

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.177 of 2020

Arising Out of PS. Case No.-210 Year-2016 Thana- BHAGWANPUR District- Vaishali

Chandan Rai Son of Ramdayal Rai Resident of Village - Ratanpura, P.S.-
Bhagwanpur, District - Vaishali.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Surendra Kumar Singh, Advocate
Mr. Prasan Kumar, Advocate
Mr. Prabhat Kumar Singh, Advocate
Mrs. Tulika Singh, Advocate
For the Respondent/s : Ms. Sujit Kumar Singh, APP
For the Informant : Mr. Rajeev Ranjan Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH)

Date : 29-08-2023

This appeal has been preferred under Section 374(2) of
the CrPC against the judgment of conviction dated 20.01.2020 and
the order of sentence dated 22.01.2020 passed by the learned
Additional District and Sessions Judge-II, Vaishali at Hajipur, in
Sessions Trial No. 329 of 2017, arising out of Bhagwanpur P.S.
case no. 210 of 2016, whereby the appellant has been convicted
and sentenced as under: -

Appellant	Conviction under Section	Sentence		
		Imprisonment	Fine (Rs.)	In default of fine
Chandan Rai	304-B/34 of the IPC	R.I. for 12 years	- -	- -
	498-A/34 of IPC	R.I. for 03 years	25,000/-	R.I. for 03 months



2. All the sentences have been ordered to run concurrently.

3. The appellant is the husband of the deceased. The *fardbeyan* of the deceased, said to have been recorded by an Assistant Sub-Inspector of Police, Ashok Trivedi (PW-16) on 02.12.2016 at 3:30 pm in Sadar Hospital is the basis for registration of Bhagwanpur P.S. Case No. 210 of 2016 on 03.12.2016 at 5:30 pm disclosing commission of offences punishable under Sections 341, 342, 323, 307, 326, 498A read with Section 34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. Since the deceased subsequently died on 07.12.2016, Section 304B of the IPC came to be added under the orders of the court below. According to her *fardbeyan*, (i) the appellant, (ii) father-in-law of the deceased, Ram Dayal Rai, brother-in-laws of the deceased, namely (iii) Pancham Rai, (iv) Ranjan Rai, (v) Methur Rai, sister-in-laws, (vi) Sarita Devi, (vii) Meena Devi and mother-in-law, (viii) Kamli Devi, used to torture her for demand of dowry to the tune of Rs. 2 lakhs. As the family members of the informant were not in a position to meet the demand, all the accused persons putting kerosene oil on her body and set her on fire. Further, according to her *fardbeyan*, she had a son aged nearly six years. upon hearing her screams, persons from



the neighbourhood came and rescued her, whereafter, they took her to the Sadar Hospital, Hajipur.

A *fardbeyan* of the brother of the deceased, Rakesh Kumar Rai (PW-7) was also recorded on 07.12.2016 at Patna Medical College Hospital, Patna at 2:30 P.M. by Sub-Inspector, D.K. Singh, where the deceased was taken for further treatment, in course of which she died. PW-7, in his *fardbeyan* recorded on 07.12.2016, also made allegations of demand of dowry and torture. He further alleged in the *fardbeyan* that the deceased was married nearly six years prior to the date of occurrence to the appellant and that the deceased had a child aged nearly six years. He also alleged that this appellant and in-laws of the deceased killed her by setting her on fire after pouring *kerosene* oil on her. Upon completion of investigation, the police submitted chargesheet against the appellant on 31.03.2017 for the offences punishable under Section 304B of the Indian Penal Code, whereupon cognizance was taken on 15.05.2017 and the case was committed to the court of Sessions for trial.

4. The charges were framed for commission of offences punishable under Section 304B read with Section 34 of the Indian Penal Code and Section 498A read with Section 34 of the Indian Penal Code. Subsequently, an alternative charge was framed for



the appellant for commission of the offence punishable under Section 302 of the Indian Penal Code. The appellant denied the charge and claimed to be tried.

5. At the trial, the prosecution got examined altogether 17 witnesses. In addition to the oral evidence adduced at the trial, the prosecution brought on record the documentary evidence by way of exhibits namely the *fardbeyan* of the deceased (exhibit-1), endorsement of S.I., Ashok Trivedi (PW-16), over the *fardbeyan*, signature of Rakesh Kumar (PW-7) over his statement as exhibit-2. Chargesheet was brought on record by way of exhibit-3 and the postmortem report as exhibit-5. The endorsement of Station House Officer over the FIR was proved as exhibit-4. After closure of the prosecution evidence, the appellant was examined under Section 313 of the CrPC so as to give him an opportunity to explain the incriminating circumstances emerging against him based on the evidence of the prosecution's witnesses. The appellant denied the circumstances. The defense examined three witnesses, including the son of the deceased as DW-1. The defense also brought on record by way of exhibit-A, a birth certificate dated 18.08.2010 issued by the Directorate of Statistics and Evaluation, Government of Bihar showing his date of birth to be 23.07.2010, apparently in order to make out a case in defense that the deceased and the



appellant were married more than seven years before the date of occurrence. On the date of occurrence, i.e., 02.12.2016, the son of the deceased and this appellant was six years and three months old. The trial court, after having appreciated the evidence adduced at the trial, has held, the appellant guilty of the offence punishable under Sections 304B/34 and 498A/34 of the Indian Penal Code and has sentenced the appellant with imprisonment and fine, as has been noted above at the very outset.

6. Mr. Surendra Kumar Singh, learned counsel for the appellant has submitted that the prosecution has not proved at the trial that the deceased and the appellant were married less than seven years prior to the date of occurrence. Further, except for vague deposition at the trial of demand of dowry, there is no cogent evidence on record to prove that there was such demand of dowry, in fact. These two essential ingredients having not been proved beyond all reasonable doubts at the trial, which constitute commission of offence punishable under Section 304B of the Indian Penal Code, the finding of conviction for the offence punishable under Section 304B of the Indian Penal Code is not at all sustainable. He has also argued that neither any period has been mentioned nor date, month or year has been referred in the evidence of the prosecution's witnesses as to when was the



demand of dowry made and when did he learned about the torture being meted out to the deceased for non-fulfillment of demand of dowry. He has also submitted that there has been inordinate delay in registration of the FIR and its transmission to the learned Chief Judicial Magistrate. The *fardbeyan* was recorded on 02.12.2016 in a hospital at Hajipur, hardly four kilometers away from the police station, but for no justifiable reason, the date of registration of the FIR has been mentioned as 03.12.2016 at 5:30 pm. The FIR was received in the court three days thereafter on 06.12.2016, he contends. He has further submitted that the trial court has heavily relied on the *fardbeyan* of the deceased for recording conviction of the appellant little realizing the fact that the prosecution completely failed to prove at the trial that the deceased was in fit state of her physical and mental health to make such statement based on which the *fardbeyan* was recorded. He has submitted that the deceased died of severe burn injuries, five days after the date of occurrence and soon after she had sustained injuries, she was taken to hospital. There is no certificate issued by the doctor of the hospital where she was taken for treatment that she was in a fit state of physical and mental health to make any statement. On the contrary, he contends, the evidence of the witnesses would suggest that the deceased was unconscious when she had reached the



hospital after the occurrence. He has also argued that there are contradictions in the evidence of the witnesses, who are family members, on various crucial aspects including the period for which the appellant and the victim were married as on the date of occurrence. He has submitted that neither of the doctors i.e., neither the doctor who had treated the deceased, nor the doctor who had conducted the postmortem examination has been examined at the trial and thus, the appellant did not have the opportunity to cross examine the doctors at the trial. On the point of delay in registration of FIR, he has relied on Division Bench decision of this Court in case of *Lakshaman Mandal Vs. State of Bihar* reported in **2009 (3) PLJR 725**. He has also placed reliance on the Supreme Court's decision in case of *Shindo @ Sawinder Kaur Vs. State of Punjab*, reported in **2011 (3) PLJR SC 25** to submit that non-examination of the doctor was fatal to the prosecution's case.

7. Learned Additional Public Prosecutor appearing on behalf of the State, defending the finding of conviction recorded by the trial court, has submitted that it is evident from the evidence adduced at the trial that the victim died an unnatural death out of burn injuries. He submits that the prosecution's witnesses have consistently deposed at the trial that the deceased was married to



the appellant within seven years of her death and further that there was demand of dowry. He has submitted that Section 113B of the Evidence Act casts presumption as to dowry death, if it is shown that soon before the death of woman, she had been subjected to cruelty or harassment. He has accordingly submitted that the finding does not suffer from any legal infirmity. He has also argued that there is no reason to disbelieve PW-16, Sub-Inspector of Police, who had recorded the *fardbeyan* of the deceased in Sadar Hospital, Hajipur. He accordingly, contends that the learned trial court has in the facts and circumstances rightly treated the declaration of the deceased in her *fardbeyan* to be voluntary in nature. He accordingly submits that there is no legal infirmity in the finding of conviction recorded by the trial court requiring this Court's interference.

8. We have perused the order of the trial court as well as lower court's records. We have given our thoughtful consideration to the rival submissions advanced on behalf of the parties. There are certain salient features of this case which need to be taken note of at the outset. It has been consistent case of the prosecution that the deceased had a son, aged about six years on the date of occurrence. No prosecution witness has given the date of marriage of the deceased with the appellant, so as to prove that the marriage



had taken place within seven years of the date of occurrence, which is one of the basic essential ingredients to attract Section 304B of the Indian Penal Code. As regards demand of dowry, we find substance in the submissions made on behalf of the appellant that the depositions are vague on the point and not specific as to when and from whom the demand of dowry was made. We will be referring to the depositions of the witnesses in this regard. We are, however, satisfied after having perused the records that the prosecution has not been able to prove specific case of demand of dowry, much less soon before the death of the deceased, which is requisite for attracting the provision under Section 304B of the Indian Penal Code and applying Section 113B of the Evidence Act.

9. There is no gainsaying that in order to raise presumption under Section 113B of the Evidence Act and in order to make out a case under Section 304B of the Indian Penal Code, it is incumbent upon the prosecution to establish live and proximate link between the demand of dowry and death of a woman otherwise than under normal circumstances.

10. As has been noted-above, the prosecution examined altogether seventeen witnesses to bring home the charges against the appellant out of whom nine viz., Raj Kishore Rai (PW-2), Jaynandan Rai (PW-8), Vijay Rai (PW-9), Brijnandan Rai (PW-



10), Daultia Devi (PW-11), Sita Devi (PW-12), Gauri Shankar Pandey (PW-13), Munni Devi (PW-14) and Pradeep Rai (PW-15) have been declared hostile at the instance of the prosecution. On perusal of their depositions, in the court's opinion, nothing is culled out in support of the charge in any manner, whatsoever.

11. We are thus, left with Manoj Rai (PW-1), the brother of the deceased, Santosh Kumar (PW-3), a cousin of the deceased, Suresh Rai (PW-4), brother of the deceased, Ramsharan Rai (PW-5), uncle of the deceased, and Champa Devi (PW-6), mother of the deceased. The Investigating Officer, Jatashankar Mishra, deposed at the trial as PW-17 and Ashok Trivedi, the Police Officer, who is said to have recorded the *fardbeyan* of the deceased as PW-16.

12. On the point as to when was the deceased married to the appellant, PW-3 Santosh Kumar, a cousin of the deceased deposed that the marriage had taken place nearly ten years ago. PW-3 was examined at the trial on 19.02.2018. Even if his deposition as regards time of marriage of the deceased with the appellant is computed as on the date of his examination, the marriage, according to him, had taken place in 2008. The evidence of PW-3 casts a serious doubt on the prosecution case to bring it within the ambit of Section 304B of the Indian Penal Code as



according to his evidence, the marriage had taken place beyond seven years from the date of occurrence. He further deposed that the age of the son of the deceased was between 6 to 7 years. It is to be kept in mind that PW-3 has not been declared hostile though he did not support the prosecution's case of marriage of the deceased to the appellant within seven years of the date of occurrence and, therefore, it is permissible for the defense to rely upon the evidence of PW-3. It is consistent case of the prosecution that the couple had a child of six years as on the date of occurrence.

13. In such circumstances, the evidence of the prosecution's witnesses that the deceased was married to the appellant six years prior to the date of occurrence cannot be said to be reliable. In any case, the prosecution cannot be said to have proved conclusively the fact that the deceased was married to the appellant within seven years of her death.

14. At this juncture, we need to take into account the fact that the defense, in order to rebut the presumption under Section 113B of the Evidence Act brought on record at the trial by way of exhibit-A, a birth certificate issued by the Directorate of Statistics and Evaluation on 23.07.2010. Further the son of the deceased, Pawan Kumar deposed at the trial as DW-1 stating that when the occurrence had taken place, he was playing near the



house and his father (the appellant) was at a tea-stall at Ratanpura Chowk. Upon learning about the occurrence, he had returned to the house and had pacified the fire with the help of neighbours. It is thus, evident that the defense attempted to rebut the presumption under Section 113B of the Evidence Act by adducing cogent evidence.

15. PW-5, the uncle of the deceased was not examined by the police during the course of investigation and he deposed for the first time at the trial, on the point of the charge of demand of dowry. Evidence of PW-1 needs to be taken note of at this stage. He deposed that five years before the death of the deceased he had talked to her. His deposition goes to suggest that he was not even in touch with the deceased for the last five years.

16. PWs- 4, 6 and 7 deposed generally about the demand of dowry and in our considered opinion, it can not be inferred from their depositions that soon before the death of the deceased demand of dowry was made. The nexus and proximity between the occurrence leading to the deceased having sustained burn injuries and the demand of dowry has not at all proved at the trial. We are also of the view that based on the evidence of the prosecution's witnesses, it can not be conclusively held that there was a demand



of dowry at all constituting the offence punishable under Section 498A of the IPC.

17. We are thus of the view that based on the evidence of the PW-1, PW-3, PW-4, PW-6 and PW-7, it can not be concluded that the prosecution could prove case of demand of dowry and torture punishable under Section 498A of the IPC and dowry death punishable under Section 304B of the IPC.

18. We are now left with the depositions of PW-16, who had recorded the *fardbeyan* of the deceased which has been treated to be a dying declaration of the deceased and that of the Investigating Officer. In the present case, the doctor who had conducted the postmortem examination has not been examined, nor the doctor who had treated the deceased when she was brought to the Sadar Hospital, Hajipur for the first time. There is no evidence on record to the effect that the deceased was in fit state of physical and mental health to make statement of the nature recorded as *fardbeyan* by the police officer. It would be pertinent to note at this juncture, the evidence of PW-3, who deposed in paragraph-12 that after the deceased was brought to the Sadar Hospital for treatment, she had become unconscious. The deposition of PW-3 assumes significance in the background of the fact that the FIR was registered on the next day, i.e., on 03.12.2016



at 05:30 pm, though the *fardbeyan*, according to the prosecution's case was recorded on 02.12.2016 at 03:30 pm by PW-16, Ashok Trivedi. We reiterate at this juncture that it is evident from the formal FIR (Exhibit-4) that the Sadar Hospital and the police station are located in the same town, i.e., Hajipur. The situation for the prosecution is worse for the reason that there has been delay in getting the FIR received by the Court, soon after registration of FIR. The record suggests that the FIR was received on 06.12.2016. These circumstances create further doubt about the trustworthiness of recording of *fardbeyan* of the deceased in the nature of dying declaration, there being a chance of false implication based on after thought. In the absence of examination of the doctor who had treated the deceased, no certificate available on record issued by any other staff of the hospital as regards the physical and mental health of the deceased at the time when her statement was said to have been recorded, we need to notice the postmortem report which came to be proved at the trial under Section 294 of the CrPC to know the degree of burn injuries sustained by her, which is as under:-

(V) Detail description of the Post Mortem-examination (External & Internal): On examination following dermoepidermal burn was found all over the body except both soles and part of right buttock



*lateral aspect wounds where found infected at places.
On dissection heart - right side blood, viscera
congested, bladder empty, uterus-normal non-
pregnant*

Opinion:- Time since death – 6-24 hours (approx)

Cause of death:- Burn & its complication.

19. The antemortem injuries which the victim had sustained as noticed by the doctor in the postmortem report suggests that the burn injuries were found all over the body, except both soles and part of the right buttock lateral aspect. Such being the degree of the burn injuries, it can not be easily accepted that the deceased was in a position to make statement before the police in the nature of dying declaration. In any event, it was the duty of the prosecution to prove at the trial that the deceased was in fit state of mental and physical health to make statement after she had sustained injuries. It is settled legal principle that though a dying declaration is of substantive piece of evidence and conviction can be recorded on dying declaration provided that the court is satisfied that the declaration made by the deceased was voluntary and reliable and that the author recorded the dying declaration as stated by the deceased. It is normally the court, in order to satisfy whether the deceased was in a fit mental condition to make a dying declaration, look up to the medical opinion.



However, in case where the eyewitnesses say that the deceased was in fit and conscious state to make a dying declaration, the medical opinion may not prevail. In the present case, as has been noted above, PW-3 deposed that the deceased was unconscious when she was brought to Sadar Hospital, Hajipur.

20. In case of ***K. Ramachandra Reddy v. Public Prosecutor*** reported in ***(1976) 3 SCC 618*** the Supreme Court has held that there must be reliable evidence to show, in view of the intense suffering and serious injuries that the deceased was in a fit state of mind to make a statement regarding the occurrence. In a recent decision rendered on 23.08.2023 in the case of ***Irfan @ Naka v. State of U.P.***, reported in ***2023 SCC OnLine SC 1060***, the Supreme Court has noticed all important precedents on the point as to how the dying declaration is to be proved as an exception, with the aid of Section 32(1) of the Evidence Act and has concluded *inter alia* that the Court must see as to whether, as per the injuries it would have been impossible for the deceased to make a dying declaration. The Supreme Court has laid down in case of ***Irfan @ Naka v. State of U.P.***, (supra) questions to be considered while weighing an evidence in the nature of dying declaration, paragraph-62 of which reads as under:-

"...62. There is no hard and fast rule for determining when a dying declaration should



be accepted; the duty of the Court is to decide this question in the facts and surrounding circumstances of the case and be fully convinced of the truthfulness of the same. Certain factors below reproduced can be considered to determine the same, however, they will only affect the weight of the dying declaration and not its admissibility:

(i) Whether the person making the statement was in expectation of death?

(ii) Whether the dying declaration was made at the earliest opportunity? "Rule of First Opportunity"

(iii) Whether there is any reasonable suspicion to believe the dying declaration was put in the mouth of the dying person?

(iv) Whether the dying declaration was a product of prompting, tutoring or leading at the instance of police or any interested party?

(v) Whether the statement was not recorded properly?

(vi) Whether, the dying declarant had opportunity to clearly observe the incident?

(vii) Whether, the dying declaration has been consistent throughout?

(viii) Whether, the dying declaration in itself is a manifestation/fiction of the dying person's imagination of what he thinks transpired?

(ix) Whether, the dying declaration was itself voluntary?

(x) In case of multiple dying declarations, whether, the first one inspires truth and consistent with the other dying declaration?



(xi) Whether, as per the injuries, it would have been impossible for the deceased to make a dying declaration?..."

21. It goes without saying that it is the duty of the prosecution to establish the charge against an accused beyond reasonable doubt and benefit of doubt must also go in favour of the accused. We reiterate that though it is true that dying declaration is a substantive piece of evidence, same can be relied on only if it is proved that the same is voluntary and truthful and victim was in fit state of mind.

22. For the reasons noted above, we conclude as under:-

(i) The prosecution failed to prove at the trial that the deceased was married to the appellant within seven years of the date of occurrence.

(ii) The prosecution also failed to prove beyond all reasonable doubts that there was demand of dowry and torture therefor.

(iii) The prosecution failed to prove that the deceased was physically and mentally fit to make statement which has been recorded as fardbeyan and has been treated to be a dying declaration.

23. In such circumstance, the appellant's conviction based on dying declaration can not be justified.



24. For the reasons noted above, we are of the view that the appellant deserves to be acquitted of the charge of commission of offences punishable under Sections 304B and 498A of the IPC by extending him benefit of doubt.

25. Accordingly, the impugned judgment of conviction dated 20.01.2020 and the order of sentence dated 22.01.2020 passed by learned Additional Sessions Judge-II, Vaishali at Hajipur, in Sessions Trial No. 329 of 2017, arising out of Bhagwanpur P.S. case no. 210 of 2016, are hereby set aside. The appellant stands acquitted of the charge of commission of the offence punishable under Sections 304B/34 and 498A/34 of the IPC by giving him benefit of doubt.

26. This appeal is allowed.

27. The appellant is in custody. Let him be released from jail forthwith, if not required in any other case.

(Chakradhari Sharan Singh, J)

(Nawneet Kumar Pandey, J)

Nishant/Nirmal-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.09.2023
Transmission Date	05.09.2023

