
(2000) 01 PAT CK 0079

In the Patna High Court

Case No : Criminal Appeal No. 101 of 1996 R

Bijoy Uraon @ Phagu Uraon

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 11-01-2000

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 222(1), 374(2)
Penal Code, 1860 (IPC) — Section 304B, 306

Citation : (2000) CriLJ 3384 : (2000) 2 DMC 445

Hon'ble Judges : G.S. Chaube, J

Bench : Single Bench

Advocate : A.K. Sahani and N.K. Sahani, for the Appellant; Sekhar Sinha, APP, for the Respondent

Judgement

G.S. Chaube, J.—The sole appellant Bijoy Uraon @ Phagu Uraon has been convicted by the Addl. Judicial Commissioner of Khunti u/s 304B of the Indian Penal Code for committing dowry death and is sentenced to undergo rigorous imprisonment for ten years. Hence, this appeal u/s 374(2) of the Code of Criminal Procedure.

2. The prosecution case is that the appellant, a resident of village Nehalgara within Bundu Police Station in the district of Ranchi was married to Bichar Grain, daughter of late Jhirga Uraon of village Damaru within the same police station in or about year 1991 and thereafter was residing with his wife at the matrimonial home separate from his parents and brothers. At the time of the marriage, tile appellant had demanded a bicycle from his in-laws, but the same could not be given. Consequently, the appellant used to subject the wife with cruelty in consequence of non-fulfilment of the said demand of dowry, which was even repeated several times after the marriage. The appellant also used to harass and torture his wife Bichar Uraon because she had failed to bear any child during the wedlock. The wife of the appellant used to make complaint in this regard to her mother, brother and sister-in-law. On 2.4.1995, the mother-in-law of the

appellant, namely, P.W. 1 Ganga Devi happened to reach the house of the appellant while returning home from the place of the in-laws of her son Gula Uraon, the first informant. To her utter surprise, she found the house of the appellant locked from outside. The appellant was present there. When she enquired about her daughter, the appellant gave different explanations. Consequently, she got suspicious and returned home. Reaching home, she made public her suspicion to her son and others who went to village Nehalgara and found the house locked. On demand, the appellant who was still present there declined to hand over the key thereof and on some pretext went away. Consequently, the first informant entered inside the house through a window and found that his sister Bichar Uraon was hanging inside the room with a rope tied around her neck and its other end fastened with the beam of the roof. The police was informed and a First Information Report was lodged (Ext. 2) on the same day. The police arrived there, held inquest on the dead body, and sent the same for post mortem. On post mortem, it was found that the deceased-wife of the appellant had died of strangulation due to hanging. Consequently, the appellant was charged with commission of offence of "dowry death" punishable u/s 304B of the Indian Penal Code.

3. The defence of the appellant is denial of the allegation that he had been demanding bicycle from his deceased wife and used to torture her in consequence of non-fulfilment of such demand. His further plea is that a couple of days earlier, he had gone to a friend's house and when the death of his deceased wife came to be known, he was informed and came home to find that his wife had died of hanging. In other words, the defence of the appellant is total denial of the allegation and false implication.

4. To prove the charge, the prosecution examined six witnesses including a formal one. The appellant also examined a witness in support of his defence. On consideration of the evidence adduced by the prosecution as well as by the defence, the learned Addl. Judicial Commissioner did not accept the plea of alibi taken by the appellant. The learned Addl. Judicial Commissioner has found on evidence that the appellant had been making demand of a bicycle by way of dowry from his in-laws and the deceased wife and consequent to non-fulfilment of the demand, he used to torture her. The death of the deceased wife of the appellant having taken place within seven years of the marriage in abnormal or unnatural circumstances, the appellant has been held guilty of committing dowry death. Accordingly he has been convicted and sentenced as indicated above.

5. Mr. A.K. Sahani, learned Counsel for the appellant has submitted that even though the death of the deceased wife of the appellant had occurred otherwise than under normal circumstances within seven years of her marriage with the appellant, there is no satisfactory evidence that the appellant had made demand of dowry, particularly of a bicycle and used to subject the deceased wife with cruelty for dowry or in connection therewith. He has submitted that the evidence of the prosecution witnesses on the point of demand of dowry and consequent

torture is highly inconsistent and contradictory. According to him, there is consistent evidence of the prosecution witnesses, who are blood relations of the deceased, that the relationship between the appellant and the members of the family of his in-laws was quite cordial and it was not possible in that event for his subjecting the deceased with cruelty for non-fulfilment of the demand of dowry.

6. Section 304B of the Indian Penal Code defines, as well as prescribes punishment for "dowry death". According to this provision, where the death of a woman is caused by burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death 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, such death shall be called "dowry death" and such husband or relative shall be deemed to have caused her death. Thus it is manifest that to constitute the offence of dowry death, the following necessary ingredients are to be established :

- (i) that the death of a woman is caused by burns or bodily injury or it occurs otherwise than under normal circumstances;
- (ii) that such death has occurred within seven years of the marriage of the woman;
- (iii) that there was a demand of dowry; and
- (iv) that soon before the death of the woman, she was being subjected to cruelty or harassment by her husband or his relatives, for, in connection with, such demand of dowry.

Only if all the abovementioned ingredients are fulfilled, that a person can be found guilty and convicted of committing the offence of dowry death. If any of the ingredients is found not established, the offence of dowry death is not made out.

7. In the present case, certain facts are undisputed. They are, that the deceased was married with the appellant only about four years prior to her death; she was found hanging inside the matrimonial home with ante-mortem bodily injury on her person. According to the evidence of P.W. 5 Dr. Ram Sewak Sahu who had conducted post mortem examination on the dead body of the deceased on 3.4.1995 at about 11.30 a.m., there was an ante-mortem bruise measuring 7 cm. x 2 cm. on the back of the left chest of the deceased, besides legature mark 1 1/2 cm. to 2 cm. in width situated on the upper part of her neck. A nylon rope was found tied round the neck and its running noose was found situated on the left side of the neck. The legature mark was oblique and high up towards left side of the neck. It was continuous all along the neck except left lateral neck. An abrasion measuring 2 cm. x 1 1/2 cm. was found present over the left angle of mandible corresponding to the knot of the noose. Thus, it is apparent that the death of the deceased wife of the appellant was not only caused due to bodily

injury, it had occurred otherwise than under normal circumstances.

8. Therefore, the question arises whether the prosecution has been able to prove that the appellant had made or had been making demand of a bicycle by way of dowry from the deceased wife and her parents and blood relatives and whether in consequence of non-fulfilment of such demand, he had been subjecting the deceased with cruelty or harassment soon before the death?

9. P.W. 1 Ganga Devi is the mother of the deceased. She has stated that her son-, in-law, namely, the appellant had made a demand for bicycle but she has expressed her inability to fulfil the demand on the ground of poverty. She has further stated that in consequence of non-fulfilment of the demand, the appellant started quarrelling with the deceased. She has further stated that when the deceased had come to her before her death, she had told that her husband always used to quarrel with her in consequence of non-fulfilment of demand of dowry, as also because she had failed to bear any child after the marriage. In course of her cross-examination, she has, however, stated that the appellant made the demand for bicycle for the first time after one year of his marriage with the deceased. She has also stated that some times he made the demand from her and some time from her son and daughter-in-law.

10. P.W. 3 Gula Uraon is the brother of the deceased and son of P.W. 1. He has stated that the deceased had been married with the appellant about 4-5 years back and that whenever she used to visit parental home, she used to complain that her husband was insisting for a bicycle and was torturing her for the same. In course of his cross-examination he has stated that the appellant very often used to ask him to give him a bicycle, but there was no witness to such demand. He has also stated that the appellant started making the demand for the bicycle only two months after the marriage. Eventhough he has stated that he had disclosed to the elderly people of his village that the appellant was demanding a bicycle, none has been brought to the witness box in corroboration of this statement.

11. P.W. 2 Jhupri Uraon is the wife of P.W. 3. She has also stated that the appellant used to demand a bicycle. She has also stated that the deceased used to complain why bicycle was not being given to her husband when it was promised. When put to cross-examination, witness admitted that the appellant had never asked her for the bicycle. Only the deceased used to tell her that the appellant was asking her to bring the bicycle. According to her, for the first time only 3-4 months prior to the occurrence, the deceased had made such a disclosure to her.

12. On the other hand, P.W. 4 Charan Uraon who is the uncle of the deceased and husband of the sister of P.W. 1, has stated that at no point of time, the deceased had even made any complaint to him, even on being asked, that the appellant was asking her to bring a bicycle and in consequence of non-fulfilment of the demand, she was being tortured by him: Had there been any demand of

bicycle by the appellant and consequent torture of the deceased, the latter would have certainly complained of it to her uncle (P.W. 4), at least, when he enquired of her well being from her. The omission on the part of the deceased to make any such complaint to P.W. 4 coupled with contradictory and inconsistent statements of P.Ws. 1, 2 and 3 on the point when the demand for bicycle by the appellant started, only goes to show that the story of demand for a bicycle and consequent torture due to its non-fulfilment is not beyond reproach. In this connection, it is worth mentioning that the relationship between the appellant on the one hand and the members of the matrimonial family on the other, is shown to be very very cordial. As a matter of fact, the mother-in-law used to reside with the appellant and look after his affairs and tend his cattle. When the house of his in-laws fell down, he had provided timber, etc., for its reconstruction. All the witnesses have stated that the relationship between the two families was quite cordial. If there was a demand of dowry and consequent torture to the deceased, the relationship between the appellant and his in-laws would have certainly become sour, if not bitter. The evidence is just to the contrary. To crown all, in her evidence P.W. 1 has admitted that the appellant had a bicycle of his own. If he had already a bicycle, there was no question of his pestering either the deceased or his in-laws for the same and torturing the deceased for non-fulfilment of the said demand.

13. Therefore, from the evidence of the prosecution witnesses, it becomes manifest that two very important ingredients of dowry death, that is, demand of dowry and cruelty or harassment to the deceased bride for the same or in connection therewith, are not established beyond reasonable doubt. Indeed, from the facts and circumstances of the case, it appears that the deceased had committed suicide. The room in which she was found hanging, was bolted, according to the prosecution witnesses, from within and it could be opened only when P.W. 3 went inside through the window after breaking it. Post mortem report shows that there was an ante-mortem bruise measuring 7 cm. x 2 cm. on the back of the deceased towards left side. This shows that the bruise had been inflicted on her before she hanged. Evidence on record shows that in the matrimonial home only the appellant and the deceased used to reside as other members of the family were residing separately in different houses. This shows that, in all probability the ante-mortem bruise on the person of the deceased was inflicted by none else than the appellant himself. It might be that the deceased committed suicide on being aggrieved of the assault on her by the appellant. Thus, the appellant can be said to have abetted the suicide committed by the deceased wife, punishable u/s 306 of the Indian Penal Code.

14. Sub-section (1) of Section 222 of the Code of Criminal Procedure lays down that when a person is charged of offences consisting of several particulars, a combination of some only of which constitutes a complete minor offence and such combination is proved but the remaining particulars are not proved, he may be convicted of the minor offence, though he was not charged with it. The appellant was charged u/s 304B of the Indian Penal Code for committing dowry

death on the ground that within seven years of his marriage with the deceased, the latter was found dead with bodily injuries in an abnormal circumstance in consequence of cruelty by him in connection with demand of dowry. The prosecution has failed to prove the ingredient of demand of dowry. However, the ingredients of death of the deceased having occurred otherwise than under normal circumstances, that is, due to suicide committed by her in consequence of cruelty or torture meted out to her by the appellant, sufficient to constitute the offence of abetting the suicide punishable u/s 306 of the Indian Penal Code, have been established. Therefore, even though no charge u/s 306 of the Indian Penal Code had been framed against the appellant, he can be held guilty and convicted of minor offence of abetting the deceased to commit suicide punishable u/s 306 of the Indian Penal Code for a maximum period of ten years only.

15. In the result, the appeal is allowed in part. The appellant is acquitted of the charge u/s 304B of the Indian Penal Code and instead is convicted u/s 306 thereof. However, taking into consideration the age of the appellant as also the fact that he has suffered incarceration for nearly five years by remaining behind the bar since 4.4.1995, he is sentenced for the period already undergone. He is directed to be released forthwith if not required in any other matter.