

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.3415 of 2017

Arising Out of PS. Case No.-87 Year-2013 Thana- LALGANJ District- Vaishali

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Jitendra Tiwary , Son of Late Chhote Lal Tiwary, R/o Village-Kharauna
Pokhar, P.S.-Lalganj, District-Vaishali. Appellant/s

Versus

The State Of Bihar Respondent/s

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Appearance :

For the Appellant/s : Mrs.Bela Singh,Adv

For the Respondent/s : Mr. Zeyaul Hoda,APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
C.A.V. JUDGMENT

Date : 22-02-2021

Appellant- Jitendra Tiwary has challenged, herein, the judgment of conviction dated 31.10.2017 and order of sentence dated 01.11.2017 whereby the learned Sessions Judge, Vaishali has found the appellant guilty for offences under Sections 304B and 201 IPC and has sentenced to undergo rigorous imprisonment for ten years for offence under Section 304B IPC and rigorous imprisonment of two years for offence under Section 201 IPC. The sentences have been ordered to run concurrently. The impugned judgment and sentences were passed in S.Tr. No.392 of 2015 arising out of Lalganj P.S.Case No.87 of 2013.

2. The prosecution case, as disclosed in the Fardbeyan of P.W.7 Paras Nath Mishra, is that his daughter Nitu Kumari was married with the appellant in November, 2012. The victim went to her Sasural and after 2-3 months the named accused persons including the appellant started torturing even by physical assault for non-fulfillment of their demand for more dowry in the form of



Colour T.V. and Gold Chain. The victim had telephonically informed to P.W.7 about the aforesaid act. Thereafter P.W.7 alongwith his wife Meena Devi (P.W.6) and other relatives went to village Kharauna of the appellant and requested the family members including to the appellant to not to torture the victim for non-fulfillment of dowry demand. However, the appellant and his mother insisted that until their demand is fulfilled, the torture would continue.

On 01.06.2013 at about 7.00 AM, the informant got information that inlaws of his daughter have committed her murder. Then the informant alongwith other family members reached near village Kharauna and found that near Primary School, Lal Basanta, a crowd had gathered. When informant and others went there, the dead body of the victim was found in a plastic bag. The informant and others identified the dead body. The face of the victim was black, the eyes were protruded and there was ligature mark around her neck. According to informant, the inlaws had committed her murder and just to screen the evidence of crime, had packed the dead body in a plastic bag and thrown away in the field side.

3. The First Information Report is Ext.-1 and on the basis whereof, the formal FIR of Lalganj P.S. Case No.87 of 2013



was registered and the same is marked as Ext.3. After investigation, the police sent up the appellant for trial and investigation against others was kept pending.

4. During trial, prosecution examined altogether seven witnesses. P.W.1 Amrit Mishra is full brother of the victim. P.W.2 Rubi Devi is wife of P.W. 1. P.W.3 Balwant Mishra is another brother of the victim. P.W.6 Meena Devi is mother and P.W.7 Paras Nath Mishra is father of the victim. P.W.4 Randhir Kumar Bhagat is Investigating Officer of the case and P.W.5 Dr.Prabhat Kumar had performed postmortem examination on the dead body of the victim on 01.06.2013 itself at 5.00 P.M.

5. Ms. Bela Singh, learned counsel for the appellant submits that the prosecution made disclosure of the demand of dowry and torture for the same for the first time after death of the victim. Prosecution witnesses have admitted that they had not informed to anyone including the Mukhiya regarding demand and torture. Learned counsel contends that no independent witness has come forward to substantiate the charge of demand of dowry and torture for non-fulfillment of the same or to prove any other ingredient of offence Section 304 B IPC. Only the family members have turned up as prosecution witnesses. Reliance has been placed on the case of **Gurdeep Singh Vs. The State of Punjab**, reported



in **(2011)12 SCC 408**. According to prosecution witnesses, the marriage of the victim was solemnized peacefully and happily, hence there was no demand on the date of marriage. Moreover, from the prosecution evidence, it would be clear that the parties belong to very poor strata of the society. Hence, it is unbelievable that there would be demand of Gold Chain and Colour T.V. etc. Just to harass, false case has been lodged.

6. Learned counsel for the respondent contends that plurality of the witnesses is not the requirement of law to prove the criminal charge. The family members of the victim are competent witnesses to say about the demand of dowry and torture for the same. The dowry death was caused within few months of the marriage, hence in normal behavior, it was not expected that the matter should have been reported to the police to avoid any strain in the matrimonial life of the victim. Learned counsel further submits that it cannot be assumed that the poor people do not have greed to demand dowry. According to learned counsel, the ingredients of offence under Section 304B IPC are well established in this case, hence presumption under Section 113 B of the Evidence Act of commission of dowry death is there and the appellant failed to bring on the record, any suggestion that unnatural death was result of some other reason.



Section 304B of the Penal Code reads as follows:

"304-B. 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."

Section 113 B of the Evidence Act reads as follows:

"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 Indian Penal Code (45 of 1860)."

Section 2 of the Dowry Prohibition Act defines the word dowry as follows:

"2. Definition of "dowry".-*In this Act, "dowry" means any property or valuable security given or agreed to be given either directly or indirectly-*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person, at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies.



Explanation I.-

Explanation II.-The expression "valuable security" has the same meaning as in Section 30 of the Indian Penal Code (45 of 1860)."

7. It is well settled by different judicial pronouncements that the prosecution has to prove the following four ingredients to prove the charge under Section 304B IPC;

“(a) death of a woman must have been caused by any burns or bodily injury or her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand of dowry.”

The definition of word dowry can be broken into six distinct parts.

(1) Dowry must first consist of any property or valuable security - the word "any" is a word of width



and would, therefore, include within it property and valuable security of any kind whatsoever.

(2) Such property or security can be given or even agreed to be given. The actual giving of such property or security is, therefore, not necessary.

(3) Such property or security can be given or agreed to be given either directly or indirectly.

(4) Such giving or agreeing to give can again be not only by one party to a marriage to the other but also by the parents of either party or by any other person to either party to the marriage or to any other person. It will be noticed that this clause again widens the reach of the Act insofar as those guilty of committing the offence of giving or receiving dowry is concerned.

(5) Such giving or agreeing to give can be at any time. It can be at, before, or at any time after the marriage. Thus, it can be many years after a marriage is solemnised.

(6) Such giving or receiving must be in connection with the marriage of the parties. Obviously, the expression "in connection with" would in the context



of the social evil sought to be tackled by the Dowry Prohibition Act mean "in relation with" or "relating to".

8. P.W.1 deposed that the victim was married in November 2012 with the appellant. Gift of about Rs.50,000/- was given to her. The victim went to the house of the appellant, however, after two to three months, the appellant and his family members started demanding a Gold Chain and Colour T.V. and for non- fulfillment of the aforesaid demand, victim was being tortured even by physical assault. The victim used to inform telephonically to the family members regarding aforesaid demand and torture. Thereafter the family members went to the Sasural of the victim to request them for non-demand and non-torture but they remained keeping their demands and fulfillment of the same as condition for peaceful life for the victim. On 01.06.2013 in the morning, this witness and others got information about murder of the victim. They went there and found the dead body in a plastic bag near Lal Basanta School. Police was already there at the place of recovery of dead body where statement of the father of this witness was recorded and the case was lodged. This witness was not cross examined by the defence.



9. P.W.2 Rubi Devi, the wife of P.W.1, has supported the allegation of demand of dowry and torture for non-fulfillment of the same in different way including by commission of assault by the appellant and other inlaws. There is nothing in the cross examination of the witness to disbelieve or doubt the veracity of her testimony. Likewise P.W.3 Balwant Mishra the full brother of the victim. P.W.6 Meena Devi the mother of the victim and P.W.7 the informant who is father of the victim have consistently supported that there was demand by the appellant and his family members of a Gold Chain and Colour T.V. and for non-fulfillment of the said demand, the victim was being tortured even by commission of assault. The victim had informed her family members on telephone and they had attempted to pacify the matter by promise that as soon as they would be capable they would fulfill the aforesaid demand. There is nothing in their cross examination to doubt their trustworthiness.

10. P.W.4 Randhir Kumar Bhagat is Investigating Officer of the case. He deposed that on 01.06.2013, he got information that in a field, a dead body of a female is thrown in a plastic bag in village Lal Basanta. It has come in evidence that Lal Basanta is nearby one Km. from the village of the appellant. Thereafter this witness alongwith other police personnel and



Chaukidar went to the place of recovery of dead body from near the Primary School of Lal Basanta. Though no one from the crowd could identify the dead body, however a man alongwith some people reached there and started weeping after a look at the dead body. The Man disclosed his name as Paras Nath Mishra (P.W.7) and identified dead body as of his daughter Nitu Devi, wife of the appellant.

P.W. 5 Dr. Prabhat Kumar who had performed postmortem examination vide report at Ext.7 deposed that on external examination, he found that the face was congested, eyes were protruded, tongue was protruded and ligature mark was there around the neck. The Doctor noticed bleeding around oral cavity. On dissection of the body, trachea cartilage was ruptured and bleeding was present over tracheal cartilage. The Doctor opined that the death was due to asphyxia caused by strangulation. The cross examination, does not dispute the competency and manner of examination done by this witness.

11. Some of the prosecution witnesses i.e. P.W. 2 and P.W.3 have admitted that there was no demand at the time of marriage and the marriage was solemnized peacefully and happily.

Since the definition of dowry includes after marriage demand which was made in connection with marriage, it cannot be



argued that the prosecution case is doubtful for the reason that some witnesses stated that there was no demand at the time of marriage and the marriage was solemnized peacefully.

12. Likewise it has come in the prosecution evidence that the appellant was a labour and other family members including the females of the family used to sell cloths by carrying them on their head. The prosecution witnesses further admitted that the family of the victim were doing the same business of selling the cloths by carrying them on their head. However, P.W.2 is specific that the victim had never gone to sell the cloths, might be, since she was a new comer in the family.

No doubt the prosecution evidence discloses that the parties belong to the lower strata of the society but only for that reason it cannot be assumed, against the acceptable prosecution evidence, that since they were poor they would not make any demand of dowry.

13. A suggestion has been put-forward to the prosecution witnesses that the victim also used to go to sell cloths and on the fateful night, she had gone to sell the cloths but did not return to her house. This suggestion is not sufficient to doubt the prosecution case for the reason that if the victim was also going to sell the cloths, she must have accompanied the family members



especially the mother-in-law who was engaged in the said business as the victim was a newly married lady. No other material has come on the record to doubt that the death of the victim was for some other reason and not as claimed by the prosecution.

14. Therefore, in my view, the prosecution has successfully proved that there was demand of dowry in the form of a Gold Chain and a Colour T.V. subsequent to the marriage, as such, was within the definition of dowry demand. The victim died within six months of her marriage and her death was otherwise than under normal circumstances because strangulation was found to be cause of death. Most of the prosecution witnesses are consistent that the victim was subjected to cruelty/ harassment by the appellant and other family members in different ways including by physical assault before her death. Since death was caused within a very short span of time after marriage the time lag between the demand and torture and unnatural death was not stale enough to doubt the connection between the two. Therefore, the charge against the appellant under Section 304B IPC have been proved by prosecution beyond all reasonable doubts. Hence, conviction of the appellant requires no interference.

15. In **Gurdeep Singh case (Supra)**, the facts were quite different as some of the accused were acquitted on the very



same evidence relying on which the appellants were convicted. The Court had found that there was no evidence of demand of dowry soon before death as the demand was made one year prior to the incident and the prosecution had failed to establish the proximity test. The scenario of the present case depicts a quite different story as discussed above.

16. The appellant is in custody since 30.09.2013, as such, he has already served out more than seven years of the sentence awarded. The impugned judgment does not show any noteworthy aggravating circumstance against the appellant who is a young person. Hence, in my view, the reduction of sentence to the period already undergone would serve the purpose of justice. Hence, the sentence is reduced to the period already undergone.

17. With the aforesaid modification of the sentence, this appeal stands dismissed. Let the appellant be set free at once.

(Birendra Kumar, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	12.02.2021
Uploading Date	22.02.2021
Transmission Date	22.02.2021

