
(2019) 07 JH CK 0207

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 902, 1283 Of 2004

Dhanush Dhari Prajapati And Ors

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 313, 374(2), 389
Indian Penal Code, 1860 — Section 34, 201, 304B, 498A

Citation : (2019) 07 JH CK 0207

Hon'ble Judges : Anant Bijay Singh, J

Bench : Single Bench

Advocate : A.K. Kashyap, Anurag Kashyap, Rakesh Kumar Sinha

Final Decision : Allowed

Judgement

1. Both the appeals are being heard together as the appellants had faced the trial in Sessions Trial No.160/91.

2. The appellants had preferred these criminal appeal in term of Sections 374(2) read with 389 of the Cr.P.C. being aggrieved and dissatisfied with the judgment of conviction dated 24.05.2004 and order of sentence dated 26.05.2004, passed by learned Additional Sessions Judge- Fast Track Court-II, Garhwa, in Sessions Trial No.160/91, whereby and whereunder the appellants, namely, Dhanush Dhari Prajapati and Santu Prajapati were held guilty of offence under Section 498A/34, 304B/34 and 201/34 of the IPC and sentenced to undergo Rigorous Imprisonment for Seven years each for the offence under Section 304B/34 of the IPC and they were also directed to undergo R.I. for two years each for the offence under Section 201/34 and 498A/34 of the IPC and all the sentences were directed to run concurrently.

3. The present appeals were filed on 10.06.2004 and 02.08.2004 and the appeals were admitted vide order dated 08.07.2004 and 29.10.2004 and the LCR was called for and appellants were granted bail vide order dated 08.07.2004 and

14.01.2005 respectively.

4. The prosecution case was registered on the basis of written report of Sheikh Nazir, the then A.S.I of Garhwa P.S. wherein it is alleged that on 22.06.1990, accused Vinay Prajapati (not examined), son of Dhanush Dhari Prajapati had come to the police station and handed over a written report that his Bhabhi Shanti Devi (Deceased) wife of Santu Prajapati died as she had drawn herself into well and the dead body was seen floating in his well situated at village Jatta.

On the basis of the said report, an U.D. case No.11/90 was registered and inquiry was handed over to Shri Sheikh Nazir, the then ASI of Garhwa P.S. (not examined) and the ASI proceeded to the place of occurrence i.e. well on 22.06.1990 at 5.00 p.m. and took out the dead body from the well and inquest report was prepared in presence of two witnesses, namely, Badri Narain Prajapati(P.W.-2) and Bhola Prajapati.

Dead body of Shanti Devi was found swelling and it appears that the death of deceased was not occurred due to drawing.

As per the description of inquest report, it seemed that the dead body was thrown in the well after murder.

In this regard, he started inquiry and inquired from Dhanush Dhari Prajapati being father-in-law, Santu Prajapati being the husband, Sundari Devi being the Monther-in-law, Vimla Devi being Jethani, Anil prajapati being Bhaisur, Vinay Prajapati being Devar of the deceased Shanti Devi all categorically stated that the death of the deceased was due to drawing into the well.

But there was a rumor among the villagers that the deceased Shanti Devi was subjected cruelty and torture for dowry for which she was murdered by the aforesaid members of her in-laws and her dead body was thrown in to the well with a view to give a colour of suicidal death. On the basis of the said report a case was registered as Garhwa P.S. Case No.92/90.

5. After completion of the investigation, on 30.09.90, a final form being No.82/90 was submitted against the accused persons under the aforesaid Sections and after taking cognizance, the case was committed to the court of Sessions for its trial and disposal.

On 04.05.99 case was transferred to the court of Additional District and Sessions Judge FTCII, Garhwa for its trial and disposal and numbered as S.T.No.160/1991.

Thereupon on 07.07.1999 charges were framed against the accused persons u/S 498A, 304B and 201/34 of the IPC, to which they pleaded not guilty and claimed to be tried.

6. During course of trial, altogether 09 witnesses were examined by the prosecution as well as a court witness was also examined.

P.W.-1, Bhola Prajapati, declared hostile

P.W.-2, Badri Narain prajapati, put his signature on inquest report

P.W.-3, Karan Chandra Mahto, declared hostile. P.W.-4, Jugal Kishore Prajapati, cousin of the deceased. P.W.-5, Megha Nath Mahto,

P.W.-6, Raghunath Prajapati

P.W.-7 Ram Chandra Prajapati father of the deceased. P.W.-8, Dr. Ram Naresh Singh, Diwakar, who proved the postmortem report of Dr. J.P. Singh, which is marked as Ext.-2. P.W.-09 Birbal Biatha is the formal witness, who proved the written report submitted by the then ASI, Seikh Nazir and formal FIR C.W-1, Dr. J.P.Singh, examined as court witness, who held the autopsy on the dead body of the deceased and wrote the postmortem report.

7. Prosecution has also brought on record the following documents which has been marked as :-

Ext.-1, Signature of badrinath Mahto on inquest report

Exbt. -2, Postmortem report

Ext.-3 written report of I.O

Ext.-4, Formal FIR

8. On the other hand statement of accused persons was recorded under Section 313 Cr.P.C in which they have pleaded not guilty.

The defence has also adduced both oral and documentary evidence in support of their case. D.W.-1, Vijay Kumar Prajapati and D.W.-2, Basant Manjhi are the defence witnesses who denial of allegation and marriage of deceased with the accused Santu having been taken place after 7 years and the plea of alibi of accused Dhanush Dhari Prajapati.

The defence version of the accused is that no occurrence as alleged was ever taken place and the deceased meet natural death and they have been falsely implicated in the case by the father and relatives of the deceased.

9. After conclusion of trial, the trial court held the guilty, hence the appellants have preferred these criminal appeals.

10. P.W-4, Jugal Kishore Prajapati, cousin of the deceased in his evidence stated that he known to Shanti Devi, deceased and her marriage was solemnized with the Santu Prajapati in the year 1987 and after marriage she went to sasural she was torture by her in -laws for demand of dowry and a panchayati was organized on 19.06.1990 in which he participated and Santu Prajapati assured that he will not demand of dowry and make all efforts to remain Shanti Devi happily.

In cross-examination stated at para-8 that the marriage was took place prior to three years from the occurrence. At para-10 stated that on 21.06.90 he received telegram sent by Dhanush Dhari Prajapati, father-in-law of the deceased, that

Shanti Devi had missing from the house and he had not gone to the sasural of Shanti Devi, but on 23.06.90 reached the Garhwa Police Station where he saw the dead body of Shanti Devi.

At para-17 categorically stated that on 19.06.90 a panchyati was held and the matter was reconcile. He denied the suggestion that Shanti Devi have committed suicide.

P.W.-5 Megha Nath Mahto, he also admitted the facts that a Panchyati was organized on 18.06.1990 and deceased was being tortured.

In para 13 categorically stated regarding torture that he heard the said fact from Shanti Devi, when she came to Maikhe, she disclosed the fact one year prior to occurrence.

P.W.-6, Raghunath Mahto, brother in-law of Shanti Devi, deceased stated that accused persons made a demand of Rs.10,000/- although father of the deceased was ready to give Rs.5,000/- but the accused persons were not ready.

In cross-examination stated that there is no enmity between the appellant and informant. He denied the suggestion that he has illicit relationship with the deceased.

P.W.-7, Ram Chandra Prajapati, father of the deceased examination in chief stated that Shanti Devi was his daughter and her marriage was solemnized with the Santu Prajapati in the year 1987 thereafter she went her sasural and she was tortured by her in-laws due to non-fulfilment of Rs.5,000/- as Rs.10,000/- was given in Tilak Ceremony as dowry and only Rs. 5,000/- was remaining.

In para-3 stated that a Panchayti was organized and problem was shouted out.

In cross-examination he stated that he cannot produced any paper regarding the fact that the marriage was took place in the year 1987. In para-16 stated that he has not lodged any case earlier for demanding of dowry of Rs.5,000/- made by Santu Prajapati.

P.W.-8, Dr. Ram Naresh Singh, Diwakar stated that on 25.06.90 at 1.30 p.m. postmortem examination was done on the dead body of the Shanti Devi and following anti mortem injuries were present in the body of the deceased.

Lacerated wound $2\frac{1}{2} \times \frac{1}{4}$ skin deep on middle of vertex on the dissection blood and blood clot were present under layers of scalp caused by hard and blunt substance.

No sign of anti mortem injury over her neck found. The body was swollen caused smelling eye tunk protruded. Blood present all over the body with skin pilled of at places. Risour motive absent. Trache congested. Lungs, heart, liver spleen, kidney all in advance stage of decomposition.

Cause of death:- Definite opinion of cause of death could not be given due to advance stage of decomposition.

Vescera preserved for chemical analysis but no report from chemical analysis available on record. Time elapsed since death 3 to 5 days.

Report was prepared by Dr. Jawal Prasad Singh, Medical Officer, Subdivision Hospital, Garhwa. The report is his handwriting and bears his signature, which is marked as Ext.2.

In cross-examination stated that Dr. Jawal Prasad Singh is still in service. Ante mortem injury no.1 may be cause of death.

C.W-1, Dr. Jawal Prasad Singh stated that I was not available in Garhwa district on 10.03.2002 due to transfer and in my absence another Doctor Sri Ram Naresh Prasad Diwakar was examined and this postmortem report is in my handwriting bearing my signature and it was exhibit earlier and marked as Ext.-2 and in my opinion definite cause of death could not be given due to advance stage of decomposition.

In cross-examination stated that FSL report is not available and am not sure about death.

D.W.-1, Vijay Kumar Prajapati and D.W.-2, Basant Manjhi both have stated that marriage of the Shanti Devi, deceased was solemnized with the Santu Prajapati in the year 1981 and in cross-examination stated that he did not know how she died.

11. Learned counsel for the appellant submitted that as the appellants have been convicted under Section 304B IPC and there are 3 ingredients to be proved by the prosecution so that conviction can be maintain under the aforesaid sections.

(i) Death may be unnatural caused by burn or bodily injury or occurs otherwise than under normal circumstances.

(ii) Death may be within 7 years of marriage.

(iii) Soon before the death she may be subjected to cruelty or harassment.

Further submitted that in the instant case, it appears from the evidence of both the doctors cause of death could not be ascertained.

Further in view of the evidence of D.W-1 and 2 marriage was solemnized before 07 years from the occurrence and I.O of this case has not been examined causing serious prejudice to the appellants and prosecution has failed to prove the case beyond all reasonable doubts.

Hence, in view of the said facts, judgment of conviction and order of sentence passed by the court below is fit to be set aside.

12. On the other hand learned APP has submitted that the father of the deceased has supported the prosecution's case and dead body was recovered from the well, hence this criminal appeal has no merit and deserves for dismissed.

13. After hearing the parties and go through the provision of 304 B read with 113 B of the Evidence Act which reads as under:-

304B. Dowry death-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 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.

113-B, Presumption as to dowry death-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

In the instant case in view of the evidence of both the doctors, cause of death could not be ascertained, so cannot not be said that she died unnatural death.

D.W.1 and 2 stated that deceased was married with Santu Prajapati in the year 1981-82, so the prosecution has failed to establish that the death of the victim was within 7 years of marriage.

14. Taking all these facts, I am of the considered view that prosecution has failed to prove his case beyond all reasonable doubts. Accordingly, judgment of conviction dated 24.05.2004 and order of sentence dated 26.05.2004, passed by learned Additional Sessions Judge- Fast Track Court-II, Garhwa, in Sessions Trial No.160/91 is hereby set aside. The appellants are discharged from the liability of their bail bonds.

15. Hence, these Criminal Appeals stand allowed.

Let the LCR be sent back to the court concerned forthwith.