

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.27 of 2016

Arising Out of PS. Case No.-128 Year-2012 Thana- AMNAUR District- Saran

Ved Prakash Singh, Son of Ganaur Singh, Resident of Village- Paharpur, P.S.-
Amnour, District- Saran at Chapra

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Y.V. Giri, Sr. Adv. Mr. Pranav Kumar, Adv. Ms. Shrishti Singh, Adv.
For the Respondent/s	:	Mrs. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 06-08-2024

1. Heard learned counsel appearing on behalf
of the parties.

2. The present appeal preferred by
appellant/convict, namely, Ved Prakash Singh under
section 374(2) of the Code of Criminal Procedure (in
short Cr.P.C.) against the judgment of conviction dated
15.12.2015 and order of sentence dated 21.12.2015
rendered by learned 1st Additional District & Sessions
Judge, Saran at Chapra in Sessions Trial Case No. 381
of 2013, arising out of Amnour P.S. Case No. 128 of
2012, G.R. Case No. 5297 of 2012 by which the learned
trial court has convicted the appellant for the offence



punishable under Sections 304(B) of the Indian Penal Code and sentenced the appellant to undergo rigorous imprisonment for seven years.

3. As per prosecution case the informant Sanjay Kumar Singh/P.W.-9 has alleged that his sister Mamta Kumari (deceased) was married with the appellant (Ved Prakash Singh) on 20.05.2009. For said marriage the informant gifted valuable articles according to his capacity to the deceased and her husband but after one year of marriage his sister informed to the informant regarding further demand of motorcycle alongwith cash of Rs. One Lakh as raised by her in-laws, and in furtherance of which they started torturing her. It is further stated that the deceased has given birth of two children from said wedlock. He has further alleged that on 24.11.2012 at 07:00 P.M. his sister called his wife and talked to her wife in length, whereafter his wife disclosed to him that his sister appears tense/upset while talking over phone and upon which the informant called



his sister several times and also on mobile phones of his in-laws but no one received the phone calls and later on all the phones found to be switched off. It is further alleged that about 06:00 A.M., one person from her in-laws village namely Vasist Narain Singh informed about the incident that his sister was killed/burnt alive by her in-laws and her body was taken for cremation. After receiving said information, the informant reached at police station and lodged his *fardbeyan* and proceeded for cremation place and saw that the dead body of his sister was already cremated by her in-laws, consequent upon police arrested the accused Ved Prakash Singh from the site of cremation itself.

4. On the basis of aforesaid information, Amnour P.S. Case No. 128 of 2012 was lodged on 25.11.2012 for the offence under Section 304(B), 201/34 of the Indian Penal Code, where after investigation police submitted charge-sheet accordingly.

5. To established its case before the learned



trial court, the prosecution altogether examined total of ten witnesses, namely, PW-1 Uma Nath Singh, PW-2 Updeo Singh, PW-3 Krishna Madhaw Singh, PW-4 Baban Singh, PW-5 Krishna Singh, PW-6 Randhir Singh and PW-7 Jitendra Singh, PW-8 Sanjay Singh, PW-9 Sanjay Kumar Singh (Informant) and PW-10 Suresh Kumar.

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

Exhibit 1 -Signature of the informant
on the *Fardbeyan*

Exhibit 2 – Formal F.I.R.

7. On the basis of evidences, as surfaced during the trial, the appellant/convict was examined under Section 313 of the Cr.P.C., where he denied all the evidences as surfaced against him and claimed his complete innocence and false implication.

8. No witness was examined in defense, neither any documents were exhibited during trial by



appellant/convict in his favour.

9. Upon the basis of evidences as surfaced during the trial and also by taking note of the argument as advanced by the learned counsel appearing on behalf of the parties, the learned trial court convicted appellant/convict for the offence under Section 304(B) of the Indian Penal Code, where appellant/convict sentenced to undergo for rigorous imprisonment of seven years.

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

11. Hence the present appeal.

12. Mr. Y.V. Giri, learned senior counsel while arguing on behalf of the appellant/convict submitted that from the depositions of prosecution witnesses itself, who were not declared hostile during the course of investigation, it can be gathered safely that at the time of occurrence appellant/convict was at the



house of co-villager, when the sister of the informant caught fire from the hearth (*chulha*) and by the time he came on spot along with other co-villagers she was found dead. It is submitted that information was given to informant and his family members, after the occurrence, only upon which he proceeded for the village of appellant/convict and as such appellant was very honest from his side but as a matter of an after thought false police case was lodged. It is submitted that the death of the sister of the informant was due to unfortunate fire accident. Mr. Giri, further submitted that prosecution failed to established the foundational aspect of Section 304 (B) of the I.P.C. in this case and therefore the convictions which appears secured by the Id. trial court on the exclusive note of importing presumption as available under Section 113(B) of the Indian Evidence Act is bad in eyes of law.

13. In support is his submissions learned senior counsel relied upon the legal report of ***Sher***



***Singh vs. State of Haryana, (2015) 3 SCC 724 :
(2015) 2 SCC (Cri) 422 : 2015 SCC OnLine SC 23.***

14. Learned APP while opposing appeal submitted that the death of the sister of informant/PW-9 took place in her matrimonial home where death appears unnatural within 7 years of marriage. It is submitted that the factum of demand of dowry was also supported by informant in this case during the trial and therefore it cannot be said that prosecutions failed to established the foundational aspect of section 304B of IPC and therefore the import of presumption as available under Section 113(B) of the Indian Evidence Act, can not be said illegal. Hence, there is no occasion to interfere with impugned judgment.

15. I have perused the trial court records carefully and gone through the evidences available on record and also considered the rival submissions as canvassed by learned counsel appearing on behalf of the parties.



16. As to re-appreciate the evidences, while dealing with present appeal, it would be apposite to discuss the evidences as available on record, which are as under :-

17. From the perusal of records, it appears that, **P.W.-1** is Uma Nath Singh, who appears to support the factum of marriage between the sister of informant namely Mamta Devi and appellant/convict, which somewhere took place in the year 2009. It was stated by him that the death took place out of fire accident.

18. P.W.-2 is Updeo Singh, who also supported the factum of marriage of deceased with appellant/convict, which is stated to be solemnized in the year 2009, whereupon cross-examination, he said that on the date of occurrence there was a *Tilak* ceremony of son of one Deo Bahadur of same village and due to said function he along with appellant/convict and others were present there at the time of occurrence. He further



stated that out of said wedlock appellant/convict has one son and one daughter. This witness was not declared hostile by prosecution.

19. P.W.-3 is Krishna Madhaw Singh, he stated in his examination-in-chief that the occurrence took place at about 7 P.M. and by that time he was in *Tilak* ceremony. He stated that an alarm was raised that Mamta Kumari (deceased) caught fire. He went there and saw that she was lying near the hearth (*chulha*). He upon cross-examination stated that the *Tilak* ceremony was of the son of one Deo Bahadur and appellant/convict by that time was present over there. He was also not declared hostile by prosecution.

20. P.W.-4 is Baban Singh, who stated during the examination-in-chief itself that at the time of occurrence he was at the door of Sheo Bahadur Singh, participating in *Tilak* ceremony of his son Deo Bahadur. He stated that wife of the appellant/convict received burn injury, while she was cooking, and she died of said



injury. Upon cross-examination this witness specifically deposed that the victim died with burnt injury in kitchen. It was further stated that appellant/convict by that time was in *Tilak* ceremony along with them. This witness was also not declared hostile by prosecution.

21. P.W.-5 is Krishna Singh, who also supported the factum of marriage of deceased with appellant/convict and deposed that the sister of the informant died due to catching of fire.

21.1. Upon cross-examination he deposed that on the date of occurrence there was *Tilak* ceremony of son of one Deo Bahadur in his village.

22. P.W.-6 is Randhir Singh, who deposed that the deceased sister of informant, Mamta Kumari, died due to burn injury in her matrimonial house. He said to visit the place of occurrence but by that time she was dead and it was stated further that when he arrived, no one of her matrimonial family was found present there.



22.1. Upon cross-examination he stated that on the date of occurrence there was a *Tilak* ceremony in house of one Bir Bahadur Singh in his village and he was also there along with co-villagers and Ved Prakash (appellant/convict). He was also not declared hostile.

23. P.W.-7 is Jitendra Singh, who also supported the factum of marriage between appellant and deceased but deposed that he is not aware about anything regarding occurrence in issue. He declared hostile by prosecutions, where nothing surfaced during his cross-examination on behalf of State which may be relevant for contradicting or corroborating the evidence of the prosecution witnesses, who appears to be supported the case of prosecution.

24. P.W.-8 is Sanjay Singh, it appears that he came to know regarding occurrence from someone else. He appears to be a hearsay witness of the occurrence. It was deposed by him that the family members of the deceased were demanding Rs.



1,00,000/- (Rupees One Lakh) without specifying whether it was a demand of dowry.

24.1. Upon cross-examination, it was stated by him that he did not talk with deceased over phone, before 2 to 4 days, prior to the occurrence. He deposed that deceased made complaint to her paternal family regarding torture committed upon her by her in-laws and appellant/convict/husband but no formal complaint was lodged with police out of said complaint. He stated to visit the matrimonial house of the deceased after occurrence, where he arrived somewhere between 10 A.M. to 12 A.M. but none of the family members were found over there. It was stated that the case was lodged by Sanjay Singh/P.W.-9 and after two to three hours of lodging of present case they returned to their village. He made his statement before the police on 25.11.2012, where he stated that deceased was the sister of the informant (P.W.-9), was burnt alive and her two twin children were also killed. On further cross-examination



he stated that he is not aware about the whereabouts of the children of the deceased. He declined the suggestion that both children are with their grandparents. He stated that the deceased was trained in cooking but denied to depose falsely out of his relation being cousin brother of the deceased. He denied the suggestion that the sister of the informant died out of accidental fire and she was never subjected to torture.

25. P.W.-9 is Sanjay Kumar Singh, who is the informant of this case. He stated that occurrence took place on 12.11.2012 and it was the second marriage of his sister with appellant/convict which was solemnized on 20.05.2009. He stated specifically that his sister was burnt alive by her in-laws. It was deposed by him that her sister was subjected to torture due to non-fulfillment of demand of dowry and this fact was stated by her prior to this occurrence. He identified his signatures over his written statement given to police and upon his identification it was exhibited as Exhibit-1.



25.1. Upon cross-examination he stated that the deceased was his sister and she said prior to this occurrence that she was tortured by her in-laws and also about the family quarrels. He stated that he didn't talked to his sister prior to this occurrence. He stated that he furnished written information before police on the basis of information what he received from villagers. He denied to suggestion that no such occurrence took place.

26. P.W.-10 is one Suresh Kumar, who is an advocate clerk. It was deposed by him that formal FIR of this case was drawn on 25.11.2012 by S.H.O., Madan Mohan Prasad, which is in his handwriting, upon identification it was exhibited as Exhibit no. 2. On cross-examination he said that the said formal FIR was not drawn before him and he was not aware about its contents.

Conclusion

27. First of all, it would be apposite to



reproduce Section 304(B) of the I.P.C. and Section 113(B) of the Indian Evidence Act, which reads as follows:-

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).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

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).]

28. No doubt that the death of the sister of the informant, namely Mamta Devi, took place in her matrimonial home, within 7 years of her marriage as it was supported by most of the prosecution witnesses but from the perusal of evidence it appears that the prosecution witnesses P.W.(s) -1, 2, 3, 4, 5 and 6 who were not declared hostile by prosecution, categorically stated that at the time of occurrence the appellant/convict was with them in *Tilak* ceremony which was solemnized in connection with the marriage of son of one Deo Bahadur of same village. From the testimony of all these witnesses who were not declared hostile it appears that the sister of informant caught fire while she was cooking. Her dead body was also found near to hearth (*chulha*) in the kitchen itself. Admittedly, there is no *post-mortem*. Investigating Officer of this case was also not examined and in such a circumstances



it can't be said that even the formal FIR or written statement were proved during the trial. The formal FIR was proved by Id. trial court through one advocate clerk having no occasion to work with S.H.O, namely, Madan Mohan Prasad and he also upon cross-examination stated that it was not written before him.

29. Written information which is the basis of formal FIR appears to be proved during the trial by its author which is none but the informant, namely, Sanjay Kumar Singh/P.W-9 which was exhibited as Exhibit-1. It appears from said exhibit that there was demand of one motorcycle and cash of Rs. 1,00,000/- (Rupees One Lakh) as dowry which was raised by in-laws of the deceased without specifying anyone. It appears further from the narration that on 24.11.2012 at about 7 P.M. the wife of the informant(P.W.-9) received a call from the deceased. In the night itself it was informed to the informant/P.W.-9 by his wife that Mamta Kumari (deceased) was appearing tense out of her conversation



and upon said information he called to his sister repeatedly on her mobile phone and other available phones of her in-laws which was found switched off. On very next day, co-villager of matrimonial village of the deceased namely Vasist Narain Singh called the brother of the informant namely Aditya Raj Singh (not examined) and informed that her sister was burnt alive by her in-laws.

30. From the aforesaid narrations which is the basis of implication of this case, it appears that the wife of the informant, Vasist Narain Singh and the brother of the informant namely Aditya Raj Singh, could be the best witness of this occurrence but they were not examined by the prosecution during the trial. The wife of the informant and Vasist Narain Singh could not even find place as charge-sheeted witnesses. Despite of having specific allegations qua demand of dowry as available through Exhibit-1/written information, it was suppressed by informant/P.W.-9, while deposing before



the court. For a moment, if Exhibit-1 be taken into consideration it nowhere appears that any torture, soon before the occurrence was committed upon deceased sister of informant/P.W-9 as no such communications was made to him through his wife who talked with deceased in length over phone just before the occurrence.

31. It would be apposite to reproduce para nos. 9, 13 and 16 of the ***Sher Singh (supra)***, which reads 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.



13. *In our opinion, it is beyond cavil that where the same word is used in a section and/or in sundry segments of a statute, it should be attributed the same meaning, unless there are compelling reasons to do otherwise. The obverse is where different words are employed in close proximity, or in the same section, or in the same enactment, the assumption must be that the legislature intended them to depict disparate situations, and delineate dissimilar and diverse ramifications. Ergo, ordinarily Parliament could not have proposed to ordain that the prosecution should "prove" the existence of a vital sequence of facts, despite having employed the word "shown" in Section 304-B. The question is whether these two words can be construed as synonymous. It seems to us that if the prosecution is required to prove, which always means beyond reasonable doubt, that a dowry death has been committed, there is a risk that the purpose postulated in the provision may be reduced to a cipher. This method of statutory interpretation has consistently been disapproved and deprecated except in exceptional instances where the syntax permits reading down or reading up of some words of the subject provisions.*

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.*

*We are aware that the word
"soon" finds place in Section 304-B; but we
would prefer to interpret its use not in terms
of days or months or years, but as
necessarily indicating that the demand for
dowry should not be stale or an aberration of
the past, but should be the continuing cause
for the death under Section 304-B or the
suicide under Section 306 IPC. Once the
presence of these concomitants is established
or shown or proved by the prosecution, even
by preponderance of possibility, the initial
presumption of innocence is replaced by an
assumption of guilt of the accused, thereupon
transferring the heavy burden of proof upon
him and requiring him to produce evidence
dislodging his guilt, beyond reasonable doubt.
It seems to us that what Parliament intended
by using the word "deemed" was that only
preponderance of evidence would be
insufficient to discharge the husband or his
family members of their guilt. This
interpretation provides the accused a chance
of proving their innocence. This is also the*



postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word "shown" has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.

32. It appears from the aforesaid discussion that the prosecution during the trial failed to establish the foundational aspect of Section 304(B) of I.P.C for which the prosecution was duty bound and in absense thereof the presumption as available under Sections 113(B) of Indian Evidence Act cannot be imported.

33. Accordingly, appeal stands allowed.

34. The impugned judgment of conviction dated 15.12.2015 and order of sentence dated 21.12.2015 passed by learned 1st Additional District & Sessions Judge, Saran at Chapra in Sessions Trial Case



No. 381 of 2013, arising out of Amnour P.S. Case No. 128 of 2012, G.R. Case No. 5297 of 2012 is hereby set aside/quashed.

35. Accordingly, above named appellant is acquitted from the charges leveled against him.

36. Appellant is on bail, upon his acquittal, bailors and sureties stands discharged from their liabilities.

37. Office is directed to send back the trial court records along with a copy of this judgment to the trial court, forthwith.

(Chandra Shekhar Jha, J)

Sudha/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	21.08.2024
Transmission Date	21.08.2024

