

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Criminal Appeal (DB) No. 2162 of 2017

[Against the Judgment of conviction dated 14.09.2017 and order of sentence dated 22.9.2017 passed by the learned Sessions Judge, Ramgarh in Sessions Trial No. 44 of 2016].

Sameer Kumar Singh @ Samir, son of Subhash Chandra Singh @ Subhash Singh, resident of village Bangla Toli, P.O and P.S. Ramgarh, District- Ramgarh, JharkhandAPPELLANT

Versus

The State of JharkhandRESPONDENT

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For the Appellant : M/s Rahul Dev and Pinky Shaw, Advocates.

For the State : Mr. Vishwanath Roy, A.P.P.

For the Informant : Mr. Rajesh Lala, Advocate.

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P R E S E N T

**SRI ANANDA SEN, J.
SRI GAUTAM KUMAR CHOUDHARY, J.**

J U D G M E N T

Dated: 16.10.2024

By Court:

I.A. No. 3747 of 2023

The instant Cr. Appeal has been taken up today for final hearing. Accordingly, this interlocutory application, filed under Section 389(i) Cr.P.C., stands dismissed.

Cr. Appeal (DB) No. 2162 of 2017

This criminal appeal is directed against the Judgment of conviction dated 14.09.2017 and order of sentence dated 22.09.2017 passed by the learned Sessions Judge, Ramgarh in Sessions Trial Case No. 44 of 2016, whereby and whereunder, the appellant having been found guilty of charge under Section 304B of Indian Penal Code and has been convicted and sentenced to undergo rigorous imprisonment for life.

2. Learned counsel for the appellant submits that since the conviction is under Section 304B IPC, the onus is heavily upon the prosecution to establish the fact that the deceased died unnatural

death or by burn injury within seven years of marriage and there was demand of dowry and torture related to such demand soon before the death. He further submits that though it has been established that the deceased died within seven years of marriage and the death was due to burn injury, but the prosecution has not been able to establish the fact that soon before the death, the deceased was subjected to torture on the ground of demand of dowry. He also submits that since there is no material to prove the aforesaid fact, the appellant is liable to be acquitted.

3. Learned counsel appearing on behalf of the State assisted by the counsel for the informant submits that the marriage of the deceased had taken place some time in the year 2012 and the deceased died on 30.10.2015, which is within seven years from the date of marriage. Admittedly she died of burn injury and all the family members have deposed that there was demand of LCD and Rs.50,000/- They submit that the prosecution has been able to prove all the ingredients, which constitute the offence under Section 304B IPC and the appellant has not discharged the onus of reverse burden, thus the conviction of this appellant needs to be sustained.

4. In this case, the FIR is at the instance of PW-3 (uncle of the deceased), who stated that the deceased was married with this appellant in the year 2012 and was residing in Bangali Tola, Ramgarh and gifts and presents were given during the marriage. After the deceased went to her in-laws' house, she was maintained properly for sometime, thereafter her husband, mother in-law and father-in-law used to torture her and they always used to demand LCD and Rs.50,000/. The informant received information that few days back she was assaulted and tortured and there was demand of LCD, fridge and Rs.50,000/. Thereafter, they got information that on 30.10.2015 the deceased had sustained burn injury.

On the basis of aforesaid information, Ramgarh P.S. Case No. 406 of 2015 was registered. After investigation, the police submitted chargesheet against this appellant under Section 304-B IPC. Thereafter the charge has been framed against this appellant

under Section 304B IPC and alternative charge has also been framed under Section 302/34 IPC. Since the appellant pleaded not guilty, he was put on trial.

5. The prosecution in order to prove its case has examined ten witnesses, who are as follows:-

P.W.1- Parban Rai,
P.W.2- Subrato Kumar Singh,
P.W.3- Manohar Singh (the informant),
P.W.4- Dr.Mahendra Pd. Choudhary,
P.W.5- Maniram Singh,
P.W.6- Sanjay Kumar (I.O. of this case)
P.W.7- Madan Kumar Singh,
P.W.8- Dinanath Singh,
P.W.9- Madhu Singh @ Jadu Singh, and
P.W.,10- Sapan Singh.

Some documents were also exhibited in this case.

6. The trial Court, after considering the oral and documentary evidence, convicted the appellant for committing the offence under Section 304B IPC and not under Section 302 IPC.

7. We have gone through the evidence, led by the prosecution. P.Ws.-9 and 10 have been declared hostile. P.W-7 and 8 are the neighbours, who whispered nothing about the dispute or the demand of dowry. P.W-7 only deposed that there was some intermediary dispute going on between the appellant and the deceased. Thus from the evidence of these witnesses i.e. P.Ws. 7, 8 , 9 and 10, we could not find any material to suggest that there was demand of dowry and torture was perpetrated due to such demand.

P.W. 1 (cousin of the deceased) stated that after one year of marriage, the in-laws of the deceased started demanding LCD and Rs.50,000/- and due to non-fulfillment of the same, the deceased was tortured. Manohar Singh, who is uncle of the deceased came and took her back to his house, when this appellant also reached and the family members told this appellant that their demand will be fulfilled. The appellant thereafter had taken the deceased along with him. Two days thereafter, he would come to know that the deceased died.

P.W.2 (cousin of the deceased) stated that the marriage of the

deceased along with this appellant was solemnized in the year 2012 and he stated that there was demand of Rs.50,000/-, LCD and Freeze as dowry. From paragraph- 4 of the deposition of this witness, we find that the said demand was made after six month of the marriage and when the deceased came to the house of her parents along with her husband, this witness and others made this appellant understand and sent the deceased back to her in-laws house and after 15 days, this incident had occurred. This statement of paragraph 4 is not consistent with the prosecution case as the marriage had taken place in the year 2012 and if the demand is made after six month, and she was made to go back to her matrimonial house, the same happened sometime in the year 2012 or 2013, but surprisingly the death had occurred in the year 2015. In the statement of the witness, we could not find material to conclude that "soon before the death", there was demand for dowry and there was torture for non-fulfillment of such demand.

P.W.3 (the uncle of the deceased) also stated that the demand was made which was of LCD, *Almirrah* and Rs.50,000/-, but as they could not fulfill the demand, the behaviour of in-laws of the deceased was not good with the deceased and she was assaulted. From his entire evidence, we could not get any material which would suggest that soon before the death, there was any demand or torture.

P.W.5 is the father of the deceased. From his evidence also, we find that through he stated that demand was being made that too, for Rs.50,000/-,LCD and Freeze, but that was after the expiry of six months of the marriage. In para 9, he stated that after the marriage, at least 20 to 25 times, he visited the in-laws' house of his daughter, and the daughter had visited his house at least 10 times and the husband also used to accompany his daughter and used to reside for 10-12 days and that time, they used to reside together. There was no animosity between the couple and only when the appellant came under the influence of liquor, he used to create some problem. Thus from his evidence we could not get any material that "soon before death", there was demand of dowry and there was torture for non-

fulfillment of the demand.

8. Thus from testimony of all the witnesses, we find that the prosecution has not been able to substantiate the fact that soon before death there was demand of dowry and the deceased was subjected to torture due to non-fulfillment of the same.

9. From the evidences adduced, we find that the deceased died due to burn injury, which is evident from the statement of PW-4, who is the doctor and also the postmortem report, which is exhibit-3. The doctor found extensive burn injury. Further, we find from the evidence that the marriage had taken place in the year 2012 and the death of the deceased had occurred in the year 2015 due to unnatural circumstance i.e burn injury.

10. Section 304-B of the Indian Penal Code reads as follows:-

304B.-Dowry death- 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.

i) *Explanation- For the purpose of this sub-section, 'dowry' shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961(28 of 1961).*

ii) *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.*

11. As per the aforesaid provision of law, the prosecution has first to establish the following facts.

i) *The death is caused by burn or bodily injury or occurs otherwise than under normal circumstance,*

ii) *Death occurred within seven years of her marriage, and*

iii) *It has to be shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry.*

12. In this case, we find that the prosecution though has been able to establish two of the ingredients that is death within seven years of marriage and the death was caused by burn injury, but has not been able to substantiate the fact that soon before the death,

there was any demand of dowry and there was torture soon before the death for non-fulfillment of the demand.

13. All the aforesaid three ingredients should be established and be present simultaneously. Absence of anyone of the ingredients will demolish the prosecution case. In this case, as we find that the prosecution has not been able to substantiate that "soon before the death" there was demand of dowry and there was torture for non-fulfillment of such demand.

14. In that view, we are of the opinion that conviction of this appellant under Section 304-B IPC cannot be sustained. Accordingly, the Judgment of conviction dated 14.09.2017 and order of sentence dated 22.09.2017 passed by the learned Sessions Judge, Ramgarh in Sessions Trial Case No. 44 of 2016 is **set aside**. This Court directs the above named appellant to be released forthwith from custody, if not required in any other case. Accordingly, this Criminal Appeal is **allowed**.

15. Let the Trial Court Records be sent back to the Court concerned forthwith, along with a copy of this judgment.

(ANANDA SEN, J.)

(GAUTAM KUMAR CHOUDHARY, J.)

Jharkhand High Court, Ranchi.
Dated: the 16th October, 2024.
NAFR/Anu-Abha/Cp.-3.