

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.2169 of 2019

Arising Out of PS. Case No.-67 Year-2002 Thana- KHAJAULI District- Madhubani

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1. Kari Yadav, Son of Chutti Yadav, Resident of Village- Loha Balua Dhatta, P.S.- Kaluahi, District- Madhubani.
 2. Ramlal Yadav, Son of Kari Yadav, Resident of village- Loha Balua Dhatta, P.S.- Kaluahi, District- Madhubani.

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ajay Kumar Thakur, Advocate Mrs. Vaishnavi Singh, Advocate Mr. Ritwik Thakur, Advocate
For the Respondent/s	:	Mr. A.M.P. Mehta, APP

CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
CAV JUDGMENT

Date : 10-01-2024

1. Learned counsel Mrs. Vaishnavi Singh appearing for the appellants and learned APP Mr. A.M.P. Mehta for the State are present and they are heard on the merit of this appeal.

2. The instant appeal has been filed by the Appellants Kari Yadav and Ramlal Yadav against the Judgment of Conviction dated 10.04.2019 and order of Sentence dated 15.04.2019 passed by the learned Presiding Officer, Fast Track Court-I, Madhubani in Sessions Trial Case No. 303/2003/94/2018 arising out of Khajouli (Kaluahi) P.S. Case No. 67 of 2002.

3. The appellants and two co-accused persons namely,



Bilti Devi and Jhamlal Yadav have faced trial jointly but the said co-accused persons have been acquitted of the offence charged while the appellants have been convicted for the offence punishable under Section 304B of Indian Penal Code (hereinafter referred to as “IPC”). Both the appellants have been sentenced to undergo rigorous imprisonment for ten years for the offence punishable under Section 304B of IPC. The said judgment of conviction and order of sentence have been challenged in this appeal by the convicts who are here appellants.

4. The prosecution’s case in brief is that one namely, Baidnath Yadav who happens to be father of the victim, filed a written information(Ext.2) at Khajouli (Kaluahi) police station with these allegations that his daughter namely, Ranju Devi aged twenty years was married to Ram Lal Yadav(Appellant No.2) in Baisakh (April-May) month of the year 2001 and sufficient gifts were given to her in-laws on the occasion of her marriage, thereafter, his daughter started residing in her *sasural* and during Holi festival, she was brought to her parental village on that time she disclosed that her in-laws were making a demand of milk giving she buffalo and Rs. 25,000/- from her and for the said demand her mother-in-law, father-in-law,



husband and brother-in-law tortured her. It was further alleged by the informant in his written application that on 28.05.2002 he got the information that his daughter Ranju Devi had sustained burn injuries then he, with his father Ramdev Yadav and some other persons namely, Devendra Yadav, Chhotkan Yadav, Upendra Yadav and Prabhu Yadav, went to his daughter's *sasural* at where they got the information that his daughter had been taken to Sadar Hospital, Madhubani and then they proceeded to the hospital where he found his daughter in dead condition and it was learnt by him that due to non-fulfillment of the demand of Rs. 25,000/- and a she-buffalo made by the accused persons from the victim, the victim was killed by the accused persons by pouring kerosene oil upon her and thereafter setting her on fire.

5. The written application filed by the informant at the police station concerned was also signed by the persons who had accompanied the informant to the place of occurrence, hospital and police station concerned and some of the said persons namely, Prabhu Yadav and Ramdev Yadav affixed their left thumb impression on the written application. On the basis of the written application(Ext.2) filed by the informant Khajouli (Kaluahi) P.S. Case No. 67 of 2002 was lodged for the offence



punishable under Section 304B read with Section 34 of IPC against the appellants and others which set the criminal law in motion and the police started investigation in connection with the alleged occurrence.

6. After the completion of investigation the police chargesheeted the appellants and two co-accused persons namely, Bilti Devi and Jhamlal Yadav for the alleged offence of Dowry Death and thereafter, learned Chief Judicial Magistrate, Madhubani took cognizance of the said offence and thereafter, he committed the case of the appellants and co-accused persons to the Court of Sessions for Trial.

7. Both the appellants and two co-accused persons named above jointly faced trial and stood charged for the offence punishable under Section 304B of IPC.

8. During trial the prosecution examined altogether 8 witnesses out of 16 chargesheet witnesses and some witnesses who were not produced and examined by the prosecution, were given up by the prosecution and in this regard learned Trial Court accepted the prayer of the prosecution vide order dated 13.02.2009. Here it is important to mention that during trial the prosecution failed to produce and examine the Investigating Officer.



9. In documentary evidence the inquest report of the deceased, written application of the informant on which basis the FIR was registered, Postmortem Report of the deceased, Formal FIR, an endorsement on the written application and a Protest Petition were proved by the prosecution and the same were marked as Exhibit No. 1, 2, 3, 4, 5 and 6 respectively.

10. After the completion of prosecution's evidence the statements of the appellants and co-accused persons were recorded by the Trial Court giving them an opportunity to explain the circumstances appearing against them from the prosecution's evidences in which the appellants denied the said circumstances and claimed themselves to be innocent.

11. The appellants/convicts did not give any evidence in their defence and they took the defence that the victim committed suicide as she was not happy with her marriage.

12. The main submissions advanced by learned counsel for the appellants are that the deceased who happened to be wife of the appellant No.2 committed suicide, during trial the prosecution failed to give cogent and reliable evidence to show and prove that the appellants subjected the deceased to cruelty soon before her death for the alleged demands and the statements of the material witnesses of the prosecution are



completely vague with regard to the time, date and place where the alleged demands were made by the appellants and the defences of the appellants were seriously prejudiced on account of the non-examination of Investigating Officer, in fact the victim was not happy with her *sasural* owing to that reason she committed suicide.

13. In rebuttal, it has been argued by learned APP that the victim died an unnatural death by sustaining severe burn injuries within one year of her marriage and there was no reason for her to commit suicide and the appellants cross-examined all the material witnesses of the prosecution on all important aspects of their defences on which the investigating officer could have been cross-examined and the material and relevant facts have come out from the evidences of the prosecution witnesses to throw light on the defence of the appellants, so non-examination of investigating officer did not seriously prejudice the appellants.

14. Heard both the sides, perused the judgment impugned, evidences available on the case record of the trial court and also gone through the statements of the appellants.

15. The important facts which are relevant to the alleged offence of Dowry Death for which the appellants have



been convicted are as follows:

(i) The victim who happened to be daughter of the informant died an unnatural death within one year of her marriage.

(ii) Just after the marriage, the appellants and their other family members started demanding one she-buffalo and Rs. 25,000/- from the victim.

(iii) As the victim could not have fulfilled the demand of the appellants so she had been torturing by the accused since the time of her marriage till her death.

(iv) On the occasion of Holi festival when the victim returned from her *Sasural* to her (naihar) parental village then her father and other parental family members came to know about the atrocities being committed with the victim by her husband and other in-laws for the demand of Rs. 25,000/- and a milk giving she-buffalo.

(v) When the demand of the appellants could not be fulfilled then the victim was finally killed by the appellants and their family members by pouring kerosene oil upon the body of the victim and thereafter, setting her on fire.

16. Now, it is to be decided by this Court whether the evidences adduced by the prosecution which are available on



the case record of trial court are sufficient to prove the above-mentioned allegations against the appellants beyond reasonable doubt or not.

17. In the present matter the appellants have been convicted for the offence of Dowry Death punishable under Section 304B of IPC.

18. In order to convict one for the offence of Dowry Death it must be proved that the death of the deceased has been caused by burns or bodily injury or by any other cause other than in normal circumstance and her death is within seven years of her marriage and soon before her death she was subjected to cruelty or harassment by the accused in connection with a demand for dowry.

19. In the present matter, the victim died within seven years of her marriage regarding which there is no dispute and she died due to burn injuries which is also an un-disputed fact and in this regard the evidence of the doctor P.W.7 who examined the dead body of the victim and proved the postmortem report of the deceased is relevant. In the present matter the main point for consideration is, whether there is sufficient evidence to suggest or prove that the appellants subjected the victim to harassment soon before her death for the



demand of a she-buffalo and 25,000/- rupees as alleged. In this regard the learned counsel for the appellants has vehemently argued that the prosecution did not reveal the specific date, time and place, when and where the alleged demand was made from the victim by the appellants and in this regard the prosecution's allegation is completely vague. In the light of said argument, I have perused the FIR and depositions of the prosecution witnesses. The victim's marriage with appellant No.2 was solemnized in the month of Baishakh of the year 2001 and she died on 28.05.2002 within one year of her marriage by sustaining burn injuries. In such type of matter, it can be presumed that either such victim committed suicide or she was killed by causing burn injury to her and to make a conclusion regarding the existence of any of these presumptions the circumstances in which the victim died may be relevant and deciding factor as merely on the basis of such circumstances relating to deceased the existence of any of both the situations can be drawn.

20. In the present matter, there is no dispute about victim's death due to burn injuries and her death having taken place within one year of her marriage. It is common thing of knowledge that a newly wedded young girl commits suicide



only when she has strong reason to commit suicide. In the instant matter at the time of death of the victim, her age was about 21 years only. Now, I would like to discuss the relevant facts coming out from the evidence of prosecution witnesses.

21. P.W. 1 deposed that the victim came at her father's house on the occasion of Holi just before the commission of the alleged incident and at that time, she told her family members that the appellants and their family members had been torturing her for the demand of Rs. 25,000/- and a milk giving she-buffalo. The witness deposed in paragraph no. 10 of cross-examination that the victim was an illiterate lady and at the time of marriage the photographs of the victim and her husband were not exchanged in between both the families but he visited the house of the appellants and thereafter told the deceased all the important things relating to the family of the appellants. The witness denied the fact that the deceased was having love-affair with someone of her parental village. The witness deposed in paragraph No. 12 of his cross-examination that the deceased told her family members that she was not being liked by her in-laws. The witness flatly denied the suggestion that the deceased was not satisfied with her husband and he further deposed in paragraph No. 14 of the cross-examination that he had no



knowledge about the victim's separate sleeping from her husband. The witness denied the fact that just before the happening of the alleged incident, an altercation had taken place in between the deceased and her husband and thereafter, the husband of the deceased went to other portion of his house for sleeping and after that the deceased closed her room and set herself on fire.

22. P.W. 2 deposed that since the time of second marriage (*Gauna*), the relation in between the deceased and her husband started deteriorating on account of non-fulfillment of demand of the accused. The witness denied the suggestion that the deceased did not want to marry the appellant No. 2 on account of having love affair with someone and she was forcefully married to the said appellant. Similar evidence was given by P.W. 3 and 4.

23. P.W.5, who is informant of this case, is most important witness of the prosecution as he is father of the deceased. He deposed in the examination-in-chief that he married his daughter in the month of *Baisakh* of the year 2001, after the marriage, the *Gauna* (second marriage) of his daughter took place on 05.12.2001 and thereafter on the occasion of Holi (*Phagua*) his daughter was brought back from her *sasural* and at



that time his daughter told him that she was tortured by the accused for the demand of Rs. 25,000/- and a milk giving she-buffalo and she also alleged that the accused threatened to kill her, if their demand would not be fulfilled and after one month the appellant Kari Yadav came at his house for *Bidayi* of the victim, then he denied to send his daughter to her *sasural* and also made a complain about the conduct of in-laws of the deceased then the appellant Kari Yadav assured that nobody would harass the victim and only then the deceased was sent with him to her *sasural* but just after 12 days, she was burnt to death. The witness in the cross-examination denied the suggestion that the victim was married with the appellant no. 2 against her wish as she wanted to marry some other person. The witness deposed in the cross-examination in paragraph No. 15 and 16 that at the time of his daughter's *Bidayi* in the month of *Baisakh*, he also went with appellant No. 1 in the same vehicle and stayed one day at victim's *sasural* and on that occasion the appellants made the demand of Rs. 25,000/- and a she-buffalo from him and also threatened to kill his daughter, if their said demand would not be fulfilled and the said demand was also made by the accused at the time of marriage that could not be fulfilled at that time as he had no sufficient means to fulfill the



same.

24. From the above discussed facts and circumstances coming out from the evidence of prosecution witnesses it is clearly evident that the appellants started torturing the deceased just after her marriage and the said harassment remained continue with the victim till her death and the prosecution witnesses were cross-examined at length but none of them revealed any reason on the part of the victim to commit suicide and it also does not appear that she was not happy from her marriage with appellant No. 2. The material witnesses of the prosecution were cross-examined on this point as well as on the defence of the appellants that the deceased had love affair with someone of her parental village and her marriage with appellant No. 2 was solemnized against her will due to that reason, she committed suicide but all these witnesses denied the said defence of the appellants. Though in the present matter, the prosecution's witnesses could not give the details of the particular dates, time and place, when and where the alleged demand was made by the appellants from the victim but the said fact is not material in the present matter as the circumstances appearing from the prosecution's evidences clearly suggest that the appellants started torturing the victim for the alleged



demand, just after the marriage of the victim and their harassment with the victim remained continue till her death and the victim died within one year of her marriage and moreover, the alleged act of harassment took place in the house of the appellants and the informant disclosed one occasion when he got an information of ill-treatment by the appellants with the victim on account of the alleged demand, which was given at the time of Holi festival and the informant deposed that at the time of marriage of the victim, the accused also made the said demand of Rs. 25,000/- and a she-buffalo but that demand could not be fulfilled on account of his financial incapability and thereafter, when he went with appellant No. 1 at the time of *Bidayi* of his daughter after the Holi festival then the accused persons again made the same demand from him and also threatened to kill the victim, if their demand would not be fulfilled. These facts are sufficient to prove it that the appellants had been torturing the victim till her death for the alleged demand and finally they caused burn injuries to her on account of non-fulfillment of their demand. Here it is important to mention that the appellants, while recording their statement under Section 313 of Cr.P.C. did not make any specific defence and they simply claimed themselves to be innocent but none of



them took the plea that the victim committed suicide. If the deceased committed suicide then the appellants ought to have taken the defence in their statements that the victim committed suicide on account of some particular reason but in this regard they remained silent and the said circumstance also goes against the appellants. As such the third important condition with regard to the factum of subjecting the victim to harassment by the appellants soon before her death for the demand of dowry is also fulfilled in the present matter.

25. It has been argued by learned counsel for the appellants that in the present matter the investigating officer was not produced and examined by the prosecution which seriously prejudiced the defences of the appellant. Though, in the present matter, the prosecution could not have produced the investigating officer for examination but all other prosecution witnesses were cross-examined at length by the appellants on all relevant points of their defences and the inquest report and postmortem report of the deceased were proved and in this regard the medical officer who examined the dead body of the deceased was cross-examined. The non-examination of I.O. may be fatal to the case of the prosecution but it must be proved by the defence that on account of the non-examination of the I.O



their defence has been seriously prejudiced. The Hon'ble Apex Court in the Judgment passed in the case of **Munna Lal vs. the State of Uttar Pradesh** reported in 2023 SCC Online SC 80 held that *“a defective investigation is not always fatal to the prosecution where ocular evidence is found credible and cogent. It was further held that non-examination of the I.O. must result in prejudice to the accused, if not prejudice is caused, mere non-examination would not render the prosecution's case fatal.”*

(i) In the present matter there is no dispute, regarding the cause of death of the victim and place of occurrence and the inquest report of the deceased was prepared at the hospital where her dead body was found by the police and the evidence of the prosecution witnesses, sufficiently throws light on all these above facts upon which they were cross-examined in length by the accused and P.W.8, identified the writing and signature of the investigating officer and S.H.O. of the P.S. concerned who registered the FIR and investigated the same.

(ii) Further the learned counsel appearing for the appellants has not pointed out any serious contradiction in respect of main allegations in between the statements of the



prosecution witnesses on which the examination of the I.O. was necessary to clear the same. In view of the totality of the facts and evidences available on the case record, this Court finds that non-examination of the investigating officer in the trial of the appellants did not seriously prejudice their defences, hence the appellants are not entitled to get a benefit merely on account of non-examination of the investigating officer.

26. Learned counsel for the appellants has vehemently argued that the prosecution's evidences given in the trial of the appellants are not sufficient to prove and show that the deceased was subjected to cruelty or harassment soon before her death by the appellants.

(i) In support of this argument learned counsel has placed reliance upon the judgment of the **Hon'ble Apex Court** passed in the case of **Charan Singh @ Charanjeet Singh v. the State of Uttrakhand, in Cr. APP No. 447 of 2012** in which it was mainly ruled *“that at mere death of a wife under unnatural circumstances in a matrimonial home within seven years of marriage is not sufficient to convict the husband for the dowry death”*. The learned counsel has referred to the paragraph Nos. 11 to 14 of this Judgment in support of appellants' defence.



(ii) The facts and circumstances of the present matter are quite different from the facts of the cited judgment as it was observed by the Hon'ble Apex Court in the paragraph No. 21 of the said judgment that none of the witnesses stated about cruelty or harassment to the deceased by the appellant or any of his family members on account demand of dowry soon before her death or otherwise rather, harassment has not been narrated by anyone.

(iii) While in the present matter, all the material witnesses of the prosecution stated that the appellants harassed the victim for the demand of Rs. 25,000/- and a she-buffalo and there is sufficient material to show that the harassment on the part of the appellants with the victim remained continue till her death and finally they caused burn injuries to the victim. Accordingly, the principles laid down by the Hon'ble Apex Court in the above cited judgment do not help the appellants in the present matter.

(iv) In respect of above issue the principle laid down by Hon'ble Supreme Court in the judgment passed in the case of **Kamesh Panjiyar Alias Kamlesh Panjiyar v. The State of Bihar reported in (2005) 2 Supreme Court Cases 388** is very much important. It has been ruled by Hon'ble Apex



Court in the said judgment *that Expression “soon before her death” is a very relevant, prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption under Section 113-B operates.* It was further observed that *“soon before” is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down and “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question, there must be a proximate and live link between facts of cruelty based on dowry demand and the death concerned.*

(v) In the present matter the victim died within one year of her marriage and her death was due to burn injuries that was admittedly sustained by her in the house of the appellants and the evidence of prosecution witnesses is reliable to prove the allegation that since the time of marriage of the victim, there was some tense relation in between the victim and her in-laws on account of the demand of Rs. 25,000/- and a she-buffalo and the tense relation remained continue in between them and just some months before the occurrence when the victim was brought back at her parental village on the occasion of Holi, she



told her parental family members about the harassment being committed with her by her in-laws on account of the said demand and thereafter, the victim was brought back by her father-in-law to her *sasural*, at that time, the victim's father also accompanied them and after some days the victim died of burn injuries. The appellants took the defence that the victim committed suicide but from the cross-examination of prosecution's witnesses, the appellants could not have elicited any fact to show a strong reason on the part of the victim to commit suicide and the most important fact is that the appellants did not take any attempt to examine any of the persons residing in their neighbouring area and even they did not raise the said defence in their statements recorded under Section 313 of Cr.P.C. All these facts are sufficient to show and prove that after marriage of the victim the appellants started torturing the deceased for the alleged demand and their harassment with the victim remained continue till her death and the facts and circumstances appearing from the evidence of prosecution clearly indicate and suggest that the victim was subjected to harassment during the whole period in which she resided at her *sasural* till her death and the prosecution succeeded to prove a proximity and live link between the effect of the alleged



harassment committed for the demand of a she-buffalo and Rs. 25,000/- with the deceased and her death. Accordingly, I find no force in the above contention of the appellants' counsel.

27. In the light of above discussed facts and evidences, this Court forms the opinion that the prosecution succeeded to prove its case beyond reasonable doubt before the Trial Court and the evidences adduced by the prosecution are sufficient to attract all the three main ingredients of the offence of Section 304B of IPC for which the appellants have been convicted and this Court does not find any reason to interfere in the said conclusion of the Trial Court. So far as the quantum of punishment awarded by the Trial Court upon the appellants is concerned, as the victim died due to burn injuries within one year of her marriage and her death was very horrific as she was burnt alive, so in view of these facts, the punishment of ten years of rigorous imprisonment awarded upon them appears to be justifiable.

28. Accordingly, the Impugned Judgment convicting the appellants for the offence punishable under Section 304B of IPC and order of sentence, awarding rigorous imprisonment of ten years on them are confirmed and upheld.

29. In the result the instant appeal, stands dismissed.



30. The appellant No. 1 is on bail, hence he is directed to surrender before the convicting Trial Court within ten days of the receipt of copy of this judgment by the Trial Court and his bail bonds stand cancelled and he is directed to serve the remaining part of his sentence awarded by the Trial Court.

31. Let the LCR be sent back to the Trial Court concerned.

32. Let the judgment’s copy be sent to the trial Court for needful compliance and information.

(Shailendra Singh, J)

Maynaz/-

AFR/NAFR	AFR
CAV DATE	12.12.2023
Uploading Date	10.01.2024
Transmission Date	10.01.2024

