

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1296 of 2017

Arising Out of PS. Case No.-428 Year-2014 Thana- ARARIA District- Araria

Md. Israil @ Israyeel, S/o Md. Mahfooz @ Mahafuz, Resident of Village Murballa, P.S. Araria R.S. District- Araria.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Anil Prasad Singh, Advocate
Mr. Pankaj Kumar Jha, Advocaes
Mr. Vinay Kishore Bharti, Advocate
Mr. Abhijeet Gautam, Advocate.

For the Respondent/s : Smt. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
ORAL JUDGMENT

Date : 26-07-2022

By this appeal, appellant/convicted accused, Md. Israil @ Israyeel is challenging the Judgment and order dated 16.09.2016 and 17.09.2016 passed by the learned Ist Additional Sessions Judge, Araria in Sessions Trial No. 162 of 2015, thereby convicting him of the offence punishable under Section 304B of the Indian Penal Code and sentencing him to suffer rigorous imprisonment for ten years. For the sake of convenience, the appellant shall be referred to in his original



capacity as “an accused”.

2. Facts leading to the prosecution of the accused projected from the police report can be summarized thus:-

A. Deceased Sabina Khatoon was daughter of First Informant/P.W.5, Julekha Khatoon and she was residing at Village Murballa, Ward No. 01 falling under jurisdiction of Araria (RS) Police Station of District Araria. According to the prosecution case, the accused who happens to be her husband had caused her dowry death in the night intervening 10.08.2014 and 11.08.2014 at her matrimonial house located at Ward No. 01 of village Murballa.

B. It is case of the prosecution that one year prior to the incident of unnatural death of Sabina Khatoon, she married appellant Md. Israil, who is resident of the same locality where her parental house was situated. After her marriage, she went to cohabit with the accused at his house. It is case of the prosecution that that soon after her marriage, the accused started demanding dowry from Sabina Khatoon and on refusal, he used to assault her so also to abuse her. Sabina Khatoon used to disclose the incident of beating on account of demand of dowry by the accused to her mother P.W. 5, Julekha Khatoon. Upon convincing him, the accused used to keep quite for few days to



repeat such incident again and again.

C. According to the prosecution case, on 10.08.2014, the accused as well as Sabina Khatoon had gone to the parental house of Sabina Khatoon. Prior to that, he assaulted Sabina Khatoon. She was only sent to her parental house for bringing money to her parents. The accused also went to the house of his in-laws for demanding dowry. After being convinced by P.W. 5 Julekha Khatoon, he returned to his house. Sabina Khatoon also went to her matrimonial house.

D. It is case of the prosecution that at about 12 in the midnight of the night intervening 10.08.2014 and 11.08.2014, P.W. 5 Julekha Khatoon received information from P.W. 1 Jakarul that her daughter Sabina Khatoon passed away and she is killed by the accused. Thereafter, P.W. 5 Julekha Khatoon went to the house of the accused and saw dead body of Sabina Khatoon lying on the cot at the house of the accused. The accused started running away. He was apprehended. Police were summoned. That is how P.W. 5 Julekha Khatoon lodged the FIR against the accused which has resulted in registration of Crime No. 428 of 2014 with Araria (R.S.) Police Station for the offence punishable under Section 304B of the Indian Penal Code.



E. Dead body of Sabina Khatoon was then sent for autopsy to the Sadar Hospital, Araria where P.W. 11 Dr. Md. Umar Akbar had conducted postmortem examination. Statement of the witnesses came to be recorded and after completion of investigation by P.W. 10 Prabhakar Bharti of Police Station Araria, the accused came to be charge sheeted.

F. The learned trial court framed and explained the charge for the offence punishable under Section 304B so also under Section 302 of the Indian Penal Code to the accused. He pleaded not guilty and claimed trial.

G. In order to bring home the guilt to the accused, the prosecution has examined in all eleven witnesses. Jakrul a co-villager is examined as P.W.1 whereas Rizwan a co-villager is examined as P.W. 2. Another co-villager named Ragiv is examined as P.W. 3. Neighbourer named Md. Shabbir is examined as P.W. 4. First Informant- mother Julekha Khatoon is examined as P.W. 5. Nasrin Khatoon- sister of the deceased is examined as P.W. 6. Co-villager Md. Mokim is examined as P.W. 7. Another co-villager named Md. Shamim is examined as P.W. 8. Md. Abdul Haque a co-villager is examined as P.W. 9 whereas the Investigating Officer, Prabhakar Bharti is examined as P.W. 10. Autopsy Surgeon Dr. Md. Umar Akbar, the Medical



Officer Sadar Hospital, Araria is examined as P.W. 11.

H. The defence of the accused was that of total denial. He however did not enter in the defence.

3. After hearing the parties, by the impugned Judgment and order, the learned trial court was pleased to convict the accused and to sentence him as indicated in the opening para of this Judgment.

4. I have heard the learned counsel for the appellant at sufficient length of time. By taking through the record and proceedings, he argued that there is no evidence to connect the accused to the crime in question and therefore, the impugned Judgment is per se illegal and perverse.

5. None for the State. At this juncture the learned Additional Public Prosecutor causes her appearance. The learned Additional Public Prosecutor submits that as she is not having statement of witnesses, she is unable to assist the Court.

6. I have considered the submissions so advanced and also perused the record and proceedings.

7. The accused is found guilty of the offence punishable under Section 304 B of the Indian Penal Code. For the sake of better understanding of the matter, it is necessary to reproduce Section 304B of the Indian Penal Code which read



thus;

“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.”

It is thus seen from the provision of Section 304B of the Indian Penal Code that in order to convict the accused of the offence of dowry death, the prosecution is required to prove that death of a married women took place within seven years of her marriage and the death was otherwise then under normal circumstances. It is required to be shown by the prosecution that soon before her death, the said married women was subjected to cruelty or harassment by her husband or any relatives of her husband. Such cruelty or harassment should be for and on account of demand of dowry. The offence of dowry death is



made out only if there is acceptable evidence on these aspects.

8. If evidence adduced by the prosecution in this case is perused then it is seen that the prosecution has proved that in the night intervening 10.08.2014 and 11.08.2014, Sabina Khatoon died unnatural death. As seen from the evidence of Investigating Officer, the dead body of Sabina Khatoon was dispatched for autopsy and the postmortem examination on that dead body was conducted by P.W. 11 Dr. Md. Umar Akbar, the Medical Officer of that Hospital. Evidence of this Autopsy Surgeon shows that during postmortem examination of the dead body, he noticed one ligature mark around neck of dead body of Sabina Khatoon and under neath of that ligature, tissues were found to be congested. There was fracture on hyoid bone. With this evidence obtained on conducting postmortem examination of the dead body, P.W. 11 Dr. Md. Umar Akbar has opined that Sabina Khatoon died because of asphyxia due to strangulation. There is nothing in his cross-examination to disbelieve his version regarding death of Sabina Khatoon because of asphyxia due to strangulation. With this evidence, thus the prosecution has established unnatural death of Sabina Khatoon occurring at the house of the accused.

9. Now let us examine whether the prosecution



has proved that soon before her death Sabina Khatoon was subjected to cruelty or harassment by the accused who happens to be her husband, for and on account of demand of dowry. The cruelty or harassment as envisaged by Section 304 B of the Indian Penal Code does not include normal bickering in the married life of a couple. Such harassment or cruelty is required to be of certain intensity and persistence so as to drives a married women to end her life.

10. I have carefully examined evidence of all prosecution witnesses adduced by the prosecuting agency. The first and foremost amongst them is P.W. 5 Julekha Khatoon who happens to be mother of the deceased. It is in her evidence that her daughter Sabina Khatoon married the accused and started cohabiting with him at his house. She further stated that she came to know about death of her daughter and therefore she went at the house of the accused. She stated that police also came there and took her thumb impression on the paper prepared by them. That is all what is stated by this First Informant-mother in her chief examination. Her cross-examination reveals that her deceased daughter accompanied by the accused had came to her house on 10.08.2014 and the accused had not demanded any dowry from the deceased or her



family members. She stated that her daughter never made any complaint against the accused to her and her FIR is merely based on suspicion. Thus evidence of P.W. 5 Julekha Khatoon- the First Informant is of no assistance to the prosecution to demonstrate that Sabina Khatoon was subjected to cruelty or harassment by the accused soon before her unnatural death for and on account of demand of dowry.

11. The next important witness is P.W. 6 Nasrin Khatoon who happens to be sister of the deceased. Her evidence also shows that Sabina Khatoon married the accused two years prior to the incident and thereafter Sabina Khatoon went to reside with the accused. This witness deposed that the accused maintain Sabina Khatoon very well and she died at the place of her in-laws. Her cross-examination reveals that the accused never used to demand any dowry. Thus evidence of P.W. 6 Nasrin Khatoon is also of no assistance to the prosecution to make out the charge of dowry death. Rest of witnesses such as P.W. 1 Jakarul, P.W. 2 Rizwan, P.W. 3 Ragiv, P.W. 4 Md. Sabbir, P.W. 7 Md. Mokim are co-villagers. They are deposing in unison that after her marriage with the accused, Sabina Khatoon was residing with the accused and she died after about one year of her marriage with the accused. All these witnesses



have spoken about dispatch of the dead body for postmortem examination. None of them have deposed that the accused used to subject his wife to cruelty or harassment for and on account of demand of dowry.

12. P.W. 8 Md. Shamim is a co-villager who has examined to prove the cruel treatment of married women. He however has stated that he was at Delhi at the time of the incident. His evidence is conspicuously silent about the cruel treatment if any by the accused to the deceased.

13. P.W. 9 Md. Abdul Haque is a co-villager who deposed that earlier he used to sale medicines and now he is doing agricultural work. He stated that father of the accused had never come to him for purchasing the medicines. Thus evidence of this witness is neither here nor there.

14. So far as the Investigating Officer/P.W. 10, Prabhakar Bharti is concerned, he has explained the line of investigation conducted by him and as such his evidence does not demonstrate any cruel treatment or harassment by the accused to the deceased for and an account of demand of dowry.

15. The learned trial court, it seems, was swayed by the provisions of Section 113B of the Indian Evidence Act, 1872. The provision of Section 113B which deals with



presumption as to dowry death reads thus;

“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.

Bare perusal of this provision makes it clear that it prescribes the presumption of fact. For drawing that presumption the prosecution is enjoined to adduce clear, cogent and trustworthy evidence to show that soon before her death, the married women had been subjected by the accused to cruelty or harassment for or in connection with any demand of dowry. Then only the Court can presume that the accused had caused dowry death. No such evidence is forthcoming and therefore, this presumption cannot be invoked in the case in hand.

16. In the result, this Court cannot endorse the perverse and illegal Judgment of the learned trial court holding the accused guilty of the offence punishable under Section 304B of the Indian Penal Code. Resultantly the appeal is allowed. The impugned Judgment and order passed by the learned trial court is quashed and set aside. The accused is acquitted of the offence



held to be proved against him. He be set at liberty if not required
in any required in any other case.

Bhardwaj/-

(A. M. Badar, J)

AFR/NAFR	NAFR
CAV DATE	NA
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