
(2016) 02 JH CK 0091

In the Jharkhand High Court

Case No : Criminal Appeal No. 174 of 2002

Bandhan Mahto and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-02-2016

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161, Section 313
Dowry Prohibition Act, 1961 — Section 3, Section 4
Evidence Act, 1872 — Section 113B
Juvenile Justice (Care and Protection of Children) Act, 2000 — Section 2(1), S

Citation : (2016) 3 DMC 268 : (2016) 2 ECrC 464

Hon'ble Judges : Ratnaker Bhengra, J.

Bench : Single Bench

Advocate : Deepak Kumar, Advocate, for the Appellant; Kaushal Kishor Mishra, A.P.P., for the Respondent

Final Decision : Partly Allowed

Judgement

Ratnaker Bhengra, J.—1. This Criminal appeal is directed against the judgment of conviction dated 12.4.2002 and the order of sentence dated 16.4.2002 in S.T. No. 217 of 1992 passed by the learned, Additional District Judge-cum- Fast Track Court No. II Hazaribagh whereby the above named appellants have been found guilty for the offence punishable under sections 304B and 498A of the Indian Penal Code and accordingly, they have been convicted under both the sections, and appellant No. 2 has been sentenced to undergo rigorous imprisonment for seven years under section 304B and one year under section 498A of the Indian Penal Code. So far as appellant No. 1 is concerned, he has been sentenced to undergo rigorous imprisonment for ten years under section 304B and two year under section 498A of the Indian Penal Code. It has been ordered that both the sentences have been ordered to run concurrently.

2. The prosecution case in brief is, as per Fardbeyan given by one Indranath Mahto (P.W.2) informant before Officer Incharge of Barkagaon Police Station case No. 2 of 1991 on 8.1.1991, recorded under sections 498A/304B of the Indian

Penal Code as also under sections 3 and 4 of the Dowry Prohibition Act against the accused persons that his sister Asha Devi was married to appellant No. 1 three years back and at the time of marriage according to his capacity a wrist watch, a bicycle, 40 tola Silver etc were given. After marriage his sister went to her Sasural and after one year from the time of marriage his brother-in-law i.e. appellant No. 1 started demanding 6 gms of gold (1/2 Tola) and Rs. 1500/- cash and on account of that he started assaulting his sister and tortured her also. His sister used to complain about the same whenever he visited her or she came to her Naihar. It is further alleged that he had told his brother-in-law and his mother that his economic condition is not well at present and later on he will give them some money. But they continued to hit and assault his sister and a month back his sister came to his house and she told that they have(Appellant) sent her for bringing wheat whereupon 15 kg of wheat as seed and 4 kg of garlic were given to her. At that time also she(deceased) made complaint against the appellants. It is further alleged that after marriage of his sister, the daughter of the informant namely Savitri Kumari had also gone with the deceased who had also seen the assault and torture which was being committed against the deceased and ultimately it has been alleged that on 8.1.1991 at about 11 A.M while he was working in the field he received the information that his sister has died. The informant along with his father went to the house of his sister's-in-law where he saw the dead body of his sister lying on the cot. He has suspected that both the appellants have committed murder of his sister on account of non-fulfillment of above stated demand of 6 gms of Gold and Rs. 1500/- cash and on the basis of above said information Barkagawan P.S. Case No. 2 of 1991 was lodged.

3. In order to prove the charges levelled against the accused persons/appellant, the prosecution has examined altogether six witnesses i.e.P.W.1 Savitri Kumari, P.W.2 Indranath Mahto, P.W.3 Bedi Mahto, P.W. 4 Dr. Shashi Bhushan Singh,P.W.5 Muleshwar Mahto and P.W.6 Arun Kumar Chaudhary.

4. P.W.1 is Savitri Kumari, who is the daughter of the informant. The age of this witness was disclosed as 13 years and the same has been assessed by the court as well. In her deposition she has stated that after marriage of her aunt she had gone with her to her sasural and she remained there for 5 to 20 days. According to the prosecution the marriage was solemnized in the year 1988 and she deposed in 1995 when she was aged about 13 years meaning thereby that in the year 1988 she was aged six years. She has stated that she reported the matter of demand of dowry to the police. Her statement was recorded by the police and she had given her signature on the same. But no document to that effect has been brought by the police to this effect, rather the most significant point is that her statement was not recorded by the police under section 161 of the Cr.P.C. in course of investigation, rather for the first time she had deposed in the court.

5. P.W.2 is Indranath Mahto (informant). He said that Asha Devi was his sister and she was married to Bandhan Mahto @ Punit Mahto. He has recognized him in

the Dock. He said that the marriage had taken place 3 years prior to death of the deceased. During the time of marriage 40gm silver, one watch and one cycle was given. He further said that he used to meet his sister in her sasural and she used to say that her husband and mother-in-law harassed her and have demanded Rs. 1500/- and 6 gm gold as dowry. Further that since he could not fulfill their demands, her harassment and torture was continued. Before she died, about a month ago she had come to ask for wheat and Garlic seeds. Both the things were given to his sister. His sister informed/told him that if the gold and money are not given, they will kill her. His daughter, Savitri then, aged about 10/11 years, had gone and stayed with his sister after Gauna for around 8-10 days. She ran away from there and told that they (in-laws) assaulted and threatened her aunty (Fhu Fhu). On 8.1.1991 when he had gone to the jungles to work, then his cousin brother, Naresh Mahto informed him about the death of his sister. He went there with family and found his sister lying dead on the bed. There were dark marks on both sides of her neck and her arm near her right elbow was broken. She was harassed for dowry. The police had reached before him. The police took his statement, read it out to him, he found it correct and signed on it. The police made the papers for the dead body (Inquest report) before Bhuenshwar and him and they both signed on it.

In his cross examination Indranath Mahto stated that after Gauna and after 3 to 4 months when she returned, she told them about the Dowry demand. The first time he gave his complaint to the police it was at Bandhan's house at 2.15.P.M. His house is at a distance of 7 K.M from Bandhan's house. On receiving information from Naresh, his father, Jamal Mahto, Balykhawar Mahto, Bhuneshwar Mahto and other members of his family were there. Indranath Mahto also stated that for the first time deceased informed about demand of dowry when deceased came to her Naiher after Gauna. He accepted that no Panchayati in this regard was called but he personally went to sister-in-law's house and tried to pacify them. However, he stated in cross-examination that he informed the agent (Marriage settler) about the death of his sister, Asha Devi. He did not inform about this to the Mukhiya nor to the police.

6. Bedi Mahto P.W.3 is the father of the deceased Asha Devi. In his deposition he has stated that Asha Devi was married around 7 years ago and she died about 6 years ago in her in-laws place. Further deposed that his daughter lived with her in-laws after marriage and when he met her, she told him that her in-laws were asking for 6 gms gold and Rs. 1500/-. He used to assure them of giving their demands. The son-in-law did not keep her properly and made things difficult for her. He further deposed that his son-in-law had sent his daughter to get wheat and lasun and he had given these items to his daughter. That the information about his daughter death was given to him by Naresh Mahto and he had gone to his daughter in-laws place and seen her dead body. He deposed that there were injury marks on her neck. He also deposed that his son-in-law started making demands for the aforesaid items after marriage. That at the time of marriage, he had happily given some things to his in-laws and they had also made some

demands.

7. P.W4 is Shashi Bhushan Singh who is the Doctor and examined the deceased, has listed a number of ante-mortem injuries and opined that " In my opinion the death was due to asphyxia due to strangulation."

8. P.W 5 is Muleshwar Mahto. He is a witness of Inquest report as well as a hearsay witness. At paragraph 7 he has stated that whatever Indranath Mahto has informed him, he know the same about the occurrence. At para-8 he has stated that before their arrival the Daroga was engaged in the proceeding and the other villagers were also there.

9. P.W 6 is Arun Kumar Chaudhury. He has simply submitted the Charge sheet and the investigation was done by one L.K. Thakur who has not been examined in the case.

10. Learned counsel for the appellants has raised the issue that no question pertaining to dowry under sections 304B and 498A were raised to the appellants under section 313 Cr.P.C. and this seriously effects the proceeding negatively.

11. Counsel for the appellants also raised the issue that no statement was taken from any of the witnesses during investigation under section 161 Cr.P.C. He submitted that there are only 39 paragraphs in the whole case diary but no statement of any witness is there. It is more important because a statement in court against the accused-appellant herein, may be fatal, hence the need or recently of statements under section 161 Cr.P.C. and without this proceeding are seriously flawed. He further submitted that no cognizance of the offence can be taken in absence of requirement under sections 161 Cr.P.C. and hence also cross-examination not possible nor proper.

12. Appellant counsel main defence however is to claim that at the time of the occurrence of the alleged crime, appellant No. 1 was a minor in the eye of the law and hence cannot be proceeded under the general provisions for adults, but for a minor and therefore, he is not subject to be imprisoned or put in jail custody.

13. According to the appellants' counsel, the Board has after inquiry concluded the date of birth of the appellant Bandhan Mahto as being on 3.11.1974, and the date of occurrence was on 8.1.1991, on which date his age would be 16 years 2 months and 5 days, and hence he is entitled to benefit of minor even under the Juvenile Justice (Care and Protection of Children) Act, 2000. Regarding second appellant, counsel has said that she is also very old, now 83 years, and has already suffered the vigors of trial and imprisonment. He has also stated that giving of a certain or small amount of wheat and garlic to the appellants by the deceased family is a normal activity between relations. Further, there is no evidence of cruelty or demand of dowry before the death of the deceased.

14. Counsel for the appellant also relied on certain judgments regarding the aspect of the minor age of the first appellant, and particularly Lakhan Lal Versus

State of Bihar, , (2011) 2 SCC 251.

15. Learned counsel for the State, APP, has sought to counter this with a larger Bench judgment of Pratap Singh Versus State of Jharkhand and Another, , (2005) 3 SCC 551.

16. Further, he has submitted that the relevant prosecution witnesses have supported and proved their case and that in case of dowry death, if it is within 7 years of marriage, then the case is proved against the accused.

17. Regarding the issue of being availed the benefit of being minor under the Juvenile Justice (Care and Protection of Children) Act, 2000, the claim of inclusion it seems is answered by the judgment cited by the counsel-for the appellant himself. The counsel has also relied on 2 other judgments. Hari Ram Versus State of Rajasthan and Another (, (2009) 13 SCC 211) and Dharambir Versus State (NCT of Delhi) and Another, , (2010) 5 SCC 344)

18. First of all, the date of occurrence, on the 3 cases including this one was considered. Hence, accordingly:--

19. In the three cases, all the dates of occurrence were prior to 1.4.2001, the date for coming into force of the 2000 Act. In all three cases the appellants were above 16 but below 17 years on the date of occurrence. In all the three cases the benefit of being minor was awarded. In fact in Lokhan Lal's case the date of occurrence was as far back as 9.5.1985. Hence, prima facie it seemed that current appellant Bandhan Mahato " may also succeed on the age issue.

20. The issue before us, as in other cases cited is whether the Act of 2000 will be applicable in a case where a proceeding is initiated under the 1986 Act and was pending when the Act of 2000 was enforced with effect from 1.4.2001?"

21. The issue before us or point as also given in Hari Ram (supra) is well answered in the following paragraphs:

"35. On the second point, after considering the provisions of Section 3 and 20 of the Juvenile Justice Act, 2000, along with the definition of "juvenile " in Section 2(k) of the Juvenile Justice Act, 2000, as contrasted with the definition of a male juvenile in Section 2(h) of the 1986 Act, the majority view in Pratap Singh case was that the 2000 Act would be applicable to a proceeding in any court/authority initiated under the 1986 Act which is pending when the 2000 Act came into force and the person had not completed 18 years of age as on 1.4.2001. In other words, a male offender, who was being proceeded with in any court/authority initiated under the 1986 Act and had not completed the age of 18 years on 1.4.2001, would be governed by the provisions of the Juvenile Justice Act, 2000."

"36. In his concurring judgment, S.B. Sinha, J. while considering the provisions of Section 20 of the Juvenile Justice Act, 2000, observed that for the purpose of attracting Section 20 it had to be established that (i) on the date of coming into force the proceedings in which the petitioner was accused was pending; and (ii)

on that day he was below the age of 18 years. The unanimous view of the Constitution Bench in Pratap Singh case was that the provisions of the Juvenile Justice Act, 2000, have prospective effect and not retrospective effect, except to cover cases where though the male offender was above 16 years of age at the time of commission of the offence, he was below 18 years of age as on 1.4.2001. Consequently, the said Act would cover earlier cases only where a person had not completed the age of 18 years on the date of its commencement and not otherwise.

"37. The said decision in Pratap Singh case led to the substitution of Section 2(1) and the introduction of Section 7-A of the Act and the subsequent introduction of Rule 12 in Juvenile Justice Rules, 2007, and the amendment of Section 20 of the Act. Read with Sections (2k),2(I),7-A and Rule 12, Section 20 of the Juvenile Justice Act, 2000, as amended in 2006, is probably the section most relevant in setting at rest the question raised in this appeal, as it deals with cases which were pending on 1.4.2001,when the Juvenile Justice Act, 2000 came into force"

38. The same is, accordingly, reproduced herein below:

20. Special provision in respect of pending cases,- Notwithstanding anything contained in this Act, all proceedings in respect of a juvenile pending in any court in any area on the date on which this Act comes into force in that area, shall be continued in that court as if this Act had not been passed and if the court finds that the juvenile has committed an offence, it shall record such finding and instead of passing any sentence in respect of the juvenile, forward the juvenile to the Board which shall pass orders in respect of that juvenile in accordance with the provisions of this Act as if it had been satisfied on inquiry under this Act that a juvenile has committed the offence.

Provided that the Board may, for any adequate and special reason to be mentioned in the order, review the case and pass appropriate order in the interest of such juvenile

...The proviso and the Explanation to Section 20 were added by Amendment Act 33 of 2006, to set at rest any doubts that may have arisen with regard to the applicability of the Juvenile Justice Act, 2000, to cases pending on 1.4.2001, where a juvenile, who as below 18 years at the time of commission of the offence, was involved"

22. Hence, under the amended provisions, the benefit of minor age will be available to the first appellant.

23. The issue still has to be addressed as far as the second appellant or Jagni Devi is concerned.

24. Counsel for the appellants has raised the issue of section 161 Cr. P.C. not being complied with that the statement under section 313 Cr.P.C. was defective and that there is no evidence of torture, harassment or demand of dowry. He has also pleaded her old age.

25. In these issues the State Counsel or learned A.P.P. has rightly submitted that the relevant prosecution witnesses have sustained and proved their case. Indranath Mahato, P.W 2 is the informant and thus his evidence has supported his fardbeyan. In his examination in chief he has stated that he was informed about the death of Asha Devi by one Naresh and he along with family members went to Guru Chatti, where he saw the deceased's dead body. He observed black spot around her neck. In his cross-examination he has stated that the marriage of deceased took place 3 years prior to the death of the deceased. Both the accused harassed the deceased for dowry with demand of cash of Rs. 1500/- and 6 g.m. of gold. He also submitted that one month before her death Asha Devi had informed that she would be killed if the dowry demand were not met with.

26. Savitri Kumari, P.W.1 is the daughter of the deceased, she has in her examination and cross examination stated about the demand for dowry of the said amount of cash and gold.

27. Bedi Mahto P.W3 is the father of the deceased and he has said in his examination that Asha Devi was married to Bandhan Mahto and she died in her matrimonial house after 3 years of marriage. He has also submitted about the same amount of demand for cash and gold by the accused persons. That the husband did not treat her daughter in a proper manner and harassed her.

28. Dr. Shashi Bhushan, P.W.4 has said that in his opinion, death was asphyxia due to strangulation. He has proved his post mortem report.

29. On the basis of the records available, the deposition and arguments, it is clear that marriage had taken place around 3 years prior to the death of the deceased. That, apparently, there was demand for dowry and in the form of cash of Rs. 1500/- and 6 g.m. of gold. Even if the child's evidence is believed with some doubt, the evidence of P.W 1 and P.W.2 can be sustained and there seems to have been demands for dowry and some harassment and even threat.

30. P.W2 has stated in his examination that he observed that there was black marks around her neck and this may be consistent with the subsequent Doctor's opinions. That the body of the deceased was found at the place of death is of significance when taken along with other aspect of accusation.

31. The Doctor P.W4 has stated that in his opinion cause of death was due to Asphyxia due to strangulation. Finally, in such case of death section 113B of the Evidence Act, comes into play and since there is death under unnatural circumstances within 7 years of marriage, accompanied by reports of harassment and demands of dowry which was informed to her father and brother, hence presumption of dowry death caused by the accused persons is attracted.

32. I have pondered on the prayer for reduced sentence for the second appellant on the issue of age. There is apparently no age, or even medical certificate or document attached in case she has any ailments, that might have been considered. Even then what are "adequate and special reasons" and there seems

to be no rules or guideline like the ones I have just considered for her then minor son. Therefore, based on the aforesaid facts and circumstances and reasonings, the conviction of the Jagni Devi, the second appellant under section 304B and 498A of the Indian Penal Code is sustained and she is directed to undergo the remainder of her sentence of 7 years R.I. and 1 year R.I to run concurrently. However imprisonment already undergone shall be adjusted. Her bail bond is hereby suspended and she is directed to surrender in the court below within six weeks. The conviction of Bandhan Mahto @ Punit Mahto, first appellant, in the lines of sentence, seen in the case cited, is also sustained, however, since he was a minor on the date of occurrence of the crime and his case was still pending, his conviction would be sustained, however his sentence, is that if he has already undergone some imprisonment, that period may be adjusted and the remaining period may be spent at a special home or for helping him at some other place of safety. If he has already spent the maximum three years of imprisonment then he shall be directed to be released forthwith. The matter is accordingly remitted to the Juvenile Justice Board for disposal in accordance with law and bearing in mind our observation as expeditiously as possible.

33. This appeal accordingly stands partly allowed.