

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.734 of 2022

In
CRIMINAL APPEAL (SJ) No.1251 of 2020

Arising Out of PS. Case No.-147 Year-2011 Thana- JOKIHAT District- Araria

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SANTOSH BHAGAT @ SANTOSH KUMAR BHAGAT Son of Ram
Chandra Bhagat @ Ram Chandra Prasad Bhagat Resident of Virpur, P.S-
Virpur, Dist- Supaul

... .. Appellant

Versus

1. The State of Bihar
2. Kanchan Bhagat Son of Late Hazari Lal Bhagat R/v- Jokihat, P.S.- Jokihat,
Dist- Araria

... .. Respondents

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Appearance :

For the Appellant/s : Mr.Tej Pratap Singh, Advocate
For the Respondent/s : Mr.Zeyaul Hoda, APP

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

and

HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

C.A.V. ORDER

(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)

10 22-09-2023 Heard learned counsel for the parties at the stage of
admission itself.

2. The present criminal appeal is preferred against the
judgment of acquittal dated 28.01.2020 passed by Sri Satyendra
Singh, learned Additional Sessions Judge-V, Araria in Sessions
Trial No. 951 of 2013/C.I.S. No. 1461/2013, arising out of
Jokihat P.S. case No. 147/2011 whereby Respondent No. 2 of the
present criminal appeal has been acquitted by the learned Trial



Court for the charge under Sections 304(B) and 302 of the Indian Penal Code.

3. Vide order dated 28.02.2023, lower Court records was called for and notice was issued to Respondent No. 2 upon which he appeared on filing Vakalatnama.

4. The lower Court records has been received.

5. The prosecution case, as per the written report of the informant dated 16.06.2011 at 7.30 a.m., is that the sister of the informant namely Rekha Kumari @ Munni Devi got married with Kanchan Bhagat six year ago and their relationship was harmonial. The informant's sister had a son namely Ujjwal Kumar. After few days of marriage, the informant's sister was mentally tortured by mother-in-law Krishna Devi and Devars Ranjan Kumar Bhagat and Pankaj Kumar Bhagat in regular interval. The informant was not known to this. On 15.06.2011 at about 10 pm in the night, the informant was informed by his brother-in-law Kanchan Bhagat that his sister is not well and requested to come immediately. When informant insisted to talk with his sister than Kanchan Bhagat told that she is in unconscious state. After hearing this, the informant reached the sasural of his sister at Jokihat at 1.30 a.m. and saw his sister lying dead. On seeing the dead body, the informant suspected that his



sister has been killed by poisoning her. The informant alleged that his sister has been killed by her mother-in-law Krishna Devi, devars Ranjan Bhagat and Pankaj Bhagat, nanad Rekha Devi and stated they always physically and mentally tortured his sister. The informant further stated that Kanchan Bhagat (husband of his sister) has no role in this incident.

6. On the basis of written report of the informant, Jokihat P.S. case No. 147/2011 dated 16.06.2011 was registered under Sections 304B and 302 of the Indian Penal Code against four named accused and formal FIR was drawn. After completion of investigation, charge-sheet has been submitted against the accused persons. The learned Chief Judicial Magistrate took cognizance against the accused persons and committed the case to the Court of Sessions on 06.07.2013. Charges were framed against the accused persons on which they pleaded not guilty and claimed to be tried.

7. During the trial, the prosecution examined altogether 09 witnesses viz. PW1 Md. Mohiuddin, PW2 Nizamuddin, PW3 Pawan Kumar, PW4 Vinod Kumar Bhagat, PW5 Firoz, PW6 Shyam Nandan Rajak, PW7 Ramchandra Bhagat, PW8 Santosh Kumar Bhagat (informant) and PW9 Dr. D.N.P. Sah (doctor who conducted post-mortem examination). The prosecution has also



produced exhibits as Ext. 1 signature on inquest report, Ext. 2 pagination on application form for F.I.R., Ext. 3 post-mortem report. No material exhibit has been produced. The defence has neither produced any witness nor exhibited any documents in support of its case. After closure of evidence, the statements of accused was recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned trial Court has acquitted the accused.

8. In criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and prima facie illegal. Once the appellate court comes to the finding that the grounds on which the judgement is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of ***Surajpal Singh & Ors. v. The State reported in 1952 SCR 193***, wherein it was observed that:

“... .. the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of



seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

In the case of ***Ghurey Lal v. State of Uttar Pradesh*** reported in ***(2008) 10 SCC 450*** in para no. 75, the Hon’ble Supreme Court re-iterated the said view and observed as under:

“The trial Court has the advantage of watching the demeanour of the witnesses who have given evidence; therefore, the appellate court should be slow to interfere with the decisions of the trial court. An acquittal by the trial court should not be interfered with unless it is totally perverse or wholly unsustainable.”

9. Ground considered by the learned Trial Court for acquittal are as under:

(I) In the FIR, the informant does not mention the present Respondent no. 2 stating that he is not guilty for the complaint made nor does the informant have any complaint with him for the same.

(II) The doctor said in the postmortem report that there is no external injury upon the deceased and further, no definite opinion can be given regarding the cause of death.

(III) No FSL report of the viscera was presented by the prosecution.

(IV) PW 1, PW 2, PW 4 and PW 5 have stated in their respective deposition that there was no dowry demand and the victim lived happily.



10. After hearing the arguments advanced by the learned counsels appearing for the parties and perusing the evidence available on record the issue which arises 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.

11. In order to deal with the issue raised, from perusal of the post-mortem report of the deceased it appears that the doctor has opined that “*no definite opinion can be given regarding the cause of death*”. Further, the doctor has preserved the viscera for FSL examination. However, the prosecution has not produced the FSL examination report of the viscera, so preserved, on record. It is necessary to point out here that the post-mortem report vividly reveals that no external injury was found anywhere on the body of the deceased. Therefore, from the material brought on record by the prosecution, it cannot be ascertained that the deceased died an unnatural death. Hence, in absence of any evidence, we are constrained to hold that the prosecution has failed to establish and prove the ingredients of dowry death i.e., the deceased died an unnatural death. In order to establish the allegation of cruelty done upon the deceased in connection with demand of dowry, the prosecution has not brought any piece of evidence on record.



12. It has to be understood that at what stage the presumption as enunciated under Section 113B of the Evidence Act will come into play. Since, the general rule of criminal jurisprudence is that an accused is presumed to be innocent until proven guilty. The Hon'ble Supreme Court in the case of **Kamesh Panjiyar vs. State of Bihar** reported in (2005) 2 SCC 388 the Hon'ble Supreme Court has in paragraph 11 held: -

“11. A conjoint reading of Section 113B of the Evidence Act and Section 304B IPC shows that there must be material to show that soon before her death, the victim was subjected to cruelty or harassment. Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of the 'death occurring otherwise than in normal circumstances'.

The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. 'Soon before' is a relative term and it would depend upon circumstances of each case and no strait-jacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B IPC and Section 113B of



the Evidence Act is present with the idea of proximity test.

No definite period has been indicated and the expression 'soon before' is not defined. A reference to the expression 'soon before' used in Section 114. Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods soon after the theft, is either the thief has received the goods knowing them to be stolen, unless he can account for his possession. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts, depending upon facts and circumstances of each case.

Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effects of cruelty based on dowry demand and the concerned death. If an alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.

13. In the facts of the present case, as dealt with in the preceding issue, prosecution has not been able to rule out the possibility of natural death as prosecution has not been able to ascertain the cause of death. Further, there is no substantive evidence to support the allegation that the deceased was subjected to cruelty, soon before her death, for or in connection with demand of dowry. Therefore, since the prosecution has failed to establish a case under Section 304B of the Indian Penal



Code, the presumption of guilt against the accused (Respondent no. 2), as enunciated under Section 113B of the Evidence Act, would not be applicable in the present case.

14. In summation, the meticulous examination of the evidence, deliberations, and testimonies presented before this Court has led to a considered and comprehensive understanding of the issues at hand. The proceedings have shed light on crucial aspects of the case. For instance, the depositions of PW1, PW2, PW4, and PW5 did not support the prosecution's case, stating that there was no dowry demand and that the deceased used to live happily. Additionally, the doctor's postmortem report mentions no external injuries, and in his opinion, no definite conclusion can be reached. During cross-examination, the doctor also stated that even in cases of natural death, a definite opinion cannot be formed. Furthermore, the non-production of the FSL report of the preserved viscera has contributed to a substantial cloud of doubt over the prosecution's case. This Court, guided by the principles of fairness and the pursuit of truth, has diligently evaluated the evidence and has come to the conclusion that the trial Court's judgement is a reasoned and well-founded decision. Its assessment, based on a balanced analysis of the available evidence, remains unmarred by any evident irregularities or



biases. Given these considerations, there is no justifiable basis for interfering with the impugned judgement.

15. Accordingly, the appeal against the judgment of acquittal dated 28.01.2020, passed by Sri Satyendra Singh, learned Additional Sessions Judge-V, Araria in Sessions Trial No. 951 of 2013/C.I.S. No. 1461/2013, arising out of Jokihat P.S. case No. 147/2011, is dismissed at the admission stage itself.

(Sudhir Singh, J)

(Chandra Prakash Singh, J)

Pankaj/-

AFR/NAFR	NAFR
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