

Sanjay Singh and ors. Vs. State of Bihar

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Court : Patna

Decided On : Jul-22-2004

Judge : Aftab Alam and Bal Krishna Jha, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 201 and 304B; [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Crl. Appeal Nos. 567 and 588 of 2000(DB)

Appellant : Sanjay Singh and ors.

Respondent : State of Bihar

Advocate for Def. : Ganesh Prasad Jaiswal, A.P.P.

Advocate for Pet/Ap. : Anjana Prakash and Rama Nand Poddar, Advs.

Judgement :

B.K. Jha, J.

1. Both the appeals are directed against the judgment and order passed on 28/29th September, 2000 by the then learned Additional Sessions Judge-II, Katihar in Sessions Trial No. 144 of 1997, so they were heard together and are being disposed of by this common judgment.

2. The appellants-Ramchandra Singh, Birendra Singh, Harendra Singh and Jitendra Singh-in Criminal Appeal No. 588 of 2000 (DB) have been convicted under Section 304B of the Indian Penal Code and sentenced to R.I. for life. The appellants-Sanjay Singh, Suresh Singh, Parwati Devi @ Panwati Devi and Shila Devi @ Shabnam Devi-in Criminal Appeal No. 567 of 2000 (DB) have been convicted under Section 304B of the Indian Penal Code and sentenced to R.I. for seven years. All the eight appellants have further been convicted under Section 201 of the Indian Penal Code and sentenced to R.I. for two years. The sentences awarded to them, however, have been ordered to run concurrently.

3. Briefly, the facts of the case are that Anita Kumari, the sister of the informant, Raj Kumar Singh, P. W. 9, was married with the accused Birendra Singh, son of Ramchandra Singh of Village Sirsa, P.S. Mufassil, District Katihar on 3.5.1995 and according to the capacity the prosecution party had given gifts to the accused persons. On 17.1.1996 Duragaman of Anita was performed and thereafter she started living in her Sasural house at Village Sirsa. Anita Kumari used to inform through letters that her in-laws, husband and dewars were demanding cash of Rs. 50,000/- besides golden chain in dowry and were subjecting her to cruelty on account of non-fulfilment of their demand. They also threatened to desert her in case of non-fulfilment of their demand. Thereafter when Vishwanath Singh, the father of the informant, went to Sirsa to see Anita Kumari, he was not allowed to meet her by her in-laws, elder gotani and others. They also disclosed that only after fulfilment of their dowry demand they would allow him to see her but due to critical financial position their demand could not be fulfilled by the prosecution side. The further case of the prosecution is that on 2.3.1997 the informant was informed by a person of Sirsa village that on 28.2.1997 his sister was murdered and her dead body was disposed of secretly by her husband, Birendra Singh, in-laws, Ramchandra Singh and Parwati Devi @ Panwati Devi, dewars, Harendra Singh and Jitendra Singh and elder gotani, Shila Devi @ Shabnam Devi. On receipt of information he sent intimation to his maternal uncle and neighbours about it. On the same day, i.e., 2.3.1997 at 1.00 p.m. he proceeded for Katihar on a jeep and arrived Sirsa Village at 11 p.m. He stayed in the night at the residence of his relative, Ram Pravesh Singh and made inquiry secretly about the incidence. He learnt that his sister was murdered by the accused, Birendra Singh, Harendra

Singh, Jitendra Singh, Ramchandra Singh, Shila Devi @ Shabnam Devi, Panwati Devi (c) Parwati Devi, Suresh Singh and Sanjay Singh and concealed her dead body somewhere in the river. He also learnt that in the night of 28.2.1997 at about 11 p.m. all the male six accused persons had gone to Sirsa Military Farm with something tied on bamboo and on being enquired by Guard he was threatened by them.

4. On 3.3.1997 at about 10 a.m. the informant, Raj Kumar Singh, son of Vishwanath Singh of Village Majhauilya, P.S. Sakra, District Muzaffarpur along with his mother, Pushpanjali Lata, P.W. 2 and maternal uncle, Sanjay Kumar, P.W. 4, went to the Katihar (Mufassil) Police Station and lodged Fardbeyan before the S.I., R.N. Roy, O.C. of Katihar (M) Police Station. On the basis of the ardbeyan of the informant (Ext. No. 2), Katihar Town P.S. Case No. 106 of 1997 dated 3.3.1997 was instituted under Sections 304B/201/34 of the Indian Penal Code against the 8 accused persons, namely, Ramchandra Singh, Birendra Singh, Harendra Singh, Jitendra Singh, Shila Devi @ Shabnam Devi, Parwati Devi @ Panwati Devi, Suresh Singh and Sanjay Singh. Police switched over to the investigation of the case in course of which arrested the accused, Ramchandra Singh. On the basis of his confessional statement the dead body of Anita was recovered from a field situated near Medical College. An inquest report was made and dead body of the deceased, Anita was sent for post-mortem examination. On completion of investigation all the eight accused persons were charge-sheeted, tried and convicted in the manner indicated above.

5. The defence case is that Anita died a natural death because of serious chronic ailments and the appellants were not at all involved in the commission of the offence as alleged by the prosecution. Defence examined two witnesses and also adduced documentary evidence in support of it.

6. The prosecution in all examined 11 witnesses. Out of them P.W. 3, Kamal Singh, is an inquest report witness. His evidence is that on hulla he went on the Bank of river and saw the dead body already recovered by the police there. Many persons were also assembled there. His further evidence is that paper was not prepared in his presence but he had signed it at the police station. He proved his

signature on the inquest report (Ext. No. 1). He was declared hostile but nothing material was elicited in his cross-examination. The evidence of P.W. 5, Tetari Devi, P.W. 7, Satyanarain Pandit and P.W. 8, Pyari Devi, is that Anita died of her serious illness. P.W. 7, Satyanarain Pandit and P.W. 8, Pyari Devi, have also stated that after her death she was cremated. They were declared hostile and were put to cross-examination but nothing substantial could surface in their cross-examination either by the prosecution or defence. P.W. 6, Ram Chandra Singh, is a formal witness. He has stated that the dead body of Anita was recovered in his presence. An inquest report was prepared and he put his signature. He proved his signature on the inquest report (Ext. No. 1/1). P.W. 10 is Dr. Dinanath Poddar who held post-mortem examination on the dead body of the deceased Anita. P.W. 11, Ashutosh Charan Gyan is the then officer-in-charge of Katihar (Mufassil) Police Station. He took up the investigation from Sri R.N. Roy, the previous investigating officer, investigated the case and submitted charge-sheet. The remaining witnesses, P.W. 1, Ram Pravesh Singh, P.W. 2, Pushpanjali Lata, P.W. 4, Sanjay Kumar and P.W. 9, Raj Kumar, are the material witnesses in this case. At the same time they are closely related to each other. P.W. 1, Ram Pravesh Singh is Mause, P.W. 2, Pushpanjali Lata is step-mother, P.W. 4, Sanjay Kumar is maternal uncle and P.W. 9, Raj Kumar is the brother of the deceased, Anita. The prosecution failed to examine the investigating officer in this case.

7. The learned Counsel for the appellants contended that P.Ws, 1, 2, 4 and 9 are closely related to the deceased, Anita, so no reliance can be placed on their testimony, their evidence on demand of dowry is of general nature and is materially contradictory to each other. It was further contended that there is no evidence that Anita was subjected to cruelty by the appellants soon before her death or in connection with any demand of dowry to attract the offence under Section 304B of the I.P.C. It was further submitted that the letter (Ext. No. 3) purported to have been sent by the deceased Anita to the prosecution side does not speak of demand of dowry or any demand of Cash of Rs. 50,000/- or complain of cruelty. It was again contended that the prosecution has failed to substantiate all the ingredients required for the application of the offence under Section 304B of the Indian Penal Code, so no presumption can be drawn under Section 113B of the Indian Evidence Act that the appellants had caused the dowry death of Anita. It

was lastly contended that all the circumstances appearing against the appellants were not put to them in their examination under Section 313 of the Cr.P.C, so those circumstances cannot be used against them. The conviction of the appellants is bad in law as well as on facts, so it is fit to be set aside. On behalf of the appellants following cases were referred:

(1) Sharad Birdhichand Sharda v. State of Maharashtra, AIR 1984 SC 1622.

'In this case, it has been held that 'close relatives of victim have tendency to exaggerate or add facts-Court should examine their evidence with great care and caution'. In this case, it has further been held that 'the circumstances not put to accused in examination under Section 313, Cr.P.C. cannot be used against him.'

(2) Binod Kumar Jha and Ors. v. State of Bihar, 2004 (1) PLJR 393:

In this case, it has been held that 'in a case based on only circumstantial evidence chain must be complete to establish the guilt of the accused persons'.

(3) Satvir Singh and Ors. v. State of Punjab and Anr., II (2001) DMC 734 (SC)=VI (2001) SLT 83=IV (2001) CCR 75=AIR 2001 SC 2828 :

In this case, it has been held that 'it is not enough that harassment or cruelty was caused to the woman with a demand for dowry at some time, if Section 304B is to be invoked. But it should have happened 'soon before her death'. The said phrase, 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. If the interval elapsed between the infliction of such harassment or cruelty and her death is wide the Court would be in a position to gauge that in all probabilities the death would not have been the immediate cause of her death. It is hence for the Court to decide, on the facts and circumstances of

each case, whether the said interval in that particular case was sufficient to snuff its cord from the concept 'soon before her death'.

8. On the other hand, learned Counsel for the State, Mr. G.P. Jaiswal, A.P.P. argued that from the evidence of the witnesses and the letter of Anita (Ex. No. 3) the prosecution has established that Anita was being subjected to cruelty or harassment soon before her death by the accused-appellants for not bringing the demanded dowry. The Court below rightly drew presumption against the appellants under Section 113B of the Indian Evidence Act that they committed the dowry death of Anita and the appellants failed to rebut the presumption, so both the appeals are fit to be dismissed.

On behalf of the State following case was referred:

Kans Raj v. State of Punjab and Ors., (2000) 5 SCC 207:

In this case, it has been held that 'in relation to dowry deaths, the circumstances showing the existence of cruelty or harassment to the deceased are not restricted to a particular instance but normally refer to a course of conduct. Such conduct may be spread over a period of time. If the cruelty or harassment or demand for dowry is shown to have persisted, it shall be deemed to be 'soon before death' if any other intervening circumstances showing the non-existence of such treatment is not brought on record, before such alleged treatment and the date of death. It does not, however, mean that such time can be stretched to any period. Proximate and live link between the effect of cruelty based on dowry demand and the consequential death is required to be proved by the prosecution. The demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time which, under the circumstances, be treated as having become stale enough.'

9. Admittedly, the present case is one dowry death case and is covered by Section 304B of the Indian Penal Code. Therefore, before examining the oral evidence I would first like to analyse the legal position in the matter. Section 304B of the I.P.C. lays down that (i) 'where the death of a woman is caused by 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.

(ii) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than 7 years by which may extend to imprisonment for life.

According to Section 2 of the Dowry Prohibition Act, 1961 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-

(a) by one party to marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with marriage of the said parties, but does not include dower or mahr in the case of persons to whom Muslim Personal Law (Shariat) applies.'

Section 113B of the Indian Evidence Act also provides 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 has been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry, the Court shall presume that such person had caused a dowry death.'

Explanation.-For the purposes of this section, 'dowry death' shall have the same meaning as in Section 304-13 of the Indian Penal Code.

If the prosecution succeeds in proving the conditions laid down for the attraction of the offence under Section 304-13 of the Indian Penal Code then the presumption under Section 113B of the Indian Evidence Act will come into play against the

accused. In that situation the onus will shift and the accused will have the chance to reduce the presumption.

10. Now, I turn to examine the evidence on record.

P.W. 1. Ram Pravesh Singh has stated that Anita Devi was married in his village Sirsa. Two or four days after her Duragaman when Anita was passing in the market she met him in front of his house and disclosed that she was being tortured by her Sasural people because of fulfilment of less dowry by her father to them. On 1.3.1997 he learnt from his co-villager, Pyari Devi, P.W. 8 and one Laxman Singh (not examined) that on 28.2.1997 Anita was murdered by her Sasural people and her dead body was disposed of secretly by them. His further evidence is that the officer-in-charge visited the P.O. village in connection with the investigation of the case and arrested the accused, Ramchandra Singh. On the statement of Ramchandra Singh the dead body of Anita was recovered from a field near Medical College. An inquest report was prepared and was signed by the witness, Ram Chandra Singh, P.W. 6 and Kamal Singh P.W. 3. He has further stated that Anita was murdered because of non-fulfilment of dowry demand of cash Rs. 50,000/- and a locket. P.W. 2, Pushpanjali Lata, has stated that after marriage Anita lived in Sasural house for three months and came back to her house at Majhauriya. Anita narrated to her that her husband, Birendra Singh, father-in-law, Ramchandra Singh, gotani, Shila Devi, mother-in-law, Parwati Devi and dewars, Jitendra Singh and Harendra Singh, were demanding a golden locket, cash Rs. 50,000/ and a wrist watch in dowry failing which they threatened to kill her. Anita further narrated that they were also threatening to desert her and perform the second marriage of Birendra Singh in case of non-fulfilment of their demand. After six months Anita was taken back to her Sasural and from there sent a letter confirming about the dowry demand by her Sasural people and her torture by them. She has further stated that on 1.3.1997 one Bhola Singh (not examined) informed about the commission of murder of Anita by her Sasural people. Then she along with her husband, son Raj Kumar, uncle Sitaram Singh, brother Sanjay Kumar and dewar Suresh Singh, went to Sirsa village on 2.3.1997 and learnt from Ram Pravesh Singh, P.W. 1, Laxman Singh (not examined) and Arvind Singh (not examined) about the occurrence. Her further evidence is that on 4.3.1997 police

arrested Ramchandra Singh and on the basis of his statement the naked dead body of Anita was recovered from the ploughed field near T.V. Tower in presence of her husband, son, dewar, uncle and some villagers. She learnt about the recovery of dead body from them, the dead body was first brought at the house of Ram Pravesh Singh and then was taken to the police station. She had seen the dead body at the police station. In cross-examination she has stated that she had noticed the injury on the neck, swelling on the head and sign of lathi on the chest of Anita. Her teeth were also found broken. She has further stated that there was burning sign on the leg of Anita. She has denied the suggestion that Anita was suffering from Polio-Arthritis and she died of the said ailment. P.W. 4, Sanjay Kumar, has stated that 2/3 months after Duragaman of Anita her father approached Sasural people for her Bidagiri but they refused to perform Bidagiri without fulfilment of their dowry demand. Then he and his sister, Pushpanjali Lata, P.W. 2 also approached them for the Bidagiri of Anita but they refused to perform her Bidagiri without fulfilment of their dowry demand. On 2.3.1997 one Bhola Singh informed about the commission of murder of Anita by her husband, father-in-law, mother-in-law, dewars, Harendra and Jitendra and disposal of her dead body secretly by them. He also disclosed about the involvement of three other villagers, Suresh Singh, Lala Singh and Sanjay Singh, in the commission of the offence. He has further deposed that on 4.3.1997 police arrested Ramchandra Singh and on the basis of his statement the dead body of Anita was recovered. The dead body of Anita was identified on the basis of old burning sign on her left leg. P.W. 9, Raj Kumar, the informant has supported the prosecution case and corroborated the evidence of other witnesses. He has stated that he along with others went to the police station and lodged Fardbeyan and was signed by him. His mother and maternal uncle also put their signatures on the Fardbeyan (Ext. No. 2). He has further stated that on account of non-fulfilment of dowry demand of cash Rs. 50,000/- and ornaments his sister was murdered by the accused persons. His sister had also sent letter to his father. He has proved the letter (Ext. No. 3). In cross-examination at para 17 he has stated that Anita was hale and hearty and was never suffering from any illness either before or after marriage.

11. P.W. 10 is Dr. Dinanath Poddar. On 5.3.1997 at 2.30 p.m. he conducted autopsy on the dead body of the deceased, Anita Devi and found the following

ante-mortem injuries on her person:

(1) Bruise over lower part of front of neck 3' 1 1/2'.

(2) Bruise over upper part of chest 5' x 2'.

(3) Face swollen, both eyes were opened. Rt. eye ball protruded out. Tongue swollen and coming out from oral cavity. Both lips were swollen.

According to him rigor mortis was found absent in both upper and lower limbs. The cause of death could not be ascertained and viscera was kept preserved and was handed over to the custodian for needful examination. He proved the postmortem report (Ext. No. 4). According to him above injury indicated a case of strangulation and at the time of post-mortem examination the time elapsed since death was between 3 and 7 days.

12. On the other hand, the defence has also examined two witnesses, Vijay Kumar Singh, D.W. 1 and a lady Dr. Mini Rani, D.W. 2. Besides defence also produced documentary evidence. Ext. A is the letter dated 14.7.1995 sent by P.W. 4, Sanjay Kumar to the deceased, Anita and the accused, Birendra Singh. Exts. B to B/2 are the three medical prescriptions of the treatment of the deceased Anita. D.W. 1, Vijay Kumar Singh, has stated that Anita was suffering from disease. Her finger was bent and the leg was burnt. She was treated in Katihar Medical College Hospital as well as in Nepal by Birendra Singh and other family members. He has further stated that Anita was not in position to move and she died on 28.2.1997. She was buried in a field. He has further stated that she had white spots on her body. In cross-examination his evidence is that there was a burning sign on the leg of Anita. D.W. 2 Dr. Mini Rani, has stated that while she was posted as C.A.S. at Sadar Hospital, Katihar, she treated Anita on 13.2.1996, 12.3.1996 and 8.9.1996. She proved all the three medical prescriptions issued by her (Exts. B, B/1 and B/2). She has further stated that Anita was suffering from pain and vomiting tendency. The evidence of D.W. 2, Dr. Mini Rani, is not indicative of the fact that Anita was suffering from any serious ailment threatening to her life.

13. It is established by the evidence adduced by the prosecution that Anita was married with the accused, Birendra Singh on 3.5.1995. After marriage there was persistent demand of cash besides other articles in dowry and persistently cruelty or harassment was meted out to Anita. The evidence of P.W. 2, Pushpanjali Lata, the step-mother of the deceased, Anita in this regard is that three months after her Duragarnan when Anita came to Naiher she complained to her about the dowry demanded by her husband, Birendra Singh, father-in-law, Ramchandra Singh, gotni, Shila Devi, mother-in-law, Parwati Devi and dewars, Jitendra Singh and Harendra Singh. She also complained about their threatening to desert her, perform second marriage of Birendra Singh and to kill her in case of non-fulfilment of their dowry demand. Her further evidence in this regard is that after six months Anita sent a letter confirming about the dowry demand and her torture by them. The evidence of P.W. 2, Pushpanjali Lata and P.W. 4, Sanjay Kumar is that when they approached them for the Bidagiri of Anita they refused to perform her Bidagiri without fulfilment of their dowry demand. It is also established from the evidence that the death of Anita occurred on 28.2.1997 within seven years of her marriage and this factum of death also finds support from the evidence of D.W. 1, Vijay Kumar Singh. After the death of Anita no information was sent to the prosecution party. Further, it is also established that in course of investigation police arrested the accused-appellant, Ramchandra Singh and on the basis of his statement the dead body of Anita was recovered from a poughed field near Medical College, Katihar. The evidence of P.W. 4, Sanjay Kumar, is that the dead body of Anita was identified on the basis of old burning mark on her leg. The evidence of P.W. 2 in this regard is that there was a burning mark on the leg of Anita since before the occurrence. This also finds support from the evidence of D.W. 1, Vijay Kumar Singh. In such a situation the recovery of dead body of Anita from the alleged place and its identification by the prosecution side cannot be doubted. The evidence of P.W. 2, Pushpanjali Lata is also that she had seen violence on her body. P.W. 10, Dr. Dinanath Poddar, did not give any definite opinion about the cause of the death but according to him the injury found on the dead body of the deceased Anita indicated a case of strangulation. Admittedly, the Investigating Officer did not come to Court and the earlier part of the oral statements of the witnesses recorded by the police under Section 161, Cr.P.C. were not brought on

record to contradict them but on close scrutiny of the evidence I find that no major contradiction appeared in their evidence to discard their testimony.

14. On behalf of the appellants it was strongly contended that all the circumstances appearing against them were not put in their examination under Section 313, Cr.P.C., so those circumstances cannot be used against them.

I find no substance in this submission. At the time of recording their statements under Section 313, Cr.P.C. they were not unaware of substance of accusations and charges against them. They were also examined on the question of motive, so no prejudice was caused to them by not putting all the allied circumstances appearing against them.

15. In this case, there is no evidence to show that the appellants, Sanjay Singh and Suresh Singh, had their hands in the commission of the alleged offence, so they are given benefit of doubt.

16. As regards the remaining six appellants, Ramchandra Singh, Birendra Singh, Harendra Singh, Jitendra Singh, Parwati Devi @ Panwati Devi and Shila Devi @ Shabnam Devi, the prosecution has established that they constantly made dowry demand of cash besides other articles from the prosecution side and subjected Anita to cruelty or harassment for non-fulfilment of their demand. It is also established that Anita died on 28.2.1997 while she was in her Sasural house within seven years of her marriage. The death of Anita on 28.2.1997 cannot be construed to be normal. Thus, the prosecution has succeeded in proving all the ingredients of offence under Section 304B of the Indian Penal Code, so the presumption under Section 113B of the Indian Evidence Act can easily be drawn that the appellants committed dowry death of Anita. The appellants failed to rebut the mandatory provisions under Section 113B of the Indian Evidence Act by ocular and documentary evidence produced by it.

17. In the result, the Criminal Appeal No. 567 of 2000 (DB) is allowed in part. The order of conviction and sentence passed against the appellants, Sanjay Singh and Suresh Singh, are set aside and they are acquitted of the charges framed against them. They are on bail, so they are discharged from the liabilities of their executed

bail bonds.

18. There is no merit in Criminal Appeal No. 588 of 2000 (DB) and it is dismissed. The appellant, Birendra Singh, is in custody. The appellants, Ramchandra Singh, Harendra Singh and Jitendra Singh [in Criminal Appeal No. 588 of 2000 (DB)] and the appellants, Parwati Devi @ Panwati Devi and Shila Devi @ Shabnam Devi [in Criminal Appeal No. 567 of 2000 (DB)] are on bail. Their bail bonds are cancelled with a direction to surrender in the Court below within one month failing which the Court below will take steps for their immediate arrest to serve out the sentences imposed upon them.

Aftab Alam, J.

19. I agree.

Criminal Appeal No. 567/2000 partly allowed and 568/2000 dismissed.

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