

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.460 of 1996

1. Akhtar Hussain son of Badruddin
2. Md. Badruddin son of late Nayamat Ali (Appeal against this appellant
has already abated vide order dated 28.07.2022)
3. Saira Bano w/o Md. Badruddin, all resident of village Iatahana, P.S.
Krishnagarh, District Bhojpur

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (DB) No. 496 of 1996

Anwar Hussain, Son of Late Badruddin, resident of village- Iathana, P.S.
Krishnagarh, District Bhojpur

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (DB) No. 460 of 1996)

For the Appellants : Mr. Amish Kumar (Amicus Curiae)
Mr. Amit Anurag, Advocate

For the Respondent : Mr. Bipin Kumar, APP

(In CRIMINAL APPEAL (DB) No. 496 of 1996)

For the Appellant : Mr. Amish Kumar (Amicus Curiae)
Mr. Amit Anurag, Advocate

For the Respondent : Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

Date : 26-08-2022

Both these appeals filed in the year 1996, i.e., around 26 years ago, arise out of the same judgment and order. Hence, both these appeals were heard together and are being disposed of by a common judgment.



2. By order dated 28.07.2022, the appeal against Md. Badruddin (appellant No.2 in Criminal Appeal (DB) No.460 of 1996) has already got abated. Therefore, Criminal Appeal (DB) No.460 of 1996 is now confined to appellants Akhtar Hussain and Saira Bano only.

3. Both the appeals have been preferred against the judgment of conviction dated 07.09.1996 and the order of sentence dated 09.09.1996, passed by the 1st Additional Sessions Judge, Ara in Sessions Trial No.27 of 1995, arising out of Barahara (Krishnagarh) P.S. case No.171 of 1993, whereby and whereunder the appellants have been convicted under Sections 304B, 201, 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act and have been sentenced to undergo R.I. for life under Section 304B of the Indian Penal Code, R.I. for 5 years under Section 201 of the Indian Penal Code, R.I. for two years under Section 498A of the Indian Penal Code and R.I. for 6 months under Section 4 of Dowry Prohibition Act. All the sentences of the appellants have been directed to run concurrently.

4. Prosecution case, in brief, is that the deceased Reshma, the daughter of the informant, was married in 1991 with accused Anwar Hussain. Accused Anwar Hussain, his mother accused Saira Bano and his younger brother accused Akhtar Hussain



started torturing deceased Reshma and used to say that dowry agreed upon has not been fulfilled. They used to confine her and not give meal to her. She complained about it many times and the informant wanted to pacify the matter. Accused Anwar Hussain wanted to kill her due to the reason that he had illicit relation with other woman. He used to write threatening letters to the informant. A panchayati was also attempted. Accused Badruddin also instigated to kill her. The informant received information of murder of said Reshma on phone. He came on leave and went to the Sasural of his daughter where accused Anwar Hussain and others threatened him not to take any action in this regard, otherwise he would face dire consequences. The mother-in-law of deceased and mother of accused Anwar Hussain is own sister of the informant. On the written report, Barahara (Krishnagarh) P.S. case No.171 of 1993 was instituted. The police investigated the matter. During course of investigation, under the permission of the District Magistrate and Sub Divisional Magistrate, Ara, the grave of the deceased Reshma was dug and her dead body was exhumed. The statements of the witnesses were recorded and after completion of investigation, the police submitted charge-sheet against the accused persons and the jurisdictional Magistrate took cognizance in the matter and then committed the case to the Court



of Sessions. Charges were framed against the appellants under Sections 304B, 201, 498A of the Indian Penal Code and $\frac{3}{4}$ of Dowry Prohibition Act. The appellants pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution has examined altogether ten witnesses. Out of whom, P.W.1 Md. Salim Ansari is uncle of deceased Reshma and own brother of informant. P.W.2 is Md. Kalamuddin. P.W.3 Md. Shakir Hussain is Bahnoi of the informant and own Sarhu of accused Badruddin. P.W.4 is Md. Samim. P.W.5 is Md. Halim. P.W.6 Md. Idris Ansari is the informant of the case. P.W.7 is Pramod Kumar. P.W.8 Rajiv Ranjan Sinha is the Officer (C.D.P.O.), in presence of whom the grave of the deceased was dug and her dead body was exhumed. P.W.9 Dr. Vishnudeo Prasad is the Doctor, who held postmortem examination on the dead body of deceased Reshma. P.W.10 Md. Israr Ahmad is the Investigating Officer. The prosecution has also brought on record the documents, like Inquest report (Ext.11), postmortem report (Ext.8), letters (Ext.5 to 5/4), photo copies of letters (Exts.2 series). Five court witnesses, namely, Md. Salim Ansari, Md. Kalimuddin, Md. Halim, Md. Syed Ansari and Md. Shabbir Hussain have also been examined by the trial court. The Defence has examined three witnesses, namely, Dr. Nand Kishore



Sharma (D.W.1), Leyakat Hussain (D.W.2) and Dharamraj Mahto (D.W.3), in support of its case.

6. When both the appeals were taken up on the last date, there was no representation on behalf of the appellants. Therefore, by order dated 28.07.2022, this Court had appointed Mr. Amish Kumar as Amicus Curiae to assist the Court on behalf of the appellants.

7. Mr. Amish Kumar, learned Amicus Curiae, appointed to represent the appellants submits that the judgment of conviction and order of sentence is bad in law. The learned trial court has fallen in error of law by holding the appellants guilty, as the prosecution has not been able to prove the ingredients of dowry death. There is no evidence brought on record by the prosecution, which can suggest that the deceased died an unnatural death. In order to support his argument, Mr. Amish Kumar contends that the doctor in the post-mortem report of the deceased has opined that the cause of death could not be ascertained due to advanced degree of decomposition. It is also submitted by him that though the viscera of the deceased was preserved for FSL examination, however, the prosecution has failed to bring on record the FSL report of the said viscera. Hence, he argues that the prosecution has not been able to establish that the deceased died an unnatural



death. Further, it has been argued that the prosecution has also not adduced any evidence on the point that the deceased was subjected to cruelty or harassment by the appellants, soon before her death, for, or in connection with, any demand for dowry. This contention has been bolstered by him by drawing our attention towards the letters, which have been brought on record by the prosecution to establish the fact of cruelty. It is submitted by him that the communication made between the parties, through the letters brought on record by the prosecution, does not even remotely indicate that the deceased was subjected to any sort of cruelty by the appellants, soon before her death, for, or in connection with demand of dowry. It has been argued that, at best, what transpires from the communication made in those letters is that the relationship of the deceased with the appellants was strained. He submits that such wear and tear in the marriage is very common and exchange of such sour words would not *ipso facto* constitute cruelty or harassment. Moreover, there is no material in the letters exhibited during the trial which would indicate that the deceased was ever assaulted physically and any mental torture was done on him or was ever abused verbally. Thus, on these grounds, Mr. Amish Kumar submits that the trial court has wrongly convicted the appellants, as the ingredients of Section 304B of the Indian



Penal Code are not made out from the evidence adduced by the prosecution. Lastly, it has been submitted that the conviction under Section 498A of the Indian Penal Code is also bad as the prosecution has not brought on record any evidence in order to prove that the appellants committed any cruelty upon the deceased. Reliance has been put by Mr. Amish on the judgments of the Hon'ble Supreme Court in the cases of *Sunil Bajaj vs. State of M.P.* reported in (2001) 9 SCC 417, *Tarsem Singh vs. State of Punjab* reported in (2008) 16 SCC 155, *Durga Prasad & Anr. Vs. The State of M.P.* reported in (2010) 9 SCC 73 and *Major Singh & Anr. Vs. State of Punjab* reported in (2015) 5 SCC 201.

8. Per Contra, learned A.P.P. appearing for the State submitted that the trial court has appreciated the evidence in a proper manner and has rightly convicted the appellants. The prosecution has adduced enough evidence to bring home guilt of the appellants. Therefore, the judgment of conviction and order of sentence passed by the learned trial court should be sustained and requires no interference.

9. Before coming to the facts of the case, at this stage, we find it necessary to delineate the ingredients which are necessary to establish and prove the charge under Section 304B of the Indian



Penal Code. Section 304B of the Indian Penal Code reads as under:

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.*

10. Therefore, in order to seek conviction under Section 304B of the Indian Penal Code against a person for the offence of dowry death, the prosecution is obliged to prove the essential ingredients which are (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 years of her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;



(d) such cruelty or harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death. The essential ingredients referred hereinabove have also been delineated by the Hon'ble Supreme in the case of ***Biswajit Halder and Ors. Vs. State of West Bengal*** reported in ***(2008) 1 SCC 202***.

11. Now coming to the case in hand, after hearing the arguments advanced by both sides and perusing the material available on record, following issues arise for our consideration: -

(I) Whether the prosecution has been able to establish and prove the essential ingredients of Section 304B of the Indian Penal Code, delineated hereinabove, in the facts of the present case?

(II) Whether the guilt of the appellants should be presumed as enunciated under Section 113-B?

(III) Whether the prosecution has been able to prove the offence of Section 498A of the Indian Penal Code and Section 4 of Dowry Prohibition Act, against the appellants, by adducing evidence to substantiate the allegation?

12. In order to deal with the first issue, from perusal of record it appears that the alleged date on which the deceased is



said to have died is 03.10.1993. Further, it is alleged that on 04.10.1993, the dead body of the deceased was buried. On 08.10.1993 the F.I.R. was lodged and on 10.10.1993 the dead body of the deceased was exhumed from the grave. The post-mortem report on the dead body of the deceased was conducted on 12.10.1993. From perusal of the post-mortem report of the deceased it appears that the doctor has opined that the '*cause of death could not be ascertained due to advanced degree of decomposition*'. Further, the doctor has preserved the viscera for FSL examination. However, the prosecution has not produced the FSL examination report of the viscera, so preserved, on record. It is necessary to point out here that the post-mortem report vividly reveals that no external injury was found anywhere on the body of the deceased. Therefore, from the material brought on record by the prosecution, it cannot be ascertained that the deceased died an unnatural death, as there is no evidence in order to support this proposition. Hence, in absence of any evidence, we are constrained to hold that the prosecution has failed to establish and prove the first ingredient of dowry death i.e., the deceased died an unnatural death.

So far the second ingredient is concerned, i.e., death within seven years of marriage. The same is not required to be dealt in



detail as it is a matter of record that the marriage of deceased was solemnized in the year 1991 and the death occurred in the year 1993. Therefore, the death of the deceased has taken place within seven years of her marriage.

The other ingredients i.e., the deceased was subjected to cruelty to harassment soon before her death and that cruelty was for or in connection with demand of dowry is required to be examined in detail. In order to establish the allegation of cruelty done upon the deceased in connection with demand of dowry, the prosecution has brought on record several letters through which communication has been made between both sides. Perusal of the same shows that there is no allegation of any sort of cruelty done upon the deceased by the appellants. At best, it shows that the relationship between the appellants and the deceased were strained. Such misunderstandings in the family are common and cannot be termed as cruelty for the purpose of dowry death. One more aspect is also required to be scrutinized, that is, the cruelty should be done soon before the death of the deceased. In the present case, there is no evidence to show that the deceased was subjected to cruelty *soon before her death*. The letters also do not indicate that any cruelty was done upon the deceased in connection with *demand of dowry*. The prosecution has not adduced any



evidence on the point of demand of dowry except the allegation made by the informant. At this juncture, we find it relevant to refer to the judgment of Hon'ble Supreme Court in the case of ***Satvir Singh and Ors. vs State of Punjab and Anr.*** reported in **(2001)8 SCC 633** wherein the Hon'ble Apex Court in paragraph 22 of the judgment has held as follows: -

“22. It is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened "soon before her death". The said phrase, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The legislative object in providing such a radius of time by employing the words "soon before her death" is to emphasis the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry related harassment or cruelty inflicted on her. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the court would be in a position to gauge that in all probabilities the death would not have



been the immediate cause of her death. It is hence for the court to decide, on the facts and circumstances of each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept "soon before her death".

Also, the Hon'ble Supreme Court in the case of ***Sakatar Singh and Ors. Vs. State of Haryana*** reported in ***(2004) 11 SCC 291*** in paragraph 11 of the judgment has held that:

"11. In the above background, we will now consider the evidence led by the prosecution to establish the charge leveled against the appellants. In this process, we will first examine the letter written by the deceased to her mother. Though this letter does not mention the date, there is no dispute that the same was posted on 20.5.1986 which is evident from the postal seal found on the envelope which would be a date prior to the incident leading to the death of Devinder Kaur and the children. The contents of the letter indicates what transpired during her mother's visit to her in-laws house and does not anywhere even remotely indicate any demand made by her in-laws. It only reflects the attitude of the deceased towards her in-laws and that she entertained a feeling that her mother was not properly treated by her mother-in-law during her last visit.



The letter also indicates that while the deceased did not wish that her mother should visit her in-laws' place, her brother could do so which is clear from the following statement in the said letter : "Mother do not worry about me. I have make up my will power. When I go angry then I also utter a few things. Mother send brother here, you need not come because they are after your blood." In the said letter she also complained against her brother's wife accepting a Shagun of Rs. 20/- from her mother-in-law and says that the same should be returned. A reading of the above letter does indicate that her relationship with her mother-in-law was not good but at the same time she herself was prone to get angry at times and was prepared to retort. In our considered opinion, this letter does not, in any manner, indicate either there was any unlawful demand from her in-laws or pursuant to such demand there was any harassment leading to cruelty."

(emphasis supplied)

Therefore, in view of the discussion made hereinabove and decisions referred above, we are of the view that the prosecution has failed to establish the essential ingredients required to prove the charge of Section 304B of the Indian Penal Code.



13. So far the second issue is concerned; the legislature along with the addition of Section 304B in the IPC made corresponding amendment in the Evidence Act and inserted 113B which reads as under:

113B. 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 has 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 304B, of the Indian Penal Code (45 of 1860)].

It has to be understood that at what stage the presumption as enunciated under Section 113B of the Evidence Act will come into play. Since, the general rule of criminal jurisprudence is that an accused is presumed to be innocent until proven guilty. The Hon'ble Supreme Court in the case of **Satvir Singh and Ors.** (*supra*) in paragraph 20 of the judgment has observed the following:

"20.Prosecution, in a case of offence under Section 304B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry



and also that such cruelty or harassment was caused "soon before her death"... "

In another case of **Kamesh Panjiyar vs. State of Bihar** reported in **(2005) 2 SCC 388** the Hon'ble Supreme Court has in paragraph 11 held: -

"11. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'.

The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test.



No definite period has been indicated and the expression 'soon before' is not defined. A reference to expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."

(emphasis supplied)

In the facts of the present case, as dealt with in the preceding issue, prosecution has not been able to rule out the possibility of natural death as prosecution has not been able to ascertain the cause of death. Further, there is no substantive evidence to support the allegation that the deceased was subjected to cruelty, soon before her death, for or in connection with demand of dowry. Therefore, since the prosecution has failed to establish a



case under Section 304B of the Indian Penal Code, the presumption of guilt against the appellants, as enunciated under Section 113B of the Evidence Act, would not be applicable in the present case.

14. Adverting to the third issue formulated above, we have examined the entire gamut of evidence brought on record by the prosecution. It is evident from the record that no independent witness, such as any neighbor or any co-villager, has been brought by the prosecution in order to prove the allegation of cruelty or demand of dowry. Further, the letters also do not reveal that any cruelty was meted out to the deceased or there was any demand of dowry. The letters only show that the relationship between the deceased and the appellants were sour. There is also no evidence on record that the deceased ever made any complaint regarding any cruelty meted out to her during her lifetime. Therefore, the allegation of cruelty under Section 498A of the Indian Penal Code and demand of dowry for the offence under Section 4 of Dowry Prohibition Act stands unsubstantiated.

15. In view of the findings arrived at on the issues formulated above, we are of the considered opinion that the prosecution has failed to prove the charges against the appellants and, therefore, the judgment of conviction is not tenable.



16. As such, both the appeals are allowed. The judgment of conviction dated 07.09.1996 and the order of sentence dated 09.09.1996, passed by the 1st Additional Sessions Judge, Ara in Sessions Trial No.27 of 1995, arising out of Barahara (Krishnagarh) P.S. case No.171 of 1993, are set aside. Since the appellants are on bail, they are discharged from the liabilities of their respective bail bonds.

17. Before parting away with these appeals, we record our appreciation for the sincere efforts put by Mr. Amish Kumar, learned Amicus Curiae, who has assisted this Court in these appeals. Therefore, as a gesture of appreciation we direct the Patna High Court Legal Services Committee to pay a sum of Rs.5000/- to Mr. Amish Kumar, learned advocate, appointed as Amicus Curiae by this Court by order dated 28.07.2022.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Narendra/-

AFR/NAFR	NAFR
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