

BASISTH NARAYAN YADAV

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v.

KAILASH RAI AND ORS.

(Criminal Appeal Nos. 67-70 of 2009)

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JULY 03, 2015

[PINAKI CHANDRA GHOSE AND
UDAY UMESH LALIT, JJ.]

Penal code, 1860 – s. 304B – Death of married woman – In her matrimonial house – Within 7 years of marriage – Prosecution of 10 accused – Case of one accused abated due to her death during trial – Conviction of the 9 accused by trial court – Acquittal of all the accused by High Court – On appeal, held: Though the prosecution case suffers from many infirmities, yet incriminating circumstances of the case indicate that the deceased was physically assaulted soon before her death – Demand of dowry and harassment on its account was also sufficiently proved – Thus main ingredients of s. 304B have been proved to trigger the presumption u/s. 113B of Evidence Act – The burden of proof shifts on the accused, which they failed to discharge – However, it has not been conclusively proved that all the accused were present in the house at the time of incident – Therefore, 7 of the accused who are not the residents of the house are acquitted – The 2 accused i.e. the husband and father-in-law of the deceased are convicted – Evidence Act, 1872 – s. 113B – Dowry death.

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Partly allowing the appeals, the Court

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HELD: 1.1 Although the case of the prosecution suffers from many infirmities and there has been unexplained reluctance in bringing the relevant witnesses on record, apart from parents of the deceased,

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A the doctor and the Investigating Officer. Even 'T' (witness
to the incident) and the Chowkidar who saw the accused
persons disposing of the body of the deceased, have
also not been examined. Yet the fact that this is the
B case of dowry death, cannot be lost sight of. Even with
the limited evidence brought on record, certain things
have been established. It is undisputed that the deceased
had died during the night of 30.07.1989 due to burn
injuries inside her matrimonial house. When PW-5
C informant arrived at the house on the day of the incident,
the house was deserted except that her sister's dead
body was lying. These two are extremely incriminating
circumstances; as in normal course the dead body would
not have been abandoned like this. Further, there are
D ante-mortem injuries found on the body of the deceased
which shows physical assault. Her knees were tied with
an iron wire even after death. This indicates that the
deceased was not only physically assaulted which
caused her three ribs to fracture, but she was also tied
E up with iron wire so as to make her immobile and
thereafter she was set on fire. [Para 9] [957-C-H]

1.2 The demands of dowry are proved sufficiently
by PW-5, and the letter that the deceased had written to
F PW-5, clearly shows that the demands of dowry were
not only made, but even cruelty in relation to those
demands was committed. The deceased had expressed
in the letter her apprehension of being killed. The
complaint to the Chief Judicial Magistrate under Sections
G 494, 498A of IPC and Sections 3 and 4 of Dowry
Prohibition Act, goes on to further indicate that dowry
related cruelty was committed against the deceased.
[Para 9] [957-H; 958-A-C]

H 1.3 The death of the deceased occurred within a

little over 2 years of the marriage. The three main ingredients of Section 304B of IPC have been proved to trigger the presumption under Section 113B of the Evidence Act, 1872. The death has occurred within 7 years of the marriage due to burn injuries and there were demands of dowry accompanied with the physical and mental cruelty against the deceased, prior to her death. The post-mortem report revealed the physical assault on her, just before her death. Therefore, the burden of proof must shift on the accused persons to explain the death of the deceased. The defence has made a cursory statement that the deceased caught fire from stove while cooking food. There is no explanation as to why the deceased was not taken to hospital or why was the dead body left unattended to in the morning. The entire conduct of the accused persons is very suspicious and non-explanation of the same means that they have not discharged their burden of proof. [Para 9] [958-C-F]

2. There are ten accused persons in this case (one of them i.e. mother-in-law died during the pendency of trial) and it has not been proved conclusively or even sufficiently that all of the accused were present in the house when the deceased died. Three accused who are not the members of this family and they had no reason to be present at the house of husband-accused, when the deceased died due to burn injuries. Similarly the two sisters of husband-accused and their husbands did not use to live in that house and they used to stay in a different village. There is no evidence to the effect that these accused persons were in that house when the incident occurred. Therefore, it is not prudent to attach guilt to them in absence of any such evidence. [Para 10] 958-G; 959-A-C]

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A **3. However the husband-accused and his father**
who were ordinarily residents in the house where the
deceased died of burn injuries, have not offered any
reasonable explanation as to how did the deceased
B suffer the ante-mortem injuries and died due to burn
injuries. In these circumstances, they are guilty for
commission of crime. [Para 11] [959-D-E]

CRIMINAL APPELLATE JURISDICTION: Criminal
Appeal Nos. 67-70 of 2009.

C From the Judgment and Order dated 07.02.2007 in CrI.
Appeal Nos. 396, 405, 407 and 421 of 2003 of the High
Court of Judicature of Patna at Patna, Bihar.

D S. K. Mohanty, Awanish Sinha for the Appellant.

Nagendra Rai, Aakash Kumar, Shashank Saurav (T.
Mahipal), Gopal Singh, Shubhra Rai, Rashmi Srivastava for
the Respondents.

E The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. The present set of
appeals arise out of the common judgment and order dated
7.02.2007 of the High Court of Judicature of Patna in Criminal
F Appeal Nos.396, 405, 407 and 421 of 2003, whereby the
High Court reversed the Trial Courts judgments and acquitted
all the nine accused persons in this case. Earlier the 5th
Additional Sessions Judge, Vaishali at Hajipur, being the Trial
Court in the present matter, had convicted nine accused
G persons for the offence under Section 304-B of the Indian
Penal Code, 1860, and sentenced them to rigorous
imprisonment for ten years.

H 2. Before venturing into the facts of the case it would
be expedient to mention the names of the persons involved

in this case which are as follows:

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Deceased: Raj Banshi Devi

Accused persons:

(i) Ranjeet Rai @ Ranjeet Kumar Rai (husband of the deceased)

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(ii) Janaki Devi (mother-in-law of the deceased - died during the trial of the case)

(iii) Dholan Devi (sister-in-law of the deceased)

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(iv) Yogendra Rai (father-in-law of the deceased)

(v) Kailash Rai (husband of Dholan Devi)

(vi) Deobanti Devi (sister of Ranjeet Rai)

(vii) Ram Shresth Rai (husband of Deobanti Devi)

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(viii) Sarita Kumari (alleged second wife of Ranjeet Rai)

(ix) Bishnudeo Rai (father of Sarita Kumari)

(x) Binda Rai (close relation of Bishnudeo Rai)

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Prosecution witnesses:

(i) Mishri Lal

(ii) Awadhesh Kumar

(iii) Munsilal

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(iv) Mahendra Rai

(v) Basisth Narayan Yadav (brother of the deceased)

3. The facts as per the prosecution story are that Raj Banshi Devi (now deceased) was married to Ranjeet Rai on 28.06.1987. Within 5 months of marriage, the in-laws of the deceased started torturing her and making dowry demands of a Rajdoot Motorcycle and a Television. Allegedly, the deceased was also threatened to be assaulted and killed

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A and she was told that Ranjeet Rai would marry somebody else. The informant Basisth Narayan has stated that whenever he visited the deceased she informed him of the harassment that she suffered at the hands of her in-laws. He took her sister back to her parental home in December
B 1987 on her insistence since she feared of being killed. Later on, learning that Ranjeet Rai was going to marry one Sarita Kumari daughter of Bishnudeo Rai, Basisth Narayan took his sister, now deceased, to her matrimonial home on 24-
C 06-1988. The deceased was allegedly beaten up and turned out of home by her in-laws. She again went to her matrimonial home on 01-07-1988. However, she was again badly assaulted and beaten up for not fulfilling the dowry demands on 17.07.1988. After this incident the deceased had filed a
D complaint before the Chief judicial Magistrate, Vaishali, against the accused persons under Sections 498A, 494 of IPC and Sections 3 and 4 of Dowry Prohibition Act. It is the further case of the prosecution that in October, 1988, the accused persons called Basisth Narayan to their house and made explicit demands of a Rajdoot Motorcycle and a
E Television and threatened him of facing the death of his sister. On 30.07.1989 in the morning, Basisth Narayan (the informant) received the news of his sister's death and he went to her matrimonial house where he found her sister
F died of burn injuries. He filed an FIR and the police conducted investigation thereupon.

4. During the trial, the prosecution produced 5 witnesses out of 11 persons named in the charge-sheet. It appears
G that prosecution missed out to examine either parents of the deceased and curiously, two persons being Bir Bahadur Rai and Chandeshwar Rai, who were cited as prosecution witnesses in the charge-sheet, were produced as Defence Witnesses. If this was not enough to show poor way of
H conducting the prosecution, there is another strikingly

disturbing fact that neither the doctor who conducted post-mortem nor the investigating officer was brought on record as witness. A

5. PW-1 Mishri Lal appears to be a hearsay witness as he says that he was told by one Triloki Sharma that the ten accused persons had beaten up the deceased and set her on fire. Even PW2 Awadhesh Rai says that he had gone to Triloki Sharma's house on the date of incident i.e. 30.07.1989 when Triloki Sharma told him that the accused persons had beaten up the deceased and that she was killed. He further states that he had seen the dead body of the deceased and it had scars all over the body and both the knees were tied up with iron wire. B C

6. The testimony of the informant Basisth Narayan (PW-5) is vital one as he is the brother of the deceased. He has stated that the incident occurred on the night intervening 29.07.1989 and 30.07.1989. He received the information of death of his sister in the morning of 30.07.1989 and went to her place. He found large assemblage of people outside the house. On going inside the house he found the dead body of his sister which was covered with pink colour terrycot saree. On removing the saree he found both her hands were tied with iron wire and flesh of both the hands was reddish while neck also appeared to be tied with something. On enquiring from the crowd assembled outside the house he learnt that the previous night at around 9 PM, all the ten accused persons were making conversations inside the house and even sound of crying was heard. People also told him that in the morning when the accused persons were trying to dispose of the dead body, the village chowkidar had seen them, so they all fled away. He has further testified to the harassment met out with the deceased after her marriage at the hands of the accused persons. He deposed D E F G H

A with respect to the dowry demands which we have already
recorded in the alleged facts from the side of prosecution
and, for the sake of brevity, we are not repeating them. He
has further deposed that 21.06.1988 he had gone to
B Bishnudeo Rai who is the father of Sarita Kumari to whom
Ranjeet Rai was rumored to marry soon. He had requested
Bishnudeo Rai not to let his daughter marry Ranjeet Rai as
it would ruin the life of his sister (now deceased) but it was
dismissed by Bishnudeo Rai. Later he learnt that Ranjeet
C Rai was marrying Sarita Kumari and so he had taken his
sister (now deceased) to her matrimonial house and due to
this reason the marriage was postponed from 24.06.1988 to
27.06.1988. Thereafter, it is alleged that Ranjeet Rai did
marry Sarita Kumari, however, no conclusive proof is brought
D fore to prove this fact.

7. Apart from oral testimony, we find that there is a
letter dated 09.08.1988 written in handwriting of the
deceased and signature of the deceased, to her brother
Basisth Narayan wherein she has expressed her fears of
E being killed by her in-laws if the demands of dowry were not
met. She mentions in that letter about a past incident when
she was given poison in her food but she threw away the
food. This letter was proved by PW-5 as the one that he
F received from his sister. The medical evidence in this case
is the post-mortem report. The post-mortem report reveals
that there are numerous ante mortem injuries. Three ribs in
chest are found fractured by some hard and blunt object
and that there are superficial burn injuries all over the body
G deep at only a small portion of front neck. The cause of
death as per the post-mortem report appears to be shock
due to burn injuries.

8. The defence has not come up with a substantial case
H of its own except claiming that the deceased was not

murdered but she caught fire from a stove while cooking food. The defence has contended various lacunae in the case of the prosecution. They have relied heavily on the non-examination of important witnesses in this case. But besides this, the defence has failed to explain any other circumstance surrounding the death of the deceased or the circumstances after her death.

9. We have analysed the evidence produced in this case. We find that although the case of the prosecution suffers from many infirmities and there has been unexplained reluctance in bringing the relevant witnesses on record, apart from parents of the deceased, the doctor and the Investigating Officer, even Triloki Sharma and the Chowkidar who saw the accused persons disposing of the body of the deceased, have also not been examined. Yet we may not lose sight of the fact that this is the case of dowry death. Even with the limited evidence brought on record certain things have been established. It is undisputed that the deceased had died during the night of 30.07.1989 due to burn injuries inside her matrimonial house. It further appears that when PW-5 informant arrived at the house on the day of the incident, the house was deserted except that her sister's dead body was lying. These two are extremely incriminating circumstances; as in normal course the dead body would not have been abandoned like this. Further, there are ante mortem injuries found on the body of the deceased which shows that there was some physical assault on her before she died. This is further established by the fact that her knees were tied with an iron wire even after death. We find this indicates that the deceased was not only physically assaulted which caused her three ribs to fracture but she was also tied up with iron wire so as to make her immobile and thereafter she was set on fire. The demands of dowry are proved sufficiently by PW-5 and the letter that the

A deceased had written to PW-5, clearly shows that the demands of dowry were not only made but even cruelty in relation to those demands was committed. The deceased had expressed in the letter her apprehension of being killed. The complaint to the Chief Judicial Magistrate under Sections B 494, 498A of IPC and Sections 3 and 4 of Dowry Prohibition Act, goes on to further indicate that dowry related cruelty was committed against the deceased. The deceased was married to accused Ranjeet Rai on 26.06.1987 which means the death of the deceased occurred within a little over 2 C years of the marriage. We find that the three main ingredients of Section 304B of IPC have been proved to trigger the presumption under Section 113B of the Evidence Act, 1872. D The death has occurred within 7 years of the marriage due to burn injuries and there were demands of dowry accompanied with the physical and mental cruelty against the deceased prior to her death. The post-mortem report has revealed the physical assault on her just before her E death. Therefore, we find that the burden of proof must shift on the accused persons to explain the death of the deceased. The defence has made a cursory statement that the deceased caught fire from stove while cooking food. There is no explanation as to why the deceased was not taken to hospital or why was the dead body left unattended to in the F morning. The entire conduct of the accused persons is very suspicious and non-explanation of same means they have not discharged their burden of proof.

10. However, we must focus our attention to the fact G that there are ten accused persons in this case (one of them died during the pendency of trial) and it has not been proved conclusively or even sufficiently that all of the accused were present in the house when the deceased died. Since we are proceeding on a presumption we must be cautious in H attaching the guilt to the accused persons whose presence

itself can be doubted at the place of incident. In the present case, Sarita Kumari, her father Bishnudeo Rai and Binda Rai are not members of this family and they had no reason to be present at the house of Ranjeet Rai when the deceased died due to burn injuries. Similar is the case of Dholan Devi and Deobanti Devi (sisters of Ranjeet Rai) and their husbands Kailash Rai and Ram Shrestha Rai. Those persons did not use to live in the house of Ranjeet Rai and they used to stay in a different village. There is no evidence to the effect that these accused persons were in that house when the incident occurred. Therefore, we do not find it prudent to attach guilt to them in absence of any such evidence.

11. With respect to the other accused persons i.e. Ranjeet Rai and his father Yogendra Rai, who were ordinarily residents in the house where the deceased died of burn injuries, neither of the two accused persons has offered any reasonable explanation as to how did the deceased suffer the ante mortem injuries and died due to burn injuries. In these circumstances, we find the two accused persons, being Ranjeet Rai and Yogendra Rai, as guilty for commission of crime. Accordingly, the judgment and order of the Trial Court, so far as it convicted and sentenced Ranjeet Rai and Yogendra Rai, is restored and the appeals are allowed to this extent. Ranjeet Rai and Yogendra Rai shall be taken into custody forthwith to serve out the sentence.

Kalpana K. Tripathy

Appeals partly allowed.

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