

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL APPEAL (DB) No.923 of 2018

Arising Out of PS. Case No.-43 Year-2012 Thana- CHANDAN District- Banka

=====

1. Mohini Devi, wife of Deo Narain Yadav

2. Sachindra Yadav, son of Deo Narain Yadav

Both resident of Village- Kenduar, P.S. Chandan (Anandpur) District-
Banka.

... ... Appellant/s

Versus

The State of Bihar

... ... Respondent/s

=====

- *The Code of Criminal Procedure, 1973 - Appeal under Section 374(2) - conviction for dowry death - Contradictions in testimonies of witnesses (e.g., neighbors) and inconsistencies in the timeline of events raised doubts about the exact circumstances leading to the deceased's death.- However, the proximity of dowry-related cruelty to the victim's death invoked the presumption under Section 113-B of the Indian Evidence Act, which the defense failed to rebut adequately. Held, the convictions under Section 304-B/34 IPC were upheld, and the appellants' life sentences were confirmed.*

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Appearance :

For the Appellant/s

:

Mr. Ajay Mukherjee, Advocate

For the Respondent/s

:

Mr. Abhimanyu Sharma, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE JITENDRA KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 25-06-2024

We have heard Mr. Ajay Mukherjee, the learned Advocate for the appellants and Mr. Abhimanyu Sharma, the learned APP for the State.

2. The appellants, who are the mother-in-law and the husband of the deceased, have been convicted under Section 304-B/34 of the Indian Penal Code vide judgment dated 18.07.2018 passed by learned FTC-I, Banka and by the order of the same date, they have



been sentenced to undergo RI for life.

3. The mother of the deceased/ Radhiya Devi(PW-6) has lodged the *fardbeyan* on 23.04.2012 alleging that her daughter/ deceased was married to appellant No. 2 three years ago. However, she was not treated well in her matrimonial home on account of her bad looks and not bringing sufficient dowry. She was tortured and was threatened that appellant No. 2 would be remarried to another person. On 23.04.2012, appellant No. 2 informed the mother/ PW-6 that the deceased had died and that she and the family members should come immediately. On such information, she along with Kamli Devi, Shakuntala Devi, Naresh Yadav and Chaturgun Yadav went to the matrimonial home of the deceased and found her dead on a cot. On enquiry from the neighbourhood, it was learnt that that appellants had killed the deceased and they were making attempts that creating a situation so that it is understood to be case of self-hanging.



4. On the basis of the aforementioned *fardbeyan* statement of PW-6, a case vide Chandan (Anandpur) P.S. Case No. 43 of 2012 dated 23.04.2012 was registered for investigation for offences under Sections 341, 323, 304-B, 504, 506 and 34 of the IPC. The police after investigation submitted charge-sheet against the appellants whereupon cognizance was taken and the case was committed to the Court of Sessions for Trial.

5. The Trial Court, after having examined eight witnesses on behalf of the prosecution, convicted the appellants as aforesaid.

6. It may be relevant here to state that out of the persons who were named by PW-6 as having gone to the matrimonial home of the deceased, only Chaturgun Yadav (PW-4) was examined. Rest all others were curiously not brought to the witness-stand on behalf of the prosecution.

7. Pappu Yadav (PW-1) is only the signatory to the inquest report (Exhibit-1) and has expressed



complete ignorance about the cause of the occurrence.

8. PWs-2, 3, and 5, viz., Ramanand Prasad Bhagat, Kuldeep Prasad Yadav and Mahadev Yadav have been declared hostile as they did not support the prosecution case.

9. Chaturgun Yadav (PW-4), who is the uncle of the deceased, has though supported the prosecution case but his evidence lacks in material particulars which could help the prosecution to prove its case. He has reiterated that on 23.04.2012 at about 6:00 AM, the appellant No.2 informed him on telephone that the deceased had died. He along with Kamli Devi, Sakuntala Devi, Radhiya Devi (PW-6) and others went to the matrimonial home of the deceased and found her dead. She was lying on a cot. No body was present in the house. The villagers told him that appellant No. 2 had tried to throttle the deceased whereas appellant No. 1 (mother-in-law) had administered poison to her. He also alleged that an attempt was being made to show that



the deceased had hanged herself. He has also stated that he saw the deceased hanging.

10. This obviously is a wrong statement as he, in the first part of the deposition, has averred that he along with others had seen the deceased lying on a cot. A motorcycle was being demanded by the appellants. Within 15-20 minutes, he has claimed, many persons came to the matrimonial home of the deceased. Along with him, there was other villagers, viz., Jalandhar Yadav, Sikandar Yadav, Bhikhari Yadav, Sahdeo Yadav, Mahadev Yadav, Barsati Yadav and Shiv Lakhan Yadav. None of them have been examined at the Trial. His niece (deceased) always used to tell him that there was a persistent demand of a motorcycle. However, no such complaint was ever made by him or by anyone of the members of his family. He reiterated on being questioned that he had seen the dead body hanging.

11. Very curiously, the mother of the deceased, who is the informant of the case also, viz., Radhiya



Devi (PW-6) has not supported the prosecution case and has only stated that the deceased used to come to her parental home but she had never complained against demand of dowry or motorcycle or any bad treatment at the hands of her husband and mother-in-law. She had no idea as to how the deceased had died. Whatever document was brought before her by the police was signed by her. On the asking of others, she is said to have filed the instant case.

12. The dead body of the deceased was subjected to postmortem examination on 23.04.2012 at about 4:30 PM. The doctor had found forth coming out of the nostrils. There were ligature mark from front to behind on the neck region. Internally, the subcutaneous tissues were damaged and in the tracheal cavity, blood clots were present. The opinion was reserved till the report of the viscera from FSL arrived.

13. The doctor who conducted the postmortem, viz., Dr. Shailendra Kumar (PW-7) has categorically



stated that according to the FSL report, no metallic, alkoildal, glycocidal or pesticidal poison could be detected in the viscera.

14. In his cross-examination, he has confirmed that in case of hanging, the ligature mark is not regular.

15. The Investigating Officer, viz., Md. Zafiruddin Khan (PW-8) has not said anything which could be helpful in deciding the case regarding the complicity of the appellants in the crime. He had submitted the charge-sheet. Beyond that, he had nothing to offer to the Trial Court.

16. The deceased died in her matrimonial home within seven years of marriage. There was no complaint in the past of any demand of motorcycle or ill-treatment. The *fardbeyan* by the mother of the deceased (PW-6) also indicates that perhaps the deceased did not have good look and, therefore, she was not liked by her husband.

17. This statement had come for the first time



when the deceased had died. There was no prior complaint like this.

18. We have found that during the Trial, PW-6 has very candidly stated that she had signed the document which was presented before her by the police. The case also was lodged on the asking of others. Her daughter never complained of any bad treatment. PW-6 has also not been declared hostile.

19. Thus, the only material against the appellants is the deposition of PW-4, viz., Chaturgun Yadav who has made contradictory statements before the Trial. At one point of time, he has claimed that he saw the deceased lying on a cot whereas in his cross-examination before the Court, he has said that he had found the deceased hanging from the ceiling. He had also learnt that perhaps the deceased had been poisoned to death. Though the postmortem report does not clearly spell out that the ligature mark was because of hanging for the reason of the same being regular all



through, which is possible in cases of strangulation.

20. We have tried to test the case from the nature of accusation as also keeping in mind that the death had occurred within seven years of marriage and the dead body was found in the house of the appellants.

21. It is noticeable that PW-6 and PW-4 both have confirmed that the information regarding the death was communicated by appellant No. 2. This is an indicator of the fact that the appellants were not acting under any stealth or were attempting to dispose off the body or trying to make a pretence of the deceased having hanged herself.

22. The other question, which has arisen in our minds, is whether the conviction of the appellants under Section 304-B of the IPC would be sustainable. The ingredients to be satisfied for convicting an accused for the offence punishable under Section 304-B of the IPC are :

(i) The death of a woman should have been



caused by burns or bodily injury or otherwise than under a normal circumstance.

(ii) Such a death should have occurred within seven years of her marriage.

(iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband.

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

(v) Such cruelty or harassment is shown to have been meted out to the woman "soon before her death".

23. The Supreme Court in case of ***Bansilal v. State of Haryana, (2011) 11 SCC 359*** has clearly held that to attract the provisions of Section 304-B of the IPC, one of the main ingredients of the offence, which is required to be established, is that "soon before her death", she was subjected to cruelty and harassment "in connection with the demand of dowry".



In case, the essential ingredients of such death are established by the prosecution, it would be the duty of the Court to raise a presumption that the accused has caused the dowry death. It was also observed that the expression "soon before her death" is not defined in any of the statute. Therefore, in each case, the Court has to analyse the facts and circumstances leading to the death of the victim and decide if there is any proximate connection between the demand of dowry and the act of cruelty or harassment and death.

24. In ***Sher Singh Alias Partapa v. State of Haryana, (2015) 3 SCC 724***, the Supreme Court has reiterated that Section 113-B of the Evidence Act and Section 304-B of the 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". The Supreme Court went on to state that in the realm of civil and fiscal laws, 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. However, in criminal legislation, it is unpalatable to adopt this approach.

25. It is generally posited that there are rebuttable as well as irrebuttable presumptions; the irrebuttable ones 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 the intention to commit it nor was there any active participation in its commission. It is after deep cogitation that it was considered 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 :

(i) under abnormal circumstances, viz., burning or the woman being subjected to bodily injury,

(ii) within seven years of marriage,

(iii) 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.

26. We have not been able to find any evidence to demonstrate that the deceased was subjected to any cruelty or harassment in connection with demand of dowry, having a causal connection or a live link with the demand of dowry. The deceased, no doubt, died within seven years of marriage under exceptional/ abnormal circumstances. We are conscious of the fact that if such



kind of murder takes place within the four walls of the house, there would be not many witnesses to the occurrence but then the prosecution has to prove the basic ingredients for the Courts to apply the presumption against the accused persons.

27. Section 113-B of the Indian Evidence Act, as referred to above, provides that 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 for dowry, the Court shall presume that such person had caused the dowry death.

28. For such presumption to be operative, the other factors have to be proved by the prosecution.

29. We have found from the evidence on record that no independent person was examined and those who have been examined have not supported the prosecution case including the mother of the deceased.



30. The uncle of the deceased (PW-4) has made contradictory statements. There is nothing on record to indicate that there was any prior cruelty meted out to the deceased. No case was lodged or any complaint made at any quarter. Merely because the deceased was found dead in the house of the appellants, the prosecution cannot jump to the conclusion that the deceased was killed for dowry.

31. The only doubt in our mind is the nature of ligature mark on the person of the deceased. It could be because of strangulation as well; but then the other factors also have to be taken into account. If it were so, the appellant No. 2 would not have given telephonic information to PW-4 to come to his house immediately as the deceased had died.

32. Apart from this, the contradictory statement of PW-4 goes a long way to demonstrate that perhaps, on the asking of others, the case was lodged. There was no evidence of any poisoning.



33. The Investigator's (PW-8) deposition has not offered any help to the Trial Court.

34. For the aforementioned reasons, we are left with no option but to give benefit of doubt to the appellants.

35. The judgment of conviction and the order of sentence is therefore, set aside.

36. Both the appellants are acquitted of the charge.

37. Appellant No. 1 is on bail. She is discharged of her liabilities under her bail bonds.

38. Appellant No. 2 in jail. He is directed to be released forthwith from jail if not wanted or detained in any other case.

39. The appeal stands allowed.

40. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

41. The records of this case be returned to the Trial Court forthwith.



42. Interlocutory application/s, if any, also stand disposed off accordingly.

(Ashutosh Kumar, J)

(Jitendra Kumar, J)

Rajesh/Saurav

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