

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.602 of 2014

Arising Out of PS. Case No.-8 Year-2012 Thana- BIHPUR District- Bhagalpur

Sanjeev Kumar Jha @ Sanjeev Jha @ Bulbul @ Bablu S/o Shri Shivendra Jha
R/o Village- Chkrami Sahpur, P.S. Bihpur, Bhawanipur, Distt. Bhagalpur
... .. Appellant

Versus

The State Of Bihar
... .. Respondent

Appearance :

For the Appellant : Mr. N.K.Agrawal, Senior Advocate
Mr. Pravin Kumar Sinha, Advocate
For the Respondent : Mr. Sujit Kumar Singh, A.P.P.
Ms. Surya Nilambari, learned Amicus Curiae

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

and

HONOURABLE MR. JUSTICE KHATIM REZA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH)

Date : 08-09-2022

Heard Mr. N.K. Agrawal, learned Senior Counsel with Mr. Pravin Kumar Sinha, learned counsel appearing on behalf of the appellant and Mr. Sujit Kumar Singh, learned Additional Public Prosecutor appearing on behalf of the State. When this appeal was taken up on 25.07.2022 for final hearing, the Court, after having noticed no representation for the appellant had requested Ms. Surya Nilambari, a learned Advocate of this Court to assist this Court as an *Amicus Curiae* to present the appellant's case. The appeal was heard on 06.09.2022, when Ms. Surya Nilambari, learned *Amicus Curiae* presented the case of the appellant. However, subsequently, learned Senior Counsel for the



appellant appeared to address this Court. Ms. Surya Nilambari has also effectively assisted this Court as an *Amicus Curiae* in this case.

2. This appeal has been preferred by the appellant assailing the impugned judgment of conviction dated 24.05.2014 and order of sentence dated 28.05.2014, passed by learned Adhoc Additional Sessions Judge, Naugachia, Bhagalpur, in Sessions Trial No. 398 of 2012/Tr. No. 490 of 2013, whereby the appellant has been convicted and sentenced as under:

Conviction under Section	Sentence		
	Imprisonment	Fine (Rs.)	In default of fine
304-B of the Indian Penal Code	R.I. for life	50,000/-	S.I. for one year
120(B) of the Indian Penal Code	Imprisonment for life	-	-

3. Both the sentences have been directed to run concurrently.

4. The appellant is a brother of co-convict Rajiv Ranjan Jha (since deceased).

5. Briefly narrated, it is the prosecution's case, based on the *fard-beyan* of Kunal Mishra @ Goldee (P-6) as recorded by the Sub Inspector of Police (PW-7) on 05.01.2012, that the deceased and co-convict Rajiv Ranjan Jha were married on 29.05.2011. There is allegation of demand of a four wheeler as dowry by said



Rajiv Ranjan Jha, the husband of the deceased and his other family members. There is also allegation of ill-treatment, physical assault and torture against the husband and the in-laws so as to pressurize the deceased and her family members to fulfill their demand of a four-wheeler. On 04.01.2012, the informant was informed by one Rohit Kumar Mishra, a nephew (*Bhagina*) of Rajiv Ranjan Jha that the deceased had died. Few days before 04.01.2012, on 01.01.2012, the deceased had called her father Antaryami Mishra (PW-5) requesting him to come immediately to her else her in-laws would kill her. When the informant reached the matrimonial home of his sister after receiving the news of her death, he saw the dead body of his sister hanging with a red printed *Gamcha* (towel) tied around her neck from a horizontal bamboo in the house. Her feet were touching the floor and her knees, nearly 6” above the floor. With an allegation that the informant’s sister was done to death under a conspiracy by her in-laws and hanged her body with a bamboo, with the help of a *Gamcha*, the First Information Report came to be registered for the offences punishable under Section 304-B, 120-B/34 of the Indian Penal Code.

6. After submission of charge-sheet by the police and taking of cognizance of the offences by the learned Magistrate, the case was committed to the Court of sessions on 21.03.2012 for



trial. The charges were framed on 03.05.2012 against said Rajiv Ranjan Jha and this appellant for commission of the offence punishable under Section 304-B, 120-B and Section 302/34 of the Indian Penal Code. As there was complete denial of the charge, the appellant and said Rajiv Ranjan Jha were put on trial.

7. During the course of examination, altogether eight witnesses were examined. The defence examined six witnesses. Apart from oral evidence, the prosecution proved documentary evidence also at the trial.

8. Upon scrutiny and analysis of the evidence adduced at the trial, the trial court concluded that the prosecution had been able to prove the offence punishable under Section 304-B of the Indian Penal Code. Surprisingly, the trial Court held in its impugned judgment and order that the offence under Section 300 of the Indian Penal Code was also proved. However, since the death was caused for demand of dowry and there being specific provision for an offence of causing death due to demand of dowry, i.e., 304-B of the Indian Penal Code, the trial court held the appellant and Rajiv Ranjan Jha guilty of the offence punishable under Section 304-B of the Indian Penal Code and sentenced them accordingly.



9. Ms. Surya Nilambari, learned *Amicus Curiae*, appointed by this Court has argued that there is no evidence at all adduced at the trial to constitute ingredients of 300 of the Indian Penal Code and the finding recorded by the trial court to this extent is patently erroneous, verging on perversity. She has further submitted that it is albeit true that the deceased died within seven years of marriage, the prosecution miserably failed to establish that it was a case of homicide. She has contended that though, with the aid of Section 113-B of the Indian Evidence Act, an offence under Section 304-B of the Indian Penal Code can be proved, based on legal presumption, it is, at the same time, the statutory obligation of the prosecution to prove that the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand of dowry, soon before the death. Definite proof of the fact beyond reasonable doubt with cogent evidence that a married woman was subjected to cruelty or harassment, is a *sine qua non* to make out an offence under Section 304-B of the Indian Penal Code, before applying the statutory presumption under Section 113-B of the Indian Evidence Act, she contends. The said legal presumption is rebuttable and question of rebuttal of presumption would arise only if the prosecution establishes beyond all reasonable doubts that a



married woman was subjected to cruelty or harassment by her husband or near relatives of her husband for or in connection with any demand for dowry, she urges.

10. She has submitted that the appellant is the brother of the husband of the deceased. She contends that the prosecution did not lead any evidence to substantiate that the appellant and the husband of the deceased lived together in the same house in which the dead body of the deceased was found. She has further argued that this is not the specific case of the prosecution that any demand of dowry was made by the appellant or that the deceased was subjected to mental cruelty or torture by this appellant. She has further argued that the prosecution has miserably failed to prove essential ingredients to constitute an offence punishable under Section 304-B of the Indian Penal Code against this appellant.

11. In support of her submission she has relied on Supreme Court's decisions in case of *Pawan Kumar v. State of Haryana*, reported in (1998) 3 SCC 309; *Satvir Singh v. State of Punjab*, reported in (2001) 8 SCC 633; *Vijay Pal Singh v. State of Uttarakhand*, reported in (2014) 15 SCC 163; *Rajinder Singh v. State of Punjab*, reported in (2015) 6 SCC 477 and *Baijnath v. State of M.P.*, reported in (2017) 1 SCC 101.



12. She has argued, referring to the depositions of the PW-1 that he clearly mentioned in his evidence in paragraph 15 that there was no conversation with this appellant, apparently on the point of demand of dowry. She has also drawn our attention to the evidence of PW-1, in paragraph 19, suggesting that the deceased was happy after the marriage and the deceased was not dissatisfied with her marriage performed at the instance of the father of the victim.

13. Mr. N.K. Agrawal, learned Senior Counsel appearing on behalf of the appellant has submitted that the trial court has completely overlooked the evidence of the defence witnesses in its judgment of conviction. Requirement of analysis and scrutiny of evidence of defence witnesses becomes more important for the trial court while dealing with a case relating to an offence punishable under Section 304-B of the Indian Penal Code, where rebuttal of presumption of commission of offence assumes significance.

14. Mr. Sujit Kumar Singh, learned Additional Public Prosecutor representing the State, has submitted that this is an admitted fact that the deceased died within seven years of marriage. The prosecution witnesses have consistently testified that soon before the death of the deceased, there was demand for



giving a four-wheeler as dowry. He has submitted that there is further evidence of cruelty and torture meted out to the deceased by the husband and other in-laws of the deceased including this appellant soon before her death. In that background, the finding of convicted recorded by the trial Court does not suffer from any infirmity requiring this Court's interference, he contends.

15. We have perused the impugned judgment and the order of the trial court as well as the lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the appellant, the State and that made by learned *Amicus Curiae*.

16. It would be apt to reiterate in the present judgment the essential ingredients for proving a case of dowry death attracting punishment under Section 304-B of the Indian Penal Code. Section 304-B of the Indian Penal Code reads as under: -

“304-B -(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.]

17. It is easily culled out on plain reading of the aforementioned provision that the fundamental constituents of Section 304-B of the Indian Penal Code are as under: -

- (i) when a death of a woman is caused by any burn or bodily injury or
- (ii) it occurs otherwise than under normal circumstance;
- (iii) the above two facts must have happened with seven years of a married woman;
- (iv) the married woman was subjected to cruelty, harassment by her husband or his relative, soon before her death
- (v) such cruelty or harassment was for or in connection with any demand of dowry.

18. The explanation to sub-section (I) of Section 304-B provides that for the purpose of this said sub-section, “dowry”



shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The term 'dowry' as falling in Section 2 of the Dowry Prohibition Act, 1961, has been explained by a three-Judge Bench of the Supreme Court in the case of **Rajinder Singh** (supra) and has laid down in paragraph 8 thereof as under: -

8. A perusal of Section 2 shows that this definition 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 solemnized.

(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”.

19. The Supreme Court, in the case of **Rajinder Singh** (supra), dealing with the said definition of ‘dowry’ under Section 2 of the Dowry Prohibition Act, as noted above, has concluded in paragraph 20 as under: -

“20. Given that the statute with which we are dealing must be given a fair, pragmatic, and common sense interpretation so as to fulfill the object sought to be achieved by Parliament, we feel that the judgment in Appasaheb case [Appasaheb v. State of Maharashtra, (2007) 9 SCC 721(2007) 9 SCC 721 : (2007) 3 SCC (Cri) 468] followed by the judgment of Vipin Jaiswal [Vipin Jaiswal v. State of A.P., (2013) 3 SCC 684 : (2013) 2 SCC (Cri) 15] do not state the law correctly. We, therefore, declare that any money or property or valuable security demanded by any of the persons mentioned in Section 2 of the Dowry Prohibition Act, at or before or at any time after the marriage which is



reasonably connected to the death of a married woman, would necessarily be in connection with or in relation to the marriage unless, the facts of a given case clearly and unequivocally point otherwise.”

(underscored for emphasis)

20. This Court, in the facts and circumstances of this case, as noted above, is required to consider as to whether the appellant's conviction for commission of offence punishable under Section 304-B of the Indian Penal Code as recorded by the trial court is justified, based on the evidence adduced at the trial. The appellant, as has been noticed at the outset, is an elder brother of the husband of the deceased. In our considered view, Ms. Surya Nilambari, learned *Amicus Curiae*, has rightly placed reliance on Supreme Court's decision in case of **Baijnath** (supra), wherein, after having conjointly read Sections 304-B, 498-A of the Indian Penal Code and Section 113-B of the Indian Evidence Act, it has been held that the presumption under Section 113-B of the Indian Evidence Act is founded on the proof of cruelty or harassment of the woman for or in connection with demand for dowry by the person charged with the offence. There is no gainsaying that presumption as to dowry death will arise only when the fact that a married woman was subjected to cruelty or harassment for or in connection with the demand of dowry by the accused is proved.



The requirement of such proof to attract presumption under Section 113-B of the Indian Evidence Act is a prerequisite to invoke statutory presumption of commission of offence of dowry death by the person charged of such offence.

21. The legislative primature of relieving the prosecution of the rigour of the proof of the often practically inaccessible recesses of life within the guarded confines of a matrimonial home and of replenishing the consequential void, by according a presumption against the person charged, cannot be over eased to gloss over and condone its failure to prove credibly, the basic facts enumerated in the sections involved, lest justice is the casualty, the Supreme Court held in the case of **Baijnath** (supra) (see paragraph 31).

22. It would be useful to reproduce paragraph 30 of the Supreme Court's decision, in the case of **Baijnath** (supra), which reads as under: -

“30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or his relative or the



person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.”

23. In the present case, on perusal of the First Information Report, it is manifest that there was nothing specific alleged against this appellant that he had subjected the deceased to cruelty or harassment or he had made any demand of dowry. There was general and omnibus accusation of demand of a four-wheeler after marriage against the husband of the deceased and all other family members. PW-1 is the brother of the deceased, who has not stated anything, attributing any role of this appellant either in relation to any demand of dowry or the deceased having been subjected to harassment or cruelty by this appellant. In response to a question during the cross-examination, he has specifically stated that this appellant had never talked with PW-1 (संजीव झा से कोई बात-चित नहीं हुई थी).

24. Similarly, PW-2, who is uncle of the father of the deceased, has also deposed that though there was conversation for



dowry and marriage with the father-in-law of the deceased, there was no such conversation with the other members of the family at any point of time in the said regard. PW-3 did not remember the name of this appellant in his deposition at the trial. PW-4 is merely a hearsay witness and has not at all proved the accusation of any harassment or cruelty caused by this appellant. PW-5 is the father of the deceased. On careful examination of the evidence of PW-5, we notice that there is no evidence against this appellant. PW-6, the informant, who is the brother of the deceased, has not made a whisper against this appellant. In paragraph 12 of his evidence, he has stated that after marriage of the deceased and till her death, the deceased had not made any complaint against the in-laws of the deceased. In paragraph 17, he has specifically stated that he never conversed with the father-in-law, mother-in-law and brother-in-law (the appellant) of the deceased. In paragraph 18, upon having been asked about this appellant, he has expressed his inability to say as to what does he do, apparently in relation to the appellant's occupation.

25. It is evident on cumulative analysis of the evidence adduced at the trial that there is no iota of evidence to constitute a case of homicide, much less murder within the meaning under Section 300 of the Indian Penal Code. The contrary finding



recorded by the trial court in this Court's opinion, is based on no evidence and is accordingly held to be perverse.

26. Now coming to the question of the appellant's conviction of the offence punishable under Section 304-B of the Indian Penal Code, we find that there is no evidence on record to indicate that this appellant had subjected the deceased to cruelty or harassment for or in connection with any demand for dowry. There is no definite and clear evidence against the appellant of having made any demand of dowry or of having subjected the deceased to cruelty or harassment. In the absence of proof of these ingredients to constitute an offence punishable under Section 304-B of the Indian Penal Code, the appellant's conviction by the trial court by the impugned judgment of conviction and the order of sentence is unsustainable. Unless, the demand of dowry is proved; unless harassment or cruelty on a married woman is proved coupled with her death in the reasonable contiguity of death, a person cannot be held guilty of the offence punishable under Section 304-B of the Indian Penal Code.

27. In view of the above, we are of the considered opinion that the impugned judgment of conviction and the order of sentence dated 24.05.2014/28.05.2014 passed by Adhoc Additional Sessions Judge, Naugachhia, Bhagalpur, in Sessions Trial No. 398



of 2012/ Tr. No. 490 of 2013 is unsustainable inasmuch as the prosecution failed to discharge its primary onus of proving demand of dowry by this appellant in connection with the marriage of the deceased with the brother of the appellant (died in jail). The finding recorded by the trial court, holding the appellant guilty of the offence punishable under Section 302 of the Indian Penal Code, is without any evidence and such finding, in the Court's opinion, verges on perversity. The appellant's conviction of the offence punishable under Sections 302(B) and 120(B) of the Indian Penal Code is equally unsustainable.

28. Consequently, this appeal is allowed. The impugned judgment and order 24.05.2014/28.05.2014 is set aside. The appellant stands acquitted of the charges framed against him. The appellant is on bail. He stands discharged of all the liabilities of bail bonds and sureties.

29. Before parting with the present judgment, we must not forget to place on record the able assistance extended to this Court by Ms. Surya Nilambari, learned counsel, who was appointed as an *Amicus Curiae*, in the absence of learned counsel for the appellant, to present the appellant's case before this Court. We deeply appreciate her perseverance, sincerity and preparedness with which she took up the cause of the appellant while assisting



this Court. For the selfless service rendered by her, we direct the Secretary, Patna High Court Legal Services Committee, to pay to her token amount of Rs.10,000.00 (Ten thousand). The amount must be paid within three months from receipt/communication of the order.

30. Let this order be communicated to the Secretary, Patna High Court Legal Services Committee.

(Chakradhari Sharan Singh, J)

(Khatim Reza, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	N/A
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