

(2004) 09 JH CK 0076

In the Jharkhand High Court

Case No : Criminal Appeal No. 98 of 2000 (R)

Awadh Bihari Singh and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 03-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 34

Citation : (2004) 4 Crimes 333 : (2005) 1 DMC 138 : (2004) 4 JCR 278

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : T.R. Bajaj and A.K. Kashyap, for the Appellant; S.K. Dutta, APP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard Mr. T.R. Bajaj, for the appellant and Mr. S.K. Dutta learned APP for the State.

2. This appeal arises out of the judgment dated 15th February, 2000, passed by Shri Sheo Kumar Prasad, learned 5th Additional Sessions Judge, Hazaribagh in Sessions Trial No. 272 of 1997 convicting the appellants under Sections 304B/34 of the Indian Penal Code and sentencing them to undergo rigorous imprisonment for 10 years each.

3. On the basis of a written report (Ext. 4) of Devendra Mohan Prasad (Informant PW 6) father of Baby @ Sunita Kumari (deceased) FIR (Ext. 6) was drawn. As per the written report, Sunita Kumari got married with Dr. Abinash Chandra Prabhakar (appellant No. 3) about a year ago. At the time of marriage, informant had given "dahej" according to his capacity but the in-laws of the daughter were not satisfied with it and they used to demand more "dahej" on telephone and through letters. On 7.3.1996, the informant gave a Maruti Car to his daughter in "bedaigiri. Thereafter his daughter was happy for sometime but the in-laws again started torturing her after a month for the demand of more dowry. On 3.12.1996

at about 5.45 a.m. in the morning, informant received a message on telephone by appellant No. 1 that Sunita Kumari had sustained some burn injuries while she was boiling milk. Telephone was cut. He waited for more information. He became suspicious. Thereafter he along with his son, Manoj Kumar (PW 5), his brother Dr. Ashok Mehta (PW 2) and his neighbour Abhay Kumar Singh (PW 4) reached at the official quarter of appellant No. 1 at Patratu. He found his daughter dead lying in the kitchen with burn injuries on her person. It is alleged that the cause of death is that the in-laws of Sunita Kumari were not satisfied with "dahej" and were demanding more. A car was given. Then there was peace for some time but again the demand started. Sunita used to tell that she may be killed for dowry, but he did not take it seriously and told her to live in sasural with adjustment. It was further alleged that on 24.11.1996, Manoj Kumar, brother and uncle of the deceased, had gone to her in-laws house to bring her to attend the marriage of Manoj Kumar, scheduled to be held on 7.12.1996 but they were not allowed to see her and she was not allowed to go to her parent's house. It is further alleged that when Sunita Kumari had met Manoj Kumar she complained that she was not liked by her in-laws and her husband and they were always ill-treating her for dowry and she had apprehension that she might be killed by her husband and in-laws. But the informant thought that there will be adjustment between Sunita and her in-laws. It is further alleged that her husband Dr. Abinash Chandra Prabhakar in order to save him has made show of some burns, on his person.

4. Charge-sheet was submitted against the appellant Nos. 1, 2 and 3 and then a supplementary charge-sheet was also submitted against two "nanads" namely Suchitra Devi, Kiran Devi and Sudhir Chandra Prabhakar, "bhainsur" of the deceased, appellant No. 4. The said "nanads" namely Suchitra Devi and Kiran Devi have been acquitted by the trial Court.

5. The accused persons were charged u/s 304B/34; IPC,

6. Mr. Bajaj, learned counsel for the appellants submitted that all the ingredients of Section 304B, IPC are not made out in this case. He admitted that the first two ingredients namely un-natural death by burns and within seven years of marriage are not disputed. However, the other ingredients namely, she was subjected to cruelty or harassment soon before her death in connection with any demand of dowry, by her husband or relative of her husband have not been satisfactorily proved by the prosecution.

7. He submitted that the following facts are admitted. The marriage took place on 2.12.1995 at Hazaribagh. After reception at Patratu, on 6.12.1995, Sunita Kumari returned to Hazaribagh with her father, where she remained for about three months. On 7.3.1996 "bedaigiri" was performed. She went directly to Dhanbad, where her husband was posted, with her husband and father-in-law (appellant No. 1) in a Maruti Car which was purchased in her name and which was given in "bedaigiri" by her father. She gave birth to a girl child on 20.9.1996. It appears that she came to Patratu for the purpose of "sataisa" of

her daughter, which was fixed on 10.12.1996 at Patratu. On 24.11.1996, her uncle Dr. Ashok Mehta and her brother Manoj Kumar went to bring her to attend marriage of her brother Manoj Kumar, which was fixed on 7th December, 1996.

8. Mr. Bajaj further submitted that demand, if any, was fulfilled when Maruti Car was given on 7.3.1996 and thereafter nothing has come on record as to what was demanded in the next nine months, except vague and general allegations that the deceased told the PWs that she was not liked by her in-laws and she was asked to bring more dowry and that she may be killed. The letters produced by the prosecution also does not support these allegations Mr. Bajaj further submitted that the husband of the deceased was living separately from his parents as he was posted at Dhanbad whereas his father was posted at PTPS and was residing in the official quarter of PTPS at Patratu. After marriage, she remained for about three days at Patratu and she returned with her father on 6.12.1995. Thereafter she went to Dhanbad on 7.3.1996. She gave birth to a girl child on 20.9.1996. Her uncle Dr. Ashok Mehta, her mother and father went to see her at Dhanbad. Her husband took proper care of the deceased during pregnancy. She was shown to doctors. Her mother went to Dhanbad on the birth day of her husband. On the occasion of "chhath", the uncle of the deceased, Dr. Ashok Mehta went to meet with father-in-law of the deceased at Patratu. Thus, Mr. Bajaj submitted that relations between the parties were normal, otherwise if Sunita Kumari told her in-laws that she may be killed for dowry, they could not have allowed her to remain with her husband and in-laws.

9. Her further submitted that the postmortem report has been prepared under the influence of the uncle of Sunita Kumari namely Dr. Ashok Mehta. Post-mortem report was prepared by PW 1 in the hospital where Dr. Ashok Mehta, uncle of the deceased was also posted. In the inquest report, it is mentioned that the mouth of the deceased was closed. But in the post-mortem report, it is shown that the tongue was protruded as if Sunita Kumari was killed by strangulation and thereafter she was burnt.

10. He further submitted that admittedly there were four quarters in the building out of which father in-law of the deceased occupied one. He further submitted that admittedly there were three neighbours, whose names have been mentioned in the case diary but the prosecution has failed to examine any neighbour of appellant No. 1.

11. He further submitted that it is specifically stated by the prosecution witnesses that they reached Patratu from Hazaribagh at about 9 a.m. The inquest report (Ext. 5) shows that inquest was done at 9.45 a.m. by the Police Officer (PW 8) at Patratu, whereas the post-mortem (Ext. 1) shows that the dead body was received at Hazaribagh at 9.45 a.m., which is at about 80 kilometers away from Patratu. It is submitted that as per the evidence of PW 9, the IO, he got the post-mortem report on 21.1.1997 i.e. after about a month. Mr. Bajaj, in these circumstances, tried to create doubt about the veracity of the post-mortem report.

12. Mr. Bajaj also submitted that appellant No. 3 husband of deceased himself sustained burn injury at his hands and legs, for which he was treated in the jail hospital for about a month.

13. He pointed out that PW 8, the Police Officer, Sukhlal has said in his evidence that he proceeded to the house of appellant No. 1 after making a station diary entry but the same has not been brought on record by the prosecution. He further submitted that PW 9, the Investigating Officer has denied almost all the statements said to have been made before him by the prosecution witnesses during the course of investigation.

14. Mr. Bajaj also pointed out to the letters exhibited by the parties to show that from none of them, it appears that the deceased was being harassed or tortured for any demand as dowry. Mr. Bajaj admitted that the appellant No. 1 wrote letters to the informant prior to the marriage insisting for giving the Maruti Car at the time of "tilak". However, the Car could not be given at the time of "tilak" but subsequently it was given on 7.3.1996 at the time of "bedaigiri". He submitted that after this, the demand, if any, was fulfilled and the prosecution has not brought on record anything to show that any further demand was made in the near proximity of the death of Sunita Kumari on 3.12.1996.

15. Mr. Bajaj pointed out to the letter dated 24.10.1996, written by Sunita Kumari to her parents (Ext. 3/3), in which she asked about the date of marriage of her brother, Manoj Kumar. She said that "sataisa" of her daughter was fixed by her husband Abinash on 10th December so that she may not attend the marriage of her brother Manoj Kumar because Munna Bhaiya will also attend the said marriage. She further said that probably this matter is not known to her mother-in-law. She further said that it is not known when everything will become normal. She further said that she is scared as it is not known on which count she may be taunted. She wanted to tell her parents many things. Mr. Bajaj submitted that in the letters she did not say about demand of any dowry; rather this letter gives a hint that there was some difference between deceased and her husband on account of fixing a date of "sataisa" of her daughter and not allowing her to go to attend marriage of her brother Manoj Kumar. He further pointed out to the prosecution case to the effect that on 24.11.1996, appellant No. 1 did not allow the deceased to go with her uncle and brother who had gone to bring her.

16. Mr. Bajaj lastly submitted that as against appellant No. 4, Sudhir Chandra Prabhakar, who is elder brother of husband of the deceased, there is no allegation and in the entire case nothing has come against him. He further submitted that in any event appellant Nos. 1 and 2 have remained in jail for more than five years and appellant No. 3 has remained in jail for about seven years and nine months. He further submitted that appellant No. 3 Dr. Abinash became mentally sick and he was treated in RINPAS.

17. In support of his contention that all the ingredients of Section 304B, IPC should be made out clearly by the prosecution, he relied on the following

judgments. 2000 (2) ECC 698 : 2000 (1) FJCC 170 (SC) Kans Raj v. State of Punjab and Ors.; Kunhiabdulla and Another Vs. State of Kerala, , Surinder Kaur and Anr. v. State of Haryana 2001 SAR 856, Hira Lal and Others Vs. State (Govt. of NCT) Delhi, .

18. Learned counsel for the State submitted that the appellants cannot be allowed to take advantage of minor contradictions in the prosecution case. He submitted that the witnesses have consistently said that deceased used to say that no body liked her in sasural and she was asked to bring more dowry and that she may be killed and she told these things verbally and by letters. Therefore, he submitted that the prosecution has been able to prove the charges fully.

19. After hearing the parties and going through the records, I am of the view that the appellants can be given benefit of doubt. The prosecution has not shown satisfactorily that in near proximity of death of Sunita 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. PW 2, Dr. Ashok Mehta, uncle, PW 5, Manoj Kumar, Brother and PW 6, Devendra Prasad, father and PW 7, Smt. Sushila, Mother of the deceased have stated in general and vague terms that Sunita informed them that she was taunted that as per the talk dowry was given, but for the car, was not given and therefore, car was given on 7.3.1996. Again in general and vague terms it is said that the deceased used to say that her in-laws did not like her and harassed her for bringing more dowry due to which she is scared PW 4, Abhay Kumar Singh is said to be the family friend of in-laws of the deceased. He negotiated this marriage. It is said about him that he knew everything from beginning to end. He has also said in general term that the in-laws of the deceased used to torture her for dowry. PW 3, Ganga Singh a neighbour of the appellants, has also stated in general terms that he heard that there was demand of dowry.

From the letters filed by the parties also, it does not appear that there was demand of dowry after giving Maruti Car on 7.3.1996. However, it is not clear that on what counts she was given taunts. It further appears that her husband and father in-law did not like that she should attend the marriage of her brother.

It further appears that there is vital contradiction with regard to the time of the inquest report and the time of receiving the dead body at the hospital for post-mortem. The inquest was held at Patratu at 9.45 a.m. and the same time is mentioned on the post-mortem report in the column when the dead body was received. As per the evidence, there is distance of about 80 kilometers and it takes about 2-3 hours between Hazaribagh and Patratu. The postmortem report was received by IO after about a month. The uncle of the deceased was posted as a Doctor in the hospital where post-mortem was conducted. Dr. Mahendra Prasad Choudhary, who held post-mortem was well-known to Dr. Ashok Mehta, the uncle of the deceased and he had been to the house of the in-laws of the deceased with her uncle. It is not that, only for these reasons the post-mortem

report should be discarded but a serious doubt arises about the prosecution case. Moreover the prosecution has not examined any neighbour, where the occurrence took place. A person will certainly cry for help if, by accident, he catches fire, or if some body tries to burn, him. The neighbours were the best persons to say something about the incident. The IO (PW 9) has denied almost all the statements alleged to have been made before him during investigation by the prosecution witnesses. No doubt, demand was made by appellant No. 1 that car should be given at "tilak", but there is nothing to show that any demand subsisted after car was given on 7.3.1996. The appellant No. 3, the husband of the deceased had also sustained burn injuries on his hands and legs, for which he was treated in jail hospital for about a month.

20. After carefully considering the facts and circumstances of the case, I am of the view that appellants can be given benefit of doubt with regard to the last ingredients of Section 304B, IPC. The prosecution has not shown clearly that in near proximity of her death, Sunita Kumari was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with any demand for dowry.

21. In the result, this appeal is allowed and the judgment under appeal is set aside. As the appellant Nos. 1, 2 and 3 are in custody, they shall be released forthwith, if not required in any other case. As the appellant No. 4 is on bail, he is discharged from liability of his bail bonds furnished in this case.