The witness is specific that in cases of hanging, ligature mark is found upwards as noticed in the instant case. Ligature mark in this case discontinued in the back of the neck. The Doctor further opined



that in case of wrapping electric wire around the neck, the ligature mark would be in circle covering entire circumference of the neck.

14. Two of the prosecution witnesses who are full brothers of the deceased namely PW-2 and PW-4 have not supported the prosecution case of demand of dowry and torture for the same inasmuch as PW-2 does not say about any further demand after fulfillment of demand of the gold chain and PW-4 does not say about any demand or torture for the same.

15. In Sunil Bajaj Vs. State of Madhya Pradesh reported in **2001 CRI. L. J. 4700**, the prosecution had produced only vague and inconsistent statement of interested witnesses being relation of the deceased. There was no evidence, of any independent witness or neighbor of the place of occurrence or wherever the deceased was residing, regarding cruelty to the deceased by the accused in relation to demand of dowry. In that case, there was no mention of dowry demand in letters written by the deceased to her parents. The Hon'ble Supreme Court set aside the judgment of conviction.

In the case on hand, there is no independent corroboration, of any torture to the deceased, by any neighbor who had occasion to watch the relationship of the deceased with



her in-laws nor there is any evidence that the deceased while she was in her parents house from 20.09.2013 to 23.09.2013, made any complaint of demand and torture nor the doctor found any external injury on the person of the deceased to corroborate the claim of the prosecution witnesses that the deceased telephonically informed that she was bitterly assaulted by the in-laws and after few hours report of her death was received. Thus, the prosecution evidence is very shaky and clumsy to prove the ingredient of demand of dowry and torture for the same and on such evidence conviction would not be safe.

16. It is settled law that incriminating circumstances appearing against the accused in prosecution evidence must be put to the accused at the time of statement under Section 313 Cr.P.C. Unless such statements are put to the accused to give opportunity to meet the same with explanation, such incriminating circumstances cannot be used against the accused.

17. In **Naval Kishore Singh v. State of Bihar** reported in **(2004) 7 SCC 502**, the Hon'ble Supreme Court observed as follows:

“5. The questioning of the accused under Section 313 Cr.P.C. was done in the most unsatisfactory manner.



Under Section 313 Cr.P.C. the accused should have been given opportunity to explain any of the circumstances appearing in the evidence against him. At least, the various items of evidence, which had been produced by the prosecution, should have been put to the accused in the form of questions and he should have been given opportunity to give his explanation. No such opportunity was given to the accused in the instant case. We deprecate the practice of putting the entire evidence against the accused put together in a single question and giving an opportunity to explain the same, as the accused may not be in a position to give a rational and intelligent explanation. The trial judge should have kept in mind the importance of giving an opportunity to the accused to explain the adverse circumstances in the evidence and the Section 313 examination shall not be carried out as an empty formality. It is only after the entire evidence is unfurled the accused would be in a position to articulate his defence and to give explanation to the circumstances appearing in evidence against him. Such an opportunity being given to the



accused is part of a fair trial and if it is done in slipshod manner, it may result in imperfect appreciation of evidence.”

18. The aforesaid Judgment was followed by a three Judges Bench of the Hon’ble Supreme Court in **Maheshwar Tigga Vs. State of Jharkhand** reported in **(2020) 10 SCC 108** and the law was stated in Para-8 of the judgment as follows:-

“8. It stands well settled that circumstances not put to an accused under Section 313 Cr.P.C. cannot be used against him, and must be excluded from consideration. In a criminal trial, the importance of the questions put to an accused are basic to the principles of natural justice as it provides him the opportunity not only to furnish his defence, but also to explain the incriminating circumstances against him. **A probable defence raised by an accused is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.**”

19. In **Asraf Ali v. State of Assam** reported in **(2008) 16 SCC 328**, the Hon’ble Supreme Court said:

“21. Section 313 of the Code casts a



duty on the court to put in an enquiry or trial questions to the accused for the purpose of enabling him to explain any of the circumstances appearing in the evidence against him. It follows as necessary corollary therefrom that each material circumstance appearing in the evidence against the accused is required to be put to him specifically, distinctly and separately and failure to do so amounts to a serious irregularity vitiating trial, if it is shown that the accused was prejudiced.

22. The object of Section 313 of the Code is to establish a direct dialogue between the Court and the accused. If a point in the evidence is important against the accused, and the conviction is intended to be based upon it, it is right and proper that the accused should be questioned about the matter and be given an opportunity of explaining it. Where no specific question has been put by the trial Court on an inculpatory material in the prosecution evidence, it would vitiate the trial. Of course, all these are subject to rider whether they have caused miscarriage of justice or prejudice. This Court also expressed a similar view in *S. Harnam Singh v.*



State (Delhi Admn.) (1976) 2 SCC 819, while dealing with Section 342 of the Criminal Procedure Code, 1898 (corresponding to Section 313 of the Code). Non-indication of inculpatory material in its relevant facets by the trial Court to the accused adds to vulnerability of the prosecution case. Recording of a statement of the accused under Section 313 is not a purposeless exercise.”

The Judgment in Asraf Ali was considered and followed in **Samsul Haque Vs. State of Assam** reported in **(2019) 18 SCC 161**.

20. In the case on hand, the examination of the accused under Section 313 Cr.P.C. has been done in extremely casual and perfunctory manner:-

“**Question no.1:** Have you heard the statement of the prosecution witnesses?

Question No.2: The witnesses have deposed that on 24.09.2013 in village Jayshree, P.S.-Karakat, District – Rohtas you all in furtherance of your common intention caused death, by throttling, of Namita Devi, for non-fulfillment of demand of dowry.

Question No.3: The witnesses have deposed that



Namita, the sister of the informant Ramesh Prasad Gupta, was married with you on 09.09.2012.

Question No.4: What you have to say else in your defence?”

Evidently the trial Judge failed in its duty to put specific incriminating material as to nature of demand and nature of torture allegedly committed by the accused persons against the deceased. Specific question on nature of demand and nature of torture was essential. The accused cannot be expected to submit a reasonable explanation to a vague question. The accused seriously prejudiced due to non specific question as the prosecution had improved the allegation of demand of a motorcycle for the first time in the Court.

Thus, on a deeper scrutiny of the prosecution evidence, it has surfaced that

(a) the prosecution has failed to establish that the victim was being tortured before her death for non-fulfillment of dowry demand for the reason that the demand which was alleged in the F.I.R. i.e. of a gold chain and locket was already fulfilled and thereafter there was no demand and the prosecution cooked up a case only during trial that



there was further demand of motorcycle.

(b) There is no prosecution evidence that the victim during period of her stay in her mother's house from 20.09.2013 to 23.09.2013 had made any complaint of demand of dowry and torture for the same.

(c) there is no independent witness or any evidence that any witness had seen the deceased being tortured by her in-laws, much less torture for non-fulfillment of dowry demand.

(d) the doctor has not found any physical injury on the body of the deceased except the ligature mark, as such the oral testimony of the prosecution that the deceased telephonically informed that she was bitterly beaten by the family members soon before her death is not acceptable.

(e) Coupled with the aforesaid infirmities non-asking of specific question, under Section 313 Cr.P.C., regarding specific demand and nature of torture to the deceased, by the appellants, any prosecution evidence on the point cannot be



accepted. The defence version put forward during the trial evidently appears to be a probable story of unnatural death of Namita raised by the accused and is sufficient to rebut the accusation without the requirement of proof beyond reasonable doubt.

21. The learned trial Judge has not considered correctly that the prosecution has failed to prove a case of demand of dowry and torture for non-fulfillment of the same. As such the prosecution failed to establish the charge under Section 304-B IPC beyond reasonable doubt.

22. In the result, the appellants are allowed the benefit of doubt for which they are entitled. The impugned judgment of conviction and order of sentence are set aside. The appellants are acquitted and these appeals stand allowed.

The appellants are serving out the sentence. Let them be set free at once.

(Birendra Kumar, J)

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