

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.713 of 2022

Arising Out of PS. Case No.-414 Year-2018 Thana- DUMRAO District- Buxar

Mina Devi W/o Late Arun Chaudhary R/o village- Pandey Patti, P.S.- Buxar
(M), Distt.- Buxar

... .. Appellant

Versus

1. The State of Bihar
2. Kashi Nath Chaudhary S/o Daulat Choudhary R/o village- Nandan, P.S.-
Dumraon, District- Buxar
3. Devanti Devi W/o Kashi Nath Chaudhary R/o village- Nandan, P.S.-
Dumraon, District- Buxar
4. Sunil Choudhary S/o Kashi Nath Choudhary R/o village- Nandan, P.S.-
Dumraon, District- Buxar

... .. Respondents

Appearance :

For the Appellant	:	Mr. Anirudh Mishra, Advocate.
For the State	:	Mr. Binod Bihari Singh, APP
For the Resp Nos. 2 to 4 :		Mr. Jitendra Singh, Advocate.
		Mr. Rakesh Kumar Shrivastava, Advocate.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 14-03-2024

Heard learned counsel for the appellant, learned counsel
for the informant and learned Additional Public Prosecutor for the
State.

2. This appeal has been preferred by the mother of the
deceased seeking setting aside of the judgment of acquittal dated
15th of March, 2022 passed in respect of the respondent Nos.2 and
3 and enhancement of sentence awarded to respondent No. 4 by
the learned trial court in Sessions Trial Case No. 100 of



2019/C.I.S. No. 100 of 2019 arising out of Dumraon Buxar P.S. Case No. 414 of 2018 registered for the offences punishable under Section 304(B)/34 of the Indian Penal Code (in short 'IPC') and Section 3/4 of the Dowry Prohibition Act.

3. By the Judgment under appeal (hereinafter called the impugned judgment), the learned Trial Court has been pleased to acquit respondent Nos. 2 and 3 who are father-in-law and mother-in-law respectively of the deceased from the charges under Section 302/34 and Section 304(B)/34 IPC. At the same time, by the impugned judgment, the learned Trial Court has convicted respondent No. 4 who is husband of the deceased under Section 304(B) IPC and sentenced him to undergo rigorous imprisonment of eight years and pay a fine of Rs.20,000/-. In case of non-payment of the compensation amount, the respondent No. 4 has been ordered to undergo an additional three months imprisonment.

Prosecution Case

4. As per the prosecution story which is based on the written report submitted by one Arun Choudhary, father of the deceased (PW-5), her daughter Pushpa, aged about 25 years, was married on 6.5.2018 with respondent No. 4 in accordance with Hindu rites and customs. In his written report (Exbt. 3), the informant alleged that after the marriage, her daughter was being



tortured by her *sasural* people in connection with the demand of dowry, they were demanding one motorcycle and a gold chain. He alleged that his daughter was being beaten for not bringing the dowry and this fact was being conveyed to him by his daughter over telephone. The informant got information in the forenoon of 22.10.2018 that his daughter has been killed. It is stated that when the informant reached village Nandan, he saw that his daughter had been killed by pouring kerosene oil on her body and her neck had been tied by a rope. He alleged that the *sasural* people of his daughter, namely, (I) Sunil Choudhary (ii) Kashi Choudhary (iii) Banarsi Choudhary (iv) Manji Choudhary (v) Sonu Kumar (vi) Guddu Kumar (vii) Banarsi Choudhary (viii) Putul Kumari (ix) Khushbu Kumari and (x) Mother-in-law of the deceased had committed murder of his daughter by burning her after throttling her neck.

5. After investigation, Police submitted a charge sheet against the husband and his parents. So far as the other accused are concerned, in absence of any material against them, they were not sent up for trial.

6. After submission of charge sheet, the learned Magistrate took cognizance of the offences and upon finding that the offences are triable by the court of Sessions, the records were



committed to the court of learned Sessions Judge. Charges were framed against the accused persons under Section 304(B)/34 IPC as also under Section 302/34 IPC. Charges were explained to the accused persons who denied the same and claimed to be tried.

7. From the materials available on the record and the discussions made in the judgment of the learned Trial Court, it would appear that on behalf of the prosecution, altogether eight witnesses were examined. PW-1 Dr. Ravi Bhushan Shrivastava had conducted the autopsy on the dead body. PW-2 Dr. Bhupendra Nath was an observer at the time of postmortem and he has appeared as an expert witness. PW-3, Dhanu Choudhary @ Dhanu Kumar is the uncle of the deceased, PW-4 Meena Devi (the appellant) and PW-5 Arun Choudhary (informant) are the mother and father respectively of the deceased. PW-6 Shiv Narain Ram is the Investigating Officer of the case whereas PW-7 Dinesh Yadav and PW-8 Sudarshan Kumar are the formal witnesses of the inquest report.

8. On behalf of the prosecution, the following documents have been marked exhibits:-

- i) Exbt. 1 - Postmortem report
- ii) Exbt. 1/1 to 1/2 - the signature of Doctor B. Nath and Dr. B.N. Choubey on the Postmortem report.



(iii) Exbt. 2 – Signature of the informant on the written report.

iv) Exbt. 3 – Endorsement made on the written report.

iv) Exbt. 4 – Formal F.I.R.

(v) Exbt. 4/1 - Signature of the SHO on the formal First Information Report.

(vi) Exbt. 5 - Inquest Report

(vii) Exbt. 5/1 - the signature of PW-7 on the carbon copy of the inquest report and Exbt. 5/2 is the signature of PW-8 on the carbon copy of the inquest report.

(viii). Exbt. 6 is the charge sheet and Exbt. 7 is report of the Forensic Science Laboratory (FSL)

9. After the prosecution evidences were closed, the statement of the accused persons were recorded under Section 313 Cr. P.C. in which they claimed to be innocent. The defence did not produce any witness and not proved any document.

10. We find from the impugned judgment that the learned Trial Court has discussed the evidences led on behalf of the prosecution. The informant (PW-5) improved upon his former statements made before the I.O. (PW-6) and stated that when he got information that his daughter is being beaten by her *sasural* people, he along with his brother Dhanu Choudhary (PW-3) had



gone to the *sasural* of his daughter where his daughter started weeping and told them to provide gold chain and a motorcycle to her *sasural* people. PW-5 claimed that when he talked to Kashi Nath Chaudhary (Respondent No. 2), he was told that only upon giving gold chain and Motorcycle, Pushpa would be allowed to go. The I.O. (PW-6) has stated in paragraph '12' of his cross-examination that during investigation, none of the witnesses told him that in his presence, the deceased had been assaulted and the witnesses did not tell him that when was the demand of dowry made. The witnesses had not stated to the I.O. that who had demanded the dowry and at which place. In his cross-examination, PW-6 has stated that from the place of occurrence he could not seize any rope.

11. PW-4, who is the mother of the deceased, claimed in her examination-in-chief that her daughter Pushpa had given her a telephone call and told that her husband, father-in-law, mother-in-law, *nanad* and two *devars* were assaulting her. In her examination-in-chief, PW-4 has nowhere stated that her daughter had informed her about any demand of dowry. She has not stated that respondent nos. 2 to 4 were demanding a gold chain and a motorcycle and that it was told to her by her daughter. In paragraph '2' of her examination-in-chief, she has stated that Kashi



Nath Chaudhary (respondent no. 2) had given a telephone call and informed that an occurrence had taken place with her daughter whereafter she along with her husband, devar and co-villagers Guddu and Jairaj went to village 'Nandan' and when they went into the house of the accused persons, they saw the dead body of her daughter in burnt condition and smell of kerosene oil was coming. She had stated that a rope was tied in the neck of the dead body but this rope has not been found by the I.O. It is, at this stage, PW-4 has stated that this occurrence had taken place and committed by the accused persons due to non-fulfillment of the demand of a gold chain and a motorcycle.

12. We find from the evidence of PW-5, who is the father of the deceased that the marriage between the deceased and the respondent no. 4 was an arranged marriage with the help of his friends but as regards the demand of a gold chain and a motorcycle, he had not made any complaint to those persons and he has stated that prior to lodging of the present case, he had not informed anyone that his daughter is being tortured in connection with a demand of dowry.

13. The evidence of the Doctor (PW-1) shows that it was a case of 100% burn but no other physical injury was seen over the body of the deceased. The burn has been found *ante mortem*. PW-1



opined that the *ante mortem* burn injury found on the person of the deceased was sufficient to cause death. In his cross-examination, once again in paragraph '6', he has stated that except burn injury, no other external physical injury was found on the person of the deceased.

14. The learned trial court has upon examination of the evidences on the record held that there is no evidence available on the record to prove a case of murder. There is no direct evidence and the allegation against respondent nos. 2 and 3 are general and omnibus kind of allegations which have not been proved. The prosecution case depends upon the circumstantial evidence, hence, learned trial court acquitted the accused persons from the charge under Section 302/34 IPC and so far as respondent nos. 2 and 3 are concerned, they have also been acquitted from the charge under Section 304B IPC because the learned trial court found that there is no evidence suggesting that respondent nos. 2 and 3 had been acting with common intention to kill the deceased on account of non-fulfillment of the demand of dowry.

15. So far as respondent no. 4 is concerned, the learned trial court has held that from the evidence on the record, the prosecution has been able to prove that the husband of the deceased had made a demand of dowry and he had tortured the



deceased. Since respondent no. 4 has preferred an appeal against his conviction and sentence, we would not go into much details as regards the evidences which have been discussed by the learned trial court in respect of respondent no. 4. The only grievance of the appellant as regards respondent no. 4 is that he has been awarded a sentence of only 8 years for the offence of dowry death punishable under Section 304B IPC.

16. Learned counsel for the appellant has submitted that the learned trial court could not appreciate the evidences available on the record and has acquitted respondent nos. 2 to 4 both under Section 302/34 IPC and Section 304B IPC which is not correct. It is submitted that in a case of dowry death what was incumbent upon the prosecution was to prove that it was a case of abnormal death within a period of seven years from the date of marriage and that soon before her death, the deceased was subjected to torture in connection with a demand of dowry. Hence, once these ingredients are satisfied by preponderance of possibilities, there would be a legal presumption that the accused is guilty of causing dowry death and then heavy burden would fall upon the accused persons to prove their innocence.

17. Learned counsel for the appellant submits that in this case, the prosecution had been able to prove *prima facie* that the



deceased had been subjected to torture soon before her death, therefore, it was for the respondent nos. 2 and 3 to rebut the legal presumption by bringing adequate evidence on the record to prove their innocence. It is for these reasons that the impugned judgment is fit to be set aside as respect respondent nos. 2 and 3 and the sentence of respondent no. 4 be enhanced.

18. On the other hand, learned counsel for the respondents and Mr. Binod Bihari Singh, learned Additional Public Prosecutor for the State have supported the impugned judgment. It is submitted that the learned trial court has discussed the prosecution evidences and after meticulous examination of the evidences on the record, the learned trial court has returned its findings. It is submitted that since the accused nos. 2 and 3 have been acquitted, there would be a presumption of double innocence in favour of respondent nos. 2 and 3. Learned counsel submits that in such circumstance, this Court may interfere with the judgment of acquittal only if the appellant demonstrates perversity in the findings of the learned trial court.

Consideration

19. We have heard learned counsel for the parties and perused the records. This Court finds from the evidences available on the record that there is a general and omnibus statement in the written report giving rise to the First Information Report submitted



by the informant (PW-5) that all the *sasural* people were demanding a motorcycle and a gold chain. PW-5 has improved upon his former statement in course of trial. When he said that on information from her daughter, he along with PW-3 had gone to her *sasural* where his daughter started weeping and told her to provide a gold chain and a motorcycle to the *sasural* people. PW-5 has been contradicted by PW-6 and when PW-6 was called upon to say as to whether any witness had stated before him as to who had made demand and where such demands were made, PW-6 has stated that none of the witnesses has stated before him that who had made demand and in whose presence and at which place demand was made. The I.O. has not verified telephone call and the statement of PW-4 that her daughter had informed her over telephone about the torture being meted out to her, therefore, the claim of PW-4 in this regard remained unverified. No mobile phone was handed over to the I.O. for verification on this point.

20. We are satisfied on going through the judgment of the learned trial court that the trial court has not committed any error in returning a finding that the charge under Section 302/34 and 304B/34 IPC could not be proved against respondent nos. 2 and 3. We are of the considered opinion that in this case, the prosecution has not discharged its initial burden to prove by preponderance of possibilities that respondent nos. 2 and 3 had been making demand



of dowry and tortured the deceased soon before the occurrence in connection with the said demand or acted with common intention with respondent no. 4. We, therefore, find that the presumption of innocence as contained under Article 20(2) of the Constitution of India remains intact and the legal presumption would not arise against respondent nos. 2 and 3. In the case of **Sher Singh @ Partapa Vs. State of Haryana** reported in **(2015) 3 SCC 724**, the Hon'ble Supreme Court has dealt with the requirements of proof at first instance on the part of the prosecution in a case under Section 304B IPC and we reiterate the same hereunder:-

“16. As is already noted above, Section 113-B of the Evidence Act and Section 304-B IPC were introduced into their respective statutes simultaneously and, therefore, it must ordinarily be assumed that Parliament intentionally used the word “deemed” in Section 304-B to distinguish this provision from the others. In actuality, however, it is well-nigh impossible to give a sensible and legally acceptable meaning to these provisions, unless the word “shown” is used as synonymous to “prove” and the word “presume” as freely interchangeable with the word “deemed”. In the realm of civil and fiscal law, it is not difficult to import the ordinary meaning of the word “deem” to denote a set of circumstances which call to be construed contrary to what they actually are. In criminal legislation, however, it is unpalatable to adopt this approach by rote. We have the high authority of the Constitution Bench of this Court both in *State of Travancore-Cochin v. Shanmugha Vilas Cashewnut Factory*⁸ and *State of T.N. v. Arooran Sugars Ltd.*⁹, requiring the Court to

8. AIR 1953 SC 333

9. (1997) 1 SCC 326



ascertain the purpose behind the statutory fiction brought about by the use of the word “deemed” so as to give full effect to the legislation and carry it to its logical conclusion. We may add that it is generally posited that there are rebuttable as well as irrebuttable presumptions, the latter oftentimes assuming an artificiality as actuality by means of a deeming provision. It is abhorrent to criminal jurisprudence to adjudicate a person guilty of an offence even though he had neither intention to commit it nor active participation in its commission. It is after deep cogitation that we consider it imperative to construe the word “shown” in Section 304-B IPC as to, in fact, connote “prove”. In other words, it is for the prosecution to prove that a “dowry death” has occurred, namely,

- (i) that the death of a woman has been caused in abnormal circumstances by her having been burned or having been bodily injured,
- (ii) within seven years of her marriage,
- (iii) and that she was subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) in connection with any demand for dowry, and
- (v) that the cruelty or harassment meted out to her continued to have a causal connection or a live link with the demand of dowry.

We are aware that the word “soon” finds place in Section 304-B; but we would prefer to interpret its use not in terms of days or months or years, but as necessarily indicating that the demand for dowry should not be stale or an aberration of the past, but should be the continuing cause for the death under Section 304-B or the suicide under Section 306 IPC. Once the presence of these concomitants is established or shown or proved by the prosecution, even by preponderance of possibility, the initial presumption of innocence is replaced by an assumption of guilt of the accused, thereupon transferring the heavy burden of proof upon him and requiring him to produce evidence dislodging his guilt, beyond reasonable doubt. It seems to us that what Parliament intended by using the word “deemed” was that only preponderance of evidence would be insufficient to discharge the husband or his family members of their guilt. This interpretation provides the accused a chance of proving their innocence. This is also the postulation of Section 101 of the Evidence Act. The purpose of Section 113-B of the



Evidence Act and Section 304-B IPC, in our opinion, is to counter what is commonly encountered—the lack or the absence of evidence in the case of suicide or death of a woman within seven years of marriage. If the word “shown” has to be given its ordinary meaning then it would only require the prosecution to merely present its evidence in court, not necessarily through oral deposition, and thereupon make the accused lead detailed evidence to be followed by that of the prosecution. This procedure is unknown to common law systems, and beyond the contemplation of CrPC.”

21. This would lead us to conclude that no interference is required in this appeal as regards the finding in respect of respondent nos. 2 and 3.

22. So far as respondent no. 4 is concerned, it is not the grievance of the appellant that respondent no. 4 has been convicted for a lesser offence. The contention before this Court is that the learned trial court has awarded a lesser sentence upon respondent no. 4. We called upon learned counsel for the appellant to demonstrate that in terms of proviso to Section 372 of the Code of Criminal Procedure (in short ‘CrPC’), the victim has a right to prefer an appeal against a lesser sentence also. We quote Section 372 CrPC as under:-

“372. No appeal to lie unless otherwise provided.

- No appeal shall lie from any judgment or order of a Criminal Court except as provided for by this Code or by any other law for the time being in force.

^a[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the



Court to which an appeal ordinarily lies against the order of conviction of such Court.]
[a] [Inserted by the Code of Criminal Procedure (Amendment) Act, 2008 (5 of 2009), S. 29, (31-12-2009)]”

23. Learned counsel for the appellant, the informant as well as learned Additional Public Prosecutor for the State have jointly submitted before this Court that in terms of the proviso to Section 372 CrPC, the victim could have maintained an appeal only on the ground that the respondent no. 4 has been convicted for a lesser offence which is not the case of the appellant. We, therefore, find that no interference is required with the impugned judgment.

24. This appeal has no merit. It is dismissed accordingly.

(Rajeev Ranjan Prasad, J)

(Jitendra Kumar, J)

S.Ali/Sushma

AFR/NAFR	
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