

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.284 of 2017

Arising Out of PS. Case No.-151 Year-2015 Thana- SIMRI District- Buxar

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Dhananjay Pathak S/o Sidheshwar Pathak, R/o Village- Niyazipur
Raghuvansh Pathak Ke Dera, P.S.- Simri, District- Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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with
CRIMINAL APPEAL (DB) No. 449 of 2017
In
CRIMINAL APPEAL (SJ) No.613 of 2017

Arising Out of PS. Case No.-151 Year-2015 Thana- SIMRI District- Buxar

- =====
1. Sidheshwar Pathak S/O Late Ram Dhyam Pathak
 2. Basanti Devi W/O Sidheshwar Pathak
 3. Karishma Kumari D/O Sidheshwar Pathak

All residents of village-Niyazipur (Raghuvansh Pathak Ke
Dera), P.S. Simri, District-Buxar.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

(In CRIMINAL APPEAL (DB) No. 284 of 2017)

For the Appellant/s : Mr. Digvijay Kumar Ojha, Advocate

For the Respondent/s : Mr. Mayanand Jha, APP

(In CRIMINAL APPEAL (DB) No. 449 of 2017)

For the Appellant/s : Mr. Digvijay Kumar Ojha, Advocate

For the Respondent/s : Mr. Binod Bihari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE A. M. BADAR

and

HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA)

Date : 20.04.2023

At the outset, it is important to mention that both



above named appeals are disposed herewith through this common judgment, as same arises out of Session Trial No. 252/2015 disposed by learned Additional District and Sessions Judge VI, Buxar.

2. Heard Mr. Digvijay Kumar Ojha learned counsel appearing for the appellant as well as learned APP for the State in Cr. APP (DB) no. 284 of 2017 and also Mr. Digvijay Kumar Ojha learned counsel for the appellant as well as learned APP for the State in Cr. APP (DB) No. 449 of 2017.

3. Both above mentioned appeals are directed against judgment and conviction dated 24.01.2017 and order of sentence dated 25.01.2017, as passed in Session Trial No. 252/2015 in connection with Simri P.S. Case No. 151/2015 dated 22.07.2015, which was lodged for offences alleged under Sections 304(B), 498(A) and 34 of the Indian Penal Code by learned Additional District and Sessions Judge, VI, Buxar, whereby and whereunder the learned Additional District and Sessions Judge, VI, Buxar, pleased to convict the appellant of Cr. APP (DB) No. 284 of 2017, namely, Dhananjay Pathak for life imprisonment, whereas appellant of Cr. APP (DB) No. 449 of 2017, namely, Sidheshwar Pathak, Basanti Devi and Karishma Kumari were sentenced for seven years rigorous



imprisonment after being convicted for the offence under Section 304(B) of the Indian Penal Code.

4. The crux of prosecution case as appears through written information of informant namely, Rishikesh Ojha (PW-6) that marriage of her sister namely, Rani Kumari @ Baby was solemnized in month of June 2012 with appellant/convict Dhananjay Pathak. He stated further that appellant Dhananjay Pathak, who is the husband of her deceased sister alongwith appellant Sidheshwar Pathak, who is father-in-law of the deceased, appellant Basanti Devi, who is mother-in-law of the deceased and appellant Karishma Kumari, who is sister-in-law of the deceased, collectively committed mental and physical cruelty upon his deceased sister for the demand of dowry, as raised for Rs. 6 lakhs and a motorcycle. It is alleged thereof that whenever informant visited the house of his deceased sister, she complained about the cruelty committed upon her by these above named four appellants. It is stated that informant received information in the morning of 22.07.2015 that his sister Rani Kumari was killed by above named appellants, subsequent to said information, after informing local police station he went to the house of his deceased sister and found that the dead body of his sister is laying on bamboo sheet



(bier), where it appears that she was killed by throttling by using rope. The dead body of his deceased sister was kept inside a closed room. It was claimed by the informant that his sister Rani Kumari was killed by throttling using rope due to non fulfillment of the demand of dowry as raised for cash of Rs. 6 lakhs and one motorcycle after committing mental and physical cruelty.

5. On the basis of aforesaid Fard-e-beyan, Simri P.S. Case No. 151/2015 was lodged against appellants/convicts, where after investigation the charge-sheet was submitted under Section 302/304-B/34 of the Indian Penal Code against all above named four appellants, where learned Magistrate took cognizance on 21.09.2015 and committed the case to Session, where matter was received by the learned trial court on 30.11.2015. The charges against all appellants/convicts were framed by learned trial court under Section 304(B)/34 of the Indian Penal Code, where all above named appellant put on trial after taking a plea of “not guilty” and after trial all appellants were convicted under Section 304(B) of the Indian Penal Code, appellant Dhananjay Pathak on conviction sentenced for life imprisonment, whereas appellants Sidheshwar Pathak, Basanti Devi and Karishma Kumari were sentenced for seven years



imprisonment.

6. Hence, the present appeals.

7. To establish its case before the learned trial court the prosecution altogether examined total of seven witnesses, namely, PW-1 Amrendra Ojha, PW-2 Dr. Anil Kumar Singh, the doctor who conducted postmortem upon the deceased, PW-3 Manish Kumar Ojha, PW-4 Hareram Ojha, PW-5 Jay Prakash, one of the Investigating Officer of the case, PW-6 Rishikesh Ojha, informant of the case, PW-7 Akheleshwar Dinesh, Investigating Officer of the case.

8. The prosecution also exhibited following documents during the trial to substantiate its case which are as:-

Exhibit 1 - Postmortem report of the deceased, namely, Rani Kumari @ Baby.

Exhibit 2, 2/1- Signature of PW-3 on inquest report of the deceased and informant respectively.

Exhibit 2/2 - Signature of informant on written information (Fardbeyan)

Exhibit 3 - Written information/Fardbeyan

Exhibit 3/1, 3/2- Forwarding endorsement on written information/Fardbeyan



Exhibit 3/3 - Formal F.I.R.

9. During the course of trial two witnesses also examined in defense as DW-1, namely, Ramji Pathak and DW-2, namely, Banshidhar Chaubey. Statement of convicts/appellants were recorded under Section 313 of the Criminal Procedure Code (Cr.P.C.), where they show their innocence by denying the incriminating evidence appears against them during the trial.

10. PW-1 Amrendra Ojha, who is brother of the deceased, deposed before the learned Trial Court that marriage of his sister Rani Kumari @ Baby was solemnized with Dhananjay Pathak (appellant/convict) at Raghuvansh Pathak Ke Dera in year 2012. It is stated thereof that his sister was subjected to physical assault on regular basis by her husband Dhananjay Kumar (appellant/convict), her father-in-law, namely, Sidheshwar Pathak (appellant/convict), her mother-in-law, namely, Basanti Devi (appellant/convict) and sister-in-law, namely, Karishma Kumari (appellant/convict) due to non-fulfillment of demand of dowry, as raised for cash of Rs. 6 lakhs and a motorcycle. It is further stated that he was told about said demand of dowry by her deceased sister, when he visited to her matrimonial home (Sasural), where she also stated about



physical assault. He also deposed that he saw the mark of violence on back and arm of her deceased sister and on her apprehension he brought his sister to his village, where she gave birth to a child. It is stated that after delivery family members of her matrimonial home were requested to take her back but they did not turn up, subsequently, her sister was taken to her matrimonial home after social intervention. It is stated that his sister was alright for next 3 to 4 months but again thereafter members of her matrimonial family started to torture her. It is stated that on 15.07.2015 when she went to matrimonial home (Sasural) of his sister he was told by his sister that her family members are again started to raise demand for cash of Rs. 6 lakhs and a motorcycle, what he also conveyed to his father (PW-4) and brother (PW-1). It is stated that on 22.07.2015, an information was received on mobile of one Chaubey Jee, who is the resident of village- Sikariya that his sister was killed by family members of her matrimonial home/Sasural, this information was given to his father (PW-4), who after receiving the said information visited the matrimonial village of his deceased sister alongwith his brother Rishikesh Ojha (PW-6), cousin brother Manish Kumar Ojha (PW-3) and police personnels of Simri Police Station. It was observed by the



Court that subsequently, this witness stated that he also went there. It is stated that after arriving at matrimonial home of his sister, he saw that her dead body was tied up with bier (bamboo sheet) and was covered by red cloth, after removing the cloth from the face of his deceased sister he found mark on her neck, which was tried to conceal by using powder, he also suspect oozing blood from her nose which was appeared dry. He came to know from neighbours that his sister was assaulted by husband, father-in-law, mother-in-law and sister-in-law. He identified appellant/convict Dhananjay Pathak and Sidheshwar Pathak before the learned Trial Court and claimed to identify rest of two appellants/convicts, who were not present on that day before the Court.

On cross-examination, he stated that the F.I.R. was lodged by his brother Rishikesh Ojha (PW-6) which was not read to him. He also deposed that on the occasion of festival he had usually to visit the matrimonial home of his deceased sister but, unable to name her neighbours. He stated that after one year of marriage family members of matrimonial home of his deceased sister started to commit cruelty for dowry, as raised for cash and a motorcycle. He also stated that he was never asked to fulfill any demand of dowry by any of the family members



of matrimonial home of her deceased sister. He further stated that while he removed cloth from the face of his deceased sister, at that point of time his brother namely, Rishikesh Ojha (PW-6) and father, namely Hareram Ojha (PW-4) were also present. It is stated that he never lodged any complaint, as regard to cruelty committed to his deceased sister with any of the police station and this issue was also not even raised before any local panchayats. This witness was deferred and re-examined on 14.12.2016 after a gap of about 10 months, where he deposed before the Court in Para 17th of his cross-examination that after marriage of her sister, he went to Meruth. He stated that he visited the matrimonial home of his sister on single occasion, where he went alone and no complaint was made to him by his deceased sister as she was alright there. It is stated by him in Para 19th of his cross-examination that he came to his village only after receiving information that her sister died and when he came to his village no one told him about demand of dowry. He was not even informed regarding any cruelty committed upon his deceased sister by any of her family members while in matrimonial home. He categorically stated that his sister died out of stomach pain.

11. PW-2 is Dr. Anil Kumar Singh, who conducted



postmortem upon deceased Rani Kumari @ Baby and found following injuries:-

- (i) Bleeding from nose, Face congested (Cyanosed), Eyes congested and open.
- (ii) Ligature mark whole of the neck except 1 ½” only in right side, below the thyroid, Base of the groove soft and reddish.
- (iii) Subcutaneous tissue under the mark ecchymosed.
- (iv) Fracture of larynx and trachea present.

Cause of death

“Asphyxia following strangulation”

12. PW-3 is Manish Kumar Ojha, who is cousin brother of deceased Rani Kumari @ Baby. It was deposed by him that marriage of Rani Kumari was solemnized with Dhananjay Pathak (Appellant/convict). It is deposed that he was informed by brothers of Rani Kumari, namely Rishikesh Ojha (PW-6) that Rani Kumari was usually assaulted by her in-laws due to dowry. It was also deposed that he was also informed about physical assault by Rani Kumari. It is stated thereof that she was killed in July 2015. He deposed to visit the matrimonial village of deceased, where inquest report was



prepared by police. He identified his signature alongwith signature of Rishikesh Ojha (PW-6) on the original and carbon copy of the inquest report, before the learned trial court, which on his identification were exhibited as **Exhibit 2 & Exhibit 2/1**, respectively. He identified co-convict Sidheshwar Pathak, father-in-law of the deceased, who was present in court. It is deposed by him that deceased was assaulted by her mother-in-law, father-in-law and sister-in-law Karishma, due to non-fulfillment of demand of dowry.

On cross-examination it was deposed by him that his village is 50 kilometers away and he is doing job of medical representative. He categorically deposed that he never went to his sister's home. It was also stated by him that the information of death was received by Rishikesh Ojha (PW-6) on his mobile, bearing no. 9279000960, whereas his cell no. is 9934420726, at about 6:00 AM. It is also deposed by him that the first information regarding death of his deceased sister was received by one Choubey Jee of village- Sikariya, district- Bhojpur. Said Choubey Jee is close to both families. It was deposed by him that he was informed by his brother that he visited in month of May-June of year 2015 to his sister's house. He deposed that on last occasion his family members visited in month of May-



June of year 2015 to matrimonial home of his deceased sister before her death. It was deposed that no information was given by him anywhere as regard to torture of her deceased sister and he is not aware about others to give any such information. He also deposed that he has no knowledge about demand of dowry. It is further deposed by him that in-laws family keeps her deceased sister in good conditions for one year after joining matrimonial home. It was deposed by him that his sister, on last occasion came in year 2014 for 6 months to her parental home and thereafter returned to her matrimonial home, where her departure to matrimonial home was well arranged. It was also deposed by him that his sister having a child aged about 2 ½ -3 years old, who was taken by her in-laws after death. It was also deposed that last rites was performed in Buxar and the child was handed over to in-laws by grandmother of the child. He also deposed that he is not aware about the fact that whether “*Sharadkaram*” of deceased was performed by her in-laws or not. It was also deposed that he has no objection to return the child to his grandmother. It is also stated by him that the case was lodged on the same date of occurrence at about 1:30 - 2:00 PM. He deposed that none of the family members was present at the time of last rites of her deceased sister. He also denied the



suggestion that he saw nothing and deposing falsely.

13. PW-4 is Hareram Ojha, who is the father of deceased, who deposed before the learned trial court in his examination in chief that the marriage of his daughter namely, Rani Kumari @ Baby was solemnized in year 2012 with Dhananjay Pathak (appellant), where she joined her matrimonial home on the next day of her marriage. He deposed that whenever he visited to matrimonial home of his daughter her mother-in-law, father-in-law and sister-in-law were demanded cash of Rs. 6 lakhs and one motorcycle, where he shows his inability to pay being a farmer. It is deposed by him that after one year of marriage his younger son namely, Amrendra Ojha (PW-1) visited the matrimonial home of Baby and found that she was pregnant. Baby was only sister with two brothers. It is deposed that when Amrendra Ojha (PW-1) asked family members of Baby to allow her to visit parental home, the said request was turned down. It was deposed that Baby said him to take her away from matrimonial home otherwise she may be killed. Considering same, repeated requests were made by Amrendra Ojha (PW-1) to her in-laws and finally Baby was allowed to visit her parental home, where she gave birth to a child in Sadar Hospital, Ara. It is also stated that no one came



from in-laws family of Baby at the time of delivery. He also stated that he talked over telephone with mother-in-law of Baby, who told him that no one is available at home for the present and as such no one can go there. It was deposed that after delivery, Baby returned to her parental home and remains there for next six months. No one turned up in said period from her in-laws family to know about her. Finally, he visited to matrimonial home of Baby along with 5 relatives who were residents of *Keshopur Badka Gaon*, where he was assured by father-in-law of Baby to visit his village. It was deposed that they came and taken away Baby with them. It was deposed in Para 2nd of his examination in chief that he was informed over mobile by one Choubey Jee of village- Sikariya that the dead body of her daughter is keeping since last three days. On said information they went and finally arrived to Niyazipur, where he also saw the police personnels. On arrival to matrimonial home of Baby, they found that her dead body was wrapped and laying over bamboo sheet (bier), where he saw the ligature mark on the neck of dead body of his daughter. It was deposed that case was lodged by his son Rishikesh Ojha (PW-6). It is deposed by him that husband (appellant) of Baby and father-in-law (appellant) is present in the Court and claimed to identify other



accused/appellant on their presence.

On his cross-examination, it was deposed by him that his statement was recorded after one month of the occurrence. It was also deposed that at the time of occurrence he was in Ara and the occurrence was reported to him by one Choubey Jee of Sikariya village, who was informed by someone of village- Niyazipur, over phone. He failed to collect the number of said cell phone and deposed that he received information at about 8:00 AM. It was deposed that he stated before police that he received information by Rishikesh Ojha (PW-6) that Baby is usually tortured by her in-laws. He also stated that besides this other facts were also stated by him to police during the course of investigation. It is also stated that he is not able to collect from his memory that when the fact of torture was said to him by Rishikesh Ojha (PW-6). It is also deposed by him that his younger son Amrendra Ojha (PW-1) visited first time to matrimonial house of his deceased daughter along with 2-3 neighbours on the occasion of "*Teej*". It is also stated by him that Baby was brought to her parental home by his son Amrendra Ojha (PW-1) after *Teej*. It was deposed by him that when Baby came to his house she lived there for six months. He failed to depose the name of month in which Baby



was brought from her matrimonial home and stated that even after six months the family members of Baby were not ready to take her back. It was also deposed that younger son of Pathak came to take back Baby (deceased). The examination of this witness was deferred for next date but was examined on 22.10.2016 only, where Court observed that one compromise was filed. On further cross-examination it was deposed by him that after departure of his daughter for matrimonial home, he went to Delhi. He is specifically stated that his son-in-law and his family members never raised demand for dowry. It was deposed that his daughter was literate and she never made complain either orally or in writing regarding demand of dowry. It was also deposed that there was good relations between both families and he came to know later that his daughter died out of stomach pain. Finally, he deposed that now, he has no complaint with accused persons and stated that the case was lodged by his son.

14. PW- 5 is Investigating Officer, namely, Jay Prakash, who stated before the learned trial court that he was posted as Station In-charge at Ram Dash Rai Dera (OP) and received the charge of investigation of this case from ASI Akhilesh Singh and thereafter perused the record. He stated that



under the direction of his superior officers charge-sheet was submitted under Section 304(B) of Indian Penal Code against all the named co-accused persons. On cross-examination it was deposed by him that he was not recorded the statement of any witness during the course of investigation.

15. PW-6 is the brother of the deceased namely, Rishikesh Ojha, who is also the informant of this case. In his examination-in-chief, it was deposed by him that marriage of his deceased sister namely, Rani Kumari @ Baby was solemnized in month of June of 2012 with Dhananjay Pathak (appellant/convict). It was deposed that he came to know about death of his sister on 22.07.2015 at about 7:00 AM by his father (PW-4) over telephone. It was deposed that his sister was in his matrimonial home and he visited place of occurrence after hearing about the occurrence, where police prepared inquest report before him bearing his signature, what he identified before the trial Court and on his identification, same was exhibited as **Exhibit No. 2**. It was stated in Para 2nd of his examination-in-chief that he never gave any statement/fardbeyan before police, whereas he identified his signature on ferdbeyan/written information, which on his identification exhibited as **Exhibit No. 2/2**. He categorically



deposed that he did not know about the cause of death of Baby. In Para 3rd, he categorically stated that police never recorded his re-statement, this witness was declared hostile.

On cross-examination by learned APP, he denied all suggestions as advanced by him, where no incriminating evidence surfaced suggesting involvement of appellants/convicts in present occurrence. He identified appellants/convicts before the trial court. He denied the suggestion to enter into any compromise with appellants/convicts.

On cross-examination by learned defense counsel, it was deposed by him that he visited on 2-3 different occasions to matrimonial home of his sister, where he was welcomed by all family members and no complaint was ever made to him by his deceased sister regarding husband and other in-laws family members. It is deposed by him that no demand of dowry was raised to him. It was further stated that he was not even informed by any family members that demand of dowry was raised by in-laws of his sister. It was deposed that his signature was obtained on written information by police, after calling him. It was also stated by him that he signed inquest report as he was asked for. It was also stated that he came to know about the



death of his sister from his father (PW-4) over cell phone, who was informed by her in-laws family members. Certain questions were asked by Court to this witness, where in Para 12th it was stated by him that he is teaching the students of class 8th, 9th and 10th of High School, Ara since last 8 years. He also answered that he obtained his M.A. final from Veer Kunwar Singh University. He also stated that he never put his signature without reading the contents.

16. PW-7 is Akhilesh Singh, Investigating Officer of this case, who was posted as then Sub- Inspector at Ram Dash Rai Dera (OP) and deposed that he received the ferdbeyan of Rishikesh Ojha (PW-6) at Dera of Raghubansh Pathak. It is also stated that ferdbeyan is written in his hand writing what he is identifying before this Court and on his identification, it was exhibited as **Exhibit No. 3**. It was deposed that on same day inquest report of deceased Rani Kumari @ Baby was prepared which was in the handwriting of then S.I., namely Sudheer Kumar, which he identified before the Court and on his identification, same was exhibited as **Exhibit No. 4**, before learned trial court. He identified his signature and handwriting regarding endorsement on ferdbeyan, which on his identification exhibited as **Exhibit No. 3/1**, before the learned



trial court. He also identified the endorsement of then S.I., namely, Dayanand Singh on ferdbeyan to lodge case, which he identified before the trial Court and on his identification same was exhibited as **Exhibit No. 3/2**. He also identified the signature of S.I. Dayanand Singh on formal F.I.R., which on his identification exhibited as **Exhibit No. 3/3**. He further deposed that after taking charge of investigation, he visited the place of occurrence and recorded the statement of witnesses of Hareram Ojha (PW-4), Manish Kumar Ojha (PW-1) and other witnesses. He also stated that at the place of occurrence the dead body was laying over bamboo sheet (bier) wrapped in a blanket. It was deposed by him that he brought the dead body to Sadar Hospital, Buxar for postmortem and also obtained the postmortem report of the deceased and thereafter he got transferred and handed over the charge of further investigation to S.I., Jay Prakash on 21.08.2015. It was deposed by him that appellant/convict Sidheshwar Pathak was arrested during the course of investigation by him.

On cross-examination it was stated by him that inside scene of the house in which occurrence took place, was not mentioned in case diary during the course of investigation and what he recorded is based upon the supplied information.



He also stated that he arrested Sidheshwar Pathak (appellant/convict), his wife Basanti Devi (appellant/convict) and his daughter Karishma Kumari (appellant/convict) during the course of investigation. It was also deposed by him that no statement in defense was recorded by him.

17. On the basis of above discussed evidence, appellants/convicts were examined under Section 313 of Cr.P.C., by putting them incriminating materials to which they show their complete innocence by denying the incriminating evidences as explained by learned trial court to them. Two defense witnesses, namely Ramji Pathak (DW-1) and Vanshidhar Chaubey (DW-2) were examined during the course of trial, who in their totality deposed that there was no demand for dowry and death of sister of informant was caused due to pain developed in abdomen, where on cross-examination DW-1 deposed in para-10 that he came to depose on the request of appellant/convict, whereas DW-2 denied suggestion that he is deposing falsely being relative of appellants/convicts.

ARGUMENT ON BEHALF OF APPELLANTS/CONVICTS

18. Learned counsel appearing for the appellants/convicts submitted that the basic and essential ingredients to make out a case, as required to establish offence



under Section 304(B) of Indian Penal Code, cannot be said available in present case so as to prove the guilt of appellants/convicts through available evidences on record. It is further submitted that the informant (PW-6) of this case turned hostile, denying any demand of dowry and harassment soon before the death of deceased to attract the presumptions under Sections 113(B) of Indian Evidence Act. It is submitted that until and unless prosecution is not able to establish the basic ingredients of Section 304(B) of Indian Penal Code, the presumptions against the accused cannot be made operative as available under Sections 113(B) of Indian Evidence Act. It is submitted that in the view of deposition of PW-6, namely, Rishikesh Ojha, who is the informant and brother of deceased, namely, Rani Kumari @ Baby, it can be said safely that he was not even aware about how the death of deceased was caused. It is submitted that besides the informant (PW-6) other prosecution witnesses as father of the deceased, namely, Hareram Ojha (PW-4), cousin brother of the deceased, namely, Manish Kumar Ojha (PW-3) denied that appellants/convicts ever demanded dowry and such prosecution failed to show as it was obliged otherwise to establish that deceased was subjected to cruelty in connection with demand of dowry soon before her death. There must be



cruelty or harassment in connection with demand of dowry to attract presumption to operate, as available under Section 113(B) of Indian Evidence Act, and in support of his submissions he relied upon the report of this Court as reported in the matter of ***Suresh Singh vs. State of Bihar*** as reported in ***2007 Cri LJ 92(95) (Pat)(DB)***. While concluding his argument it is submitted that prosecution must prove the guilt of the accused beyond all reasonable doubts as per settled norms of criminal jurisprudential system of this country and any departure or escape is not permissible. In support of the submissions learned counsel relied upon the report of ***Arvind Singh vs. State of Bihar*** as reported in ***AIR 2001 SC 2124***. It is further submitted that unnatural death in the matrimonial home within seven years of marriage does not lead to a conclusion *ipso facto*, as a sufficient reason to convict a person charged with Section 304(B) of the Indian Penal Code and in support of his submissions reliance was made upon the report of ***Baijnath vs. State of Madhya Pradesh***, as reported in ***2016 SCC online SC 1287***.

ARGUMENT ON BEHALF OF THE STATE

19. *Per contra*, learned APP while arguing on behalf of the State submitted that offence alleged under Section



304(B) of Indian Penal Code is a heinous offence and is not compoundable under the law and as such any compromise is of no bearing over the merit of the case. It is submitted that in furtherance of compromise informant (PW-6), namely Rishikesh Ojha turned hostile in this case, whereas PW-3, namely, Manish Kumar Ojha, who is one of the brothers of deceased, namely Rani Kumari @ Baby and PW-4 Hareram Ojha, who is the father of the deceased supported the case of prosecution in their examination of chief and as such by taking conjoint effect of compromise and the evidence available through examination in chief of PW-1 and PW-4 it can be safely said that prosecutions succeed to establish its case as far basic ingredients of Section 304(B) of Indian Penal Code is concerned and as such the presumptions as available under Section 113(B) of Indian Evidence Act is operational in this case, where appellants/convicts are under onus to discharge their burden to explain the unnatural death of deceased. It is submitted that as per the deposition of PW-2, Dr. Anil Kumar Singh it appears that cause of death is “**Asphyxia due to throttling**”, which occurs in the house of appellants/convicts within seven years of marriage and as such the main ingredients of the dowry death in present case have proved beyond doubt, where the conviction of



appellants appearing appropriate in this case. In support of his submission learned APP relied upon the report of ***Jagdish Chandra vs. State of Haryana*** as reported in ***(2019) 9 SCC 138***.

CONCLUSION

20. We have heard the argument as advanced by learned counsel, appearing on behalf of the appellants/convicts and also the learned APP on behalf of the State. We also perused carefully available evidences and materials alongwith record of proceedings of learned trial court.

21. It would be appropriate to reproduce the provisions of Section 304(B) of the Indian Penal Code and 113(B) of Indian Evidence Act for the sake of convenience and better understanding of the fact which are as:-

[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 purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).]

[113B. 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.*

Explanation- For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).]

22. It is clear from the above legal provisions as



mentioned under Section 304(B) of the Indian Penal Code that before the application of this sections following essential ingredients must be fulfilled which are as:-

- (i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;*
- (ii) such death must have occurred within seven years of her marriage;*
- (iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;*
- (iv) such cruelty or harassment must be for or in connection with demand for dowry;*
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.*

23. Coming down to the fact of present case, no doubt the death of sister of the informant (PW-6), namely, Rishikesh Ojha took place in her matrimonial home otherwise then under normal circumstances within seven years of her marriage. As per record, the deceased sister of PW-6, namely Rani Kumari @ Baby married with appellant/convict Dhananjay Pathak, somewhere in June 2012, whereas occurrence took



place in intervening night of 22.07.2015, well within seven years of her marriage. In present case the only things which require to be established by prosecutions to establish its case under Section 304-B of Indian Penal Code to attract the presumptions as available under Section 113-B of Indian Evidence Act, as to whether soon before unnatural death of the deceased sister of PW-6/informant, whether she was subjected to cruelty in connection with demand for dowry.

24. Interestingly, PW-6 namely, Rishikesh Ojha who is the informant of this case and brother of deceased Rani Kumari @ Baby turned hostile during the trial and make himself exit from the case of prosecution simply by identifying his signatures on inquest report of his deceased sister, which exhibited before the learned trial court as **Exhibit No. 2** and also on ferdbeyan, which exhibited before the learned trial court as **Exhibit No. 2/2**. Nothing substantial surfaced during his cross-examination, which may be used as a corroborative piece of evidence to establish the guilt of appellants/convicts. He also denied the suggestion of learned APP that no compromise was made with accused persons. He specifically deposed in para 7th of his cross-examination that he met with her deceased sister on 2-3 occasions, while he visited her matrimonial home but she



never complained him about any cruelty and demand of dowry. He denied specifically in para 8th of his cross-examination that the demand of dowry was not even raised by any family members of her deceased sister. In para 9th and 10th of his cross-examination he specifically deposed that his signature on ferdbeyan and inquest report was guided and same were obtained. Certain court questions were asked to him in para 12th, 13th and 14th of his cross-examination but it nowhere appears relevant to connect appellants/convicts with crime in question.

25. It appears from the impugned judgment as the case has been compromised between the parties, which is not permissible under the law therefore, appellants/convicts, convicted in this case by importing the provisions of Section 113-B of India Evidence Act.

26. The said compromise petition as per record was filed on 22.10.2016 before the Court.

27. The PW-1 namely, Amrendra Ojha, who is also one of the brothers of deceased Rani Kumari @ Baby deposed in para 6th of his cross-examination that while he visited on 15.07.2015 to his deceased sister, he was told that her family members again started to raise demand of Rs. 6 lakhs as dowry



and a motorcycle but he was not complained about any mental and physical cruelty, whereas in para 9th of his cross-examination, it was deposed by him that the nearby residents of matrimonial home of his deceased sister told him that his sister was assaulted by her husband and family members but these people not said anything regarding demand of dowry. Therefore, even from the deposition of PW-1, it appears that on the last occasion, just before seven days of the occurrence, when PW-1 visited the house of deceased sister the complaint regarding mental and physical cruelty was not made to him due to non-fulfillment of demand of dowry as alleged to be raised for Rs. 6 lakhs and a motorcycle. In para 14th of his cross-examination, he specifically submitted that the family members of her deceased sister never asked for any cash and motorcycle from him whereas in para 18th, he specifically submitted that he visited once to matrimonial home of her deceased sister where, she did not complain about anything and she was perfectly alright. It is important to mention that this witness was examined much before the alleged compromise, as recorded by learned trial court, through impugned judgment.

28. PW-3 is Manish Kumar Ojha, who is the cousin brother of deceased, Rani Kumari @ Baby, deposed in



examination-in-chief that information as regard to physical cruelty as committed upon her deceased sister was given to him by Rishikesh Ojha (PW-6) though he also deposed subsequently that he was also informed by her deceased sister Rani Kumari @ Baby about the same but without specifying any date, which may help to arrive on the conclusion that the cruelty was committed in connection with demand of dowry soon before her death. He deposed specifically in para 7th of his cross-examination that his deceased sister came to her parental home after one year of her marriage, where she was happy. He also stated that her departure to her matrimonial home was also solemnized perfectly. From the deposition of PW-4, who is Hararam Ojha and also the father of deceased Rani Kumari @ Baby, it appears in para 10th of his cross-examination that his son-in-law and his family members (all above appellants/convicts) never demanded dowry, whereas in para 11th of his cross-examination, he categorically submitted that his deceased daughter was literate and she never made complaint either in writing or orally regarding demand of dowry.

29. Hence, from the depositions of PW-6, who is informant and brother of the deceased namely, Rani Kumari @ Baby, PW-4 Hararam Ojha, who is the father of the deceased,



PW-1 Amrendra Ojha, PW- 3 Manish Kumar Ojha, who are brothers of the deceased Rani Kumari @ Baby, it appears that prosecutions failed to establish its initial burden that cruelty or harassment was committed in connection with demand for dowry soon before the death of deceased Rani Kumari @ Baby and as such the presumptions under Section 113 B of Indian Evidence Act is not appears to be available in present case so as to shift the burden to explain the circumstances of the death on appellants/convicts. In this context, it is appropriate to reproduce para 29th, 30th and 32nd of the legal report as reported in the matter by ***Baijnath and Ors. vs. State of Madhya Pradesh***, reported as ***(2017) 1 Supreme Court Cases 101***, where Hon. Supreme Court held as:-

(29) Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of



death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

(30) A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to inspire the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent coherent and persuasive evidence to prove such fact, the person accused of either of the above referred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof.

(32) This Court while often dwelling on the scope and purport of Section 304-B of the Code and Section 113-B of the Act have



propounded that the presumption is contingent on the fact that the prosecution first spell out the ingredients of the offence of Section 304-B as in Shindo Alias Sawinder Kaur and another Vs. State of Punjab – (2011) 11 SCC 517 and echoed in Rajeev Kumar Vs. State of Haryana – (2013) 16 SCC 640. In the latter pronouncement, this Court propounded that one of the essential ingredients of dowry death under Section 304-B of the Code is that the accused must have subjected the woman to cruelty in connection with demand for dowry soon before her death and that this ingredient has to be proved by the prosecution beyond reasonable doubt and only then the Court will presume that the accused has committed the offence of dowry death under Section 113-B of the Act. It referred to with approval, the earlier decision of this Court in K. Prema S. Rao Vs. Yadla Srinivasa Rao – (2003) 1 SCC 217 to the effect that to attract the provision of Section 304-B of the Code, 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 and harassment “in connection with the demand for dowry”.

30. It also appears from the version of defense witnesses DW-1, namely Ramji Pathak and DW-2, namely Vanshidhar Chaubey that no demand of dowry was ever raised by appellants/ convicts and they also denied any matrimonial discord between the deceased and appellant/convict, namely Dhananjay Pathak, who happens to be the husband of the deceased. The testimony of the prosecution witnesses as of PW-1, PW-2, PW-3, PW-4 and PW-6 (informant) fully consolidate the defense version.

31. A cumulative consideration of the overall evidence on the facet of dowry, leaves us unconvinced about the truthfulness of the charge *qua* the appellants/convicts. The prosecutions in our estimate has failed to prove indispensable components i.e., (i) soon before death deceased was subjected to cruelty or harassment by her husband and relative of her husband, and (ii) such cruelty or harassment was in connection with demand for dowry. The factum of unnatural death in the matrimonial home and that too within seven years of marriage therefore, is not sufficient to bring home the charge *ipso facto* under Section 304 (B) of Indian Penal Code.



32. In all, tested on the overall scrutiny of the evidence as a whole, in our comprehension, the conviction of the appellants/convicts herein on the basis of the available materials on record would not be out of risk to reiterate. The prosecution has failed to prove the crucial ingredients of cruelty and harassment soon before death in connection with dowry demand, by means of direct and cogent evidence, thereby dis-entitling itself to the benefit of the statutory presumption available under Section 113(B) of the Indian Evidence Act.

33. Accordingly, the present appeals are allowed.

34. The impugned judgment of conviction dated 24.01.2017 and the consequent order for sentence dated 25.01.2017 passed by the learned Additional District and Sessions Judge VI, Buxar, in session trial no. 252/2015 in connection with Simri P.S. Case No. 151/2015 are set aside. The appellants are acquitted of the charges levelled against them.

35. Accordingly, the appellant Dhananjay Pathak (CR. APP. (DB) No. 284 of 2017), who is in custody, is directed to be set at liberty forthwith unless his detention is required in any other case. Since the appellants namely, Sidheshwar Pathak, Basanti Devi and Karishma Kumari (CR. APP. (DB) No. 449 of



2017) are on bail, they are discharged from the liability of their respective bail bonds and sureties.

36. It is further directed that fine, if any, paid in terms of order of sentence be returned to them, immediately.

(A. M. Badar, J)

(Chandra Shekhar Jha, J)

Archana/-

AFR/NAFR	NAFR
CAV DATE	24.03.2023
Uploading Date	
Transmission Date	

