
(2003) 01 PAT CK 0055

In the Patna High Court

Case No : Criminal Appeal No. 118 of 2001 (S.J.)

Bhola Rajak, Manoj Rajak @ Manoj Kumar and Bechni Devi	APPELLANT
Vs	
The State of Bihar	RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2004) 1 PLJR 558

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

Advocate : B.P. Pandey, Sanjay Kumar Tiwari, Rajesh Kumar Mishra and Sourendra Pandey, for the Appellant; Rudradeo Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

I.P. Singh, J.—All the Appellants have been convicted u/s 306 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 10 years. They have been further convicted u/s 498A of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 3 years. Both the sentences were ordered to run concurrently.

2. Prosecution case was launched on the basis of Fardbeyan of accused, Bhola Rajak which was recorded on 26.7.1986 at about 12.30 at his house. He had stated that he had gone out to reach cleaned cloth to his customers. He came back after two hours and found that a number of persons were assembled at his house. He has further stated that his wife and his daughter were weeping. On enquiry, they narrated that they had some quarrel with the deceased (wife of accused Manoj kumar) and that out of uncontrollable rage, the (deceased) went inside the house and put herself on fire. It has been further alleged that she (Bachani Devi) put out the fire. The deceased started tossing and got unconscious. It has been further alleged that the victim died on the subsequent day (sic)ie. 27.7.1986. On 29.7.1986 a written report was made before the Superintendent of Police, Munger by one Upendra Rajak (P.W. 2) alleging demand

of dowry and misbehaviour to the deceased at the hands of the accused persons including Bhola Rajak on whose statement this case was initiated. Thereafter the learned Chief Judicial Magistrate took cognizance of the offence u/s 304B of the Indian Penal Code and the case was committed to the Court of sessions where the trial concluded with the result as indicated above. Hence this appeal.

3. The Appellants pleaded not guilty.

4. The prosecution in order to prove its case has examined altogether seven witnesses. P.W. 1, Dr. S. Fazaluddin, has conducted the post mortem examination of the deceased. P.W. 2 Upendra Rajak is the father of the deceased. P.W. 3, Rasmuni Devi, is the mother of the deceased. P.W. 4, Harendra Singh, is a formal witness. P.W. 5, Sheo Prasad Mandal. is also a formal witness. P.W. 6, Uma Kumari, is the sister of the deceased. P.W. 7, Awadhesh Kumar Singh, is the Inspector of Police.

5. The defence has also examined three witnesses. D.W. 1 is Rajendra Prasad. D.W. 2 is Binod Kumar. D.W. 3 is Anirudh Prasad.

6. P.W. 1, Dr. Fazaluddin, conducted the post mortem examination on the body of the deceased. According to him, there were extensive burn injuries on the persons of the deceased right from neck to back, buttocks upper and lower limbs. The cause of death according to him was shock caused by extensive burnt injuries on the person of the deceased.

7. P.W. 2, Upendra Rajak, is the father of the deceased. He has stated that his daughter was married to one Manoj Kumar. According to him one Munna Kumar came to his house on the date of occurrence at Belan Bazar Munger and informed him that his daughter, Poonam Devi had been burnt. He rushed to Jamalpur to the in-laws place of his daughter with his wife (P.W. 3). He has further stated that when they arrived there his entry in the house was resisted. He, however, forced inside the room and found his daughter in a burnt condition and lying unconscious. He has further stated that none of the Appellants were present in the house at that time and that their entry was resisted by neighbours of the accused. He brought a trekker and removed his daughter to Jamalpur Railway Hospital and from where she was referred to Munger Sadar Hospital for treatment. He has further stated that his daughter was brought to Sadar Hospital Munger. The deceased was hospitalised on that day. He has further stated that on a subsequent morning at about 6 A.M. she died of her injuries. He came to the Sasural of his daughter at about 12 noon. He has further stated that he had received information at about 11 A.M. After the death of his daughter he approached Jamalpur police for action. But no action was taken then a complaint was given before the Superintendent of Police, Munger. He has further stated that the marriage was solemnised two years before the occurrence, and right from the marriage the accused persons were insisting for a tape-recorder, golden ring and bicycle and due to non-fulfilment of the demand of dowry they used to give threat to his daughter and she was ill-treated by them. He has further

stated that the deceased informed about the demand through a letter.

8. P.W. 3 the mother of the deceased has also supported the case of the prosecution. According to her on 26.7.1986 one Munna Rajak came and informed him (sic-her?) about the burning of his (sic-her?) daughter at about 11.00 A.M. She and her husband went to Jamalpur. She has further stated that when they reached, none of the accused persons were present there. They were resisted by the female members of the neighbourhood. The deceased was lying in a dark room on the floor. She has further stated that they brought the deceased to Jamalpur Railway Hospital and from there to Munger Sadar Hospital where she died. According to her the accused persons have committed the murder of her daughter and that they used to subject her to cruelty in connection with demand of dowry. According to her daughter came to her house only once after her second marriage and when her husband went again to bring her daughter, the accused persons refused Roshgadi of her due to non-fulfilment of the demand made by them.

9. P.W. 7 the Inspector of Police has stated that on suspension of the I.O. Umesh Chandra Mishra he took up investigation of the case. According to him he did not participated in the investigation as there was no supervision note and handed over the charge of investigation on his transfer from Jamalpur police station.

10. D.W. 1 is close neighbour of the accused persons. He has stated that the deceased burnt herself and the accused Bhola went to the police station. He has further stated that the deceased herself narrated to him that she has burnt herself According to, him she was taken to Jamalpur Railway Hospital and then Sadar Hospital, Munger and that the statement of the deceased was recorded by the I.O. D.W. 2 has proved the case diary. D.W. 3 has proved a document which is receipt given by P.W. 2 by which he received all the articles given to him in dowry.

11. Learned Counsel appearing on behalf of the Appellants has submitted that no compelling reasons are available to show that it resulted in torture which to the deceased to commit suicide. It had been further submitted that since the Appellants have been acquitted of the charges u/s 304B of the Indian Code it is difficult to believe that there were any torture to that extent which resulted into suicide. It has been further submitted that according to the F.I.R. husband was away from the house and there is no evidence that husband was present in the house and there was no compelling (sic) son to force her to commit suicide, prove the plea of the Appellants, I.O. has not been examined and for which great prejudice has been occurred to the defence.

12. There is no dispute that the deceased died due to burn injury two years after her marriage but as submitted by the learned Counsel that there was no compelling situation soon before her death on account of demand of dowry which led to suicide. That apart soon after the occurrence an information was given to the police by the father-in-law of the deceased about the injury inflicted on the

deceased. In the Fardbeyan it has been alleged that the deceased had some altercation with her mother-in-law and in course of altercation she set fire. Though I.O. has not been examined but some paragraphs of the case diary has been exhibited. It appears from the case diary that after her burning A.S.I. sent her to the Hospital for her treatment, From Ext.A at page 74 of the case diary it appears that the I.O. enquired from the deceased while she was taken to Sadar (Hospital, Munger on a Trecker about her Injury on which the deceased replied that she herself set fire on her body P.Ws. 2 and 3 father and mother of the deceased though never got their statement recorded before the police. For the first time in the Court they had deposed that they had heard about setting of fire of her daughter on the information given by one Munna. They thereupon went to her house where the deceased was lying unconscious and nobody of her family was present there. Thereafter they took her to Jamalpur Hospital on a Trecker and from there she was referred to Sadar Hospital, Munger. They Shave completely denied that in the way they met the S.I. of Police. Apart from that they gave information to the Superintendent of Police three days after the occurrence and as such their testimony is not in accordance with the facts recorded in the case diary. Unfortunately the I.O. of this case has not been examined as such only those facts recorded in the case diary which has been made exhibits can be used as evidence. The learned Court below also after perusal of the evidence came to the conclusion that it was a case of suicide by the deceased. However, the Court below convicted them u/s 306 of the Indian Penal Code abetting with the deceased in the commission of her suicide. As already discussed that there was no immediate reason which compelled her to commit suicide. On the other hand she had quarrel with her mother-in-law for some domestic affairs and due to which she committed suicide by setting fire herself. The mother-in-law also tried to extinguish fire from her body and in that process she also inflicted burn injury. Unfortunately the Doctor who examined the deceased was not examined and P.W. 1 who held the post mortem examination has only mentioned that there was extensive burn injury on the person of the deceased. There is no specific and direct evidence that the Appellants abetted with her act of committing suicide and simply on presumption it will not be safe to convict the Appellants u/s 306 of the Indian Penal Code. As such they deserve benefit of doubt and accordingly they are acquitted of the charge punishable u/s 306 of the Indian Penal Code. However, for demand of dowry a letter has been exhibited and P.Ws. 2 and 3 have also deposed that there was demand of dowry by the Appellant and for that they used to give threatening to the deceased Punam Devi. They are the competent witnesses on this point. The letter which has been exhibited (Ext. 7) is of two years prior to the occurrence and there was no evidence of continuing torture and harassment for demand of dowry.

13. In view of above I am of the view that the prosecution miserably failed to even establish its case u/s 498A of the Indian Penal Code and the Appellants deserve acquittal on this count as well. Accordingly, the conviction and sentence

passed by the Court below is set aside and the Appellants are set at liberty.

14. In the result, this appeal is allowed.