

(2014) 01 JH CK 0091

Jharkhand High Court

Case No: Cr. Appeal (DB) No. 517 of 2003

Arun Soni

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Jan. 23, 2014**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 161, 313
- Evidence Act, 1872 - Section 113B
- Penal Code, 1860 (IPC) - Section 201, 304B, 304B, 498A

Citation: (2015) 1 DMC 540 : (2014) 3 JLR 646**Hon'ble Judges:** Prashant Kumar, J; Amitav Kumar Gupta, J**Bench:** Division Bench**Advocate:** Arbind Kumar Sinha, Advocate for the Appellant; Krishna Shankar, Advocate for the Respondent

Judgement

Amitav Kumar Gupta, J.

The present appeal is directed against the judgment of conviction and order of sentence dated 5.3.2003 and 6.3.2003, passed in Sessions Trial No. 97/2000, by Addl. District & Sessions Judge, Fast Track Court (F.T.C.), III, Garhwa whereby the appellant has been convicted for the offence under Section 304-B of the Indian Penal Code (for short I.P.C.) and 498-A IPC and sentenced to undergo imprisonment for 12 years and 2 years respectively and both the sentences are to run concurrently. The prosecution case as per the written report of informant, Krishna Pd. Soni (P.W. 9) is that his daughter Anita Soni, was married to Arun Kumar Soni on 23.5.1998. That at the time of marriage, as per his capacity he had given money and articles. It is alleged that after marriage, his son-in-law was repeatedly demanding a scooter and due to non-fulfilment of the demand, his son-in-law used to assault and threaten his daughter that if his demand for scooter was not fulfilled, he would set her on fire. It is alleged that his daughter was not provided with proper food/meals and the mother of Arun Soni, elder brother Krishna Soni, Manju Devi-wife of Krishna Soni

and Arun Soni after killing his daughter had sprinkled acid on her and cremated the dead body of his daughter before his arrival.

2. On the basis of the typed written report dated 26.10.1999, Garhwa P.S. Case No. 175 of 1999 was registered under Sections 498-A/ 304-B/ 201 I.P.C. After completion of investigation, charge-sheet was laid whereupon cognizance was taken and the case was committed to the Court of Sessions for trial. Charges were framed against all the four accused to which they pleaded not guilty and they were put to trial.

3. The prosecution has examined altogether 11 witnesses viz. P.W. 1-Ram Brikash Das, P.W. 2-Lakhan Pd. Soni, P.W. 3-Tapasi Ram, P.W. 4-Ram Narayan Singh, P.W. 5-Ashok Ram, P.W. 6-Uday Pd. Soni, P.W. 7-Narendra Das, P.W. 8-Durga Devi (mother of the deceased and wife of the informant), P.W. 9-Krishna Pd. Soni, the informant, P.W. 10-Bishwanath Pd. Soni (father of the informant), P.W. 11-Raj Ballabh Paswan.

The documents exhibited by the prosecution are:- the written report-Ext.-2, F.I.R-Ext.-3 and the forensic laboratory reports-Exts.-4 and 4/1. On closure of the prosecution case, statement of the accused was recorded under Section 313 Cr.P.C. and the defence is of complete denial.

In defence, the accused has examined Narayan Soni as D.W. 1.

On consideration of the evidence on record, the trial Court convicted the appellant Arun Soni by the aforesaid impugned judgment and acquitted the other three accused persons.

4. Learned counsel for the appellant while assailing the impugned judgment has submitted that none of the independent witnesses have supported the prosecution case. The learned court failed to appreciate that P.Ws. 8, 9 and 10 are highly interested witnesses as they are the mother, father and grandfather of the deceased. That the trial Court ought to have considered that P.Ws. 8, 9 and 10 had participated in the cremation. That independent witnesses have stated that the deceased died an accidental death due to burn injuries sustained while cooking food. That the learned Judge has convicted the appellant merely on the ground that the deceased died within 7 years of marriage and drew the presumption under Section 113-B of the Evidence Act that it was a case of dowry death. The trial Court has failed to consider the glaring material contradictions in the testimony of P.Ws. 8, 9 and 10.

It is contended that there is no material evidence to establish the charges against the appellant, accordingly, the impugned judgment is fit to be set aside.

5. Per contra, the learned A.P.P. for the State has argued that the marriage was solemnized in 1998 and the deceased died an unnatural death in 1999. That P.Ws. 8, 9 and 10 have testified that the appellant was demanding a scooter and due to nonfulfillment of the demand, the deceased was harassed and subjected to cruelty and killed by the appellant. That the appellant did not inform the informant and his

family members regarding the death of the deceased and had hurriedly cremated the dead body. That the trial Court after considering and appreciating the evidence has rightly convicted the appellant. The impugned judgment require no interference and the appeal is fit to be dismissed.

6. For appreciation of the submissions of the learned counsel it would be necessary to refer to the provisions of Section 304-B IPC, as under:--

"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 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment 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."

From plain reading of the provisions it is evident that for attracting the provisions of Section 304-B IPC it has to be established that the death occurred within 7 years of marriage otherwise than in normal circumstances and soon before the wife's death the deceased was subjected to harassment and cruelty in connection with demand for dowry.

7. In the case at hand it is not disputed that the marriage was solemnized in 1998 and the wife died in 1999 i.e. within seven years of marriage.

8. The prosecution has relied on the evidence of P.Ws. 8, 9 and 10 i.e. mother, father (informant) and grandfather of the deceased in support of its case. P.W. 8 has deposed that her daughter was married to Arun Soni 5-6 years back and the appellant along with his brother and mother had set fire to her daughter and killed her. That without informing her and her family members they had cremated the dead body of her daughter. P.W. 8's testimony is that the appellant and his elder brother were demanding a vehicle. That she learnt on 5th November regarding the occurrence and she along with P.Ws. 9 and 10 reached the nuptial house of her daughter where she saw the women of the house cleaning bloodstains. She testified that prior to the occurrence, her daughter had come to her parental home and had told her that inmates of her marital house were asking her to get the vehicle or else they would set her on fire.

In cross-examination she has stated that the information regarding her daughter's death was conveyed by telephone on 5th November at 7 p.m. That her niece i.e. husband's elder brother's daughter was married to P.W.-6. On information they had come to the house of the appellant at 6 a.m. but the appellant was not present. She cannot say whether P.Ws. 9 and 10 had met the appellant. In para 8 of her cross-examination, she has stated that initially her daughter did not make any complaints against the accused. That the Bidai was done in a cordial and happy atmosphere after 6 months of marriage and the appellant had also come for the Bidai. After the Bidai her daughter had told her about the demand for vehicle. Her

son-in-law had come after a month and stayed for about a week whereafter her daughter went and never returned. In para 9 she has stated that her son-in-law had threatened her daughter and at the same time she has stated that her son-in-law had asked for the vehicle from her in a light hearted manner. In para 10 she has admitted that she did not tell anyone about the demand of dowry and stated about the dowry demand for the first time to the police. In para 12 she admitted that she did not make an enquiry from the villagers as to how her daughter had died. That for the first time she had gone to her daughter's sasural on death of her daughter. In para 15 she has stated that she had stayed in the house of Uday Soni i.e. P.W. 6 for 2-3 days. P.W. 8's attention has been drawn to her statement under Section 161 Cr.P.C. made before the police and the contradictions in the statement of P.W. 8 has been drawn from P.W. 11, the Investigating Officer.

9. P.W. 9, the father of the deceased has testified that the appellant was demanding a scooter but the said demand could not be fulfilled and after one year of the marriage, they killed his daughter. That he received the information regarding the death of his daughter from other source. That his daughter had told him that the accused persons used to assault her and did not provide her enough food and were demanding a vehicle.

It is noticed that P.W. 8 has not testified regarding the assault or not being provided enough food by the appellant and the testimony of P.W. 9 is contrary to the testimony of P.W. 8.

In cross-examination, P.W. 9 has admitted that he had got the written information typed in the court. He stated that the demand for dowry was made 2-3 months after the marriage but P.W. 8, on the contrary has stated that the appellant had taken the Bidai after six months and the Bidai was done in a cordial and happy manner. P.W. 9 has further stated that he had received the information at 8 pm and his brother's son-in-law i.e. P.W. 6 had given a phone call to a person in his mohalla (neighborhood) but he cannot remember the name of that person. P.W. 9 in his cross-examination, has stated that when he reached the appellant's village and he had met him and Krishna on the road but they did not tell him anything, neither did they tell him that his daughter had died on account of epilepsy. He has deposed that the people of the locality were also present but he cannot recall their names. He cannot recall the names of the persons who told him that his daughter was murdered. That he had gone to the police and the police asked him to submit a written report so he had gone to the court and had got the information report typed. Suggestions have been given to P.W. 9 that his daughter died on account of epilepsy and he had also participated in the cremation.

10. P.W. 10 has deposed that Anita was killed within six months of the marriage for non-fulfilment of the demand of a vehicle. That Krishna the elder brother of the appellant Arun Soni had assaulted with tangi and appellant-Arun Soni had cut her legs and Manju had assaulted with kicks. Thereafter they had sprinkled acid and put

the dead body in a gunny bag and set fire to the dead body.

Admittedly P.W. 10 has come out with a new story which is not corroborated by the F.I.R neither testimonies of P.W. 8 or 9. In cross-examination he has admitted that P.W. 6 had informed on phone at night and asked them to come quickly as Anita had died.

P.W. 10 deposed that information was received on 5.11.1999 at 7 pm and he along with P.Ws. 8, 9 had reached the "sasural" (nuptial home) of Anita and asked the appellant where his daughter was and thereafter brought the appellant beating him all the way to the police station but this fact is not corroborated by P.Ws. 8 and 9.

P.W. 10 in para 8 has testified that 1 or 2 persons had told him that Anita was murdered and was cremated at night. He has deposed that Anita had gone to her parental house 2-3 times after marriage and had disclosed that the appellant, on the coaxing of his brother, was always demanding for a vehicle. On the first occasion she spoke of the demand in a friendly manner, next time she said the appellant was insistently demanding for a vehicle. That he did not have any talks with the appellant regarding the demand neither he talked on the subject with any other persons and for the first time he disclosed regarding the demand at the police station. Suggestions have been given to P.W. 10 and that he was informed by the accused over the phone and he had come and with his consent the dead body was cremated.

11. P.W. 11 is the Investigating Officer and he has stated that he had seized a bloodstained tangi and a piece of burnt cloth and pieces of red colour broken bangle from the place of occurrence. That he had also seized ash and pieces of bone from the second place of occurrence. That the said seized articles were sent to the forensic lab and the forensic report are Exts.-4 and 4/1. P.W. 11's attention has been drawn to the contradictions in statement of P.W. 8 and he has admitted that P.W. 8 did not state that the deceased had told her that the people of her sasural were telling her that if she did not bring the vehicle, they would set her on fire. That P.W.-8 has also not stated about the killing of the deceased for the demand of scooter and by sprinkling of acid on the deceased.

12. As per the forensic report (Ext.-4) blood stains were not found on the balua. The forensic report falsifies the statement of P.W. 11 that he had seized bloodstained tangi.

On perusal of Ext. -4/1, the expert has opined that the glass bottle contained Hydrochloric acid which is used for different purpose.

It is relevant to notice that neither P.Ws. 8, 9, 10 or any independent witnesses have deposed that P.W. 11 had seized any bottle containing liquid or axe neither the seizure list has been brought on record by P.W. 11 nor seizure list witnesses have been examined by the prosecution.

In such state of affairs the inference can be drawn that the Investigating Officer has tried to build up a case by bringing evidence regarding seizure of articles to suit the story of the prosecution.

It is evident that P.Ws. 8, 9 and 10 have not stated about seizure of any of the alleged articles from the place of occurrence. P.Ws. 8 and 10 have testified that Uday Soni gave information on the phone and Uday Soni is married to the niece of the elder brother of the informant (P.W. 9). As noticed and discussed above P.W. 9 has given evasive reply by stating that he does not remember the name of the person who had informed him regarding the death of his daughter. P.W. 6 Udai Shankar Soni, has not supported the case of the prosecution and he has been declared hostile.

13. P.Ws. 1, 2, 3 and 4 are the neighbours and co-villagers of the appellant and they have not stated about the demand of dowry or torture of the deceased by the appellant. They have been declared hostile. P.Ws. 1, 2, 3 and 4 have stated that the deceased died an accidental death due to burn injuries while cooking.

14. On scrutiny and analysis of testimony of P.Ws. 8, 9 and 10 it is clear that their testimonies are inconsistent regarding the period or the month as to when the appellant made the demand of a scooter. The mother i.e. P.W. 8 has stated that there was good relationship and after 6 months Bidai was taken by the appellant in a happy and cordial ambience. That there was no complaint by her daughter earlier. It is admitted by P.Ws. 8 and 10 and the informant that they had not disclosed about the demand for a vehicle made by the appellant to any one. Suggestions have been given to P.Ws. 9 and 10 that they had participated in the cremation of the deceased and the information of death was given by the accused persons. P.W. 9, as evidenced above, has admitted that he had come with P.Ws. 8 and 10 on the next morning to the sasural of his daughter where he had met the appellant and his brother and other villagers. In the given circumstances, the possibility that P.W. 9 had participated in the cremation can not be ruled out. The probability is that he lodged the written report after deliberation/consultation as he has admitted that on the advise of the police he had gone to the court and got the written report typed which he submitted to the police.

15. Looking to the evidence on record it is not disputed that the deceased died after one year of her marriage and she died otherwise than under normal circumstances. But the prosecution has not been able to cogently establish that the appellant had subjected the deceased to cruelty or harassment soon before her death in connection with demand of dowry. It is apparent that there are inconsistencies and infirmities in the testimony of P.Ws. 8, 9 and 10 regarding the period of demand of a vehicle as dowry.

It is manifest from the deposition of P.Ws. 8, 9 and 10 that they had never disclosed to anyone regarding the demand of a vehicle or scooter by the appellant prior to the

occurrence. It is admitted by them that they stated about the demand for the first time before the police. It is against the normal conduct of parents specially when the deceased had told them that the accused were threatening to set her on fire in case their demand for a vehicle was not fulfilled. In such a situation the normal course would have been to make the accused persons understand that they were not financially capable to fulfil the demands or they would have convened a panchayati for settling the differences or resolving the matter.

It is also evidenced that P.W. 9 has not stated about the proximity of the time when the deceased was subjected to harassment and cruelty for non-fulfilment of the demand and his testimony is not corroborated by P.W. 8 on the point of assault and harassment by the appellant for non-fulfilment of the demand of vehicle.

In fact there is embellishment and improvement in the testimonies of P.Ws. 8, 9 and 10 and the contradictions in their depositions in court vis-à-vis the statement under Section 161 Cr.P.C. is drawn from the testimony of P.W. 11, the Investigating Officer.

16. It is settled proposition of law that to attract the provisions of Section 304B, the prosecution has to establish:--

- (i) that the death had occurred due to burns or bodily injuries or otherwise than under normal circumstances within 7 years of the marriage;
- (ii) that soon before the death the wife was subjected to cruelty or harassment by her husband or his relatives;
- (iii) that such cruelty or harassment was for or in connection with the demand of dowry.

In this connection it will be pertinent to refer to the decision in the case of [Gurdeep Singh Vs. State of Punjab and Others](#), wherein the Apex Court has held, while delineating the above legal proposition, that even if one of the ingredients as aforesaid is not made out, the presumption under Section 113-B of the Evidence Act would not be available to the prosecution and the onus would not shift to the defence.

17. Admittedly under Section 304-B, there is mandatory presumption on the guilty conduct of an accused. In order to presume the dowry death the onus to show that the essential ingredients of offence is established lies on the prosecution, in other words, it is a condition precedent that there must be unimpeachable evidence relating to dowry demand. In the event of establishment of the ingredients then only there is a shift of burden of proof on the defence in terms of Section 113-B.

It is settled proposition of law that Section 304-B of the I.P.C. permits presumption of law only in a given set of facts and not presumption of fact. Fact has to be proved and then only, law will be presumed on the basis of the established/proved facts.

18. On evaluation of the evidence adduced as noticed above, it is clear that P.W. 8, who is the mother of the deceased, has categorically stated that initially there was no complaint by the deceased, meaning thereby that there was good relationship between the appellant-husband and the deceased-wife. P.W. 8 has testified that the appellant had taken the second bidagiri after six months and the bidagiri was done in a happy and cordial ambience. Thus, the testimony of P.W. 9, that demand of dowry was made 2-3 months after the marriage does not find corroboration from the testimony of P.W. 8.

19. P.W. 10's testimony is rather contrary to the case of the prosecution and does not find corroboration from the testimony of P.Ws. 8 and 9 as he has stated about the death of the deceased within six months of marriage, which is not the case of the prosecution.

20. It is admitted by P.Ws. 8 and 10 that the information regarding the death of the deceased was given on the information given by P.W. 6 on telephone but, P.W. 9, for reasons best known, has given evasive reply by not naming the person who informed him regarding the death of his daughter whereas it is admitted by P.Ws. 8, 9 and 10 that P.W. 9's elder brother's daughter is married to P.W. 6 which shows that P.W. 9 has not come out clean with the actual state of affairs. To reiterate, P.W. 9 has admitted in his cross-examination that he had met the appellant and his elder brother and people of the locality were also present but he cannot recall or remember the names of the persons who had disclosed to him that his daughter had been murdered. The conduct of P.W. 9 is not above board.

21. It is admitted by P.Ws. 8, 9 and 10 that they had received information regarding death of the deceased. They have not stated that they had received information that the deceased was killed or murdered. P.W. 6 is related to the informant and he had given information regarding the death of the informant's daughter. Had there been any foul play regarding the death of the deceased, he would have clearly mentioned regarding such incriminating fact on the telephone. As noticed P.W. 6 has not supported the prosecution's case.

22. P.W. 11, the Investigating Officer, as discussed above, had seized the articles which has not been testified by any witnesses. It appears that P.W. 11 has developed a story to suit the case of the prosecution which is not corroborated by P.Ws. 8 and 9.

23. Thus, in view of the emergent factual scenario of the present case coupled with settled proposition of law, as discussed above, it is held that the prosecution has not been able to lead or bring on record any cogent or clinching evidence to establish the fact that the deceased was subjected to harassment and cruelty by the appellant, in connection with any demand for dowry soon before her death. The prosecution has not been able to establish the required ingredients for attracting the provisions of Sections 304-B and 498-A I.P.C. against the accused. Thus, in the

absence of any evidence that there was a demand of dowry or the deceased was subjected to cruelty or harassment in connection to dowry, the presumption under Section 113-B of Evidence Act cannot be drawn. On the contrary, from the testimony of independent witnesses, though declared hostile, the probability is that the deceased died an accidental death, cannot be ruled out and suggestion has been given to P.Ws. 9 and 10 to this effect.

24. Accordingly, we hold the appellant-Arun Soni not guilty of the aforesaid charges. Consequently, the impugned judgment of conviction and order of sentence passed by the learned Addl. District and Sessions Judge, FTC-III, Garhwa is hereby set aside. The appellant-Arun Soni, who has remained in custody for more than ten years, is hereby directed to be released forthwith, if not wanted in any other case. The appeal is hereby allowed.