

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.188 of 2006

1. Mumtaj Mansuri, son of Late Md. Siddique
 2. Sarwari Khatoon, wife of Mumtaj Mansuri
- Both residents of Village-Pakaribarawan, P.S.-Pakribarawan, District-Nawadah

... .. Appellant/S

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. Mohammad Sufyan
For the Respondent/s	:	Mr. Anita Kumari Singh, APP

CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL JUDGMENT

Date : 11-03-2024

Heard the parties.

2. The present appeal has been filed against the judgment of conviction and order of sentence dated 04.02.2006 passed by learned Additional Sessions Judge, F.T.C-IV, Nawada in connection with Sessions Case No. 159 of 2004/ 285 of 2004, arising out of Pakribarawan P.S. Case No. 70 of 2003, whereby and whereunder the appellants were found guilty and convicted for the offences punishable under Sections 304(B)/34 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for a period



of ten years.

3. The prosecution case as per the F.I.R is that the informant got her daughter Ruksana Khatoon married with Md. Imtiyaz, son of of the appellants. After the marriage, the in-laws family members including the appellants started torturing the daughter of the informant for non-fulfillment of dowry demand of Rs. 50,000/-. On 06.10.2003, the informant received a telephonic message from appellant No. 1 that his neighbour had murdered his daughter in the last night and he found her dead body in her room, where upon the informant along with his family members came to her daughter's *Sasural* and found her daughter Ruksana Khatoon dead on the cut mark of injuries on her neck and chin which appears to have been killed by throttling due to non-payment of dowry demand of Rs. 50,000/-.

4. On the basis of the aforesaid fardbeyan of the informant, Pakribarawan P.S. Case No. 70 of 2003 was registered against the accused persons including the



appellants under Sections 304(B)/34 of the Indian Penal Code and after completion of the investigation, charge-sheet was submitted and thereafter learned Chief Judicial Magistrate, Jamui took the cognizance of the offences against the appellants and the case was committed to the Court of Sessions for trial.

5. During the course of trial, altogether ten witnesses were examined on behalf of the prosecution.

6. P.W.1- Jainab Khatoon is the neighbour of the informant (P.W. 9). She appears to be a hearsay witness and claimed to have gone with the informant at the matrimonial house of informant's daughter after getting information of her murder. This witness has stated that she had learned about torture and demand of dowry from the informant's side.

7. P.W.2- Sairu Nisha is mother of the deceased Ruksana Knatoon who is highly interested witness and supported the prosecution story in her examination-in- chief by stating the entire fact regarding



the dowry demand and torture which was perpetrated thereby and the information through telephone regarding death of her daughter. She too has deposed about the physical appearance of her daughter whose dead body was lying dead on the cot of her room and there was some mark on her neck and her tongue was out of the mouth. In para 9 of her cross examination, she has stated very clearly that she had visited her daughter place six months back before her death. This witness is the mother of the victim girl and she may be a best witness with whom the victim girl shared her entire feelings and torture done by her in-laws family members and accordingly she has deposed before this court. This witness also does not appear to have seen the occurrence and is highly interested witness.

8. P.W.3 Md. Aslam and P.W. 4 Md. Hakim Ahmad are brothers of the victim. Both, P.W.s have stated very clearly that on the demand of 50,000/- and the torture due to the same, they had visited her sister's



place. In para para 10, P.W. 3 has stated that his sister did not write any letter regarding the torture and assault, rather she used to narrate the entire thing on the telephone. These witnesses also appears to be highly interested.

9. P.W.5- Babloo Khuranid Alam is also a neighbour of informant (P.W.9). He too has deposed in respect of the prosecution case in his examination-in-chief as he learnt about the dowry demand and the torture coupled with assault through the brother of the victim girl. He too had visited to the alleged place of occurrence after having heard the death of the victim girl.

10. P.W.6 Dr. Dhanuandnari Prasad had conducted the postmortem report on 06.10.2003 at 4.15 P.M. of the dead body of Ruksana Khatoon (victim) and found following injuries :-

External Examination

(i)-Tongue was protruded both, eye



were congested.

(ii)- Bruise 3" x 1" over front of middle part of neck horizontally placed.

(iii)-Bruise 1½" X 1" over sub mentibular region on the left side.

Internal Examination

(i) Sub-cutaneous tissue under the above mentioned injuries Nos. II and III contained blood and blood clots.

(ii) Thyroid cartilage first and second rings of trachea were fractured. Larynx and trachea were congested and contained blood clots.

(iii) All other viscera i.e. brain, heart, lungs, liver, spleen and kidneys were congested and intact.

(iv) Stomach contained about two ounces semi digested food materials.

(v) Chamber of heart right side contained blood, chamber on the left side were empty.

(vi) All above injuries were anti-mortem in nature caused by hard and blunt substance.

(vii) Cause of death-asphyxia due to strangulation caused by above mentioned injuries.



11. P.W.7 Md. Yakub and P.W.8 Md. Jakir are the neighbours of informant and they have also been examined.

12. P.W.9- Wasi Ahmad is the informant himself who in his examination-in-chief has deposed in respect of the prosecution case. He has proved his signature over the *fardbeyan* given to police as Exhibit-3. He has clearly deposed that there was a dowry demand from the in-laws family members of the victim and the same was being conveyed by the victim girl either by telephone or by herself whenever he used to visit her matrimonial place. He has stated that he neither gave any petition to any officer regarding the said demand of dowry or torture nor any *panchayati* was held in this regard. It is pertinent to mention here that husband of the victim girl was not made accused in this case which suggests that matrimonial relationship between the victim and her husband was cordial and there was no reason for the informant to falsely



implicate other in-laws family members of the victim. On behalf of the defence, it tried to discredit the veracity of his evidence.

13. Learned counsel appearing on behalf of the appellants has submitted that appellants are innocent and they have falsely been implicated in this case since they happens to be the parents-in-law of the victim. The prosecution claims demand of dowry and torture for non-fulfillment of the dowry demand but they have failed to produce any evidence with regard to any torture or demand of dowry prior to the date of occurrence. The informant claims that soon after the marriage, his daughter was tortured for non-fulfillment of dowry demand but he had not filed any complaint regarding the torture and demand of dowry before any authority nor any *panchayati* was held in this regard which suggests that a concocted story was implanted to falsely implicate the appellants in this case. The husband of the victim was not made accused in this case which also falsify the



claim of torture and demand of dowry as claimed by the informant. The *bona-fide* of the appellant No. 1 is apparent to the fact that he had informed about the death of the victim to the informant. Moreover, all the witnesses are hearsay and interested witnesses and they all claim to have gone to the place of occurrence after getting informant from the appellant No. 1. Moreover, the Investigating Officer of this case has not been examined by the prosecution.

14. From perusal of the records and on going through the evidences, it appears that none of the prosecution witnesses have seen the occurrence. They all are related to the informant and are highly interested witnesses. The husband of the deceased was not made accused in this case who is solely responsible for the well being of his wife. The prosecution has not brought on record any proof with regard to the torture and demand of dowry prior to the death of the deceased. Whatever have been stated by the witnesses in their examination-



in-chief was not contradicted in absence of evidence of Investigating Officer. The right of bringing on record the contradictions in the statement of witnesses made before the Investigating Officer is a very valuable right of the accused and by showing that, the witness has made improvements or has given evidence, which contradicts his earlier statement, the accused is able to satisfy the Court that the witness is not reliable witness. In my view, the Investigating Officer is a material witness and non-examination of the Investigating Officer has definitely prejudiced the appellants since the appellants lost opportunity to cross-examine the Investigating Officer on point of seized materials, visit of I.O. at the place of occurrence and contradictions in the statement of prosecution witnesses before the Investigating Officer. It is also pertinent to mention here that in order to establish the offence under Section 304(B) of the Indian Penal Code, the prosecution is obliged to prove that death of a woman is caused by burns or bodily injury or



occurs otherwise than normal circumstances and such death occurs within seven years of her marriage and if it is shown that soon before the death she was subjected to cruelty or harassment by her husband or any relative of her husband, such harassment and cruelty must be in connection with any demand of dowry. If the prosecution proves the aforesaid circumstances then the presumption under Section 113-B of the Evidence Act will operate. Such presumption is rebuttable and the onus to rebut shifts on the accused persons. It is evident that there is nothing on record to show that soon before the death, there was any demand or torture by the appellants which is a necessary ingredient to bring the accused under Section 304-B of the Indian Penal Code. Section 304-B of the Indian Penal Code clearly says that in case of abnormal death, if it is shown that soon before the death, she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with demand of dowry, such death can be called dowry



death. It is evident from the discussions made that necessary ingredient has not been established by the prosecution to bring the case within the ambit of Section 304-B of the Indian Penal Code. If the prosecution fails to establish the aforesaid ingredient then presumption under Section 113-B of the Evidence Act does not apply and in such case the burden does not shift to the accused persons to rebut the presumption under the law. Since the ingredient of Section 304-B is absent on the record, in my view, the appellants cannot be convicted under Section 304-B of the Indian Penal Code. Thus, it is evident that the circumstantial evidence which has been brought on record, as discussed above, is not sufficient to come to a conclusion that the appellants committed dowry death due to non-fulfillment of dowry demand. It is well established rule of law that in case of circumstantial evidence, chain must be complete to establish the guilt of the accused persons. Hence, the prosecution has failed to establish its case beyond the



shadow of all reasonable doubts and the appellants are entitled to get the benefits of doubt.

15. In that view of the matter, the judgment of conviction and order of sentence dated 04.02.2006 passed by learned Additional Sessions Judge, F.T.C-IV, Nawada in connection with Sessions Case No. 159 of 2004/ 285 of 2004, arising out of Pakribarawan P.S. Case No. 70 of 2003 is set aside and the appeal is allowed.

16. The appellants are acquitted of all the charges after getting the benefits of doubt.

17. The appellants are all along on bail. They are discharged from the liabilities of the bail bonds.

18. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
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