

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1670 of 2019

Arising Out of PS. Case No.-44 Year-2015 Thana- AUANGARI District- Nalanda

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1. Muneshwar Ravidas @ Bhuneshwar Ravidas Son Of Late Daso Ravidas, Resident Of Village- Rasisa, Police Station- Aungari (Pirbigha O.P.) District- Nalanda.
 2. Rajmuni Devi, W/O Muneshwar Ravidas @ Bhuneshwar Ravidas, Resident Of Village- Rasisa, Police Station- Aungari (Pirbigha O.P.) District- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

with
CRIMINAL APPEAL (SJ) No. 2427 of 2019

Arising Out of PS. Case No.-44 Year-2015 Thana- AUANGARI District- Nalanda

Lalkeshwar Ravidas Son Of Muneshwar Ravidas @ Bhuneshwar Ravidas
Resident Of Village - Rasisa, P.S.- Aungari (Pirbigha O.P), Dist.- Nalanda.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

(In CRIMINAL APPEAL (SJ) No. 1670 of 2019)

For the Appellant/s : Mr. Sunil Prasad, Advocate
Mr. Ganesh Sharma, Advocate

For the Respondent/s : Mr. Abha Singh, APP

(In CRIMINAL APPEAL (SJ) No. 2427 of 2019)

For the Appellant/s : Mr. Sunil Prasad
Mr. Ganesh Sharma, Advocate

For the Respondent/s : Mr. Abha Singh, APP

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 02-12-2024

Heard the learned counsel for the appellant(s) and the
learned APP for the State.



2. These appeals have been preferred against the judgment and order of conviction dated 30.03.2019 and 05.04.2019 passed by learned Additional Sessions Judge-I, Hilsa (Nalanda) in Sessions Trial No. 548 of 2016 (arising out of Aungari P.S. Case No. 44 of 2015) whereby and whereunder the appellants namely Muneshwar Ravidas and Rajmuni Devi have been convicted and sentenced to undergo R.I. for seven years and to pay a fine of Rs. 5,000/- each for the offence under Section 304(B) read with section 34 of the Indian Penal Code and in default of payment of fine, further undergo simple imprisonment for four months and appellant namely Lalkeshwar Ravidas have been convicted and sentenced to undergo R.I. for ten years and to pay a fine of Rs. 5,000/- for the offense under Section 304(B) read with section 34 of the Indian Penal Code. In default of payment of fine, further simple imprisonment for four months.

3. The prosecution case in short is that F.I.R. has been lodged on the basis of *fardebayan* of the informant namely Bijendra Ravidas, who is the father of the deceased Babli Devi. It is alleged in the First Information Report that the daughter of the informant was married with appellant Lalkeshwar Ravidas 3 years ago. After marriage, in-law of the deceased tortured her for dowry and for that mediation was also held. All the accused persons murdered the



daughter of the informant by strangulation. The deceased had one son and one daughter out of the wedlock with her husband.

4. On the basis of *fardbeyan* of the informant, Aungari P.S. case No. 44/15 was registered under sections 304(B)/34 of I.P.C. and after investigation charge sheet was submitted against the appellants on 25.12.15 and 31.05.2016 under sections 304(B)/34 of the I.P.C., respectively and thereafter cognizance has been taken on 05.01.16 and 30.08.2016 respectively and committed to court of Sessions on 26.09.2016.

5. It has been submitted by the learned counsel for the appellants that the appellants have been falsely implicated in this case due to family feud and dirty village politics. During trial, 7 witnesses have been examined before trial court, and they are as follows:-

P.W.-1 is Tanikar Ravidas (nephew of informant and son-in-law of appellants.

P.W.-2 is Ranjeet Ravidas,

P.W.-3 is Bijendra Ravidas (informant of this case)

P.W.-4 is Shivnandan Ravidas,

P.W.5 is Doman Das (brother of informant),

P.W.-6 is Anil Kumar LO. of this case and

P.W.-7 is Dr. Fazal Arshad.



6. He further submits that from perusal of the evidence of the witnesses, it appears that they only supported the prosecution regarding death of deceased Babli Devi, but they are not eyewitness of the occurrence. In cross-examination, P.W.-1 has stated that he has not seen any mark of violence on the dead body of the deceased. This witness has no knowledge about the demand of dowry made by the accused. This witness is related to both the accused and the informant. The appellants have been convicted only on the basis of deposition of informant (P.W.-3) and P.W.7 (Doctor).

7. Learned APP for the State has vehemently opposed the prayer of the appellants and has submitted that the impugned judgment is a reasoned judgment after considering the oral and documentary evidence including the injury report etc., therefore, the same should not be interfered with.

8. P.W-1 is Tanikar Ravidas (nephew of informant and son-in-law of appellants). He has supported the prosecution case and in his deposition, he has said that the deceased was not kept properly in her *sasural*. There were frequent quarrels and fights between them and he did not know the reason about the dispute. He does not know about the demand of dowry. He does not know that the deceased pressurized her husband to live separately from



her in-laws and when her husband refused to do so, the deceased got angry and committed suicide.

9. P.W-2 is Ranjeet Ravidas. He has said that accused persons did not torture and assault the deceased for dowry. There was a mediation (*panchayati*) held for the same and thereafter all the accused persons had agreed to keep the deceased properly, and subsequently they killed the deceased. He has also accepted that he was on litigating terms with the family of the deceased.

10. P.W-3 namely Bijendra Ravidas is informant of the case. He is the father of the deceased. In his deposition, he has said that the accused persons were demanding Rs. 70,000/- as dowry and for that they have killed the deceased. He has said that the deceased, his daughter used to visit her parents house and she had two children.

11. P.W-4 is Shivnandan Ravidas. He has created a new story and has said that in the night of the occurrence, he heard the voice of the deceased saying that she should be left and should not be assaulted. (बबली चिल्ला रही थी कि हमें छोड़ दीजिए क्यों मार रहे हैं). He has said that deceased Babli Devi was killed for dowry by the accused persons. In his cross-examination, he has accepted that he was in litigating terms with the accused persons and a criminal case vide Aungari P.S. Case No. 56 of 2016 and 57 of 2016 was



going on between them. The I.O. of the case in his deposition has said that this witness before the police had not said that he heard shout of Babli devi.

12. P.W-5 is Doman Das. He is the uncle of the deceased Babli Devi. He has also supported the prosecution case that dowry of Rs. 70,000/- was demanded and for non fulfillment of demand of dowry, the deceased was thrown out of her house, and subsequently she was killed. He has said that the deceased visited her parents home and she has told P.W-4 & 5 that demand of Rs. 70,000/- was made by the accused persons and they finally killed her. The I.O. has said that the Doman Das had not said anything about the demand of dowry.

13. P.W-6 Anil Kumar is the I.O. of the case.

14. P.W-7 Dr. Fazal Arshad has deposed that the deceased died due to asphyxia resulting from strangulation. There was no injury present on the deceased. Trachea was found fractured.

15. The Hon'ble Supreme Court in the case of ***Shoor Singh vs. State of Uttarakhand, 2024 SCC OnLine SC 2595*** while considering the appeal of the accused persons in a dowry death case has held as follows:-



12. To constitute a 'dowry death', punishable under Section 304-B IPC, following ingredients must be satisfied:

i. death of a woman must have been caused by any burns or bodily injury or it must have occurred otherwise than under normal circumstances;

ii. such death must have occurred within seven years of her marriage;

iii. soon before such death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

iv. such cruelty or harassment must be in connection with any demand for dowry.

The phrase 'otherwise than under normal circumstances' is wide enough to encompass a suicidal death.

13. When all the above ingredients of 'dowry death' are proved, the presumption under Section 113-B of the Evidence Act is to be raised against the accused that he has committed the offence of 'dowry death'. What is important is that the presumption under Section 113-B is not in respect of commission of an act of cruelty, or harassment, in connection with any demand for dowry, which is one of the essential ingredients of the offence of 'dowry death'. The presumption, however, is in respect of commission of the offence of 'dowry death' by the accused when all the essential ingredients of 'dowry death' are proved beyond reasonable doubt by ordinary rule of evidence, which means that to prove the essential ingredients of an offence of 'dowry death' the burden is on the prosecution.

14. In the instant case, it is not in dispute that the deceased died otherwise than under normal circumstances within seven years of her marriage. However, the issue between the parties is about her being subjected to cruelty or harassment by her husband or his relative, soon before her death, in connection with any demand for dowry.

15. The testimonies of PW-1, PW-2 and PW-3 do not indicate that any demand for dowry was made by the accused-appellants either before or at the time of marriage of the deceased with their son. Further, there is no evidence



that the accused appellants directly demanded a motorcycle or cash from any of the above witnesses. In fact, evidence is to the effect that the deceased had informed PW-1 and PW-2 on 4.1.2007 and 11.1.2007 about the demand for a motorcycle and cash. Further, from the deposition of PW-1 and PW-2, it appears that the aforesaid demand was not in connection with marriage but as a mark of celebration on birth of a male child.

16. The Hon'ble Supreme Court in another case of dowry death in the case of *Chabi Karmakar & Ors v. State of West Bengal, 2024 SCC OnLine SC 2433* has held as follows:-

6. After going through the evidence of PW-1, PW-3, PW-4 and P-16 (who are the brother, father, mother and cousin of the deceased respectively), it becomes clear that the deceased faced cruelty and harassment at the hands of her husband (appellant no. 2) which compelled her to commit suicide. However, these witnesses did not state that such cruelty and harassment was in connection with the demand for dowry. With respect to the demand for dowry, they have just made some general statements which are not sufficient to convict the appellants under section 304B of IPC.

7. Trial Court raised a presumption under section 113B of Evidence Act to convict the appellants under section 304B of IPC. The High Court did not go into the question of whether the trial court was right in relying upon section 113B of the Evidence Act.

In Charan Singh alias Charanjit Singh v. State of Uttarakhand, 2023 SCC OnLine SC 454, where there were allegations against the husband that he was subjecting the deceased therein on the demand of a motorcycle and some land, this Court in relation to Section 113B of Evidence Act and section 304B of IPC, had noted that:



"21.....It is only certain oral averments regarding demand of motorcycle and land which is also much prior to the incident. The aforesaid evidence led by the prosecution does not fulfil the pre-requisites to invoke presumption under Section 304B IPC or Section 113B of the Indian Evidence Act.....

22. XXXXXXX

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 and Section 113B of the Indian Evidence Act having not being 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 of IPC."

Similarly, in the case at hand, it has not been proved by the prosecution that the deceased was subjected to cruelty soon before her death in connection with the demand of dowry and hence we are of the opinion that this is not a case of dowry death under Section 304B of the Penal Code, 1860. PW-1 and PW-3 had only stated that deceased used to tell them about her torture. PW-4 (mother of the deceased) did not speak about any demand of dowry after marriage. Moreover, this witness had said that appellant no. 2 used to assault her deceased daughter as the deceased had objections to the illicit relation of appellant no. 2 with another woman. PW-16, who is the cousin of the deceased, had deposed in court almost a year after the testimony of PW-1, 3 & 4 and his deposition regarding the physical assault of the deceased in connection with the demand of dowry is also not believable. Considering the aforesaid, in our view, the trial court erred in raising a presumption under Section 113B of the



Indian Evidence Act, even though the demand for dowry was not established.

8. On the other hand, the learned counsel for the State of West Bengal would rely on two judgments of this Court, seeking appellants' conviction under Section 304B of IPC, both of which were decided by Three Judges' Bench of this Court : *Rajinder Singh v. State of Punjab*, (2015) 6 SCC 477 and *State of Madhya Pradesh v. Jogendra*(2022) 5 SCC 401.

The facts in *Rajinder Singh* (Supra) were entirely different. In that case, the deceased had died due to consumption of poison and there were specific allegations against in-laws in the form of evidence from the deceased's father, who had given credible evidence that the in-laws were demanding money for the construction of the house. There was also evidence of giving a she-buffalo to pacify the in-laws. Father of the deceased therein further deposed how the Sarpanch and Ex-Sarpanch of their village went to the matrimonial home of the deceased for reconciliation where the father of deceased had promised to give money after harvest of crops.

Jogendra (Supra) was decided by taking into account the peculiar facts of that case where the evidence of PW-1 therein contained specific allegations of constant demand for dowry. It was stated that deceased was asked to raise Rs. 50,000 for the construction of house. He further stated that there was even an attempt by the 'people of society' to settle the matrimonial discord between the parties.

In paragraph 9 of *Rajinder Singh* (Supra), this Court had discussed the ingredients of Section 304B of IPC as follows:

"9. The ingredients of the offence under Section 304-B IPC have been stated and restated in many judgments. There are four such ingredients and they are said to be:

(a) death of a woman must have been caused by any burns or bodily injury or



her death must have occurred otherwise than under normal circumstances;

(b) such death must have occurred within seven years of her marriage;

(c) soon before her death, she must have been subjected to cruelty or harassment by her husband or any relative of her husband; and

(d) such cruelty or harassment must be in connection with the demand for dowry."

The evidence placed before us, in the case at hand, is not sufficient to prove the fourth ingredient i.e. cruelty or harassment in connection with the demand for dowry, as laid down by the abovementioned case.

17. The Hon'ble Supreme Court in the case of ***Naresh Kumar V/s State of Haryana; (2024) 2 SCC 573*** has held as follows:-

21. This Court in Gurcharan Singh v. State of Punjab [Gurcharan Singh v. State of Punjab, (2020) 10 SCC 200 : (2021) 1 SCC (Cri) 417] , observed that whenever a person instigates or intentionally aids by any act or illegal omission, the doing of a thing, a person can be said to have abetted in doing that thing. To prove the offence of abetment, as specified under Section 107IPC, the state of mind to commit a particular crime must be visible, to determine the culpability.

22. This Court in Kashibai v. State of Karnataka [Kashibai v. State of Karnataka, (2023) 15 SCC 751 : 2023 SCC OnLine SC 575] , observed that to bring the case within the purview of "abetment" under Section 107IPC, there has to be an evidence



with regard to the instigation, conspiracy or intentional aid on the part of the accused and for the purpose proving the charge under Section 306IPC, also there has to be an evidence with regard to the positive act on the part of the accused to instigate or aid to drive a person to commit suicide.

23. Had there been any clinching evidence of incessant harassment on account of which the wife was left with no other option but to put an end to her life, it could have been said that the accused intended the consequences of his act, namely, suicide. A person intends a consequence when he : (1) foresees that it will happen if the given series of acts or omissions continue, and (2) desires it to happen. The most serious level of culpability, justifying the most serious levels of punishment, is achieved when both these components are actually present in the accused's mind (a "subjective" test).

24. For intention in English law, Section 8 of the Criminal Justice Act, 1967 provides the frame in which the mens rea is assessed. It states:

"A court or jury, in determining whether a person has committed an offence,

(a) shall not be bound in law to infer that he intended or foresaw a result of his actions by reasons only of its being a natural and probable consequence of those actions; but

(b) shall decide whether he did intend or foresee that result by reference to all the evidence, drawing such inferences from the evidence as appear proper in the circumstances."

Under Section 8(b), therefore, the jury is allowed a wide



latitude in applying a hybrid test to impute intent or foresight on the basis of all the evidence.

25. It is now well settled that in order to convict a person under Section 306IPC there has to be a clear mens rea to commit the offence. Mere harassment is not sufficient to hold an accused guilty of abetting the commission of suicide. It also requires an active act or direct act which led the deceased to commit suicide. The ingredient of mens rea cannot be assumed to be ostensibly present but has to be visible and conspicuous.

18. The informant who is the father of the deceased in the F.I.R. has not said anything about the demand of dowry though subsequently he comes with a case of demand of dowry i.e. Rs. 70,000/-. The prosecution side had not approached the police before the occurrence and there is no evidence in support of the allegation of demand of dowry and torture just before the death of the deceased.

19. Though the deceased had died in the house of the appellants after three years of marriage, but there is no reliable evidence to show that the deceased was subjected to cruelty or harassment by her husband or his relatives for demand of dowry soon before her death.

20. Considering the facts and circumstances of the cases as well as the materials available on record, the prosecution has



not been able to establish the guilt of the accused beyond reasonable doubt. There is no external injury on the deceased.

21. Accordingly, both the appeals are allowed. The judgment and order of conviction dated 30.03.2019 and 05.04.2019 passed by the Trial Court is hereby set aside. The appellants of both the appeals are acquitted of all charges.

22. The L.C.R. be returned to the concerned Court below forthwith.

23. Interlocutory application/s, if any, shall also stand disposed of accordingly.

(Sandeep Kumar, J)

Shishir/-

AFR/NAFR	NAFR
CAV DATE	N/A
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