

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.509 of 2012

Arising Out of PS. Case No.-129 Year-2007 Thana- DHAMDAHA District- Purnia

Most. Veena Devi, wife of Late Rambajjo Rai, resident of Village- Dhamdaha,
Uttar, P.S- Dhamdaha, District- Purnea. ... Appellant.

Versus

The State of Bihar. ... Respondent.

WITH
CRIMINAL APPEAL (DB) No. 786 of 2012

Arising Out of PS. Case No.-129 Year-2007 Thana- DHAMDAHA District- Purnia

Randhir Rai @ Randhir Kumar Rai, son of Late Rambajjo Rai, resident of
Village- Dhamdaha, Uttar, P.S- Dhamdaha, District- Purnea. ... Appellant.

Versus

The State of Bihar

... Respondent.

Appearance :

(In Criminal Appeal (DB) No. 509 of 2012 & In criminal appeal (DB) No. 786 of 2012)

For the Appellants : Mr. N. K. Agrawal, Sr. Advocate.

Mr. Dr. Bidhu Ranjan, Advocate.

Mr. Ashok Kumar Jha, Advocate.

For the Informant : Mr. Sanjeev Kumar, Advocate.

Mr. Chand S. Singh Azad, Advocate.

For the State : Mr. Ajay Mishra, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
AND

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL)

Date : 18-04-2019

As both the aforesaid criminal appeals have
cropped up from the same judgment and order of conviction and
sentence, hence, they are taken up together for consideration
and disposed of by this common judgment.

2. Heard Mr. N. K. Agrawal, learned senior



counsel assisted by Dr. Bidhu Ranjan and Ashok Kumar Jha learned counsels for the appellants, Mr. Sanjeev Kumar and Mr. Chand S. Singh Azad learned counsels for the informant and Mr. Ajay Mishra learned Additional Public Prosecutor for the State in both these appeals.

3. The aforesaid two criminal appeals have been preferred against the judgment and order of conviction dated 25.04.2012 and order of sentence dated 27.04.2012 passed by the learned Additional Sessions Judge, Fast Track Court No.2, Purnea in Sessions Trial no. 1019 of 2007/Trial No.113 of 2009, arising out of Dhamdaha P.S. Case No. 129 of 2007, whereby the learned trial Court convicted the accused Randhir Rai @ Randhir Kumar Rai and Most. Veena Devi under Section 304-B/34 of the Indian Penal Code (hereinafter in short referred to as the 'I.P.C.') and sentenced them to undergo R.I. for life under the aforesaid section.

4. The factual matrix of the case is that Dhamdaha P.S. Case No. 129 of 2007 was instituted under Section 304-B and 201/34 IPC against accused Randhir Rai and Veena Devi on the basis of written report of Deepak Kumar Singh, son of Ravindra Prasad Singh addressed to the S.H.O. P.S. Dhamdaha with the allegation in succinct that he had performed marriage



of his cousin sister, namely, Samta Kumari with Randhir Rai in the month of May, 2006 as per Hindu rites and rituals but two months later to the marriage Randhir Rai and his mother Veena Devi started tormenting his sister for dowry. They were mounting pressure to give them sometime rupees one lakh and sometime rupees two lakhs and marshal jeep for the last couple of months. He had accorded rupees fifty thousand to them two months back for making furniture but they are again making demand. Further allegation is that in the night of 16.08.2007 Randhir Rai and Veena Devi set his sister ablaze and in order to conceal the evidence his mother Veena Devi went to her school and after her departure Randhir Rai started making hulla that victim has committed suicide by setting her ablaze in the day. Further allegation is that Randhir Rai is having illicit relation with Jyoti Kumari who is working in his coaching center, namely, Sumitra Sishu Gyan Mandir, Dhamdaha. It is claimed by the informant that the aforesaid accused persons have committed murder of her sister for dowry. He got information of the occurrence on telephone.

5. The aforesaid case was investigated by the police and on conclusion of the investigation, I.O. submitted charge-sheet against the aforesaid accused persons.



6. On receiving the charge-sheet and the case diary and perusing the same, the learned Magistrate took cognizance of the offence and committed the case to the Court of Sessions, and after commitment and on transfer finally the case came in seisin of the learned Additional Sessions Judge, Fast Track Court No.2, Purnea for trial.

7. Charge against the accused Randhir Rai and Veena Devi was framed under Section 304-B and 201/34 I.P.C. Charge was read over and explained to them by the Court to which they pleaded not guilty and claimed to be tried.

8. To substantiate its case, in ocular evidence, the prosecution has examined altogether 12 prosecution witnesses namely, Binod Kumar Singh as PW-1, Shambhu Prasad Chaudhary as PW-2, Vivekanand Singh, who happens to be father of the deceased as PW-3, Ashish Kumar, cousin brother of the deceased as PW-4, Anjani Kumar Singh, co-villager of the informant as PW-5, Binay Singh @ Vijay Singh, uncle of the deceased, as PW-6, informant Deepak Kumar Singh as PW-7, Shiv Balak Singh, maternal grandfather of the deceased as PW-8, Dr. Rajesh Bharti, who conducted the autopsy of the cadaver of the deceased, as PW-9, Kiran Devi, mother of the deceased as PW-10, Dr. Nand Kishore Ray as PW-11 and I.O. Krishan



Kumar Diwakar as PW-12. Out of the aforesaid witnesses PW-1 turned hostile, while PW-2 happens to be formal witness. The prosecution has also filed and proved some documents by way of documentary evidence in the case.

9. The statement of the accused persons was recorded under Section 313 of the Code of Criminal procedure. The case of the defence is complete denial of the occurrence claiming themselves to be innocent. The accused persons have also examined seven witnesses, namely, Manohar Chaudhary as DW-1, Sunaina Devi as DW-2, Akhilesh Thakur as DW-3, Binod Singh as DW-4, Ramchandra Paswan as DW-5, Twinkle Kumari as DW-6 and Babul Kumar Singh as DW-7 in buttress of their case.

10. After hearing the parties and perusing the record, the learned trial court passed the impugned judgment and order of conviction and sentence as detailed in the earlier paragraph.

11. Being aggrieved and dissatisfied with the aforesaid judgment and order of conviction and sentence, the convict Most. Veena Devi has preferred Cr. Appeal (DB) No. 509 of 2012 and convict Randhir Rai @ Randhir Kumar Rai has preferred Cr. Appeal (DB) No. 786 of 2012.



12. The point for consideration in this case is, as to whether the prosecution has been able to bring home the charge levelled against the appellants beyond all reasonable doubts or not.

13. It is submitted by learned defence counsel that none of the prosecution witnesses happen to be eye witness of the occurrence. The postmortem report also rules out the prosecution case of taking place of death of deceased in the night of 16.07.2007. PW-10 Kiran Devi also does not support the prosecution case about subjecting the deceased to torture for dowry demand. The witnesses examined by the defence have unanimously stated it to be case of accidental death caused due to catching of fire in the saree of the deceased in the course of cooking. They have also unanimously stated about absence of accused persons at the place of occurrence at the time of occurrence. Ext.4, which is the letter allegedly written by the deceased, does not bear the signature of the deceased and writing of the said letter has also not been proved by the prosecution by any handwriting expert. Moreover, it was not put to the accused persons while recording their statement under Section 313 Cr.P.C, hence, it cannot be considered against the appellants. Thus, the prosecution has utterly and miserably



failed to substantiate the prosecution case against the appellants beyond all reasonable doubt by adducing trustworthy, convincing and reliable evidence. Hence, the impugned judgment and order of conviction and sentence passed against the appellants by the learned trial Court is liable to be set aside and the appellants are entitled to be acquitted.

14. Per contra, learned counsel for the informant and learned APP for the State advocating the correctness and validity of the impugned judgment and order of conviction and sentence submitted that the prosecution witnesses have substantially substantiated all the ingredients of Section 304-B IPC regarding committing dowry death of the deceased by the accused persons. The prosecution has also substantiated the ingredients of making dowry demand and subjecting the deceased to torture in connection with the said demand soon before her death by the appellants. Hence, under Section 113-B of the Evidence Act, the burden of proof is on the appellants to prove their innocence. In a bid to prove their innocence, they have taken the case that the deceased had caught fire in her sari during the course of cooking, resultantly she died but none has taken the deceased to hospital to accord her medical aid, though as per DW-6 Twinkle Kumari she had called her Nani (Veena



Devi) from school after the occurrence. Thus, the appellants have miserably failed to discharge the aforesaid burden to prove their innocence in the occurrence and the learned trial Court correctly appreciating the facts and evidence on record has rightly passed the impugned judgment and order of conviction and sentence which is liable to be upheld and these appeals are shorn of merit and are liable to be dismissed.

15. In order to seek conviction under Section 304-B I.P.C. against a person for the offence of dowry death, the prosecution is obliged to prove that (a) the death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances (b) such death should have occurred within seven years of her marriage (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband (d) such cruelty or harassment should be for or in connection with demand of dowry (e) to such cruelty or harassment the deceased should have been subjected to soon before her death. When the above ingredients are fulfilled, the husband or his relative, who subjected her to such cruelty or harassment over dowry demand can be presumed to be guilty of offence under Section 304-B I.P.C., while as per Section 113-B of the Evidence Act, when the question is whether a person has



committed 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 dowry death. A conjoint reading of Section 113-B of the Evidence Act and Section 304-B I.P.C. shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment over dowry demand. Presumption under Section 113-B would be operative only if it is shown that soon before death the deceased was subjected to cruelty by her husband or any relative for or in connection with demand of dowry.

16. Regarding the said ingredients i.e. death of woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances and such death has occurred within seven years of her marriage it is the case of the prosecution that the informant had performed marriage of her cousin sister, namely, Samta Kumari in the month of May, 2006 and she was eliminated in the night of 16.08.2007 by the accused persons. Ashish Kumar (PW-4), Binay Singh @ Vijay Singh (PW-6), informant Deepak Kumar Singh (PW-7), Shiv Balak Singh (PW-8) and Kiran Devi (PW-10) have unanimously



stated that the marriage of Samta Kumari was performed with Randhir Rai in the month of May, 2006 and she has been eliminated by the accused persons on 16.08.2007. Hence, from perusal of the aforesaid testimonies of the prosecution witnesses, it appears that the marriage of deceased Samta Kumari was performed with Randhir Rai in the month of May, 2006 and she has been eliminated within 15 months of her marriage. So far as death of the deceased by burns or bodily injury or had occurred otherwise than under normal circumstances, it is the case of the prosecution that Samta Kumari was burnt to death in her marital house by the accused persons and her dead body was found in the verandah of the house of the appellants. All the material witnesses examined by the prosecution have unanimously stated that the deceased Samta Devi was burnt to death by the accused persons and his dead body was found in her verandah. From perusal of the inquest report of the dead body of the deceased, marked as Ext.5, it appears that the dead body of the deceased was found in the verandah of the house of Randhir Rai having burn injury. The postmortem report of the deceased, marked as Ext.3, indicates that the doctor has found burn injury over whole body, except both sole to the extent of 100% of the deceased as



antemortem injury and has opined the cause of death due to shock and above mentioned extensive burn injury. Thus, from perusal of the aforesaid ocular and documentary evidence of the prosecution, I find and hold that the deceased had died due to burning in her marital house within 15 months of her marriage.

17. So far as demand of dowry by the appellant Randhir Rai, who happens to be husband and Veena Devi, who happens to be mother-in-law of the deceased, is concerned, it is the case of the prosecution that even after two months of the marriage Randhir Rai and his mother Veena Devi started harassing his sister for dowry. They were mounting pressure upon the informant to give them sometime Rs. 1 lakh and sometime Rs.2 lakhs and marshal jeep for the last couple of months. He had accorded Rs.50,000.00 for making furniture of the house two months back but they were making demand even thereafter.

18. Vivekanand Singh (PW-3) has stated in para-5 & 6 of his examination-in-chief that the appellants used to mount pressure upon the deceased to fetch Rs.2 lakhs and marshal jeep after the marriage. He had sent Rs.50,000.00 to the appellants for making furniture through Deepak (informant) two months preceding to her death which was accorded to them by



Deepak. Death of Samta Kumari was caused due to not according dowry. In para-10 of his cross-examination, he has further stated that Randhir Rai had demanded dowry for the first time after two months of the marriage at his house for purchasing marshal jeep to upgrade his standard. In para-13 of his cross-examination, he has further stated that he had made demand for the second time of Rs.1 lakh and marshal jeep two months later to his first demand. Thereafter, he always used to make the aforesaid demand frequently after 10-15 days by telephone. In para-14 of his cross-examination, he has stated that he also used to extend threatening to face music for not coughing up of the demand after the first demand. Ashish Kumar (PW-4) has stated in para-1 of his examination-in-chief that Randhir Rai and Veena Devi used to make demand sometime Rs.1 lakh and sometime Rs.2 lakhs and marshal jeep after two months of the marriage but the aforesaid demand could not be met. Anjani Kumar Singh (PW-5) has stated in para-4 of his examination-in-chief that Samta Kumari had divulged him at Telagi five months back that the accused persons were mounting pressure upon her to fetch Rs.1-2 lakhs and marshal jeep since two months later to the marriage but she could not cough up the aforesaid demand. Binay Singh @ Vijay



Singh (PW-6) has stated in para-4 of his examination-in-chief that he went to in-law's house of Samta Kumari two months later to the marriage. He met with her. She divulged him that Randhir Rai used to make demand sometime Rs.1 lakh and sometime Rs.2 lakhs and marshal jeep. Informant Deepak Kumar Singh (PW-7) has stated in para-3 & 4 of his examination-in-chief that Randhir Rai and his mother started demanding sometime Rs.1 lakh and sometime Rs.2 lakhs and marshal jeep after two months of marriage. They used to ask Samta Kumari to fetch the same from his maternal house. He had accorded Rs.50,000.00 to Randhir Rai for making furniture two months preceding to her death but they did not stop making demand even thereafter. Shiv Balak Singh (PW-8) has stated in para-2 of his examination-in-chief that after marriage Samta Kumari started living in her marital house but she was never happy there. They used to make demand of money for furniture and marshal jeep. Some money was accorded to them for furniture. She used to inform the matter to her parents and she had also divulged the aforesaid facts to him personally on his arrival at her maternal house at the time of appearing in the examination. In para-22 of his cross-examination, he has further stated that after operation of Randhir Rai after marriage, his



mother was living in his house at Bhagalpur. During the aforesaid period his mother had asked him to get the marshal jeep accorded to her. Kiran Devi (PW-10) has stated in para-1 of her examination-in-chief that after marriage her daughter used to pay visit to her and divulged her that Randhir Rai and his mother used to make demand of Rs.2 lakhs and marshal jeep but they did not accord the money and vehicle to them. In para-13 of her cross-examination, she has further stated that her son-in-law had demanded money from her after the marriage of her daughter in the month of January, 2007. He had demanded the money from her visiting her house. He had demanded Rs.2 lakhs for purchasing the vehicle. She had accorded Rs.50,000.00 to her son-in-law for purchasing the furniture. All the aforesaid witnesses were subjected to gruelling cross-examination but barring Anjani Kumar Singh (PW-5), who has stated in para-15 of his cross-examination that he had given statement before the police what he learnt. He had divulged to the police that he had given statement as per the revelation of Deepak indicating that he was a tutored witness and has given statement as per the disclosure made by the informant Deepak (PW-7), rest witnesses stood the test of cross-examination and nothing convincing and cogent has been elicited in their cross-



examination having potential to rule out their testimony regarding the aforesaid aspect of the case. Though the prosecution has filed and proved the letter dated 22.12.2006 allegedly written by deceased Samta Kumari to her mother, marked as Ext.4 and Kiran Devi (PW-10) has stated in para-3 of her examination-in-chief that her daughter Samta Kumari had written letter to her. She had furnished copy of the aforesaid letter to the I.O. and has filed the original letter before the Court. She has proved the aforesaid letter written in the handwriting of her daughter. But from perusal of the aforesaid letter, it appears that in the said letter the writer had written about some sort of compulsion and trouble meted out to her at her marital house. She has not specifically mentioned about any demand of cash and kind by the accused persons. Moreover, the aforesaid letter does not bear the signature of its writer and the said handwriting of the aforesaid letter has not been proved to be of Samta Kumari by the prosecution by examining any handwriting expert. More so, the aforesaid letter was not put to the appellants while recording their statements under Section 313 Cr.P.C. enabling them to explain the aforesaid incriminating circumstance, hence the aforesaid letter cannot be considered against the appellants. Hon'ble Apex Court in **Vikramjit Singh**



Alias Vicky Vs. State of Punjab reported in **(2006) 12 SCC 306** has been pleased to rule that the circumstances which according to the prosecution lead to proof of the guilt against the accused must be put to him in his examination under Section 313 Cr.P.C., this having not been done, appellants acquitted. Hon'ble Apex Court in **Sharad Birdhichand Sarda Vs. State of Maharashtra** reported in **(1984) 4 SCC 116** has been pleased to rule that circumstances in respect of which accused not examined under, cannot be used against him. Thus, from perusal of the aforesaid evidence adduced by the prosecution and the discussions made by me herein above, I find and hold that the prosecution has substantially substantiated the case of demanding cash and marshal jeep by the appellants from the deceased and her maternal people after the marriage.

19. Regarding subjecting the deceased Samta Kumari to cruelty or harassment at the hands of the appellants in connection with the aforesaid dowry demand soon before the death is concerned, it is the case of the prosecution that the appellants used to torment the deceased Samta Kumari over the aforesaid demand since after the marriage and finally burnt her to death on 16.08.2007 within 15 months of her marriage over the said demand. The prosecution has substantiated the death of



the deceased due to burning in her marital house within 15 months of the marriage, as discussed by me earlier herein above, and it would not be appropriate to reiterate the same.

20. Vivekanand Singh (PW-3), who happens to be father of the deceased, has stated in para-6 of his examination-in-chief that the death of the deceased has occurred due to not coughing up of the demand of dowry. In para-14 of his cross-examination, he has further stated that the appellants used to extend threatening of facing the music of not coughing up of their demand since first demand. Ashish Kumar (PW-4) has stated in para-2 of his examination-in-chief that due to not coughing up the demand of the appellants they have burnt to death Samta Kumari in the night of 16.08.2007. Informant Deepak Kumar Singh (PW-7) in para-3 of his examination-in-chief has stated that Randhir Rai and his mother started tormenting Samta Kumari for dowry after two months of the marriage. In para-15 of his cross-examination, he has stated that Randhir Rai had thrashed Samta Kumari before him in Telagi after four months of the marriage. Shiv Balak Singh (PW-8) has stated in para-2 of his examination-in-chief that after marriage Samta Kumari started living in her marital house but she was never happy there. Her husband and mother-in-law used to



behave her ruthlessly. They used to make demand of cash, furniture and marshal jeep. She divulged the aforesaid fact to him personally at the time of her arrival in her maternal house for appearing in the examination. Kiran Devi (PW-10) has stated in para-1 of her examination-in-chief that Randhir Rai and Veena Kumari have done to death her daughter for not coughing up the demand of cash and jeep. In para-2 of her examination-in-chief, she has further stated that they always used to subject her to torture for money. From perusal of the testimony of the aforesaid witnesses, it appears that the aforesaid witnesses have stated that the appellants used to subject the deceased Samta Kumari to torture and cruelty over the aforesaid demand since two months later to the marriage and burnt her to death for not coughing up the aforesaid demand. The aforesaid witnesses were subjected to gruelling cross-examination regarding the aforesaid aspect of the case but they stood the test of cross-examination and nothing convincing and cogent has been elicited in their cross-examination to rule out their testimony regarding the aforesaid aspect of the case. More so, as discussed by me herein above, death of the deceased Samta Kumari has taken place in her marital house due to burning within 15 months of the marriage i.e. within short span of time of the



marriage. The Hon'ble Apex Court in the case of **Satvir Singh and others Vs. State of Punjab and another** reported in **(2001) 8 Supreme Court Cases 633** has been pleased to observe that the phrase “soon before her death”, no doubt, is an elastic expression and can refer to a period either immediately before her death or within a few days or even a few weeks before it. But the proximity to her death is the pivot indicated by that expression. The Legislative object in providing such a radius of time by employing the words “soon before her death” is to emphasise the idea that her death should, in all probabilities, have been the aftermath of such cruelty or harassment. In other words, there should be a perceptible nexus between her death and the dowry-related harassment or cruelty inflicted on her. The Hon'ble Apex Court in the case of **Yashoda and another Vs. State of Madhya Pradesh** reported in **2004 (3) PLJR (SC) 23** has been pleased to observe that the words “soon before” found in Section 304B IPC have come up for consideration before this Court in large number of cases. This Court has consistently held that it is neither possible nor desirable to lay down any straitjacket formula to determine what would constitute “soon before” in the context of Section 304B IPC. It all depends on the facts and circumstances of the case.



21. Having regard to the facts and circumstances of the case, I find that there was persistent demand of cash and marshal jeep from the deceased Samta Kumari and her maternal people since two months after the marriage by the appellants and due to not coughing up the demand of dowry subjecting the deceased to harassment and cruelty over the said demand and ultimately burning her to death within short span of time of 15 months of the marriage, as such her death in all probabilities have been the aftermath of such cruelty or harassment meted out to her at the hand of appellants and there is perceptible nexus between her death and dowry related harassment and cruelty inflicted on her. Thus, I find and hold that the deceased Samta Kumari was subjected to harassment and cruelty “soon before her death” in connection with the aforesaid dowry demand of cash and marshal jeep by the appellants.

22. As the prosecution has substantially substantiated the ingredients of subjecting the deceased to cruelty and harassment over the dowry demand soon before her death by the appellants, the presumption under Section 113-B of the Evidence Act would be operative and under Section 113-B of the said Act, the burden of proof lies upon the shoulder of the appellants to rebut that presumption and prove their innocence.



Though in their statements under Section 313 Cr.P.C., the appellants have not advanced any defence case but from perusal of para-14 of cross-examination of Ashish Kumar (PW-4), para-26 of Shiv Balak Singh (PW-8) and para-29 of Kiran Devi (PW-10), it appears that they have taken the case that the deceased had died due to catching fire in course of cooking by giving suggestion to the aforesaid effect to the said witnesses but the appellants have not substantiated their aforesaid case by adducing any cogent evidence and mere suggestion to the witnesses, in my considered opinion, does not take the shape of evidence. Thus, the appellants have utterly and miserably failed to discharge the aforesaid burden shifted upon them under Section 113-B of the Evidence Act and failed to rebut the presumption and to prove their innocence in the occurrence.

23. Considering the facts and circumstances of the case and the discussions made by me herein above, I find and hold that the prosecution has successfully substantiated the prosecution case and succeeded to bring home the charge levelled against the appellants beyond all reasonable doubt by adducing convincing, cogent, consistent and worth credence evidence. Hence, the impugned judgment and order of conviction and sentence passed by learned trial Court does not



warrant any interference by this Court and, accordingly, it is upheld and the aforesaid two appeals filed by the appellants are dismissed.

24. As the appellant Most. Veena Devi of Cr. Appeal (DB) No.509 of 2012 is on bail, her bail bond is hereby cancelled and she is directed to surrender before the learned lower Court to serve out her remaining sentence forthwith.

(Prakash Chandra Jaiswal, J.)

Rakesh Kumar, J. I agree.

(Rakesh Kumar, J.)

Trivedi/-

AFR/NAFR	AFR
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