

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.134 of 2003

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Uchit Das, son of Late Bhatoo Das, resident of village-Gora, P.S.-Banka,
District-Banka

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

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Appearance :

For the Appellant/s : Mr. Abhas Chandra, *Amicus Curiae*

For the Respondent-State: Ms. Anita Kumari Singh, APP

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 04-07-2024

This appeal has been preferred by the appellant/convict under Section 374(2) of the Code of Criminal Procedure (hereinafter referred to as 'the Code') challenging the judgment of conviction and order of sentence dated 17.01.2003 passed by learned 1st Additional Sessions Judge, Banka in S.T. No. 4 of 1995/71 of 2003, whereby the concerned Trial Court has convicted the appellant/convict for the offence punishable under Section 304-B and 498-A read with 34 of the Indian Penal Code (for short 'IPC') and sentenced to undergo rigorous imprisonment for ten years under Section 304-B of the IPC and rigorous imprisonment for three years under Section 498-A of the IPC.



2. At the outset, it would be appropriate to mention that the learned counsel appearing for the appellant/convict has failed to appear repeatedly on several occasions in past when the matter was taken on Board for final hearing, and, therefore, having no option left, this Court appointed Mr. Abhas Chandra, as an *Amicus Curiae* to assist in disposal of present appeal vide order dated 03.07.2024 of this Court, which is of year 2003.

3. The case of prosecution as speaks through written information of informant/PW-3, namely, Bodhi Das that his daughter was married with appellant/convict and soon after joining the matrimonial home, her husband (appellant/convict), namely, Uchit Das along with his family members started torturing to his daughter, namely, Pabiya Devi for fulfilment of demand of dowry as raised for cash of Rs.10,000/-. It is stated thereof that a threat was given in the event of non-fulfilling of demand of dowry, that appellant/convict may solemnize his second marriage. It is further stated that one year before the occurrence, the appellant/convict along with family members assaulted his



daughter with intention to kill her but, as alarm was raised timely, they could not succeed in their plan. It is further stated that on 16.04.1991, his daughter came to his village, where after *panchayati* the disputes were resolved. Consequent upon, his daughter Pabiya Devi went to join her matrimonial home. He received an information on 22.07.1991 that his daughter is missing and when, on said information, he visited the matrimonial home of his daughter, he found his daughter dead, where he came to know from the villagers that on 21.07.1991, the appellant/convict along with his parents killed his daughter after a family quarrel. He further came to know from the villagers that only after said incidents of family quarrel, his daughter was missing. He claimed that his daughter was killed by appellant/convict and his family members due to non-fulfilment of demand of dowry as raised for.

4. On the basis of aforesaid information, the police registered a case as Banka P.S. Case No.181 dated 24.07.1991 for the offence punishable under Sections 498-A and 304-B read with 34 of the IPC, where after the



investigation, the police submitted charge-sheet, accordingly.

5. The learned Trial Court after perusal of record and materials collected during the course of investigation, took cognizance for the offence under Sections 304-B and 498-A of the IPC and after supplying police papers as mandated through Section 207 of the Code, committed the case to the Court of Sessions in view of provision as available under Section 209 of the Code for its trial and disposal.

6. The learned trial court on the basis of materials collected during investigation, framed charge against the appellant/convict and other co-accused persons on 01.06.1995 for the offence under Sections 304-B and 498-A read with 34 of the IPC against the appellants/convict, which he pleaded "not guilty" and claimed trial.

7. To substantiate its case, the prosecution has examined altogether five witnesses. They are:- (i) PW-1 Nanhki Devi, mother of the deceased; PW-2 Shivshankar Das, cousin brother of the deceased; PW-3 Baudhi Das; PW-4 Rameshwar Das; and PW-5 Surendra Ravidas.



8. Apart from the oral evidence, the prosecution has also relied upon following documents/exhibits in order to prove the charges:-

Exhibit No(s).	List of documents
Exhibit-1	Written report of the informant.
Exhibit-I	Postmortem report of deceased.
Exhibit-II	Carbon copy of inquest report.

9. On the basis of evidence as surfaced during the trial, the learned trial court has examined the appellant/accused under Section 313 of the Code, where he completely denied his involvement by denying the incriminating evidences surfaced during the trial and stated that he was implicated with this case falsely and claimed his innocence.

10. No witness was examined by appellant/convict during the trial in his defence and further no documents were also exhibited in support of the defence.

11. Taking note of the evidence as surfaced during the trial and the arguments as advanced by the parties, the learned Trial Court has convicted the



appellant/convict/accused for the offences under Sections 304-B and 498-A read with 34 of the IPC and sentenced him in the manner as stated above.

12. Being aggrieved with the aforesaid judgment of conviction and order of sentence, the appellant/convict has preferred the present appeal.

13. Hence, the present appeal.

Argument on behalf of the appellant/convict:

14. Mr. Abhas Chandra, learned *Amicus Curiae* while arguing for appellant/convict submitted that even from the bare perusal of FIR, it appears that FIR (Exhibit No.-1) as authored by PW-3, namely, Baudhi Das, suggest that dispute between the daughter of informant and her family members was resolved in *panchayati* as held on 16.04.1991, which was organized at the house of informant itself. It is submitted that thereafter straightway on 22.07.1991, the informant/PW-3 received information regarding missing of his daughter. It is pointed out that between the said time gap of three months i.e. from 16.04.1991 to 22.07.1991, no allegation as to raise demand of dowry was made from



which, it can be safely gathered that the demand of dowry as raised through present FIR *qua* Rs. 10,000/- was not made soon before death of the daughter of informant/PW-3.

15. It is further submitted by Mr. Chandra, learned *amicus* that from perusal of FIR, it appears that the informant/PW-3 has received information regarding missing of his daughter, family quarrel and death of his daughter from unknown villagers, where during trial, he named one Panchu Das as a person, who supplied him aforesaid informations. It is pointed out that said Panchu Das was not examined during the trial and, as such, the entire basis of prosecution appears doubtful.

16. While concluding argument, it is submitted by learned *amicus* that the present is the case of suicide out of family quarrel and general matrimonial discord for which before lodging the present FIR, the mother-in-law of the deceased, who is mother of appellant/convict lodged a U.D. Case before Banka police, which has been registered as U.D. Case No.5 of 1991 dated 22.07.1991. It is also pointed out that cause of death as per autopsy report is "drowning"



where dead body of the daughter of informant was found inside well.

17. Travelling further over the argument, it is pointed out by Mr. Chandra that in present case the Investigating Officer and doctor were not examined as to ascertain the place of occurrence and to prove the postmortem report. It is further submitted that as Investigating Officer of this case was not examined, different suggestions as it was put during trial to the prosecution witnesses could not contradicted and, as such, it appears that appellant/convict deprived from his valuable right of defence during the trial. In view of aforesaid submission, learned *amicus* relied upon the legal report of Hon'ble Supreme Court as passed in the matter of **Sher Singh alias Partapa vs. State of Haryana [(2015) 3 SCC 724]**. It is further submitted that all three witnesses i.e. PW-1, PW-2 and PW-3, who appears to be supported the case of prosecution are related to each other i.e. mother of deceased, cousin brother of deceased and father of deceased respectively and, therefore, on this score also conviction is



bad in the eyes of law, as same was made without examination of independent witnesses. In support of his submission, learned *amicus* has relied upon the legal report of Hon'ble Supreme Court as passed in the matter of **Nand Lal v. State of Chhattisgarh [(2023) 10 SCC 470]**.

18. It is further pointed out that import of provisions as available under Section 113-B of the Indian Evidence Act regarding presumption is not appears to be applicable in present case, as prosecution has failed to establish the basic foundational aspects, which are required to establish a case under Section 304-B of IPC.

Argument on behalf of learned APP

19. Mrs. Anita Kumari Singh, learned APP appearing on behalf of the State submitted that the appellant/convict is the husband and he is bound to explain the circumstances as to how the death of his wife took place in matrimonial home. It is submitted that appellant/convict was bound to explain the death of his wife as per provision made under Section 106 of the Indian Evidence Act. It is submitted that death is unnatural within seven years of



marriage, where informant/PW-3 deposed before the court regarding demand of dowry as raised for Rs.10,000/- and, therefore, the conviction recorded by learned Trial Court cannot be said bad in the eyes of law.

20. After hearing the arguments and on perusal of records, it appears to this Court that the evidence as surfaced during the trial is required to be discussed for the purpose of its re-appreciation, which requires for the just and proper disposal of the present appeal.

21. It appears that out of five prosecution witnesses, PW-4, namely, Rameshwar Das and PW-5, namely, Surendra Ravidas became hostile during the trial, where upon cross-examination of State, nothing appears out of their deposition as to corroborate or contradict the statements of other prosecution witnesses, who have supported the case of prosecution and, as such, same is not required to be discussed.

22. **PW-3, Bodhi Das**, who is the father of the deceased and informant of the present case deposed through his examination-in-chief that he came to know about the



occurrence from one Panchu Das. He also appears to be supported the demand of dowry as raised by appellant/convict for Rs.10,000/-. It was stated by him that the marriage of his daughter, namely, Pabiya Devi was solemnized with Uchit Das (appellant/convict). It was deposed that his daughter Pabiya Devi after getting frustrated with family quarrel came to her parental village, where upon arrival, she stated to him that an attempt of murder was also made by accused/appellant and his family members. It was also stated by him that after compromise/*panchayati*, his daughter went to her matrimonial home.

22.1. On cross-examination, he denied suggestion that no such dowry as alleged was ever made by appellant/convict and he also denied to the suggestion that his daughter committed suicide out of family quarrel.

23. **PW-1 Nanhki Devi**, who is the mother of deceased and wife of informant/PW-3. She supported the occurrence of assault and dowry demand of Rs.10,000/- by the appellant/convict and his family members. It was



deposed by her that when after *Panchayati*, her daughter went for her matrimonial home along with in-laws after eight days only to joining her matrimonial home, the present occurrence took place, where appellant/convict along with his family members committed murder of her daughter and thrown her dead body to a nearby well. It was deposed by her that the information regarding occurrence was given by one Panchu, who is a resident of same locality and upon receiving such information, her husband/PW-3 went to matrimonial home of her daughter to verify the correctness of information as it was given by Panchu. She identified the appellant/convict and other co-accused persons before the court during the trial.

23.1. Upon cross-examination, she stated that the marriage of her daughter was solemnized about four and half years, before the occurrence. It was stated that her daughter arrived to her house couple of months before the occurrence, having injuries on her body, which alleged to be caused by appellant/convict and in-laws family members for which, she reported to the police and also brought the



occurrence in the knowledge of co-villagers. It was stated that after six months, a *panchayati* was held and, thereafter, her daughter Pabiya Devi went to join her matrimonial home along with in-laws. It was stated by her that on said occasion, her daughter was accompanied with his younger son. It was further stated in her cross-examination that she came to know about the occurrence from her husband, who is the informant/PW-3, who received information regarding occurrence from one Panchu Das. She denied the suggestion that her daughter committed suicide out of frustration for the reason that her husband (appellant/convict) was of simple look and, therefore, she was not desirous to continue her relation as a wife. She further denied the suggestion regarding dowry demand and suicide as advanced by learned counsel appearing on behalf of the appellant. She stated that after the occurrence, the father of appellant/convict (father-in-law of deceased) came to her home and informed regarding missing of her daughter, whereafter her husband/informant/PW-3 went with him and during course of search, her dead body was recovered.



24. **PW-2, Shivshankar Das**, who is cousin brother of the deceased. It also appears from his examination-in-chief that he came to know about the occurrence from Panchu Das, who stated him that appellant/convict along with his family members after killing Pabiya thrown her dead body to a nearby well. It was deposed that he went up to said well, where he found dead body of Pabiya was lying on a cot. It was deposed by him that he came to know about harassment caused by appellant/convict and his family members due to non-fulfilment of demand of dowry from his uncle, namely, Bodhi Das (PW-3). It was deposed by him that on instruction of PW-3, he wrote written information, which he identified as same was in his hand-writing and upon his identification, it was exhibited as Exhibit No.-1 during the trial, which after obtaining thumb impression of PW-2 given to S.H.O. Banka. He identified the co-accused persons during the trial, who were present on the date of examination and claimed to identify the accused persons.

24.1. Upon cross-examination, it was stated by



him that he met with Panchu near Radha Nagar and after receiving said information, he came back to his village and cancelled his plan to visit 'Gora'. He claimed to saw the dead body of daughter of informant. It was stated by him that none of the in-law family members of Pabia was present at the place of occurrence. He deposed that appellant/convict was assaulted Pabiya in a maize field just before eight days of the occurrence. He claimed to be an eye-witness of that occurrence. Upon court question, he replied that the assault was made due non-fulfilment of demand of dowry. It was further stated by him that she came to her matrimonial home one month prior to the occurrence.

25. It would be appropriate to reproduce the provisions of Section 304-B of the IPC and 113-B of Indian Evidence Act for the sake of convenience and better understanding of the fact, which are as under:-

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

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.

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

26. It is clear from the above legal provisions as mentioned under Section 304-B of the IPC that before the application of this section, 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".

27. It would be apposite to reproduce Para-9 and 16 of the judgment of Hon'ble Supreme Court rendered in the matter of **Sher Singh alias Partapa case** (supra), which are as under:-

"9. The legal regime pertaining to the death of a woman within seven years of her marriage thus has numerous features, inter alia:

(i) The meaning of "dowry" is as placed in Section 2 of the Dowry Prohibition Act.

(ii) Dowry death stands defined for all purposes in Section 304-B IPC. It does exclude death in normal circumstances.

(iii) If death is a result of burns or bodily injury, or otherwise than under normal circumstances, and it occurs within seven years of the marriage and, it is "shown" in contradistinction to "proved" that soon before her death she was subjected to cruelty or harassment by her husband or his relatives, and the cruelty or harassment is connected with a demand of dowry, it shall be a dowry death, and the husband or relative shall be deemed to have caused her death.

(iv) To borrow from Preventive Detention jurisprudence



—there must be a live link between the cruelty emanating from a dowry demand and the death of a young married woman, as is sought to be indicated by the words "soon before her death", to bring Section 304-B into operation; the live link will obviously be broken if the said cruelty does not persist in proximity to the untimely and abnormal death. It cannot be confined in terms of time; the query of this Court in the context of condonation of delay in filing an appeal—why not minutes and second—remains apposite.

(v) The deceased woman's body has to be forwarded for examination by the nearest civil surgeon.

(vi) Once the elements itemised in (iii) above are shown to exist the husband or relative shall be deemed to have caused her death.

(vii) The consequences and ramifications of this "deeming" will be that the prosecution does not have to prove anything more, and it is on the husband or his relative concerned that the burden of proof shifts as adumbrated in Section 113-B, which finds place in Chapter VII of the Evidence Act. This Chapter first covers "burden of proof" and then "presumption", both being constant bed-fellows. In the present context the deeming or presumption of responsibility of death are synonymous.

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16. *As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word "deemed" in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word "shown" is used as synonymous to "prove" and the word "presume" as freely interchangeable with the word "deemed". In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word "deem" to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this*



approach by rote. We have the high authority of the Constitution Bench of this Court both in State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory [(1953) 1 SCC 826 : AIR 1953 SC 333] and State of T.N. v. Arooran Sugars Ltd. [(1997) 1 SCC 326], requiring the Court to ascertain the purpose behind the statutory fiction brought about by the use of the word "deemed" so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word "shown" in Section 304-B IPC as to, in fact, connote "prove". In other words, it is for the prosecution to prove that a "dowry death" has occurred, namely, i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured, (ii) within seven years of her marriage, (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband, (iv) in connection with any demand for dowry, and (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry."

CONCLUSION:

28. It appears from the deposition of PW-1, PW-2 and PW-3/informant, who supported the case of prosecution, being mother, cousin brother and father respectively, are not the eye-witness of the occurrence. It further appears that without making any deviation, all three



prosecution witnesses i.e. PW-1, PW-2 and PW-3 stated that the information regarding murder and throwing of dead body of deceased was given by one Panchu, who was not examined during trial.

29. It appears from the deposition of PW-1 that information regarding missing of her daughter was given to her by '*Samdhi*' i.e. father-in-law of the deceased and, thereafter, her husband/PW-3 proceeded for matrimonial village of her deceased daughter namely, Pabiya, where during course of search, her dead body was found. It appears from the deposition that the information as received from Panchu regarding occurrence is not appearing convincing because same appears contradicted by her own statement. Similarly, PW-2 is also disputing the occurrence by disputing the time for the reason that he stated in his cross-examination that deceased Pabiya was assaulted just eight days before the occurrence by appellant/convict, where he was the eye-witness of the assault but, as per deposition of PW-3/informant, it appears that his deceased daughter Pabiya after *panchayati*, which was held on



16.04.1991 went to join her matrimonial home, where he received an information regarding her missing on 22.07.1991. The prosecution has failed to reply the crucial time gap regarding the occurrence and presence of deceased in her parental village.

30. It is an admitted position that before lodging this FIR, a missing report was lodged by mother-in-law of the deceased regarding missing incident of daughter of PW-3/informant, which was registered as Banka P.S. (U.D.) Case No.5 of 1991. It is also an admitted position that doctor and Investigating Officer not appears to be examined in this case as to ascertain the place of occurrence and natural death. The cause of death appears from postmortem is drowning, where the dead body of deceased was found inside well. Lodging of U.D. Case regarding missing of daughter of informant and also giving information regarding her missing by going upto parental village of deceased in terms of PW-1 only reflects the *bona fide* approach of appellant/convict and his family members.

31. It further appears that the deceased joined her



matrimonial village on 16.04.1991 and, thereafter, before her missing as reported on 22.07.1991, no demand of dowry was raised, which is sufficient to suggest that soon before her death demand of dowry was not raised, as to attract the offence within the meaning of Section 304-B of the IPC. It is well settled law that deeming provision available under Section 113-B of Indian Evidence Act can import only when prosecution established basic ingredients of Section 304-B of IPC. If the prosecution failed to prove substantial allegation as raised for dowry death in view of discussions as made above, the separate discussion to deal with conviction for offence under Section 498-A of the IPC is not required.

32. Accordingly, the appeal stands allowed.

33. The impugned judgment of conviction and order of sentence dated 17.01.2003 passed by learned 1st Additional Sessions Judge, Banka in S.T. No. 4 of 1995/71 of 2003 is, hereby, set aside. The appellant, above-named, is acquitted from the charges levelled against him.

34. If the appellant is in custody in connection



with this case, he is directed to be released forthwith, if not required in any other case.

35. The Patna High Court, Legal Services Committee is, hereby, directed to pay Rs.7,500/- (Rupees Seven Thousand and Five Hundered only) to Mr. Abhash Chandra, learned *Amicus Curiae* as consolidated fee for rendering his valuable professional service for the disposal of present appeal.

36. Office is directed to send back the lower court records along with a copy of the judgment to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Sanjeet/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	15.07.2024
Transmission Date	15.07.2024

