

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.598 of 2023

Arising Out of PS. Case No.-47 Year-2020 Thana- PIPRA District- Patna

Paras Rai @ Paras Nath Rai, S/O Late Nandu Rai, R/O Village- Upharpura,
PS.Phulwarisharif, Dist. Patna.

... .. Appellant

Versus

1. The State Of Bihar
2. Manish Kumar S/o Mahesh Yadav R/O Village- Basiyawan, PS. Pipra, Dist. Patna
3. Saroj Devi W/o Mahesh Yadav R/O Village- Basiyawan, PS. Pipra, Dist. Patna

... .. Respondent

Appearance :

For the Appellant/s	:	Mr. D.K. Sinha, Sr. Advocate Mr. Pramod Kumar Sinha, Advocate
For Respondent Nos. 2 and 3:		Mrs. Nivedita Nirvikar, Sr. Advocate Mrs. Supragya, Advocate, Advocate
For the Respondent/s	:	Mr. Bipin Kumar, APP

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
and

HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RUDRA PRAKASH MISHRA)

7 02-02-2024 Heard Mr. D.K. Sinha, learned senior counsel assisted by Mr. Pramod Kumar, learned counsel for the appellant, Mrs. Nivedita Nirvikar, learned senior counsel assisted by Mrs. Supragya, learned counsel for respondent Nos. 2 and 3 and Mr. Bipin Kumar, learned A.P.P. for the State.

2. The present criminal appeal has been filed against the judgment and order dated 05.04.2023 passed by learned Addl. District and Sessions Judge-I, Masaurhi in Sessions Trial No. 393 of 2020, (Arising out of Pipra P.S. case No. 47 of 2020,



G.R. No. 761 of 2020) whereby the respondent nos. 2 and 3 have been acquitted of the charges by the learned Trial Court.

3. The prosecution case, on the basis of handwritten application of the informant dated 18.07.2020 addressed to the Officer-in-charge of Pipra police station, is that marriage of his daughter Rupa Kumari, aged about 22 years, was solemnized in February, 2019 with Mahesh Yadav of village Basiawa after giving dowry as per his capacity. After marriage, his daughter always used to tell that her *sasural* people insist for demand of Rs. five lakhs and one katha land as dowry and they also used to torture her. The informant further stated that many a times he talked to *sasural* people and make them understand. The informant further stated that father-in-law, mother-in-law, *nanad* and husband jointly killed her daughter. On 18.07.2020 at about 11.a.m., he got information that his daughter has been killed by *sasural* people by hanging. On receiving such information, he reached along with his family members at 1 p.m. at village Basiawa and saw dead body of his daughter lying on cot. The informant stated that for non-fulfilment of dowry, his daughter has been killed by father-in-law, mother-in-law, *nanad* and husband jointly by hanging herself.

4. On the basis of handwritten application of the



informant, Pipra P.S. Case No. 47 of 2020 was registered and investigation was taken up. After completion of investigation, final report was submitted against accused Mahesh Yadav and Priyanka Kumari while charge-sheet was submitted against respondent Nos. 2 and 3/accused. Thereafter, cognizance was taken against respondent Nos. 2 and 3 and the case was committed to the Court of Sessions. Charges were framed against the accused persons on which they pleaded not guilty and claimed to be tried.

5. During the trial, the prosecution examined altogether eight (08) witnesses, namely, P.W.1 Paras Nath Rai (informant), P.W.2 Satyender Kumar (I.O.), P.W.3 Sudeshwar Rai, P.W.4 Ram Ekbal Rai, P.W.5 Lalita Devi @ Lali Devi (mother of the deceased), P.W.6 Dr. Shiv Ranjan Kumar (doctor who conducted post-mortem examination), P.W.7 Awdhesh Prasad Singh and P.W.8 Shyam Nandan Ram. Certain documents were also exhibited viz. Ext. P-1- signature of informant on his application, Ext. P-2 endorsement on fardbeyan, Ext. P-3 signature of witness on fardbeyan, Ext. P-4 signature of Ram Ekbal Rai on fardbeyan and Ext. P-5 post-mortem report. Defence has also examined one witness namely Pappu Kumar as D.W.1 in support of its case. After closure of



the evidence, the statements of the accused persons were recorded under Section 313 Cr.P.C. and after conclusion of the trial, learned Trial Court has acquitted both of them.

6. Learned senior counsel for the appellant/ informant has submitted that learned trial Court has not considered the presumption raised under Section 113-B of the Indian Evidence Act(hereinafter referred to be referred as “Evidence Act”. He further submits that as per Section 304-B of Indian Penal Code (hereinafter to be referred as “I.P.C.”), if the prosecution has proved all the ingredients of Section 304-B of I.P.C. beyond reasonable doubt then automatically presumption can be raised under Section 113-B of the Evidence Act. The witnesses, in the present case, have supported the prosecution case but the trial Court has given finding that in this case, there is no eye witness and the I.O., who was examined, stated in his evidence that in the supervision note, there was no allegation of demand of dowry or torture made from the side of the in-laws of the deceased. Further, the trial Court ought to have convicted the accused persons but the trial Court has not considered the evidences of the prosecution witnesses and acquitted the accused persons and thus an error of law has been committed by the trial Court.



7. Learned senior counsel for the respondent Nos. 2 and 3 and learned A.P.P. for the state have submitted that the learned trial Court has elaborately considered the evidences led/produced from the side of the prosecution during the course of trial and the learned trial Court rightly acquitted the respondent Nos. 2 and 3. It is the duty of the prosecution to first prove the case beyond reasonable doubt. Learned senior counsel has further submitted that if the ingredients of Sections 304-B I.P.C. are found and the prosecution has proved the case beyond reasonable doubt, then presumption under Section 113-B of the Evidence Act is to be considered by the Court but in this case, learned trial Court has not proved the essential ingredients of Section 304-B I.P.C. and from perusal of the evidence of the informant as also P.W. 1, P.W.3, P.W. 4 and P.W. 5, who deposed before the Court during the course of trial and have very clearly stated that no any demand of dowry or torture was made from the husband of the deceased or by in-laws of the husband of the deceased. P.W. 1 (informant) has stated that the relation between his daughter and her husband was good. P.W. 5, who is mother of the deceased, has clearly stated that with regard to demand of dowry, torture and harassment, no any complaint was made to the police or any office regarding demand of five lakhs and even



no any panchayati was convened during this period. Since, the prosecution has not proved the essential ingredients of Section 304-B of I.P.C., the trial Court has rightly acquitted the respondent Nos. 2 and 3/accused persons. Further submission is that the doctor in his statement has also stated that the deceased was operated and that no any case was made for suicide. Further submission was made that P.W. 2 (I.O.) in his cross-examination has stated in paragraph 14 that the deceased was suffering from spleen for which she was operated and after the operation, she did not want to go to the *sasural* and further that it was mentioned in the supervision note of the S.D.P.O., Masaurhi that the deceased has threatened her *maika* people that she would commit suicide if they would send her forcibly to *sasural*. Further P.W. 5 (mother of the deceased) also stated in paragraph 13 of her cross-examination that her daughter was operated in Patna. P.W. 6 (doctor) in paragraph 8 of his cross-examination has stated that he has found old mark of scar over the stomach and left shoulder and he has discussed about the same in the post-mortem report. In the evidence of doctor, it was further found that the doctor has stated in paragraph 6 of his cross-examination that he did not find any mark of injury from which it appears that any force was applied to her by anyone to



cause her death. Lastly, placing reliance on judgments of Hon'ble Apex Court reported in *AIR 1989 SC 2134 (Lalit Kumar versus Superintendent & Remembrancer of L.A. Government of W.B.)* and in *AIR 2023 SC 2095 (Charan Singh vs. State of Uttarakhand)*, learned counsel for the respondent Nos. 2 and 3 has submitted that the trial Court has considered all evidence and has not committed any error in acquitting the accuseds persons.

8. After hearing the arguments advanced by the learned counsels appearing for the parties and on perusing the L.C.R. as well as evidence available on record, it appears to us that in criminal appeal against acquittal what the appellate court has to examine is whether the finding of the learned court below is perverse and *prima facie* illegal. Once the appellate Court comes to the finding that the grounds on which the judgment is based is not perverse, the scope of appeal against acquittal is limited considering the fact that the legal presumption about the innocence of the accused is further strengthened by the finding of the court. At this point, it is imperative to consider the decision of the Hon'ble Supreme Court passed in the case of *Surajpal Singh & Ors. v. The State* reported in *1952 SCR 193*, wherein it was observed that:



“... .. the High Court has full power to review the evidence upon which the order of acquittal was founded. But it is equally well settled that the presumption of innocence of the accused is further reinforced by his acquittal by the trial Court and the findings of the trial Court which had the advantage of seeing the witnesses and hearing their evidence can be reversed only for very substantial and compelling reasons.”

9. For better appreciation of the case at hand, a perusal of Sections 304-B, 498-A of the I.P.C., Section 113-B of the Evidence Act and Section 2 of Dowry Prohibition Act, 1961 would be required. The same are extracted hereinbelow:

“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 purpose 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.

498-A. Husband or relative of husband of a woman subjecting her to cruelty.- *whoever being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be*



punished with imprisonment for a term which may extend to three years and shall also be liable to fine.

Explanation.- For the purposes of this section, “cruelty” means-

(a) 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) of the woman; or

(b) 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.”

“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 of 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).”

“2. Definition of “dowry”.- *In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly-*

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before [or any time after the marriage] [in connection with the marriage of the said parties, but does not include] dower or mahr in the case of persons to whom the Muslim Personal Law



(Shariat) applies.

Explanation II.- The expression “valuable security” has the same meaning as in section 30 of the Indian Penal Code (45 of 1860).”

10. A conjoint reading of above provisions thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Evidence Act against the accused. We have considered the evidences of the prosecution witnesses more particularly the evidences of P.W. 1, P.W.3, P.W. 4 and P.W. 5 and found that no any demand of dowry was made or torture was committed on the deceased by the accused persons. The requirement of Section 304-B of the I.P.C. is that “soon before death”, the deceased was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry. It means that there must be a proximate and live link between the effect of cruelty based on dowry demand and the consequential death of victim. It is firstly the duty of the prosecution to prove that there was cruelty or harassment in connection with demand of dowry. P.W. 1, in his deposition, has stated that there was good relation of his son-in-law with his wife (deceased) and the deceased and her



husband used to visit his house and stayed just before 8-10 days of the occurrence, and thus it cannot be said that there was demand of dowry and the deceased was subjected with cruelty. P.W. 5 (mother of the deceased) clearly stated in her deposition that no any cruelty or harassment was made. Neither any complaint was ever made before any public office and further that no panchayati was made. This shows that there was no such demand or cruelty imposed upon the deceased. Further, in the evidence of P.W. 6 (doctor), who has stated in paragraph 6 of his cross-examination that he did not find any mark of injury which suggested that a force against the accused was applied. The doctor opined the death by hanging and found ligature mark on the neck of the deceased but he did not find any other injury on the body of the deceased to show that there was criminal force applied to her in order to kill her by hanging and if such force was applied, then there definitely would be mark of injuries of resistance. Thus, the learned trial Court has rightly given the finding on this point and acquitted the accused persons. The Hon'ble Supreme Court in catena of decisions has held that the deeming fiction created by Section 304-B of I.P.C. and further strengthened by Section 113-B of the Evidence Act, cannot be invoked when the essential ingredients of offence of dowry



death remain unproved. In the case of ***Rajiv Singh versus State of Bihar since reported in (2015) 16 SCC 369***, the Hon'ble Supreme Court has made following observation in its paragraph Nos. 66 and 68 which are as under:

66. It is well entrenched principle of criminal jurisprudence that a charge can be said to be proved only when there is certain and explicit evidence to warrant legal conviction and that no person can be held guilty on pure moral conviction. Howsoever grave the alleged offence may be, otherwise stirring the conscience of any court, suspicion alone cannot take the place of legal proof. The well-established canon of criminal justice is "fouler the crime higher the proof". In unmistakable terms, it is the mandate of law that the prosecution in order to succeed in a criminal trial, has to prove the charge(s) beyond all reasonable doubt.

*68. In the supplementation, it was held in affirmation of the view taken in **Kali Ram v. State of H.P. (1973) 2 SCC 808** that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted."*

11. It is pertinent to note that we are dealing with the acquittal appeal filed by the informant. The Hon'ble Supreme Court in the case of ***Chandrappa and Ors. Vs. State of Karnataka***, reported in ***(2007) 4 SCC 415*** has observed in



paragraph no. 42 as under:-

“42. From the above decisions, in our considered view, the following general principles regarding powers of appellate Court while dealing with an appeal against an order of acquittal emerge;

(1) An appellate Court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded;

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law;

(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc. are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasize the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the



presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

12. Recently, the Hon’ble Supreme Court in the case of ***Nikhil Chandra Mondal Vs. State of West Bengal***, reported in ***(2023) 6 SCC 605*** has observed in paragraph no. 22 as under:-

“22. Recently, a three-Judges Bench of this Court in the case of Rajesh Prasad v. State of Bihar has considered various earlier judgments on the scope of interference in a case of acquittal. It held that there is double presumption in favour of the accused. Firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the court. It has been further held that if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.”

13. From the aforesaid decisions rendered by the Hon’ble Supreme Court, it can be said that there is double presumption



in favour of the accused, when the order of acquittal has been accorded by the Trial Court, firstly, the presumption of innocence that is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the Court. Further, if two reasonable conclusions are possible on the basis of the evidence on record, the Appellate Court should not disturb the finding of acquittal recorded by the trial court.

14. Keeping in view the aforesaid decisions rendered by the Hon'ble Supreme Court coupled with the facts of the present case as discussed herein-above are carefully examined, we are of the view that while passing the impugned order of acquittal, the learned Trial Court has not committed any error, as the prosecution has failed to prove the case against respondent Nos. 2 and 3/accused persons beyond reasonable doubt.

15. In view of the aforesaid discussions, we are not inclined to entertain the present appeal. Accordingly, the appeal against the judgment and order dated 05.04.2023 passed by learned Addl. District and Sessions Judge-I, Masaurhi in



Sessions Trial No. 393 of 2020, (Arising out of Pipra P.S. case No. 47 of 2020, G.R. No. 761 of 2020), is dismissed at the admission stage itself.

(Vipul M. Pancholi, J)

(Rudra Prakash Mishra, J)

Pankaj/-

U		T	
---	--	---	--

AFR

