
(2000) 04 PAT CK 0091
In the Patna High Court
Case No : Criminal appeal No. 218 of 1999 (R)

Alam Ansari @ Mohd. Alam Ansari and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 18-04-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2000) 2 BLJR 1554

Hon'ble Judges : A.K. Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

A.K. Prasad, J.—This criminal appeal, at the behest of the five appellants, is directed against the judgment dated 16.7.99 and order dated 19.7.99 in S.T. No. 612/96 passed by Sri R.P. Shrivastava, Addl. Judicial Commissioner, whereby and whereunder they have been convicted u/s 304B read with Section 34, I.P.C. and u/s 498A, I.P.C. and sentenced to R.I. for seven years and two years, respectively thereunder. However, the sentences have been ordered to run concurrently.

2. Briefly put, the prosecution case as made out in the written report lodged by informant Israil Ansari on 19.3.96 is as under:

Shaيدا Khatoon, the sister of the informant was married to appellant Alam Ansari, a resident of village Nagritika tola, within P.S. Ratu (district Ranchi) on 17.1.96. Appellant Saimun Khatoon @ Balkahi and xzmuddin Ansari and her parents-in-law while appellant Shakila @ Git a Khatoon and Babu @ Alam Ansari are the sister and brother, of her husband. On 17.3.96 Jasmuddin Ansari (P.W. 1) went to his Sasural at village Nagri and Saida Khatoon, the deceased at about 9 a.m. at that time she was hale and hearty and did her domestic work as usual till the evening and on the next day he came to know that Saida Khatoon had died and the people of her Sasural were making preparation for her burial

whereupon he returned to his village Jarin Pankhi and gave the same answer to the informant about the death of Saida Kahtoon. And the in-laws of the deceased did not give any information about the death of Saida Khatoon. On being informed by Jasmuddin Ansari the informant accompanied by Abdul Quadir Ansari, Jalaluddin Ansari, Md. Ansari and other villagers rushed to the matrimonial house of his sister and he found that blood and froth were coming out of her mouth and nose. He suspected some foul play and he brought the dead body with the assistance of his villagers to his village home Jari and on inspection red and black marks of assault were found on her dead body. The informant alleged in the written report that the accused-persons were demanding a sum of Rs. 10,000/- as dowry and due to non-fulfilment of the dowry demand the accused-persons had assaulted and poisoned Saida Khatoon to death. He further alleged that the accused-persons used to treat her with cruelty earlier to her death.

On the basis of written report (Ext. 2), the present case came to be instituted, formal FIR (Ext. 5) was drawn up, Shyam Kishore Singh, ASL Ratu P.S. (who is now dead) held inquest over the dead body vide Ext. 6), and sent the dead body for post-mortem examination, the investigation of the case was made over to R.S. Das the then O.C. Nagri O.P., he visited and inspected the place of occurrence and on completion of investigation charge-sheet was laid in Court against the accused-appellant u/s 498A and 304B/34, I.P.C.

3. The case was ultimately committed to the Court of Session by Judicial Magistrate, Ranchi on 9.9.96.

4. The main defence is of innocence, bare denial that the accused-appellants made any demand of dowry or tortured the deceased or had caused her death and of false implication on mere suspicion. The further defence is that the deceased died a natural death on account of diarrhea and vomiting.

5. At the trial, the prosecution examined 8 witnesses in support of its case. They are P.W. 1 Jasmuddin Ansari, P.W. 2 Dr. Saroj Kumar who held autopsy on the corpse of Saida Khatoon, P.W. 3 Ismail Mian, the informant and the sister of the deceased, P.W. 4 Seraj Ansari. a witness to the inquest, P.W. 5 Abdul Quadir, P.W. 6 Md. Jahur Ali, P.W. 7 Saikh Jdrish, the father of the deceased and P.W. 8 Radheshyam Das, I.O.

6. The defence, on the other hand, examined two witnesses namely D.W. 1 Md. Mustafa Ansari and D.W. 2 Jamir.

7. On consideration of the evidence and materials on record learned Addl. Sessions Judge held the accused-appellants guilty of the charge under Sections 498A/304B read with Section 34, I.P.C. and convicted and sentenced them as stated above.

8. Mr. S.N. Gupta, learned Counsel for the appellant has assailed the impugned conviction mainly on the ground that the prosecution has failed to prove the

genesis of prosecution case, that there is omnibus and no specific allegation dowry demand, doctor had found an abrasion on the right wrist back and a bruise on right forearm back upper part of the deceased which were possible by fall on a hard substance and the stomach contained brownish fluid 50ml. with strong smell and he had kept his opinion preserved about the cause of death pending chemical examiner's report but no report of the chemical examiner was received in the case and in its absence, it cannot be said that death of the deceased was due to poisoning and the available medical evidence is not definite about the cause of death; that there is inconsistency between the inquest report and the medical evidence regarding the injuries on the person of the deceased that evidence regarding alleged demand of dowry led the trial by the prosecution is not convincing; that D.Ws. 1 and 2 have deposed that they had given information about the death of Saida Khatoon to the informant; that the death of the deceased was natural due to vomiting and, in the facts and circumstances of the case, the accused-appellants are entitled to benefit of doubt.

9. Mr. N.N. Mahto, learned A.P.P., on the other hand, has supported the impugned judgment.

10. The fact that Saida Khatoon, deceased was married to accused-appellant Md. Alam Ansari on 17.1.96 is not disputed. P.W. 3 Islam Ansari, brother of the deceased, has testified to the effect and this fact has been admitted by the husband and her in-laws in the statement u/s 313, Cr.P.C. They have also admitted that Saida Khatoon died at her matrimonial home in the night of 17.3.96.

11. At this juncture, it would be worthwhile to mention here that ingredients/essential facts, which the prosecution has to establish for proving the offence u/s 304B, I.P.C., are as follows:

(i) that the death of the woman has been caused otherwise than under normal circumstances;

(ii) that, such death has occurred within 7 years of her marriage;

(iii) that the woman before her death was subjected to cruelty or harassment by the husband and her relatives and such cruelty or harassment should be or in connection with demand of dowry.

12. At the first instance, it is to be considered whether the death of Saida Khatoon has been caused otherwise than under normal circumstances.

13. P.W. 3 Ismail Mian has testified to the effect that when on information given by P.W. 1 Jasmuddin Ansari, his co-villager he visited the matrimonial house of his sister Saida Khatoon, he found that she was lying dead with blood and froth coming out from her nose and mouth. P.Ws. 4 and 5 are witnesses on the inquest report P.W. 5 too has stated that he had found blood and froth flowing from the mouth and nose of the deceased. Exts. 3 and 3/1 are the signatures on the inquest report (Ext. 6). P.W. 8 Radhesyam Das, the I.O., has testified to the

effect that Shyam Bihari Singh, A.S.I., of Police, who is now dead, had held inquest over the corpse of Saida Khatoon and he has proved the inquest report (Ext. 6) in his hand writing and signature. The inquest report (Ext. 6) is admissible in evidence as the author of the document is dead. The inquest report shows that, blood and froth were found flowing from the nose and mouth of the deceased, there was red mark near left elbow, there was black mark near the left waist, red mark on right side of hip, black marks near right elbow and left wrist and there was swelling of right eye with red mark. The inquest was held on 19.3.1996 at 8 a.m.

14. P.W. 2 Dr. Saroj Kumar has stated that on 19.3.96 at 12 a.m. he had held post-mortem on the corpse of Saida Khatoon and he had found following ante-mortem wounds on her person:

- (i) An abrasion 3 cm x 1/4 cm on left wrist back.
- (ii) Bruise 11 cm x 6 cm on right forearm back upper part.

According to him, the injuries were caused by hard and blunt substance although not sufficient to cause death in ordinary course of nature. He has further stated that the internal organs were congested and the stomach contained brownish fluid 150 ml with strong disagreeable smell which was abnormal and the mucous membrane of stomach was congested. He has opined that time elapsed since death was between 12-36 hours of the post-mortem examination. Ext. 1 is the post-mortem examination report in his pen.

15. It is true that he has kept his opinion about the cause of death reserved pending chemical examination of the preserved viscera. It is true that no report of chemical examiner of the preserved viscera was sent to him and so he was unable to give definite opinion about the cause of death. It has come in the evidence of Investigating Officer (P.W. 8) that viscera report was not received by him by the time of submission of the charge-sheet in the case.

16. There is the evidence of P.W. 1 that when in the morning at about 9 a.m. he had met the deceased at her matrimonial home, he had found her hale and hearty and the next day he had seen her dead body. It is true that the report of chemical examiner regarding the viscera of the deceased has not been brought on record. It is equally true that, the medical evidence is not definite about the cause of her death. But the fact remains that the doctor has found some ante-mortem wounds on the person of the deceased with the congestion of her internal organs. There is the evidence of P. Ws. 3 and 5 that they had seen blood and froth flowing from the mouth and nose of the deceased. The inquest report (Ext. 6) shows about the presence of marks of seven injuries on the person of the deceased. It is not a case where no injury was found on the person of the deceased by the doctor.

17. The defence suggested to the informant (P.W. 3) that on suspicion accused-appellants had been implicated in the case. This suggestion has been

emphatically denied by the informant. P.W. 3 has stated in his evidence that in-laws of the deceased did not give information to him about the death of his sister, Saida Khatoon and they were making preparation to dispose of her dead body by putting her in grave, when on getting information from P.W. 1 he rushed to her matrimonial house and brought her dead body to his village home. P.W. 7 Seikh Idrish, father of the deceased has testified to the effect that information had been received that her in-laws had killed her. Appellant, Alam Ansari @ Md. Alam Ansari, husband of the deceased and her parents-in-law as well as appellant Babhi the younger brother of the husband of the deceased in their statement u/s 313, Cr.P.C. pleaded that the deceased died of vomiting and diarrhea but no suggestion was given by the defence to P.Ws. 3 and 7 that deceased had died such a natural death.

18. D.W. 1, Md. Mustafa Ansari. and D.W. 2 Jamir, the co-villagers of the husband of the deceased have testified to the effect that Alam Ansari, husband of the deceased told them at about 1.30-2 a.m. that the deceased was suffering from diarrhea and they had gone to call the compounder but he did not come and ultimately the deceased died and on the next morning they gave information about the death of the deceased to her brother (P.W. 3) P.W. 2 cannot even name the compounder whom he had gone to call. The compounder has not been examined by the defence to support the fact that D.Ws. 1 and 2 had gone to call him. D.Ws. 1 and 2 did not earlier make any statement in the matter before any authority and for the first time they had come to depose that the deceased had died of vomiting and diarrhea. No information was given by the husband or the in-laws about the cause of death of the deceased as propounded by the defence to any authority. It is axiomatic that D.Ws. 1 and 2 being the co-villager of the husband and in-laws of the deceased have come forward to deposit to shield the accused-appellants. The inquest report and in away the medical evidence do not support the defence version regarding the cause of death of the deceased. Hence, in the circumstances of the case, no reliance can be placed on the testimony of D.Ws. 1 and 2.

19. The facts and evidence discussed above, establish beyond doubt that the death of Saida Khatoon occurred at her matrimonial home in the mysterious circumstances and otherwise than under normal circumstances and that her death occurred within seven years of her marriage at her matrimonial home.

20. The crucial point which now arises for consideration is whether deceased was subjected to cruelty or harassment by her husband and/or in-laws in connection with demand of dowry.

21. P.W. 1 Jasmuddin Ansari, who has his sasural at village Nagri, has testified to the effect that when on 17.3.96 at 9 p.m. he has met Saida Khatoon, the deceased she had complained to him that her husband and in laws were demanding dowry and they were not treating her properly. A comment has been made by the learned Counsel for the appellants that though a co-villager of the informant he is not related to his family and in the circumstances it is highly

improbable that he would have met the deceased at her matrimonial home. It is a matter of common knowledge that a villager visits the matrimonial home of a girl belonging to his village, when he happens to visit her matrimonial village.

22. P.W. 3 Islam Ansari, the informant, and the brother of the deceased has testified to the effect that after the marriage the husband and in-laws of Saida Khatoon started to demand Rs. 10,000/- as dowry and used to pressurize her for the same. He has further stated that Saida Khatoon had disclosed this fact to him and the other family members and they were unable to fulfil the demand and after pacifying her they had sent her to her sasural whereafter they did not behave well with her and after four days he came to know about her death which was otherwise than in normal circumstances. He has further stated that Saida Khatoon had disclosed to him earlier that if the dowry demand of Rs. 10,000/- was not met she might be driven out from her matrimonial home or she might have to face dire consequences. In the fardheyan there is the allegation that husband and the in-laws of Saida Khatoon were demanding Rs. 10,000/- as dowry and due to non-fulfilment of the demand she had been done to death.

23. P.W. 7 Seikh Idrish, father of deceased Saida Khatoon too has testified to the effect that she had disclosed at her parental home that her husband and in-laws were demanding Rs. 10,000/- but he sent, her to her sasural after persuasion and thereafter the news was received that she had been done to death by her husband and in-laws. In spite of searching cross-examination P.Ws. 1, 3 and 7 are consistent in their evidence that dowry demand was made by the husband and in-laws of Saida Khatoon and she had complained about it.

24. It is true that there is omnibus allegation in the fardheyan and in the evidence of P.Ws. 1, 3 and 7 that the husband and the in-laws had demanded dowry of Rs. 10,000/-. It is equally true that no specific instance as to when and in what manner dowry was demanded has come on record. No doubt, it has come in the cross-examination of P.W. 3 that on two occasions after the marriage Saida Khatoon had visited her paternal home in the company of her husband Alam Ansari and they had returned together. On this basis, learned Counsel for the appellants has urged that there was cordial relation between Saida Khatoon and her husband and there was no occasion to make any dowry demand. It is suffice to say that when the deceased visited her parental home she had occasion to complain about the dowry demand to her brother (P.W. 3) and her father (P.W. 7).

25. It is evident from the materials on record that dowry demand was made after the marriage of Saida Khatoon. Husband is the protector of his wife. So, he is directly responsible for dowry demand that was made and for the death of his wife Saida Khatoon which was not in normal circumstances. When within three months" of marriage dowry demand is made from the wife that in itself leads to the inference that she was subjected to cruelty or harassment by her husband. So appellant, Alam Ansari @ Md. Alam Ansari is liable for the offences under Sections 304B and 498A, I.P.C. His conviction u/s 304B read with Section 34,

I.P.C. is altered to Section 304B, I.P.C. His conviction u/s 498A, I.P.C. is maintained. The sentences passed on him by the trial Court are affirmed.

26. There is the omnibus allegation that parent-in-laws namely, accused-appellants, Saimun Khatoon @ Balkahi, Azmuddin Ansari, Bablvi @ Azad Ansari, younger brother of husband of the deceased and Shakilan @ Gita Khatoon, the married sister of Alam Ansari, too had made dowry demand or had harassed the deceased. No specific instance of dowry demand or alleged harassment against them has been detailed in the evidence. It is highly improbable that a married sister and younger brother of the husband of the deceased would make any demand for dowry. Under the circumstances the charge under Sections 498A and 304B read with Section 34, I.P.C. is not proved beyond reasonable doubt against these four accused-appellants. They are entitled to benefit of doubt.

27. In the result, criminal appeal as against appellant, Alam Ansari @ Md. Alam Ansari is dismissed with the modification in the order of conviction as indicated above. The criminal appeal as against accused-appellants Shakilan @ Gita Khatoon, Saimum Khatoon @ Balkahi, Azmuddin Ansari and Bablu @ Azad Ansari is allowed. They are acquitted, on giving benefit of doubt, of the offences under Sections 498A and 304B of the I.P.C. The convictions and sentences passed on them by the trial Court are set aside. These four acquitted accused-appellants are-released from their bail-bonds.