

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.553 of 2022

Arising Out of PS. Case No.-275 Year-2017 Thana- CHAND District- Kaimur (Bhabua)

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Ghasi Prasad Gupta @ Ghasi Prasad S/o Late Manni Sah R/o village- J. 35/60
A-9-G, Shailputri, P.S.- Jaitpur, District- Varanasi (U.P.)

... .. Appellant/s

Versus

1. The State of Bihar
2. Pramod Sah S/o Jhengat Sah R/o village- Birbhanpur, P.S.- Chand, District- Kaimur
3. Meena Devi W/o Pramod Sah R/o village- Birbhanpur, P.S.- Chand, District- Kaimur
4. Marachi Devi W/o Jhengat Sah R/o village- Birbhanpur, P.S.- Chand, District- Kaimur
5. Jhengat Sah S/o Late Ramdhari Sah R/o village- Birbhanpur, P.S.- Chand, District- Kaimur

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Ravi Shanker Sahay, Adv. Mr. Chandra Mohan Jha, Adv. Mr. Rakesh Kumar, Adv.
For the Respondent/s	:	Ms. Shashi Bala Verma, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR
and
HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE A. M. BADAR)

Date : 04-07-2023

This is an appeal preferred by the victim challenging the judgment and order dated 07.05.2022 and 12.05.2022, respectively, thereby acquitting original accused nos. 2 to 5 of the offences punishable under Sections 304B read with 34 and 302 read with 34 of the Indian Penal Code. By the very same judgment and order, accused no. 1 Dinesh Sah, who happens to be husband came to be convicted of the offence



punishable under Section 304B of the Indian Penal Code and is sentenced to suffer rigorous imprisonment for ten years.

2. Heard the learned counsel appearing for the appellant at sufficient length of time.

3. By drawing our attention to evidence of P.W.2 Santosh Kumar Gupta, P.W.3 Kaushaliya Devi, P.W.4 Prema Devi, P.W.5 Ramsewak Rajbhar, P.W.6 Ghasi Prasad Gupta and P.W.9 Paras, it is argued that the prosecution has proved torture by the accused to the deceased. It is further argued that death within three years of marriage is undisputed fact and therefore the acquittal is illegal. It is further argued that the learned Trial Court has acquitted the respondent nos. 2 to 5 by holding that date of demand of dowry has not been mentioned by the witnesses.

4. We have also heard the learned Additional Public Prosecutor for the State.

5. Upon hearing both the parties and on perusal of depositions of witnesses examined by both sides, we are unable to persuade ourselves that the offence punishable under Section 304B of the I.P.C. is made out by the prosecution qua the respondents/acquitted accused. Cruelty as defined by Section 498A of the I.P.C. implies harsh and harmful conduct with



certain intensity and persistence. Legal cruelty is always different from domestic cruelty. Inflicting of cruelty requires *mens rea*. The prosecution is enjoined to prove willful conduct of such a nature so as to drive a married woman to commit suicide or to cause grave injury or danger to her life, limb, or health. Health include mental health as well as physical health. Similarly, harassment of a woman for an on account of unlawful demand of any property or valuable security and because of failure on the part of the married woman to satisfy such demand also constitutes cruelty. However, such cruelty or harassment is required to be of a requisite degree in order to bring it within the compass of legal cruelty. For making out the offence punishable under Section 304B of the I.P.C., proof of cruelty is not sufficient. It is required to be shown that death of a married woman is caused within seven years of her marriage and in unnatural circumstances. Apart from this, it is also required to be proved that such a married woman was subjected to cruelty or harassment for an on account of demand of dowry soon before her death. The prosecution is burdened with proving all these facts but adducing clear and cogent evidence on these aspects. Omnibus statement of the witnesses who are close relatives of the deceased are not sufficient to hold that there was



cruelty or harassment to a married woman for an on account of demand of dowry. Test of proximity is also required to be satisfied.

6. Let us consider the evidence adduced by the prosecution in the light of these requirements of law.

7. P.W.2 Santosh Kumar Gupta, is stated to be brother of deceased Rinki Devi, who married with accused no.1 Dinesh Sah on 18.05.2014 and she was found dead because of burn injury suffered by her on 18.05.2017. He has made an omnibus statement that accused persons used to make demand of *Sikri* and motorcycle and they used to commit *Marpit* with his sister. This statement is lacking details as required in order to make out the offence. This statement does not reflect legal cruelty nor it is seen that such cruelty was soon before death of a married woman. Illicit relation of Dinesh Sah with his sister-in-law is also vaguely stated and who is that sister-in-law is not mentioned.

8. P.W.3 Kaushaliya Devi, is the mother of the deceased. Her evidence is similar in nature as that of P.W.2 Santosh Kumar Gupta. No details can be found in her evidence in order to ascertain whether legal cruelty is reflected from such version. No issuances in married life of the deceased are



brought on record from evidence of both these witnesses or rather even from evidence of other witnesses which we will be referring to hereinafter.

9. P.W.4 Prema Devi, is stated to be *Bhabhi* of the deceased Rinki Devi. She is not even declared hostile by the prosecution. This witness has wholly demolished the case of the prosecution. She stated that the accused persons had maintained and kept deceased Rinki Devi properly during her matrimonial life and there was no demand of dowry. Even otherwise evidence of this witness is sufficient to infer cloud of doubts in the version of other witnesses examined by the prosecution.

10. P.W.5 Ramsewak Rajbhar, is stated to be an independent witness. This witness has not averred any ill treatment to the deceased by the accused persons.

11. P.W.6 Ghasi Prasad Gupta, is the father of the deceased and evidence of this witness is also not reflecting any instances in the matrimonial life of the deceased in order to infer this Court whether such conduct on the part of the accused persons amounts to legal cruelty or not or whether such cruelty was inflicted soon before death of a married woman.

12. P.W.7. Paras is also made omnibus statement regarding demand of dowry and *Marpit* with no further details.



13. The prosecution has not explained as to how all the witnesses came to know about happenings in the matrimonial life of Rinki Devi. The prosecution has not demonstrated that these witnesses were having opportunity to see what was going on in the matrimonial life of deceased Rinki Devi.

14. At this juncture, though the defence has examined two witnesses, we feel it not necessary to go into the evidence of those witnesses as evidence of the prosecution is scanty to infer cruelty to a married woman for an on account of demand of dowry soon before her death.

15. Resultantly, no perversity or illegality in the impugned judgment and order of acquittal of respondents nos. 2 to 5 is noticed by us and as such there is no scope of entertaining the instant appeal. The same is, accordingly, dismissed.

(A. M. Badar, J)

rohit/-

(Harish Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
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