

(2002) 07 PAT CK 0073

In the Patna High Court

Case No : Criminal Appeal (DB) No. 9 and 44 of 1997

Bishundeo Poddar and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-07-2002

Acts Referred:

Penal Code, 1860 (IPC) — Section 300

Citation : (2002) 50 BLJR 2280 : (2003) CriLJ 1558 : (2003) 2 DMC 64 : (2002) 3 PLJR 712

Hon'ble Judges : Sachchidanand Jha, J;P.N. Yadav, J

Bench : Division Bench

Advocate : Kanhaiya Prasad Singh, Abul Kalam and Atal Bihari, for the Appellant; Lala Kailash Behari Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Sachchidanand Jha, J.—These two appeals are directed against the judgment and order by which the appellants have been convicted u/s 302/34, Penal Code and sentenced to rigorous imprisonment for life and further convicted u/s 498A of the Penal Code and sentenced to rigorous imprisonment for two years. There are three appellants in Cr. Appeal No. 9/97. They are in-laws of the deceased. In Cr. Appeal No. 44/97 the appellant is the husband.

2. Briefly stated, omitting the unnecessary details, the case of the prosecution is that Ranju Kumari, daughter of the informant Ram Narayan Poddar, was married to appellant-Birendra Poddar of Village Sadpur, P. S. Sahebpur Kamal, District Begusarai on 27-6-90. In her sasural she was ill-treated, the reason being that Birendra Poddar was having illicit relationship with his Bhabhi, Janki Devi, one of the appellants herein, to which Ranju was objecting. Her objection was not taken well and she was at times beaten. Ranju Kumari told her father about the ill-treatment. She expressed her apprehension that she might be killed and, therefore, she does not want to go to her sasural. However, on account of marriage in the in-laws family Rokshadi was performed on 5-4-93. She sent

letters describing her plight. Ram Narayan Poddar sent his son Sanjay to bring her but she was not allowed to come. On 8-9-93 his nephew Shashi Bhushan Poddar informed Ram Narayan Poddar that Ranju had been killed by her husband and in-laws in the night of 1/2-9-93 and her dead body made to disappear. Ram Narayan Poddar along with Shashi Bhushan Poddar and son Sanjay Poddar went to Sadpur to enquire the whereabouts of Ranju. Appellant Bishundeo Poddar (father-in-law of Ranju) told that Ranju had died of illness. Ram Narayan Poddar made enquiries and came to learn that she had been killed and her dead body made to disappear by the appellants.

3. On 9-9-93 at 11.45 a.m. Ram Narayan Poddar lodged written report to the above effect on the basis of which Sahebpur Kamal PS Case No. 128/93 was instituted.

4. On 10-9-93 dead body of a woman was recovered at Village Chhoti Balia Dharara Ghat Bahiyar within Balia Police Station in the field of one Rajendra Yadav. Her neck was found cut. On the statement of said Rajendra Yadav, Balia PS Case No. 159/93, dated 10-9-93 was instituted. The Officer-In-charge of Balia who made the inquest at 10-30 a.m. found besides cut in the neck, the tongue protruded, the body swollen and blisters (on the body) at many places. The body was clad in blouse and petticoat. A sari was lying by the side. The body was sent to Begusarai Sadar Hospital where post-mortem was held by Dr. Raja Rajeshwar Prasad Singh on 11-9-93 at 10-30 a.m. Since the body had not been identified till then he described it as body of an "unknown woman". It was later identified as that of Ranju Kumari i.e. daughter of Ram Narayan Poddar, by one Shatrughan Thakur, a co-villager. Ram Narayan Poddar came to learn about the recovery from Teghra PS through one Maheshwar Thakur at 1-30 p.m. He along with others went to Begusarai Hospital and found the dead body of Ranju lying at Ambedkar Sangh, a part of the hospital premises. After he identified the body as that of his daughter custody thereof was made over to him which he later cremated.

5. After the Investigating Officer of the instant case i.e. Sahebpur Kamal PS Case No. 128/93 learnt about the recovery of the dead body on 12-9-93 he went to Balia P.S. contacted the Officer-In-charge and learnt that the body had been made over to her father i.e. Ram Narayan Poddar. Constable No. 57 Kailash Prasad Yadav confirmed it. In the meantime he had recorded the statements of the witnesses. After completing the investigation he submitted charge-sheet against the appellants and one Jawahar Poddar and Ram Prakash Poddar who have since been acquitted by the judgment under appeal.

6. At the trial, which followed, the prosecution examined 12 witnesses to prove its case. The material witnesses are P.W. 5 Shashi Bhushan Poddar, a cousin of the deceased. P.W. 6 Hardeo Narayan Poddar, maternal uncle of the deceased, P.W. 7 Sanjay Kumar Poddar, brother of the deceased and P.W. 8 Ram Narayan Poddar, the informant i.e. father of the deceased, besides the doctor namely Dr. Raja Rajeshwar Prasad Singh and the I.O. namely P.W. Ravindra Prasad Singh as

P.Ws. 9 and 10. The remaining witnesses namely P.W. 1 Sukhdeo Mahto, P.W. 2 Talekhar Sahni, P.W. 3 Ghanshyam Prasad Mahto, P.W. 4 Mahadeo Sada, P.W. 11 Kaleshwar Prasad Singh and P.W. 12 Md. Naseem, were either tendered or declared hostile.

7. The appellants also examined one witness namely Dinesh Poddar to prove their defence that Ranju had died from Jaundice. In fact, some of the prosecution witnesses namely P.W. 1 Sukhdeo Mahto, P.W. 2 Talekhar Sahni (tendered), P.W. 3 Ghanshyam Prasad Mahto (hostile) P.W. 11, Kaleshwar Prasad Singh (tendered) and P.W. 12 Md. Naseem (tendered) also stated in their evidence that Ranju had died due to Jaundice.

8. There are thus two versions about the death of Ranju. While there is positive evidence to suggest that she died from Jaundice there is no such positive evidence about her homicidal death. Understandably, because Ranju died in her sasural and her parents or other family members are not expected to adduce any direct evidence on the point. But, equally, if the aforesaid dead body found at Chhoti Balia was really that of Ranju, her homicidal death would stand proved in view of the ante-mortem injuries on her body both by the Officer-In-charge of Balia PS vide Inquest Report (Ex. 7) and Dr. Raja Rajeshwar Prasad Singh vide his postmortem report (Ext. 4), which would be wholly inconsistent with the defence of the appellants that Ranju died from Jaundice. At this stage the injuries found by the doctor and as mentioned in the Post-mortem Report may be noticed as under :--

(i) Incised injury in the front of neck at the level of Thyroid Cartilage 4" x 2" x 2". Trachea has been completely cut. Right and left internal (illigible) and external (illigible), internal (illigible) vein were cut.

(ii) Incised injury on the upper part of right side of abdomen through which small intestine was cut. Size injury 3" x 2" communicating with the abdomen.

The doctor further found that the body was in advance stage of putrification, foul smelling odour was coming from the body. The body was swollen, tongue was protruded. Eye-ball was bulging out. Whole body was covered with maggot. Blisters appeared over the skin. The doctor opined that death was due to haemorrhage and shock caused by sharp cutting edge from abovesaid injuries.

9. Shri Kanhaiya Prasad Singh, learned counsel for the appellants was, naturally, at pains to challenge the identity of the dead body as that of Ranju Kumari. He submitted that though Ranju Kumari is said to have been killed in the night of 1/2-9-93 the dead body was recovered on 10-9-93 and according to the doctor death was within 48-72 hours. Further according to the doctor the dead body was of a 30 year old woman which does not fit in with the identity of the deceased considering that she was married only three years ago in 1990 and in villages a girl does not normally wait, for marriage till she attains that age. Further, the recovery was made from a place 10 Kilometers away from Sadpur village, the village of occurrence, and it is doubtful that the appellants after

committing the murder would cover a distance of 10 kilometers to dispose of the body. Shri Singh pointed out that admittedly the dead body had not been identified till the time of post-mortem i.e., 10-30 a.m. on 11-9-93. Shailendra Thakur, who claims to have seen and identified the body at the hospital has not been examined in the case. Maheshwar Thakur from whom Ram Narayan Poddar claims to have learnt about the recovery of the dead body has also not been examined. There is thus no evidence as to how Ram Narayan Poddar came to learn about the recovery. Though he claims to have gone to Begusarai Sadar Hospital and identified the dead body lying there, none of the hospital staff also has been examined and thus there is no evidence on the point of identification.

10. Having perused the records of the case I am constrained to observe that the investigation in the case was conducted in a very casual manner. In fact a suggestion was also given to the Investigating Officer in course of his evidence that he did not properly investigate the case in collusion with the accused. The Investigating Officer should have recorded the statements of said Shailendra Thakur and Maheshwar Thakur. In fact, steps should have been taken to tag Balia PS Case No. 159/93 with the instant case as corpus delicti was found and seized in that case. Separate case was instituted because when the body was recovered its identity was not known. Actually the case was not properly conducted by the prosecution even in Court. The prosecution witnesses who said that the deceased died from jaundice had told before the police about the relationship between Birendra Poddar and Janki Devi; that she used to be tortured by her in-laws; that at the relevant time (on 3-9-93) they had shifted to their newly constructed incomplete house. Curiously, attention of the witnesses was not drawn to their previous statements in course of their evidence nor the I.O. was asked any question about their previous statements before him.

11. Be that as it may, the fate of the case does not depend on what the Investigating Officer or the prosecutor ought to have done and the evidence which ought to have been led. The fate depends on the evidence which is on record. Admittedly the dead body of a woman was recovered on 10-9-93 at Village Chhoti Balia, Dharara Ghat Bahlyar on 10-9-93. The fact that Inquest was held at 10-30 a.m. suggests that the body must have been discovered in the early hours because it must have taken some time to send information to the police and the Officer-in-charge of the PS to reach the place. There is serious dispute about the identity of the said body. As observed above, if the dead body was really that of Ranju Kumari the defence case of her dying natural death from Jaundice would stand completely demolished. The ante-mortem injuries found on the body leave no room for doubt that the woman had been killed and the dead body dumped at the place from where it was eventually discovered.

12. On the point of identification there is positive evidence of not only her father P.W. 8, but also cousin and own brother i.e. P.W. 5 Shashi Bhushan Poddar and P.W. 7 Sanjay Kumar Poddar. Considering their close relationship with the deceased their evidence on the point of identification must be given due weight.

It has to be kept in mind that though petrification had set in and the body was swollen there is nothing in the Post-mortem Report to suggest that the body was beyond identification. In fact no such suggestion was given to the doctor in his cross-examination on behalf of the appellants. The informant was allowed custody of the dead body by the hospital authorities and he thereafter cremated it. Obviously he would not have done so if the body had been of a stranger. The fact that the body was delivered to him finds corroboration from the evidence of the I.O. who told in his evidence that he had learnt about it from the Officer-in-charge of Balia PS on 12-9-93. The Officer-in-charge of Balia PS also told him that the body had been identified as that of daughter of Ram Narayan Poddar of Village Gaura. It may be mentioned that in para 7 of his evidence he made a slight mistake when he said that the body had been identified by Ram Narayan Poddar of Village Gaura. What has actually been recorded in the case Diary, vide para 33, is that the Officer-in-charge (Balia PS) had told him that the body had been identified as daughter of Ram Narayan Poddar of Village Gaura. In the case diary there is also reference to similar statement by Constable Kailash Prasad Yadav.

13. As regards the submission of the counsel for the appellants that there is no evidence as to how the informant came to learn about the recovery of the dead body of Ranju, it appears that there is positive evidence vide paras 19 and 25 of the deposition of the informant that the body was identified by co-villager Shatrughan Thakur who had gone to hospital for some other purpose. Then there is positive evidence vide para 25 of the deposition that Maheshwar Thakur had informed him from Teghra PS that the body of his daughter had been recovered. It appears that Shatrughan Thakur having seen, and identified, the dead body of Ranju Kumari passed on the information to Teghra PS within whose jurisdiction the informant's village is situated. Teghra Police got the message conveyed to the informant through Maheshwar Thakur. I do not think there is anything unusual in the sequence of events. Shatrughan Thakur having per chance seen the dead body and identified it as the body of Ranju, being a co-villager, would have either come to the informant's village and informed him personally about it, he could also get the message, conveyed, say, through Teghra PS and he took steps accordingly. Teghra Police ultimately conveyed the information to the informant through Maheshwar Thakur. There is nothing unnatural about it. Things happen like this in real life. Of course, if only, Shatrughan Thakur and Maheshwar Thakur had been examined, things would have been clearer, but as I have understood the case, merely on the ground that they were not examined, it cannot be said that there is a missing link in the prosecution case regarding the informant getting information about the recovery of the dead body of his daughter. There is evidence that he received information at 1-30 p.m. i.e. three hours after the Post-mortem examination, whereafter he went to Begusarai Sadar Hospital and took custody of the body.

14. The submission of the counsel that though Ranju Devi is said to have been killed in the night of 1/2-9-93, as per the Post-mortem Report death had taken

place within 48-72 hours and, therefore, the body could not be that of Ranju Kumari, at the first instance appears to be attractive but I do not find any substance in it. It is true that in his written report the informant had said about the death of Ranju Kumari in the night of 1/2-9-93 but it is to be kept in mind that he said so on the basis of information received from P.W. 5 Shashi Bhushan Poddar on 8-9-93. Shashi Bhushan Poddar does not claim to have any direct knowledge of the death, he conveyed to the informant what he had learnt. He told about disappearance of Ranju Kumari since 1/2-9-93 leading to an inference that she might have been killed in that night. Where death occurs in one's sasural the family members can only make a guess about the probable date or time of the death and, therefore, the fact that in the, written report he stated about the occurrence taking place in the night of 1/2-9-93 does not necessarily lead to the conclusion that Ranju was actually killed in that night. If the time of death is reckoned from 8-9-93 when P.W. 5 informed P.W. 9. about the killing of Ranju, it would fit in the findings of the doctor that the death had taken place within 48-72 hours on 11-9-93.

15. The submission that the appellants would not have carried the dead body up to a distance of 10 Kilometers also has no substance. As already stated above, there is no positive evidence that the deceased was killed at Village Sadpur itself, the evidence rather suggests that she was not seen since 1/2-9-93 which led them to think that she had been killed in that night. If she was killed on or about 8-9-93 -- as per the Postmortem Report -- it seems likely that she was taken to some other place where she was killed and her dead body was dumped at Village Chhoti Balia. Apart from that, so far the distance between Sadpur, and Chhoti Balia is concerned, what I.O. stated in the evidence was the distance between the two places by National Highway which suggests that one could reach Chhoti Balia from Village Sadpur by shorter route also.

16. The submission that the dead body was of a woman of 30 years age and, therefore, could not be the body of Ranju Kumari also has no substance. It is true that the doctor described the dead body as that of a woman of 30 years but this was his opinion. Apparently no scientific test was done before reaching this conclusion. It should be kept in mind that the body was swollen and in advance stage of petrification and, therefore, the description of the age could not be but based on general estimate, not much relevance can be placed on this part of his findings especially when the father, brother etc. identified the body.

17. In the facts and circumstances of the case, I am satisfied that the materials on record prove beyond reasonable doubt that the dead body in question was that of Ranju Kumari and that she died homicidal death and not a natural death from Jaundice as the defence and some of the prosecution witnesses would suggest.

18. Shri Kanhaiya Prasad Singh submitted that the case is not one u/s 304B of the Indian Penal Code and therefore the accused are not liable to prove their innocence, rather the prosecution has to prove its case in all its aspects beyond

all reasonable doubts. No contemporaneous evidence has been led by the prosecution that the deceased had been killed by the appellants. He pointed out that some of the prosecution witnesses stated in their evidence that Ranju was suffering from Jaundice and died of illness.

19. It is true that there being no allegation of dowry demand the case could not be brought within the mischief of Section 304B of the Penal Code. The specific case of the prosecution is that Ranju was killed as she was objecting to the illicit relationship between Birendra Poddar and Janki Devi. But the fact remains that when Ranju Devi died she was in her sasural. The appellants do not deny this. In fact their definite case is that she died of illness. The story of natural death from Jaundice having been held to be false it would follow that the death having occurred in the sasural, the in-laws cannot afford to keep silent. It is true that the prosecution has to prove its case and the accused is not supposed to take specific defence, and prove it, but where a woman dies in her sasural the in-laws cannot afford to keep silent. They have to explain the circumstances in which the deceased died and their silence may be taken as a circumstance against them. Where a specific defence is taken which is found to be false, this also becomes a circumstance staring on the face of the accused. Where a woman dies or is killed at her in-laws' place, no direct contemporaneous evidence is normally expected; however, in the instant case the prosecution has brought on record the letters written by Ranju in which she stated about her plight. One of the letters was written on 22-5-93 i.e. within close proximity of her death, marked as Ext. 1. It is true that some of the witnesses who were either tendered or declared hostile did say that Ranju died from Jaundice, and though the appellants are entitled to rely on their evidence, in view of my findings about the homicidal death of Ranju, it is futile to claim any mileage on the basis of their evidence in favour of the appellants.

20. Having thus considered and rejected the submissions advanced on behalf of the appellants I find that the prosecution has proved its case beyond all reasonable doubts and the impugned judgment of conviction, therefore, does not require any interference. The appeals are accordingly dismissed. Appellants Bishundeo Poddar, Janki Devi and Bhola Poddar are on bail, their bail bonds are cancelled and they are directed to surrender in the Court below to serve the remainder of the sentence.

P.N. Yadav, J.

21. I agree.