
(2006) 08 JH CK 0137
In the Jharkhand High Court

Dhananjai Patar

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 29-08-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304B, 328, 34

Citation : (2007) 1 JCR 51

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.R. Prasad, J.—The appellant Dhananjai Patar was put on trial to face charges u/s 304-B/328/34 of the Indian Penal Code along with one Chand Patar (since acquitted) on the allegation that they in furtherance of their common intention committed dowry death of Sushila Devi. On being tried learned 2nd Additional Judicial Commissioner, Khunti while acquitting Chand Patar convicted the appellant u/s 304-B of the Indian Penal Code and consequently sentenced him to undergo rigorous imprisonment for seven years.

2. The case of the prosecution is that Sushila Devi, daughter of the informant Nagendra Patar (PW 2) was married to the appellant Dhananjai Patar in the year 1993. After the marriage Sushila Devi stayed in her matrimonial home for about a week and during that period when the informant (PW 2) came to her daughter's matrimonial home he could know that the appellant had gone some where along with one girl and, therefore, he brought his daughter to his house. After one and half year the appellant came to his place and wished to take Sushila Devi with him and the appellant was allowed to take her with him. After some days his daughter informed him that this appellant as well as her father-in-law (other accused) have been asking repeatedly for watch and cycle as dowry and in order to get the demand fulfilled, she is being subjected to assault. Further case is that on 16.4.1999 this appellant came to the house of the

informant and told him that there had been some altercation with Sushila Devi, and as such, she has left home. Subsequently on 18.4.1999 at 9 a.m. one Chandramohan Patar (not examined) came and informed to the informant that Sushila Devi has consumed some poison. On getting this information the informant came to his daughter's place and saw her daughter in senseless condition and also saw froth coming out of her mouth. Subsequently, she breathed her last.

3. Thereafter the informant gave his fardbeyan (Ext. 2) before the Sonahatu Police Station on 19.4.1999 at 3 p.m. On the basis of which a case was registered and the matter was taken up for investigation by the Investigating Officer (not examined) and in course of investigation, the Investigating Officer seems to have sent the dead body for post mortem examination before Dr. Saroj Kumar (PW 5) who did autopsy on the dead body of Sushila Devi. In course of examination no mechanical injury either external or internal was found on the persons of the deceased. However, viscera was preserved and was sent before the Forensic Science Laboratory. In that event no definite opinion could be given regarding cause of death. The post mortem examination report issued by PW 5 has been marked as Ext. 3. It further appears that viscera on being examined chemically in Ijaz Ahmad Khan (Court witness No. 1) found to have contained some pesticides which can cause death of human beings. The viscera report has been marked as Ext. 4.

4. After completion of investigation, police submitted charge-sheet against this appellant as well as Chand Patar and, accordingly, cognizance of the offence was taken and in due course when the case was committed to the Court of Sessions, charges were framed to which the appellant and other accused pleaded not guilty and claimed to be tried.

5. In course of trial, the prosecution examined as many as six witnesses, out of them PW 1 Krishna Chandra Patar is the son of the informant, whereas the informant has been examined as PW 2. One Ram Singh Patar brother of the informant has been examined as PW 3. Apart from that, Ashok Kumar Manjhi, a hearsay witness has been examined as PW 4.

6. After the closer of the prosecution cast; the appellant and other co-accused were questioned u/s 313 of the Code of Criminal Procedure about the incriminating circumstances appearing against them to which they denied.

7. The trial Court on the basis of evidences put forth on behalf of the prosecution did find that the appellant guilty u/s 304-B of the Indian Penal Code and accordingly, convicted and sentenced him as aforesaid.

8. Being aggrieved with that, the appellant has preferred this appeal.

9. Learned Counsel appearing for the appellant submitted that prosecution has failed to prove that the deceased was subjected to cruelty soon before the death on account of non-fulfillment of demand of dowry and that when on the same set

of evidences the other accused. Chand Patar has been acquitted, this appellant also deserves to be acquitted.

10. As against this, learned Counsel appearing for the State submitted that there has been evidence on the record that the appellant used to subject the deceased to cruelty on account of non-fulfilment of demand of cycle and watch. In support of that, learned Counsel referred to evidences of PWs 1, 2 and 3 and submitted that trial Court has rightly passed the order of conviction and sentence which needs no interference by this Court.

11. Having heard learned Counsel for the parties and on perusal of the records, I do find that Krishna Chand Patar PW 1, Nagendra Patar PW 2 and Ram Singh Patar PW 3 have come forward to depose that Sushila Devi was married to appellant in the year 1993 and after the marriage she lived on her matrimonial home for about a week and then she was brought to her parental home where she lived about one and half year. Thereafter, the appellant came and took her to his house. It has also come in their evidences that the other day i.e. on 16.4.1999 the appellant came to the house of the informant and told him that after Sushila Devi had some altercation with him she left home. Subsequently, on 18.4.1999 one Chandramohan Patar came and informed PWs 1 and 2 that Sushila Devi is critically serious and when they (PWs 1, 2 and also PW 3) went to the matrimonial home of Sushila Devi, they found her dead. Thus, from the evidences let in by the prosecution it appears that it is the admitted position that death of Sushila Devi was unnatural which occurred within seven years of her marriage. However, before coming to any conclusion it is to be looked into as to whether the prosecution has been able to establish that the deceased was subjected to torture on account on non-fulfilment of demand of dowry soon before her death. In this respect evidence of PW 1 be referred to, where he has deposed that when the appellant on 16.4.1999 informed that Sushila Devi has left home he along with others came to her sister's house and saw her sister all right. But, on the other hand, PW 2 in his evidence says that when alter receiving information, he came to the house of his daughter, his daughter informed him that the accused persons used to subject her to assault on account of non-fulfilment of demand of cycle and watch. However, I do find that this statement of the informant PW 2 was not therein the very first information report lodged by him. Therefore, that piece of evidence can easily be said to be an after thought. At this stage it would be also relevant to refer the evidence of PW 1 as has come in paragraph 10 where it has been said by PW 1 that the appellant never put forth demand either from him or from his father or from his sister in presence of him. Further I do find that PW 2 in his cross-examination on being questioned about the time and date of the demand, failed to give any details of the same. Thus, I do find that the prosecution has failed to establish that the deceased was subjected to cruelty soon before the death on account of non-fulfillment of demand of dowry. Coming to other aspect of the matter, it would be pertinent to mention here that according to PW 3 he was informed by his brother (PW 2) that Sushila Devi has consumed poison which has been confirmed by the Viscera

report and further medical evidence shows that no mechanical injury either external or internal was found on the person of the deceased. These circumstances go to falsify the case of the prosecution as has been made out rather it give indication that the instant case may be a case of suicide.

12. In the result, I do find that the prosecution has failed to prove the charge levelled against him. Accordingly, the judgment of conviction and order of sentence passed u/s 304-B of the Indian Penal Code against the appellant is hereby set aside. Consequently, this appeal stands allowed.