

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.635 of 2017

Arising Out of PS. Case No.-51 Year-2014 Thana- RAFIGANJ District- Aurangabad

Kamlesh Das S/o Kapildeo Das, resident of Village- Sihada, P.S.- Rafiganj,
District- Aurangabad.

... .. Appellant

Versus

The State Of Bihar

. . . . Respondent

Appearance :

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

For the Respondent/s : Sri Sujit Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL JUDGMENT

Date : 29-08-2022

The present criminal appeal has been preferred against the judgment of conviction dated 24.01.2017 and order of sentence dated 27.01.2017 passed by the Court of Sessions Judge, Aurangabad in Sessions Trial No. 14/2015 arising out of Rafiganj P.S. Case No. 51/2014 whereby and whereunder the appellant, namely, Kamlesh Das has been convicted under Section 304B of Indian Penal Code and has been sentenced to undergo rigorous imprisonment of 10 years with fine of Rs. 10,000/- and in default of payment of fine, the appellant has been further sentenced to undergo six months rigorous imprisonment.

2. It is the case of prosecution, recorded on the basis of fardbeyan of Krit Ram at 9.15 am on 01.04.2014, that on 31.03.2014 at 3 o'clock during day time he was informed by his nephew Sunil Kumar through mobile phone that Poonam Devi(deceased) had got burnt and requested him to come to see her. The informant along with son of his brother-in-law went to the Rafiganj hospital wherein he saw that the



whole body of his daughter was in burnt condition. In course of treatment, she was referred to Sadar Hospital, Aurangabad and thereafter she was immediately referred to Gaya Maa Gayatri Memorial Hospital where during the course of treatment, she succumbed to death at 11 p.m. in night. He further states that her daughter told him that it was the appellant who set her on fire. The informant further claims that it is the appellant who has caused burnt injury on the body of his daughter by pouring oil and setting her on fire through match stick. The informant further states that the reason behind this occurrence is that the appellant always threatened his daughter to bring a gold chain from his father's house and as a result of which the said incident took place.

3. The police after registration of the case carried investigation and on completion of the same, submitted charge-sheet against the appellant under Section 304B of the Indian Penal Code. The cognizance of the offence was taken by the learned Chief Judicial Magistrate who committed the case to the Court of Sessions whereafter charges were framed under Section 304B of the Indian Penal Code against the appellant. The appellant pleaded not guilty and claimed to be tried.

4. During the trial, to substantiate the charges against the accused person, the prosecution examined as many as nine witnesses, namely, P.W.-1 Sikandar Kumar, P.W.2 Ramashish Ram, P.W.3 Krit Ram (informant), P.W.4 Dinesh Yadav, P.W.5 Mukesh Das, P.W.6 Jaglal Paswan, P.W.7 Brahamdeo Yadav, P.W.8 Ramkrishna Paswan and P.W.9



Dr. Sunil Kumar Prasad (doctor who conducted post-mortem examination. Certain documents were exhibited by the prosecution in support of its case. The defence has also examined four witnesses, namely, D.W.1 Dr. R.S. Chaudhary, D.W.2 Kamlesh Das, D.W.3 Raj Kumar Shashtri and D.W. 4 Anup Das and has produced exhibit in support of its case.

5. Learned counsel for the appellant submits that the prosecution has failed to prove its case beyond all shadow of reasonable doubt, in light of the material contradiction arising out in the deposition made by the Prosecution Witnesses regard to the manner of occurrence. The learned counsel further submits that the learned trial court has failed to appreciate the evidence of P.W.4, P.W.5, P.W. 6 and P.W.7 and has relied upon the deposition of P.W.1 who is a hearsay witness and thus, his evidence is inadmissible. Furthermore, the learned counsel has drawn the attention of this Court to the deposition of the informant, wherein the informant after having talk with the deceased neither informed the police nor the doctor about such incident which shows falsity in the case of prosecution and the learned counsel in furtherance of his aforesaid argument submits that, that there being no direct evidence regarding the cause of the death or circumstances leading to death, and in the absence of demand of dowry soon before the death, the appellant could not be held guilty for the offence with which he has been charged, convicted and sentenced by the trial court. The Learned Counsel furthermore submits that, the cremation was performed after



his arrival which negates the presence of *mens rea* for the commission of offence and shows the innocence on part of the appellant. Therefore, the finding of the trial court as recorded in its judgment is perverse and is fit to be set aside.

6. Learned A.P.P. for the State has submitted that the judgment of conviction and order of sentence under challenge requires no interference as the prosecution has been able to prove its case beyond all reasonable doubts. From the evidence, which has been adduced by the prosecution, the guilt of the appellant is satisfactorily proved and there is no infirmity in the judgment of conviction and order of sentence rendered by the Trial Court.

7. After hearing the arguments advanced by the learned counsels appearing for the parties and perusing the evidence available on record the issue which arise for consideration in this appeal is that whether the prosecution has been able to prove the charge of offence under Section 304B of the Indian Penal Code beyond the shadow of reasonable doubt.

8. Before advertng to the facts and circumstances of the case, this Court deems it appropriate to examine the law and the jurisprudence that has been evolved by the Hon'ble Supreme Court, in relation to the offence of Dowry Death under Section 304B of the Indian Penal Code. The offence of Dowry Death find its legislative incorporation in Sec. 304B of Indian Penal Code with corresponding



amendment made in the Evidence Act by insertion of Sec. 113 B of the Indian Evidence Act. Section 304B of Indian Penal Code states that:

“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.”

The Hon’ble Supreme Court in *M. Srinivasulu v State of A.P.*, reported in *AIR 2007 SC 3146*, in expounding the law relating to the Dowry Death, in paragraph no. 7, further observed that:

“In order to attract application of Section 304B IPC, the essential ingredients are as follows:

(i) The death of a woman should be caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.”



In order to attract the provision of Sec. 304 B, the expression “soon before her death” has been given a serious consideration by the Hon’ble Supreme Court in *Maya Devi & anr. V. State of Harayana, AIR 2016 SC 125*, wherein the Court observed that:

“To attract the provisions of Section 304B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. Though the language used is “soon before her death”, no definite period has been enacted and the expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned.”

9. Now, in the light of the law settled by the Hon’ble Court, this Court adverts itself to appreciate the evidence which has been brought on record by the prosecution in order to prove the offence under Section 304B of the Indian Penal Code. The informant of the case (P.W.3) is also the father of the deceased, who in his examination-in-chief in paragraph 1 has stated that his daughter was married with the



appellant in 2013 and this has been admitted by the defence as well as the prosecution. Further, it has been admitted by both prosecution and defence that the death of the deceased was caused on account of burn injury within seven years of marriage otherwise than normal circumstances. P.W.4 in his evidence deposed that one and a half years ago, the deceased succumbed due to burn injury in her law's house. P.W.5, P.W.6 and P.W.7 have also supported the statement of P.W.4 in their respective depositions. P.W.9 is the doctor who conducted the post-mortem examination, who has deposed that in his opinion, that the cause of death is shock, coma and asphyxia as a result of burn. Therefore, the death of the deceased took place within seven years of her marriage otherwise than under a normal circumstance. From perusal of the post-mortem report of the deceased (Ext.6), it appears that the dead body of the deceased was severely burnt. The percentage of burn on the person of the deceased is said to be 95 %. The Hon'ble Supreme Court in ***Mukesh and Ors. vs. State for NCT of Delhi and Ors., A.I.R. 2017 SC 2161***, after placing its reliance on the oral dying declaration made by the victim, after having suffered severe burn injury, referred to its earlier settled decisions in paragraph No. 179 and observed that:

“23. It is contended by the learned Counsel for the Appellant that when the deceased sustained 100% burn injuries, she could not have made any statement to her brother. In this regard, we may profitably refer to the decision in Mafabhai Nagarbhai Raval v. State of Gujarat (1992) 4 SCC 69 wherein it has been held that a person suffering 99% burn injuries could be



deemed capable enough for the purpose of making a dying declaration. The Court in the said case opined that unless there existed some inherent and apparent defect, the trial court should not have substituted its opinion for that of the doctor. In the light of the facts of the case, the dying declaration was found to be worthy of reliance.

24. In State of M.P. v. Dal Singh (2013) 14 SCC 159, a two-Judge Bench placed reliance on the dying declaration of the deceased who had suffered 100% burn injuries on the ground that the dying declaration was found to be credible.”

10. Therefore, this Court considers it appropriate to rely on the oral dying declaration made by the deceased to P.W.1 and P.W.3, with respect to burn injury caused by the appellant due to non-fulfilment of the demand of dowry.

11. The informant (P.W.3) states that after the marriage, his daughter went to her in-law's house. The informant with regard to demand of dowry has deposed that, after six months from the date of marriage, the appellant told her wife (the deceased) to inform her father to bring Rs. 50,000/- and a gold chain else he would burn her by throwing Kerosene oil on her body. Thus, after four months of the said incident of demand of dowry, the appellant burnt his wife due to non-fulfilment of demand of dowry. P.W.1 through his deposition has supported the case of prosecution wherein he stated that the deceased was his cousin and she was married in 2013. He further stated that the deceased told her about the money paid in connection with demand of dowry but due to non-fulfilment of demand of gold chain, she was tortured. The witness further states that the deceased also told him that



the said torture started after three months of marriage. Further, the witness stated at Aurangabad that the deceased told him that she was burnt by all the members of family. Thus, the deceased was subjected to cruelty, in connection with demand for dowry, soon before her death and there exist a proximate and live link between the effect of cruelty and death. Therefore, the essential ingredients relating to the offence of dowry death has been established by the prosecution and, therefore, in light of Section 113B of Indian Evidence Act, it shall be presumed that the accused-appellant has committed the offence and heavy burden is cast upon the appellant to prove his innocence through his plea of defence. But from perusal of record it appears that the appellant has not discharged the burden laid upon him by the law.

12. On the basis of findings arrived at, on the issues formulated above and on perusal of the evidence on record, this Court is of the considered opinion that the prosecution has been successful in proving the charge, beyond all shadow of reasonable doubt, against the appellant under Section 304B of the Indian Penal Code. Therefore, the judgment of conviction dated 24.01.2017 passed by learned Court of Sessions Judge, Aurangabad in Sessions Trial No. 14/2015, arising out of Rafiganj P.S. Case No. 51/2014, is hereby affirmed.

13. So far the period of sentence is concerned, taking into consideration that the appellant is in very youth of his life, therefore, has every chance of reformation and bears no criminal antecedent as also has already faced the rigors of trial, this Court deems it



appropriate to modify the sentence passed by learned trial Court to the extent that the sentence of the appellant be reduced to the period already served by him. The fine imposed by the learned trial Court is also hereby set aside. In case, if the appellant has already paid the fine amount, the same shall be refunded to him. In the light of above, it is directed that the appellant be set at liberty forthwith by releasing him from custody, if not required in any other case.

(Sudhir Singh, J)

Pankaj/-

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