

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.355 of 2024

Arising Out of PS. Case No.-169 Year-2003 Thana- MADHEPUR District- Madhubani

Shyamanand Jha, Gender-Male, aged about 71 years, Son of Dhagirath Jha @ Bhagirath Jha, Resident of Ward No. 10, Village and Post and P.S. -Ghoghardiha, Madhubani, Bihar-847402.

... .. Appellant/s

Versus

1. The State of Bihar
2. Durga Jha, Gender-Female, aged about 60 years, Wife of Shyam Jee Jha, Resident of Village- Kathinia, P.S.- Lakhnaur, R.S. Madhubani, Bihar.
3. Prabha Thakur, Gender-Female, aged about 47 years, Wife of Krishn Madhav Thakur, Resident of Village- Kharauha, P.S.- Ghoghardiha, Madhubani, Bihar.
4. Archana Devi, Gender- Female, aged about 40 years, Resident of Village- Harri, P.S.- Andhrathadi, Madhubani, Bihar.
5. Anu Kumari, Gender-Female, aged about 37 years, Resident of Village- Jaydev Patti, P.S.- Ghanshyampur, Darbhanga.

... .. Respondent/s

Appearance:

For the Appellant/s : Mr. Vikas Ratan Bharti, Advocate
For the Respondent/s : Mr. Dilip Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA

ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)

Date: 02-09-2024

Heard Mr. Vikas Ratan Bharti, learned counsel
for the appellant and Mr. Dilip Kumar Sinha, learned APP for
the State.

2. The present appeal has been filed by the
appellant under Section 372 of Code of Criminal Procedure,
1973 (hereinafter referred to as ‘Code’) against the judgment



and order of acquittal dated 25.01.2024 passed by the learned Additional District and Sessions Judge-III, Jhanjharpur at Madhubani in Sessions Trial No. 264 of 2011 (G.R. No. 556/2003) arising out of Madhepur P.S. Case No. 169 of 2003, whereby the Respondent Nos. 2 to 5 have been acquitted for offences under Sections 498A, 304B and 34 of the Indian Penal Code, 1860. Further, the learned Trial Court instead of imposing sentence for various offences upon Respondent Nos. 2 to 5 for exonerating them.

3. Learned counsel for the appellant/ informant has placed on record the copy of deposition of the prosecution witnesses as well as the copy of the FIR. Learned counsel referred to the same and thereafter submitted in the present case, the appellant/informant had lodged the FIR under Sections 498A, 304B / 34 of the Indian Penal Code against the concerned accused including the present private-respondents.

4. It is further submitted that after investigation, the Investigation Officer filed the charge-sheet against the sole accused before the concerned Additional Chief Judicial Magistrate, however, as the case was exclusively triable by the Court of Sessions, the learned Magistrate committed the same under Section 209 of the Code. It is further submitted that before



the Sessions Court, the prosecution had examined all together five witnesses and produced documentary evidence also. Thereafter, the statement of the accused persons, under Section 313 of the Code, came to be recorded. After conclusion of the trial, the Trial Court has passed the impugned order, whereby the Respondent Nos.2 to 5 have been acquitted.

5. Learned counsel for the appellant further submitted that all the prosecution witnesses have supported the prosecution case through their deposition and they have stated that the Respondent Nos. 2 to 5 and other accused persons (in-laws of the deceased) were present at the place of occurrence. Respondent Nos. 2 to 5 used to demand dowry from the family of the deceased and that has also been stated in the deposition of the witnesses. As per Section 304 B of the Indian Penal Code, there are catena of judgments which show that in-laws of the deceased also play a vital role in the death of the deceased which is under the purview of dowry death.

6. Learned counsel further submitted that the essential ingredients of provision of dowry death are fulfilled but the learned trial Court has failed to consider the relevant facts and acquitted the Respondent Nos. 2 to 5. Learned counsel referred the judgment of Hon'ble Apex Court in the cases of



Sandeep Kumar & Ors. Vs. State of Uttarakhand & Ors. reported in (2022) 14 SCC 544, Maya Devi & Anr. Vs. State of Harayana reported in (2015) 17 SCC 405 and Bansi Lal Vs. State of Harayana reported in (2011) 11 SCC 359, in support of the prosecution case and submitted that the onus of proof lies upon the accused as per Section 113 B of Indian Evidence Act but the trial Court has mechanically overlooked the well settled law.

7. The learned counsel for the appellant has submitted that the family of the accused persons continuously tortured the deceased for dowry since solemnization of marriage and burn injury of hundred per cent leading to death as per the postmortem report proves that only one person (husband) cannot cause such injury to a person by himself when all the family members are present in the same house and they are not involved in such crime.

8. PW-1 Ramkrishna Jha, who is the younger brother of the informant, has stated in his examination- in-chief that on 15.03.2012, his niece Gudiya was married to Pankaj Kumar Jha, in the year 1998. His brother had given dowry as per his capacity but could not give any other demanded articles, like scooter and colour TV. Gudiya was subjected to marital rape in



the year 1998 itself. Her husband Pankaj Kumar Jha, father-in-law Shyamji Jha, mother-in-law of the deceased, Durga Devi and sister-in-laws Prabha Thakur, Annu Kumari, Archana Devi, brother-in-law Ashok Kumar Jha and Shambhu Jha (*Bhaisur*) used to physically torture and harass Gudiya (deceased) because dowry demand was not fulfilled. Family members of Gudiya went to Pankaj Kumar Jha's house to convince him but the husband abused them and drove them away. After a few days, the above accused again started harassing. Thereafter, Gudiya along with one Baidyanath Thakur, went to the police station and filed a case which was later amicably settled in the year 2003. On the night of incident, Gudiya Devi was murdered by Pankaj Kumar Jha, Shyamji Jha, Durga Devi, Prabha Thakur, Archana Devi, Annu Kumari for demand of dowry. On the next morning, when PW-1 and other persons went to the in-laws' house of Gudiya Devi, they found her burnt and no one was present at the house of the deceased. In his cross-examination, he stated that her (deceased) and the informant's house are separate. The information was given by his brother Shyamanand Jha. He has further stated that he does not know which members of accused persons' house are currently living. PW-1 has stated that before giving statement before the police, he had gone to



the in-laws' house of the deceased with his cousins Vaidyanath Thakur, Kantu Thakur, Gauri Shankar Wakur, Bachcha Babu, Lalan Jha. Bauaji Jha's statement was recorded. He did not get any information about the incident from the people there. There were no other members in the in-laws' house of the deceased except those whom he has named as accused. He further stated that he did not see the murder with his own eyes and he is not an eye-witness to the alleged occurrence. He does not know about the families of sisters-in-law of the husband of the deceased.

9. PW-2, who is the son of the informant, has stated that Gudiya Devi, who is the daughter of the informant, was married with Pankaj Jha in the year 1998 and after the marriage, when she went to her in-laws' house, her in-laws used to harass her for dowry. Regarding this, Gudiya Devi had filed a case against her in-laws, which was settled on the basis of compromise. Her in-laws started harassing her by demanding a scooter, washing machine, colour TV as dowry. On the night of the occurrence, Gudiya Devi was burnt to death by her husband as well as family members of the husband. He has further stated that her uncle had informed about the incident and PW-2 had gone to the spot and his statement was recorded by the police. He had not visited Gudiya's in-laws' house before the date of



occurrence of the incident. Pankaj Jha (husband of the deceased) used to stay at home and his father was in a government job. He further stated that he does not know where the sister of the husband of Gudiya Devi were married. He further deposed that he has not seen the occurrence and he is not an eye-witness to the incident.

10. PW-3, who is the informant and father of the deceased, has stated that Gudiya Devi was his daughter who was married with one Pankaj Kumar Jha, in the year 1998. After marriage, her in-laws used to demand TV, fridge, washing machine, VCR, motorcycle from his daughter and harassed her physically and mentally. On 07.03.2002, his daughter was beaten up and due to non-fulfillment of their demands, Gudiya Devi (deceased) was thrown out of the house by her in-laws and Gudiya Devi registered case no. 123 of 2002 in the RS Camp police station which was settled amicably later on. Gudiya Devi, her husband, namely, Pankaj Jha and father-in-law thereafter filed an affidavit of compromise before the trial Court. PW-3 further stated that after a few months, some unknown person informed on phone that Gudiya Devi had been burnt to death by her husband (Pankaj Jha) and her in-laws. PW-3 thereafter, reached Gudiya's in-laws' place with Chhotka Jha, Ramkrishna



Jha, co-villager Laddu Jha and saw the dead body there and lodged a report at the police station. He has stated that he is not an eye witness to the alleged occurrence. Prabha Thakur was married at the time of the incident and her husband was posted in the Andhra Pradesh State Sulabh Shauchalaya. It is not the case that Prabha Thakur lived with her husband in Hyderabad at the time of the occurrence and Archana Jha lived with her husband in Dibrugarh and Shyamji Jha lived with his family and children in Jhanjharpur. There was no exchange of money at the time of marriage. After the marriage, her daughter went to her in-laws' house. Son-in-law of PW-3 was unemployed and he was the only son of his father. The in-laws family of the deceased was a very rich family.

11. PW-4, who is the doctor, has stated that on 17.07.2003, he was posted as Medical Officer, Sadar Hospital, Madhubani. On the said day, a dead body was received at 09:35 AM of Guriya Devi, Wife of Pankaj Kumar Jha, Village-Kaithinia, P.S.-R.S. Shivir, Camp Jhanjharpur, Madhubani, hindu female, aged about 25 years, identified by Constable 278 Ram Tapasya Singh and Chaukidar 1/6 Bhola Khatabe, built were average, eyes closed, fists half clinched, mouth half open hair's black to brown Rigor Mortis present.



1. *The dead body was first seen by him at 10 AM and postmortem started at 10:10 AM. Postmortem examination was done.*
2. *The following ante mortem injures was found:- Ante mortem injures superficial to deep 100% burnt i.e., whole body with blackening of skin present.*
3. *On dissection:- Brain and Manegetis were congested, lungs were congested. Heart- left side of heart empty. Right side filled with blood. Liquor was congested. Spleen was soften. Kidneys was congested. Stomach was empty. Intestine full of gases and materials. Uterus was non grant. Urinary bladder was empty.*
4. *Time since death:- within 24 hours.*
5. *Death is in his opinion was due to shock caused by thermal burnt/dry heat.*
6. *This postmortem has been prepared and signed by him which is the carbon copy of the original prepared in the same process. Thus postmortem report is hear by moved Exhibit-2.*

11.1. He has stated in his cross- examination that the time since death is ascertained through the presence of rigor mortis in the dead body. The doctor has not mentioned the presence of rigor mortis in the specific limb. The Doctor has stated that he cannot say whether death was suicidal or



homicidal. He also did not find smell of kerosene oil on the body.

12. PW-5, who is the investigating Officer of this case, has stated in his examination-in-chief that he was posted as SHO at Railway Station Camp, Jhanjharpur Police Station. On the same day, the charge of investigation of Madhepur Police Station Case No.-169/2003 was handed over by Shambhunath Singh. In this case, supplementary investigation was going on against Durga Jha, Prabha Thakur, Archana Devi and Annu Kumari and earlier chargesheet no.-47/2003, under Sections 498A/304B of the IPC, had been submitted against Pankaj Jha and Shyamji Jha. In the course of investigation, he recorded the statements of Bhogi Thakur, Sushil Jha, Bhairav Jha, Devswaroop Thakur, Bharat Thakur, Shyam Sundar Thakur, Govind Jha, Gajendra Jha, Ramakrishna, Ajay Jha, Anil Jha, Madhav Thakur, Rampravesh Singh, Arvind Thakur, Vijay Jha, Kamalnarayan Jha, Bechhan Thakur, Surendra Thakur, Amarnath Thakur. He, further requested before DIG and IG, Darbhanga to visit Delhi and Hyderabad in course of the investigation. As per the cross-examination, he has stated that during the investigation he found that Shyamji Jha lived with his wife and an unmarried daughter in Ramkumar Nayak's house in



Laheriyaganj in 2003. On the day, when Gudiya Jha died of burn injuries, Archana Jha (Respondent No. 4) was in Delhi. The details of the treatment provided to her at Satyabhama Hospital were also given to the PW-5. He reached the Sulabh International Office in Hyderabad and took the statement of the organization's chairman Alok Jha there. He told in his statement that Krishna Madhav Thakur (husband of Respondent No. 3) is working as an Executive Engineer in his organization since 1996 and lives in Hyderabad with his family and children and the children study in Hyderabad. Krishna Madhav Thakur stated in his statement that in February 2003 he brought his wife Prabha Thakur (Respondent No. 3) and two children from Madhubani to Hyderabad and is living in a rented house. His son studies in a government school in Kachigudda. He took the statement of Rampravesh Singh. He told that he has been living in Hyderabad for the last 15 years and he and Krishna Madhav Thakur live in the same house. Krishna Madhav Thakur has been living with his wife and children since February 2003. On receiving the news from his in-laws that his brother-in-law's wife had died due to burn injuries, he went to Madhubani, Bihar with his family. He, thereafter, took the statement of Krishna Madhav Thakur's landlord Ranjit Singh who has supported the fact that



Krishna Madhav Thakur lived with him. This witness had gone to Delhi and Hyderabad to investigate in relation to Prabha Thakur and Archana Jha (Respondent Nos.3 and 4) and the investigation conducted by the Investigating Officer.

13. Considering the above facts and circumstances and the deposition given by the witnesses along with the doctor and Investigating Officer, it is evident that there are no clear and specific allegation against the present Respondent Nos. 2 to 5 and the relatives of the husband are being implicated without a direct allegation proving the guilt. All the witnesses have stated that they received information of the death of the deceased from an unknown person and thereafter they went to the house of the in-laws house of the deceased. This proves that there was no eye witness of the occurrence of the alleged incident and, as such, allegation against the Respondent Nos.2 to 5 is not absolute and is subject to introspection.

14. The Supreme Court in the case of **Kans Raj Vs. The State of Bihar (2000) 5 SCC 207** has held that -

“In the light of the evidence in the case we find substance in the submission of the learned counsel for the defence that Respondents 3 to 5 were roped in the case



only on the ground of being close relations of Respondent 2, the husband of the deceased. For the fault of the husband, the in-laws or the other relations cannot, in all cases, be held to be involved in the demand of dowry. In cases where such accusations are made, the overt acts attributed to persons other than the husband are required to be proved beyond reasonable doubt. By mere conjectures and implications such relations cannot be held guilty for the offence relating to dowry deaths. A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.”

15. The Hon'ble Apex Court in the case of **Monju Roy Vs. The State of West Bengal, (2015) 13 SCC 693** in para 8, 9 and 11 of the judgment has held that -



“8. While we do not find any ground to interfere with the view taken by the courts below that the deceased was subjected to harassment on account of non-fulfilment of dowry demand, we do find merit in the submission that possibility of naming all the family members by way of exaggeration is not ruled out. In Kans Raj [(2000) 5 SCC 207: 2000 SCC (Cri) 935], this Court observed: (SCC p. 215, para 5).

"5.... A tendency has, however, developed for roping in all relations of the in-laws of the deceased wives in the matters of dowry deaths which, if not discouraged, is likely to affect the case of the prosecution even against the real culprits. In their over-enthusiasm and anxiety to seek conviction for maximum people, the parents of the deceased have been found to be making efforts for involving other relations which ultimately weaken the case of the prosecution even against the real accused as appears to have happened in the instant case.

The court has, thus, to be careful in summoning distant relatives without there being specific material. Only the husband, his parents or at best close family members may be expected to demand dowry or to harass the wife but not distant relations,



unless there is tangible material to support allegations made against such distant relations. Mere naming of distant relations is not enough to summon them in the absence of any specific role and material to support such role.

9. In Raja Lal Singh v. State of Jharkhand [(2007) 15 SCC 415: (2010) 3 SCC (Cri) 539] it was observed: (SCC p. 419, para 14)

“14. No doubt, some of the witnesses e.g. PW 5 Dashrath Singh, who is the father of the deceased Gayatri, and PW 3 Santosh Kr. Singh, brother of the deceased, have stated that the deceased Gayatri told them that dowry was demanded by not only Raja Lal Singh, but also the appellants Pradip Singh and his wife Sanjana Devi, but we are of the opinion that it is possible that the names of Pradip Singh and Sanjana Devi have been introduced only to spread the net wide as often happens in cases like under Sections 498-A and 394 IPC, as has been observed in several decisions of this Court e.g. in Kamesh Panjiyar v. State of Bihar [(2005) 2 SCC 388:2005 SCC (Cri) 511], etc. Hence, we allow the appeal of Pradip Singh and Sanjana Devi and set aside the impugned judgments of the High Court and the trial court insofar as it relates to them



and we direct that they be released forthwith unless required in connection with some other case."

11. The court has to adopt a pragmatic view and when a girl dies an unnatural death, allegation of demand of dowry or harassment which follows cannot be weighed in golden scales. At the same time, omnibus allegation against all family members particularly against the brothers and sisters and other relatives do not stand on the same footing as husband and parents. In such case, apart from general allegation of demand of dowry, the court has to be satisfied that harassment was also caused by all the named members."

16. The Hon'ble Apex Court in the case of Chandrlekha and Ors Vs. State of Rajasthan and Anr., 2013 (1) UC 155 has held under para 8 of the judgment that -

"8. We must, at the outset, state that the High Court's view on jurisdiction meets with our approval and we confirm the view. However, after a careful perusal of the FIR and after taking into consideration the attendant circumstances, we are of the opinion that the FIR lodged by respondent 2 insofar as it relates to appellants 1, 2 and 3 deserves to be quashed. The allegations are extremely general in nature. No specific



role is attributed to each of the appellants. Respondent 2 has stated that after the marriage, she resided with her husband at Ahmedabad. It is not clear whether appellants 1, 2 and 3 were residing with them at Ahmedabad. The marriage took place on 9/7/2002 and respondent 2 left her matrimonial home on 15/2/2003 i.e. within a period of seven months. Thereafter, respondent 2 took no steps to file any complaint against the appellants. Six years after she left the house, the present FIR is lodged making extremely vague and general allegations against appellants 1, 2 and 3. It is important to remember that appellant 2 is a married sister-in-law. In our opinion, such extra ordinary delay in lodging the FIR raises grave doubt about the truthfulness of allegations made by respondent 2 against appellants 1, 2 and 3, which are, in any case, general in nature. We have no doubt that by making such reckless and vague allegations, respondent 2 has tried to rope them in this case along with her husband. We are of the confirmed opinion that continuation of the criminal proceedings against appellants 1, 2 and 3 pursuant to this FIR is an abuse of process of law. In the interest of justice, therefore, the FIR deserves to be quashed insofar as it



relates to appellants 1, 2 and 3."

17. Considering all the facts and circumstances of the present case and referring the judgments of the Hon'ble Apex Court, it seems that there are no specific allegation against Respondent Nos. 2 to 5 and the fact that the investigating officer has also found out through his investigation by going to Delhi and Hyderabad that the sisters-in-law of the deceased, at the time of the incident were living with their husband in Delhi and Hyderabad. Considering the fact that the distant family members of the husband cannot be implicated in the case of dowry death, unless, there is tangible material to support the allegation made against the relatives, simply putting the name in the FIR through *fardbeyan* and naming the relatives without any substantial proof of involvement is not enough to support the prosecution case against them and support their role in the death of the deceased.

18. The Hon'ble Apex Court, as discussed in the preceding paragraphs, has observed and held that a person cannot be implicated in a case only on the basis of suspicion without any cogent and substantial evidence supporting the prosecution case.

19. From perusal of the deposition of the witnesses, when the case is not made out against Respondent



Nos.2 to 5, it is not justified to draw adverse inference against Respondent Nos. 2 to 5 and the learned trial Court has rightly pointed out the same and acquitted the accused persons (Respondent Nos. 2 to 5).

20. We have also considered the reasoning recorded by the Trial Court while passing the order of acquittal in favour of the respondent/accused and we are of the view that the Trial Court has not committed any error while passing the impugned order. Thus, looking to the overall facts and circumstances of the present case, we are not inclined to interfere with the impugned order.

21. Accordingly, the present appeal is dismissed at the stage of admission itself.

(Vipul M. Pancholi, J)

(Ramesh Chand Malviya, J)

Anand Kr.
Brajesh Kumar.

AFR/NAFR	AFR
CAV DATE	N/A
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