

(2009) 10 JH CK 0065
In the Jharkhand High Court

Dwarika Prasad Mehta, Jay Narain Mahato @ Jay Narayan Mehta, Kansi Mahato @ Kansi Prasad Mehta and Sudama Prasad Mehta

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 27-10-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304, 304(B), 304B, 34

Citation : (2009) 10 JH CK 0065

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the appellants and learned Counsel for the State.

2. This appeal is directed against the judgment of conviction dated 28.01.2002 and order of sentence dated 30.01.2002 passed by Shri Ravindra Prasad Ravi, 8th Additional Sessions Judge, Hazaribag in Sessions Trial No. 408 of 1997 by which judgment learned Additional Sessions Judge found all the four appellants guilty u/s 304 (B) of the Indian Penal Code and sentenced the appellants to undergo R.I. for ten years. Since both the appeals arise out from the single judgment of conviction and sentence, hence both the appeals were taken up together and heard. Both the appeals are being disposed of by the single judgment.

3. It is submitted by learned Counsel for the appellant that from the evidences adduced it will be found that there is no allegation that appellant Jai Narain Mahto, Kansi Mahto and Sudama Prasad Mehta tortured the victim for any demand of dowry. The prosecution has earlier never made any complain to the police station or to the panchayat that there was any torture with regard to the dowry to the victim girl. The prosecution evidences also shows that the victim girl died an accidental death and the appellants have falsely been implicated in this case and as such the conviction and sentence against the appellants is bad

in law and fit to be set aside.

4. On the other hand learned Counsel for the State has submitted that all the prosecution witnesses have proved beyond all reasonable doubt that the victim girl namely Kanti Devi died within seven years of her marriage at her Sasural a unnatural death, and the defence has failed to give any explanation and as such all the appellants are responsible for causing the dowry death of the victim and as; such they have rightly been convicted.

5. After hearing both the parties and going through the evidences recorded during trial, I find, that the prosecution case was started on the basis of fardbeyan given by the father of the deceased P.W. 5 Khirodhar Mahto on 23.04.1997 at 12 P.M. stating therein that at 7.00 A.M. in the morning Bengali Mehta of village Mangura where is daughter Kanti Devi is married he was informed that Kanti Devi has fallen in a well and died. Then he along with his son Umesh Prasad went to the village Mangura and on enquiry from her father-in-law Pyas Mahto they came to know that about 4.00A.M. in the morning Kanti Devi had gone to well for bring water to cook the food for the laborers and she fell down in the well but on enquiry from the neighbors he came to know that between 4-6 A.M. there was no hulla that any body has fallen down in the well. He alleged that his daughter Kanti Devi was married about 5-6 years back with the accused Dwarika Prasad Mehta and he had given Rs. 25000/- in dowry. After one year she went to Sasural on Gauna whereupon her husband along with other accused Jai Narain Mahato and Kanshi Mahato were demanding color T.V. He also stated that when his daughter came to her mayka then she used to say that her husband and her brother-in-law give threat for not bringing dowry and tortured her.

6. On the basis of said fardbeyan police registered a case u/s 304(B)/34 of the Indian Penal Code and after investigation submitted charge sheet against all the appellant including their parents Somni Devi and Pyas Mahato. During trial prosecution examined seven witnesses and after second evidence of the witness the learned Trial Court acquitted the father and mother of the appellants i.e. Pyas Mahato and Somni Devi and convicted the other appellants.

7. After hearing both the parties and going through the records, I find, that in course of trial the prosecution has examined seven witnesses P.W.I Bangali Mahato. He stated that two years back he heard from his uncle that out side the well dead body of the Kanti Devi is lying. She had fallen in the well then he informed her father. He stated that her relation with in-laws was good. P.W. 2 Birju Prasad Mehta staled that the deceased was married 5-6 years back and on the date of occurrence they got information that she has died by falling in the well but when they went to her in-laws village then the neighbors said that they had not seen any body falling in the well nor they saw dead body brought out from the well. They saw that injury on the right hand and on the nose. Her cheeks were also swollen. He also stated that there was demand of color T.V. from the husband as told by his sister. P.W. 3 the doctor found external injury i.e.

lacerated wound 1/2"x1/4" skin deep over ventral aspect of right wrist joint. Abrasion 1/4"x 1/4" over right leg caused by hard blunt substance. He reserved the opinion with regard to the cause of death since viscera were sent for chemical examination. On dissection doctor found frothy blood discharge from the nostril, the right chamber of heart was found containing blood and stomach half digested rice and vegetable with water two pints. P.W. 4 Umesh Prasad Mehta also stated that on the date of occurrence, about seven years back Bengali Mehta of village Mangura informed that his sister has died then they went to her Sasural and found that there is injury on her hand, leg and nose. He also stated that there was demand of color T.V. and in-laws used to pressurize her and accused shall be suspected that she was done to death and her dead body was thrown into well. He also stated that she was married about 5-6 years back. The informant also stated that prosecution case as given in the fardbeyan and also stated in his cross-examination at Para 3 that at the time of her death his daughter was pregnant of 4-5 months which was approved by the doctor. At Para 6 he stated that he had not fight with his Samdhi or Damad nor he had made any complain against them with regard to demand of color T.V. P.W.5 Khirodhar Mahato has only proved the signature on the inquest report and P.W. 7 the I.O. has stated about the place of occurrence and in his investigation two defence witness have only stated that the deceased has good relation with her in-laws and wanted to say that she was married about 8 or 9 years but none of the defence witness could give the date of her marriage nor could give any proof of the date of marriage and as such there is nothing to doubt the statements of prosecution witness. P.W. 2, 4 and 5 stated that the victim was married just five or six years back and she died within seven years of her marriage either by assault or pushed down in the well. There is no evidence of neighbours to prove as to how she fell down in the well as per the statement of P.W. 2,4 & 5 never stated neither saw that the girl was fallen in the well nor saw the dead body was being brought out from the well and as such her death remains mystery and as such as far as the husband Dwarika Prasad Mehta is concerned a case Section 304(B) of the I.P.C. squarely made out against him, because as per the witness evidence he was demanding color T.V. and he was pressurizing her always and she died within seven years of the marriage. The husband has failed to explain about the circumstances under which she died hence conviction u/s 304B of the Indian Penal Code is confirmed.

8. However, other appellants Jai Narain Mehta, Kansi Mahato and Sudama Prasad Mehta are concerned. P.W. 2, 4, & 5 had only stated that they were pressurize for the color T.V. but there is no direct evidence that they tortured her for the demand of color T.V. in presence of P.W. 2, 4 or 5 and as such there is no direct evidence that these three appellants were also demanding color T.V. or that they were torturing her and in that view of the matter it is difficult to say as to whether, they participated or they caused dowry death of the deceased. There is no evidence as to whether they were present at the time of the occurrence. The Trial Court also did not found direct evidence against the father-in-law and

mother-in-law and acquitted Pyas Mahato and Somni Devi. The case of these three appellants Jai Narain Mahato, Kanshi Mahato and Sudama Prasad Mehta, who are brother-in-law of the deceased, are also similar and as such they are also given benefit of doubt and acquitted from the charges levelled against them.

9. In the result the appeal is allowed in part. The three appellants Jay Narain Mahato @ Jay Narayan Mehta, Kanshi Mahato @ Kanshi Prasad Mehta and Sudama Prasad Mehta who are on bail are directed to be released from the bondage of their bail bond. However, the appellant Dwarika Prasad Mehta is concerned. His bail bond is cancelled. The Trial Court is directed to issue warrant of arrest against him for serving out the sentence. Accordingly this appeal is allowed in part.