

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1012 of 2006**

1. Kaushaliya Devi, wife of Sri Ramswroop Mahton
 2. Ramswroop Mahton, son of Late Madho Mahton
- Both are residents of Village-Premchand Bigha, P.S.-Sheikhpur Sarai,
District-Sheikhpura

... .. Appellant/s

Versus

The State Of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Devendra Kumar Sinha, Sr. Adv
Mr. Pramod Kumar Sinha, Adv

For the State : Ms. Abha Singh, APP.

**CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
CAV JUDGMENT**

Date : 02-05-2024

Heard the parties.

2. The present appeal has been filed against the judgment of conviction dated 05.12.2006 and order of sentence dated 07.12.2006 passed by learned Additional Sessions Judge, F.T.C-V, Sheikhpura in connection with Sessions Case No. 404 of 1998(Trial No. 124/2006), arising out of Barbigha P.S. Case No. 35 of 1997, whereby and whereunder the appellants were found guilty and convicted for the offences punishable under Section 304(B) of the Indian Penal Code and they were sentenced to undergo rigorous



imprisonment for a period of seven years for the offence punishable under Section 304(B) of the Indian Penal Code.

3. The prosecution case as per the F.I.R is that the informant Kapil Mahton has given a written information on 03.03.1997 to the effect that his daughter Sushila Devi (deceased) was married with Binod Mahto about three years before the date of filing the present F.I.R. After marriage, all the F.I.R named accused persons started torturing his daughter (deceased) for demand of dowry. She came many times at her parental house and narrated the same to the parents and other family members but every time, matter was consummated with the interventions of the family members of the deceased. It is further alleged that fort night prior to the complaint, the father-in-law of the deceased came to the informant's house and informed that his daughter had fled away from her matrimonial house. The informant thereafter started



searching his daughter and during search, he came to know that a lady about 25 years old had died consuming poison near bus stand. The informant went to the photo-studio shop and identified the photograph of that lady to be his daughter Sushila Devi. The informant alleged that due to torture, his daughter has committed suicide.

4. On the basis of the aforesaid *fardebayan* of the informant Barbigha P.S. case No. 35 of 1997 was registered against the appellants and others under Sections 498(A), 306/34 of the Indian Penal Code.

5. After completion of the investigation, charge-sheet was submitted and thereafter cognizance was taken and the case was committed to the Court of Sessions for trial.

6. During the course of trial, altogether twelve witnesses were examined on behalf of the prosecution.

7. P.W.-1 Sabinder Mahton is the neighbour and a hearsay witness who has stated in his examination-in-chief that he came to know regarding the



torture for demand of dowry from the informant. In para 3, this witness has deposed that 20-25 days prior to lodging of the F.I.R, the father-in-law came to the house of the informant in search of the victim and informed about the deceased being traceless. In para 4, this witness has deposed that the informant identified his daughter (deceased) when the police produced the photograph of the lady who committed suicide at the bus stand. In para 7 this witness has deposed that he does not know how the victim died.

8. P.W.-2 Bindu Mahto and P.W. 3 Kailash Mahto are the brothers of the informant who have stated in their examinations-in-chief that father-in-law of the deceased came at the house of the informant and informed about missing of his daughter-in-law (deceased). The informant thereafter started searching his daughter and came to know that his daughter has committed suicide. These witnesses have denied that deceased was unhappy with her husband and she



committed suicide since her husband was not of a sound mind.

9. P.W. 4 Sunil Kumar @ Mahton is the neighbour of the informant who has deposed in his examination-in-chief that the in-laws family of the deceased used to torture her. He has further deposed that father-in-law of the deceased came at the informant's house and informed that the victim had fled away from her matrimonial house. Thereafter, he came to know that the victim had died in the hospital. This witness appears to be a hearsay witness.

10. P.W. 5 Ashok Mahto is the brother of the deceased who has stated in his examination-in-chief that his sister (deceased) was tortured and ousted from her matrimonial house on several occasions. He further deposed that having heard the news that his sister had left her matrimonial house, he started searching and during search, he came to know that a lady about 25 years old had found in unconscious condition and died in



the hospital. At the instance of the local police, he went to the Komal Studio and identified the photograph of the dead lady as his sister (deceased). This witness has denied that husband of the deceased was not of sound mind.

11. P.W. 6 Kaushlendra Mahto is the brother of the informant who has deposed in his examination-in-chief that he came to know about the death of the deceased through newspapers. Thereafter, he along with the informant and others came at the police station and identified the photographs of the deceased to be his niece. This witness has also deposed that father-in-law of the deceased had informed about missing of the victim from her matrimonial house to the informant's side.

12. P.W. 7 Yugal Kishore Prasad is the formal witness who has proved the F.I.R.

13. P.W. 8 Balraj Mahto is the neighbour of the informant who has deposed in his examination-in-



chief that he came to know about the dowry demand by the in-laws family members of the deceased from his daughter. He also denied this fact that husband of the deceased was not of sound mind. This witness also appears to be a hearsay witness.

14. P.W. 9 Kapil Mahto is the informant himself who has deposed in his examination-in-chief that his daughter was married with Binod Mahton (P.W. 12) about three years prior to her death. After marriage, the deceased went to her matrimonial house but her in-laws family members started torturing her for demand of dowry. Whenever the deceased came to her parental house, she narrated all the events but it was the informant who after making her understand sent her back to her matrimonial house. This witness has further deposed that on last occasion, when the deceased went to her matrimonial house, her father-in-law came to him and told that deceased had fled away from her matrimonial house. The informant started searching but



failed to find her and ultimately came to know about her death. In para 3 of his cross examination, this witness has stated that he did not name his son-in-law as accused because he was innocent. This witness has further stated that his son-in-law had come with the deceased to his house on two occasions. This witness has clearly denied that his son-in-law was insane. This witness has clearly denied that the deceased was not happy with her husband and she wanted to marry herself with any other person.

15. P.W. 10 Surendar Prasad is the brother of the appellant Ram Swarup Mahton who has stated in his examination-in-chief that the deceased was married with Binod Kumar (P.W. 12). In his cross-examination, this witness has deposed that husband of the deceased is insane and useless. He has deposed that after the marriage, the deceased was not happy with her husband and she did not want to live with him.

16. P.W. 11 Sarju Bind is the co-villager of the



appellants who has deposed in his examination-in-chief that the deceased died after consuming poison. This witness has further deposed that he had heard that the deceased died after taking poison as her husband ignored her. This witness has further deposed that deceased was happy with her husband.

17. P.W. 12 Binod Kumar is the husband of the deceased himself who has admitted in his examination-in-chief that his wife died after consuming poison. In his cross examination, this witness has deposed that only for one chance, he had visited his *Sasural* alone. This witness has further deposed that his wife did not accompany him at that occasion and also called him saying *Pagala*. This witness has further deposed that her wife did not want to marry with any other person but she died after consuming poison as he was mentally disturbed.

18. 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 mother-in-law and father-in-law of the deceased. 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. Moreover, most of the prosecution witnesses are either highly interested or hearsay witnesses. It is further submitted that 15 days prior to the death of the deceased, the appellant No. 2 had informed to the informant that the deceased had left the house but no F.I.R was lodged at that time. Subsequently, the



informant identified the photograph of a dead body to be his daughter's after one newspaper published a news regarding finding of a dead body of a woman committing suicide by consuming poison and thereafter the F.I.R has been registered against the appellants and others. In this case, the husband has not been made accused who was fully responsible for the well being of his wife. In the entire prosecution evidence, not a single witness has brought on record any evidence to prove any demand of dowry from the in-laws family of the deceased. Moreover, neither the person who had sniped the photograph of the deceased nor the Doctor of the hospital or the Investigating Officer have been examined in this case to prove the authenticity of the prosecution version. The husband of the deceased namely Binod Kumar has been examined as P.W. 12 who had denied any torture or demand of dowry and deposed that she used to call him *Pagala* and consumed poison as he is mentally disturbed person. The prosecution has also



failed to prove that the deceased died within seven years of her marriage as the date of marriage has not been mentioned in the F.I.R.

19. From perusal of the records and on going through the evidences, it appears that none of the prosecution witnesses have seen the occurrence and most of the witnesses are related to the informant and are highly interested witnesses. 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. The husband of the deceased had also not been made accused. Whatever have been stated by the witnesses in their examinations-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 appellant since the appellant 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. The non-examination of the Doctor has also made the case of the prosecution doubtful. 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.

20. In that view of the matter, the judgment of conviction dated 05.12.2006 and order of sentence



dated 07.12.2006 passed by learned Additional Sessions Judge, F.T.C-V, Sheikhpura in connection with Sessions Case No. 404 of 1998 (Trial No. 124/2006), arising out of Barbigha P.S. Case No. 35 of 1997 is set aside.

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

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

23. Accordingly, the appeal stands allowed.

(Sunil Kumar Panwar, J)

Shageer/-

AFR/NAFR	NAFR
CAV DATE	29/04/2024
Uploading Date	06/05/2024
Transmission Date	06/05/2024

