

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.497 of 2004

1. Raj Kumari Devi alias Tuli Devi, wife of Barsati Lal Rajak, resident of village Dhobaha, P.S. Arrah Muffasil, District – Bhojpur.
2. Umesh Rajak, son of Barasati Lal Rajak, resident of village Dhobaha, P.S. Arrah Muffasil, District – Bhojpur.
3. Dinesh Rajak, son of Barasati Lal Rajak, resident of village Dhobaha, P.S. Arrah Muffasil, District – Bhojpur.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

with

CRIMINAL APPEAL (SJ) No. 538 of 2004

Mahesh Rajak, son of Barsati Rajak, resident of village Dhobahan, P.S. Mufassil Arra, P.O. Dhabahan Bazar, District Bhojpur.

... .. Appellant/s

Versus

STATE OF BIHAR

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 497 of 2004)

For the Appellant/s : Mr.Parijat Saurav, Adv.

For the Respondent/s : Mr. A.M.P. Mehta, A.P.P.

(In CRIMINAL APPEAL (SJ) No. 538 of 2004)

For the Appellant/s : Mr.Parijat Saurav, Adv.

For the Respondent/s : Mr. A.M.P. Mehta, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. G. ANUPAMA CHAKRAVARTHY
ORAL JUDGMENT

Date : 18-09-2024

1. Criminal Appeal (SJ) No. 497 of 2004 and

Criminal Appeal (SJ) No. 538 of 2004 are arising out of
same judgment in Sessions Case No. 308 of 2002 dated



22.07.2004 on the file of 3rd Additional Sessions Judge, Bhojpur, Arrah, District Bhojpur.

2. Criminal Appeal (SJ) No. 538 of 2004 is preferred by Mahesh Rajak and Criminal Appeal (SJ) No. 497 of 2004 is preferred by appellants, namely, Raj Kumari Devi alias Tuli Devi, Umesh Rajak and Dinesh Rajak. The appellant in Criminal Appeal (SJ) No. 538 of 2004 i.e. Mahesh Rajak is the son of Raj Kumari Devi who is the appellant in Criminal Appeal (SJ) No. 497 of 2004. Appellants No. 2 and 3 in Criminal Appeal (SJ) No. 497 of 2004 are brothers of the appellant in Criminal Appeal (SJ) No. 538 of 2004.

3. All the appellants are charged with the offences under Section 304B and Section 201 of the Indian Penal Code wherein the trial Court has convicted them for both the offences and the appellants were sentenced to 7 years RI for the offence punishable under Section 304B of the Indian Penal Code but no separate sentence was awarded



under Section 201 of the Indian Penal Code, though they were convicted for the offence under Section 201 I.P.C.

4. The brief facts of the case of the prosecution is that one Anita Devi who is the daughter of the informant i.e. P.W. 3 (Kuldeep Ram) was married to Mahesh Rajak on 08.07.2000. When the son of P.W. 3 namely Rinku Kumar went to bring her sister from the house of the appellants, he was told that the victim will be sent on the eve of Dasahara. On 04.10.2000 the son of the informant, again went to the house of the appellants but the appellants asked him to come along with Aguaa (Mediator). On 10.10.2000 P.W. 3 (the informant) went along with Chhotan Rajak where Dinesh Rajak and Tetari Devi met and told them some *marpeet* had taken place with victim, so she was taken for treatment at Chana village by her husband Mahesh Rajak, Raj Kumari Devi (mother-in-law) and brothers-in-law who are the appellants herein. Thereafter, they went to Chana



where Mahesh Rajak, his mother and others including Lalan Ram met them, but the victim was not shown to him and when they insisted to meet the victim, Rajendra Ram told them that due to some family problems she was beaten and they offered Rs. 25,000/- as fine to him as they have performed the last rites of the victim girl. Basing on the fardbeyan of P.W. 3 a case was registered against all the appellants vide F.I.R. of Arrah Muffasil P.S. Case No. 236 of 2000. In the Fardbeyan, it is submitted by the informant that he agreed to give a TV, Golden Ring in the marriage but could not give the same to the appellants.

5. The trial court framed charges against all the appellants for the offence punishable under Section 304-B of I.P.C. and also for the offence punishable under Section 201 of the Indian Penal code and was read over and explained to all the appellants, where the appellants denied the charges and claimed to be tried.



6. In order to support the case of the prosecution P.Ws. 1 to 4 are examined.

7. P.W. 1 is one Rajnand Devi. She testified before the court that she had no knowledge as to how the wife of Mahesh Rajak died and what was the behavior of her in-laws of the victim. She is supposed to speak about the manner of the death of the victim and as to how the appellants misbehaved with her. But she did not support the case of the prosecution and was declared as hostile. The evidence of P.W. 1 is nowhere helpful for the prosecution.

8. P.W. 2 is one Ramavatar Yadav. His evidence disclose that the wife of Mahesh Rajak died at her in-laws place about 1 or 2 years back. Further, his evidence disclose that he did not know whether the daughter of the informant was tortured for dowry, by her in-laws or not.

9. P.W. 3 one Kuldeep Ram who is the father-in-law of Mahesh Rajak and father of the victim/Anita Devi. His evidence disclose that in the



month of October his daughter was at her Sasural. When his son went to bring her, the appellants asked to come along with Auguaa (Mediator) and on that the son of the informant returned back. On next date, P.W. 3 came to know that his daughter was killed by the appellants and was tortured prior to her death. On that he went to the house of the appellants to perform the last rites (on 10th day) the villagers told him that his daughter was killed after torture. In his cross-examination, it is specifically stated by P.W. 3 that he does not know who informed him about the death of his daughter.

10. P.W. 4 is A.C. Gyani i.e. the Investigating Officer in this case. His evidence disclose that the case was registered, basing on the statement of P.W. 3 and the Fardbeyan is Exhibit 2. He further testified that after registering the F.I.R., he inspected the place of occurrence but he did not find the deadbody or any material objects at the scene of offence. In the cross-examination, it is admitted by P.W. 4 that he did not



investigate regarding the treatment of the victim/Anita Devi at Chana Village and also admitted that he recorded the statement of one Yogendra Ram who stated to him that the victim was brought before him for treatment and at that particular point of time she was in an unconscious state. Except the said oral evidence of P.W. 4 nothing is on record before the trial court.

11. It is contended by the Learned counsel for the appellants that the prosecution has miserably failed to prove the guilt of the appellants for the offences punishable under Section 304B and Section 201 IPC and therefore, the conviction of the trial Court is liable to be set aside. It is further contended that the evidence of PW 4 (Investigating Officer) clearly disclose that he investigated the place of occurrence but no incriminating material was found against the appellants and he could not even find the dead body and in the absence of dead body, punishment for dowry death is liable to be set aside.



In support of his contentions the Learned counsel for the appellants relied on the judgment of Hon'ble Apex Court reported in **(2017) 1 SCC 101 in the case of Baijnath and others Vs. State of Madhya Pradesh** wherein the Lordships have held at Paragraph No. 25:-

“25. Whereas in the offence of dowry death defined by Section 304-B of the Code, the ingredients thereof are:

(i) death of the woman concerned is by any burns or bodily injury or by any cause other than in normal circumstances, and

(ii) is within seven years of her marriage, and

(iii) that soon before her death, she was subjected to cruelty or harassment by her husband or any relative of the husband for, or in connection with, any demand for dowry.

The offence under Section 498-A of the Code is attracted qua the husband or his relative if she is subjected to cruelty. The Explanation to this Section exposits “cruelty” as:

(i) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life,



limb or health (whether mental or physical), or

(ii) harassment of the woman, where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

26. Patently thus, cruelty or harassment of the lady by her husband or his relative for or in connection with any demand for any property or valuable security as a demand for dowry or in connection therewith is the common constituent of both the offences.

27. The expression “dowry” is ordained to have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961. The expression “cruelty”, as explained, contains in its expanse, apart from the conduct of the tormentor, the consequences precipitated thereby qua the lady subjected thereto. Be that as it may, cruelty or harassment by the husband or any relative of his for or in connection with any demand of dowry, to reiterate, is the gravamen of the two offences.

28. Section 113-B of the Act enjoins a statutory presumption as to dowry death in the following terms:

“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 has 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 Penal Code, 1860.”

35. A cumulative consideration of the overall evidence on the facet of dowry, leaves us unconvinced about the truthfulness of the charge qua the accused persons. The prosecution in our estimate, has failed to prove this indispensable component of the two offences beyond reasonable doubt. The factum of unnatural death in the matrimonial home and that too within seven years of marriage therefore is thus ipso facto not sufficient to bring home the charge under Sections 304-B and 498-A of the Code against them.

36. The predicament of the prosecution is compounded further by its failure to prove, the precise cause of the death of the deceased. It is not clear as to whether the death has been suicidal or homicidal. It is also not proved beyond doubt, the origin and cause of the external injuries. Though the obscurity of the causative factors is due to the putrefaction of the body, the benefit of the deficiency in



proof, logically would be available to the persons charged.”

12. The Learned counsel for the appellants also relied on the judgment of **Charan Singh alias Charanjit Singh Vs. State of Uttarakhand reported in 2023 SCC Online SC 454** wherein the Lordships have held at para 23:-

“23. On a collective appreciation of the evidence led by the prosecution, we are of the considered view that the prerequisites to raise presumption under Section 304B IPC and Section 113B of the Indian Evidence Act having not been fulfilled, the conviction of the appellant cannot be justified. Mere death of the deceased being unnatural in the matrimonial home within seven years of marriage will not be sufficient to convict the accused under Section 304B and 498A IPC. The cause of death as such is not known.”

13. Learned counsel for the appellant also relied on the judgment of **Mungeshwar Prasad Chaurasia Vs. State of Bihar reported in (2002) 10 SCC 163** wherein the Lordships have held at para 5:-

“5. In the above circumstances it is difficult to sustain the conviction under Sections 304-B and 498-A IPC so far as the



appellants are concerned. As Section 201 IPC cannot be separated from the substantive offence, we think it is an idle exercise to consider whether conviction under Section 201 IPC can independently be fastened with the appellants. We, therefore, allow the appeal and set aside the conviction and sentence passed on the appellants. They are acquitted.”

14. The Learned Additional Public Prosecutor contended that the evidence of P.W. 2 corroborates with the evidence of PW 3 as to the death of one Anita Devi about one or two years back and further the evidence of PW 4 (the I.O.) disclose that one Yogendra Ram has revealed before the I.O. that Anita Devi was brought before him for treatment while she was in an unconscious state for which presumption under Section 113(B) of the Indian Evidence Act can be looked into and therefore the trial court has rightly convicted the appellants.

15. In order to punish the appellant for the offence punishable under Section 304B IPC the following ingredients are to be fulfilled:-



i. Where the death of a woman should occur either by burns or bodily injuries or occur otherwise than normal circumstances.

ii. the death of such woman should occur within seven years of her marriage.

iii. Soon before the death of such woman she was subjected to cruelty or harassment by her husband or any relative of her husband.

iv. and such harassment should be in connection with any demand of dowry.

16. Until these above four ingredients are satisfied the death of such woman cannot be called as dowry death. The explanation under Section 304-B of IPC states that dowry shall have the same meaning as under Section 2 of Dowry Prohibition Act, 1961. The punishment envisaged under Section 304-B of IPC is that of imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life. In the present case, the



deadbody of victim i.e. Anita Devi was not established by the prosecution. In the absence of dead body of a person, can there be a conviction against the appellants? Whether such conviction is tenable and sustainable as per the law?

17. On perusal of the entire evidence available on record, it is evident that the death of Anita Devi itself is not proved.

18. In Sanjay Rajak Vs State of Bihar reported in (2019) 12 SCC 552 the lordships of the Hon'ble Supreme Court have held as under:-

“9. It is not an invariable rule of criminal jurisprudence that the failure of the police to recover the corpus delicti will render the prosecution case doubtful entitling the accused to acquittal on benefit of doubt. It is only one of the relevant factors to be considered along with all other attendant facts and circumstances to arrive at a finding based on reasonability and probability based on normal human prudence and behaviour.”



19. Admittedly, there is no direct evidence and case of the prosecution falls under circumstantial evidence. Even in case of circumstantial evidence, it is for the prosecution to prove that the death of the victim/Anita Devi occurred in the hands of the appellants that too in relation to demand of additional dowry within seven years of her marriage and such death is caused due to burns/bodily injuries or occurs otherwise than normal circumstances. There is no physical evidence or chemical evidence before the Court. The dead-body was not discovered by the Investigating Officer. In order to prove the ingredients under Section 304(B) I.P.C, it is for the prosecution to initially prove that the death occurred. In the present case, the prosecution has miserably failed to prove the death of the victim. In the absence of such evidence before the Court, the trial Court ought not to have convicted the appellants for the alleged offences punishable under Section 304(B) and 201 of the I.P.C. The decision of the Hon'ble Apex Court stated supra



squarely applies to the facts and circumstances of the case.

20. Furthermore, there is no evidence on record to prove that there is demand for additional dowry by the appellant. The evidence of P.W. 3 do not disclose on which dates the appellants demanded for additional dowry. It is specifically admitted by P.W. 3 that he promised to give TV and gold ring but did not give them.

21. In view of the above discussion the conviction granted against the appellants in Sessions Case No. 308 of 2002 dated 22.07.2004 on the file of 3rd Additional Sessions Judge, Bhojpur is liable to be set aside.

22. This Court enlarged the appellants on bail vide order dated 09.09.2004 and 17.10.2005 respectively in Criminal Appeal (SJ) No. 497 of 2004



and Criminal Appeal (SJ) No. 538 of 2004 the bail
bond of the appellants shall stand cancelled.

23. In result criminal appeals are allowed.

(G. Anupama Chakravarthy, J)

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