

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (DB) No.124 of 2016

[Against the Judgment of conviction dated 04.09.2015 and order of sentence dated 07.09.2015, passed by learned Addl. Sessions Judge-I, Sahebganj, in S.C. No.217 of 2013 (arising out of Sahibganj (M) P.S. Case No.208 of 2012 and G.R. No.601 of 2012)].

1.Surja Choudhary, S/o Sri Khublal Choudhary
2.Khublal Choudhary, S/o Late Somaru Choudhary
3.Pataniya Devi @ Patniya Devi, W/o Sri Khublal Choudhary.
All residents of Rampur English, P.S. Mufassil, District- Sahebganj.

.... Appellants

Versus

State of Jharkhand. Respondent

P R E S E N T

SRI ANANDA SEN, J.

SRI GAUTAM KUMAR CHOUDHARY, J.

....

For the Appellants : Ms. Pragati Prasad, Advocate

For the State : Mr. Saket Kumar, APP

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By Court:- Heard learned counsel for the appellants and learned counsel for the State.

1. The instant Criminal appeal is directed against the Judgment of conviction dated 04.09.2015 and order of sentence dated 07.09.2015, passed by learned Addl. Sessions Judge-I, Sahebganj, in S.C. No.217 of 2013 (arising out of Sahibganj (M) P.S. Case No.208 of 2012 and G.R. No.601 of 2012) whereby the appellants have been convicted under Sections 304 B and 34 IPC and sentenced to undergo RI for ten years each.
2. The F.I.R. is at the instance of the P.W. 2 [father of the deceased] wherein he stated that the marriage of his daughter Durgi Devi (deceased), aged about 19 years was solemnized with Surja Choudhary (appellant no.1) in the month of June,2012 and after the marriage, her daughter went to sasural and had been residing there and on 16.10.2012, on the eve of Navratra, when he went there to take her back i.e., for Bidagiri, then the appellants/ accused persons put forward an additional dowry demand of Rs. 20,000/- for her bidai. At this, when the informant expressed his inability, they flatly denied from Bidagiri and accordingly, he came back to his home. It is alleged that thereafter his daughter always used to complain him telephonically reporting that her Sasural people are persistently, demanding aforesaid amount of dowry of Rs. 20,000/-

and on non-fulfilment, they always used to subject her to cruelty fulfilled. In the night of 30.10.2012 i.e., on Tuesday at about 11:30 pm, the Sas of his elder daughter, who happens to be a resident of very sasural of village Rampur English reported him that his daughter Durgi Devi had died and consequently, on the next day i.e., on 31.10.12 at about 11 am, he rushed to the sasural of his daughter and found her dead and in-laws were absconding.

3. On the basis of fardbeyan of the informant, the Police instituted First Information Report being Sahibganj (M) P.S. Case No.208 of 2012 registered under Sections 304B /34 IPC against the accused persons.
4. After investigation, Police submitted charge-sheet and cognizance was taken and the appellants/ accused persons were put on trial for the offence under Sections 304B /34 IPC.
5. In order to prove the case, seven witnesses have been examined by the prosecution who are P.W. 1 Kamla Devi, P.W. 2 Ram Pd. Bihari, P.W. 3 Ramekbal Choudhary, P.W. 4 Ram Prakash Choudhary, P.W. 5 Baliram Choudhary, P.W. 6 Dr. Sheo Shankar Bhagat and P.W. 7 Mukesh Kr. Singh, and relevant documents have been adduced into evidence and marked as Exhibits.
6. After prosecution evidence, the statement of the accused persons was recorded under Section 313 Cr. P.C. Defence is of total denial of prosecution story and of false implication as the deceased herself fell down in a ditch and sustained injuries which led to her death.
7. The Trial Court after considering the evidence led by the prosecution has held that the prosecution has been able to establish its case beyond all reasonable doubts and thus, convicted the appellants for committing the offence punishable under Section 304B/34 of the IPC.
8. Appellant no.1 is the husband of the deceased whereas the appellant nos.2 and 3 are the father in law and mother in law of the deceased respectively.
9. Learned counsel appearing on behalf of the appellants submits that prosecution has not established the three ingredients of Section 304B of the Indian Penal Code. There is nothing in the evidence of the prosecution to suggest that soon before death, the dowry was demanded and deceased was subjected to torture.
10. Further, it is argued that no date and time of demand of dowry and torture has been mentioned by the villagers. P.W. 4 and P.W. 5 have been declared hostile

whereas P.W. 1 and P.W. 2 are none but the father and mother of the deceased and they are the interested witnesses. On the basis of the statement of the interested witnesses, these appellants cannot be convicted. There is only one injury i.e., lacerated wound found on the body of the deceased and the Doctor has opined that the same can be caused by a fall also.

11. Further, it is argued that there was two days delay in sending the F.I.R. to the Court and the inquest report was prepared on 31.10.2012 at 13:55 hours, but no case number has been given in the inquest report (Ext.2). On these grounds, she prays that appellants may be acquitted of the charges after setting aside the impugned Judgment of conviction and sentence.
12. Learned counsel appearing on behalf of the State has defended the impugned judgment of conviction and sentence and argues that the prosecution has been able to prove and establish all the ingredients which are necessary for establishing the guilt of these appellants. There is evidence to suggest that the deceased died within seven years of the marriage and the death is unnatural. He also submits that there is consistent evidence that soon before the death, there was demand of dowry and the deceased was subjected to torture. As per him, since it is a case of dowry death for the offence under Section 304B of the IPC and the same reads as follows :-

[304-B. Dowry death.- “ (1) where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death, and such husband or relative shall be deemed to have caused her death.

Explanation- For the purposes of this sub-section, “dowry” shall have the same meaning as in Section 2 of the Dowry Prohibition Act, 1961

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.]

Ingredients of Section- In order to seek conviction under section 304-B, I.P. Code against a person for the offence of dowry death, the prosecution is obliged to prove that: (a) the death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 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 the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected soon before her death-

The expression “soon before her death” used in the substantive S. 304-B, I.P. Code and S. 113-B of the Evidence Act is present with the idea of proximity test.

As such, the onus was upon the appellants in terms of Section 113B of the Evidence Act to prove their innocence to which they miserably failed. Further, it has been argued that in a case of demand of dowry/ dowry death, it is only the family members of the deceased who are privy to the facts of the case that is demand of the dowry etc. and they are only the material witnesses. He submits that this Court may not interfere with the impugned judgment of conviction and sentence.

13. Once the foundational facts are established regarding subjecting the deceased to cruelty in connection with dowry demand is proved, onus shifts on the accused to lead evidence that such unnatural death was not a dowry death. Only when the prosecution establishes all these ingredients in terms of Section 113B of the Evidence Act, the onus will shift upon the accused otherwise not.
14. P.W. 1 and P.W. 2 are the mother and father of the deceased and they have stated that deceased was married in the month of June, 2012 and defence has also not disputed the aforesaid fact. Death of the wife/deceased had occurred in October, 2012 i.e., within five months from the date of the marriage. Thus, the prosecution has been able to establish that the deceased died within seven years of solemnisation of the marriage.
15. The Doctor has been examined as P.W. 6 and he conducted the post-mortem on the dead- body of the deceased and found the following injuries:-
 - (i) Lacerated and abraded wound in the middle of chest near xiphoid process
 - (ii) On Dis-section:- There was full of blood in abdominal cavity.
 - (iii) Spleen:- Ruptured
 - (iv) Liver:- Ruptured

He opined that the cause of death occurred due to shock and haemorrhage as a result of the injury No.1. He also opined that said injury was sufficient to cause death in the ordinary course of nature. From the injury report, we find that spleen was ruptured and there was lacerated and abraded wound in the middle of chest.

16. Further, this injury report suggests that the death is homicidal in nature and is otherwise than under normal circumstances. It is not also the case of defence that the deceased died in normal circumstances. In view of the evidence of the Doctor and also the post-mortem report which is marked as Exhibit-1, we are satisfied that the death has occurred otherwise and not under normal circumstances and the same has been established. Now the issue which would fall for consideration is about the torture and demand of dowry soon before death. Though the words 'soon before death' is related term and has to be adjudged based on the nature of torture, continuity of the same and the period of torture and the period between

the death and torture, in this case, we find that the period of matrimonial life of the deceased was only four and half months, this is too short period.

17. P.W.1 & P.W.2 clearly stated that there was a consistent demand of dowry of Rs.20,000/-. Before 'Dushehra', they went to the matrimonial house of the deceased i.e. house of the appellant to bring their daughter, but all of them refused to do so on the ground that the demand of Rs.20,000/- as dowry has not been fulfilled. P.W.1 and P.W.2 also stated that there was consistent torture of the deceased by all the family members i.e. all the appellants/accused. P.W.2 and also P.W.1 also stated that when they went to bring her daughter back, not only these appellants refused to send her back and demanded dowry, but they also tortured her. P.W.2 in Para-2 stated that when they returned to their house, the deceased called him and pleaded to take her back as she was being tortured for money. On 13.10.2012, the deceased died in the matrimonial home to which information was given to these witnesses through mother in law of the another daughter who was married in the same village. Thus, the proximity of demand of dowry and the death is negligible and we can safely say that soon before death, there was demand of dowry and torture for the said demand.
18. Thus, the prosecution has established all the ingredients of Section 304B IPC in this case. The provisions of Section 304B IPC clearly state that when these conditions are fulfilled, the husband or the relatives shall be deemed to have caused her death. By virtue of this dealing provisions, the presumption is against the in-laws and the husband.
19. Section 113-B of the Indian Evidence Act, 1872 reads as follows :-
[113-B. Presumption as to dowry death – 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.
20. Once the prosecution has been able to prove all the ingredients of Section 304B IPC, the onus shifts upon the accused to prove their innocence. This principle of reverse burden has to be discharged by the victim(s). On their failure, there is no other alternative but to presume that they had committed dowry death which is punishable under Section 304B IPC.

21. In this case, we have not found a single material either from the oral evidence or the documentary evidence to come to a remote conclusion that these appellants have discharged the burden.
22. So far as the delay in sending the FIR to the Court is concerned, we find that the same is immaterial and has no bearing on the facts of this case. What prejudice caused to the appellants has not been shown by them and the delay is only of two days which is not of much importance especially when there is no allegation of any tampering etc.
23. Considering the age of appellant no.2 (father in law) and appellant No.3 (mother in law) i.e. about 69 years and 53 years respectively at present and also considering that the minimum sentence which can be imposed as 7 years in terms of Section 304 Part B IPC, we modify the sentence of the appellant nos.2 and 3 to the extent that they should serve a sentence for seven years of RI and since they are on bail, as such, their bail stands cancelled.
24. Accordingly, appellant no.2 and 3 are directed to surrender immediately and if they fail to do so, learned Trial Court will take proper action in accordance with law. So far as appellant no.1 is concerned, it has been informed that he has already served sentence, as such, no order is required to be passed upon the appellant no.1 on the point of sentence. The order of sentence by the learned Trial Court is affirmed so far as appellant no.1 is concerned.
25. The instant Criminal Appeal (DB) stands dismissed only with modification on the point of sentence with regard to appellant nos.2 and 3.

Pending I.A(s), if any, stands dismissed.

Let L.C.R. along with a copy of this judgment be sent to the court concerned at once.

(Ananda Sen, J.)

(Gautam Kumar Choudhary, J.)

Jharkhand High Court, Ranchi
Dated 25.09.2024.
sandeep/pawan