
(2009) 07 PAT CK 0047

In the Patna High Court

Eqwal Alam @ Akwal Alam @ Eqbal Alam and Another etc.

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 08-07-2009

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 328, 34, 498A

Citation : (2009) CriLJ 4171 : (2010) 1 Crimes 935 : (2010) 1 DMC 617 :
(2010) 1 PLJR 355

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Judgement

Sheema Ali Khan, J.—In Cr. Appeal No. 442 of 2004, Eqwal Alam @ Akwal Alam @ Eqbal Alam and Md. Shahid are the appellants. These two appellants are brothers-in-laws of the victim lady. The husband Masroor Alam is the appellant in Cr. Appeal No. 552 of 2004. Masroor Alam along with his brothers have been convicted to undergo sentence of 10 years u/s 304-B/34, 2 years u/s 498A/34 and 7 years u/s 328/34 of the Indian Penal Code. Appellant Masroor Alam is in custody for 4 years and 11 months.

2. The allegation in the First Information Report is that Masroor Alam was demanding a Rajdoot Motorcycle from the informant and his father by way of dowry.

3. The prosecution case in short is that the informant Zainul Haque received information through the brother of Matlub Alam that his sister is very unwell at Gaya. He also received information that they were in Gaya, thus he along with his father rushed to Gaya where they found Naseema Khatoon in the house of her father-in-law Khurshid Alam. At the time they reached the house of Khurshid Alam, they found that she was being administered medicine and was being treated by one Dr. Alimuddin. After some time she died and thereafter it is alleged that the appellants ran away from the place of occurrence. PW 5 gave information to the police station and the investigation commenced.

4. During the trial, six witnesses have been examined on behalf of the prosecution, five witnesses have been examined on behalf of the defence whereas three witnesses are the Court witnesses in this case. P.W. 1, Wayzul Haque is the father of the deceased. P.W. 2, Sultan Ahmad is the cousin brother of the deceased. P.W. 3, Hafiza Khatoon is the mother of the deceased and claims to be the eye witness of the occurrence. P.W. 4, Matlub Alam is the person who took the deceased to Gaya and also informed the informant regarding the illness of Naseema Khatoon, and P.W. 5, Ziaul Haque is the informant whereas P.W. 6, Md. Abbas a formal witness who has proved the First Information Report.

5. The important witnesses in this case are P.Ws. 1, 3 and 5. P.W. 3 is the mother of the deceased Naseema Khatoon and she has stated that her daughter was suffering from a leg ache and her husband gave her a tablet for the pain which resulted in a severe vomiting. It is said that Naseema Khatoon complained that her husband had given her poison. Thereafter she was taken by Shahid, Ekbal, her husband and Matlub to one doctor and thereafter she was taken on a "Tempo" to Gaya to the house of Khurshid Alam, the father-in-law, situated at Durgabari, Gaya. The doctor was immediately called and she was administered some injections and was also administered saline water. In the morning, P.W. 3's husband, son and some villagers also came to Durgabari at Gaya and after sometime Naseema died around 9 a.m. This witness admits that she was living with her daughter for past 15 days prior to her death but she does not say a word about demand of dowry or torture or harassment inflicted on the girl.

6. P.W. 1 is the father of the deceased Naseema Khatoon. He supports the case made out in the First Information Report. This witness has also stated that six months after the marriage, the appellant Masroor Alam had demanded a Rajdoot Motorcycle. In his evidence he has stated that he got information regarding the illness of his daughter through Matlub Alam who had sent a letter stating therein that his daughter had become very unwell because of a medicine given to her. The letter has not been produced to substantiate the fact that Matlub Alam had given written information to P.W. 5. P.W. 1 also claims that he wanted to take his daughter to be treated at the Medical College but the appellants had started to argue with him as a result, he could not take his daughter for proper treatment. He admits that Dr. Alimuddin used to live in the house belonging to the appellant's father and was practicing medicine in the same house. With respect to the demand of dowry, this witness claims that the demand of a Rajdoot motorcycle was made by a letter, written by his son-in-law which was delivered by hand. P.W. 1 states that he has not preserved the letter by which the demand was made because he did not think it essential. It appears that this witness was cross examined to show that he has remarried after his first wife died and that he has three children from the first wife and four daughters and four sons from the second wife. This evidence has been elicited to show that he (PW1) comes from a very poor family background and could not have afforded a Rajdoot motorcycle, and as such, it is submitted that there could not have been any demand by the appellants. This part of the submission appeals to me, as it is

quite unbelievable that a demand can be made from a person who has 11 children and comes from a poor background. Attention has been drawn of PW 1 at paragraph 12 as to whether he had stated before the Investigating Officer that he wanted to take his daughter for treatment to the medical college, but he was not allowed to do so by the appellants. P.W. 1 claims that he visited his daughter just before the occurrence. He also claims that he visited his daughter out of love and affection. In other words this witness has just made a bald statement that there was a demand without giving details regarding the demand. It is also apparent that this witness has led no evidence whatsoever to indicate that his daughter was tortured or harassed as a result of the demand.

7. P.W. 5, Zaiul Haque the Informant, is the brother of the deceased lady Naseema Khatoon. This witness has reiterated the statements made in the First Information Report in the Examination in Chief. Zaiul Haque states that he got information that his sister was given some poisonous tablets. PW 5 has stated at paragraph 21 that the two brothers i.e., the appellant and the appellants' brother got married on the same day. At paragraph 24, this witness also states that his father received a letter demanding a Rajdoot motorcycle. He claims not to have preserved the letter because he did not think it was important. This witness also claims that they were locked up in a room after they reached Gaya which appears to be an improbable story as if they were locked in a room, they could not have informed the Police regarding the occurrence and this fact is not in the First Information Report. It is not their case that they had to break open the door to go to the Police Station. This witness has not stated before the police that they wanted to take Naseema Khatoon to the Medical College for better treatment but were stopped by the appellants. On perusal of the evidence of P.W. 5 the informant, the important facts which emerge is that there is no allegation of harassment and torture and that the allegation of demand of dowry is also not substantiated by giving specific details with respect to the demand.

8. P.W. 4 is the person who is said to have given information regarding the incident to the father of the deceased. In his chief, this witness does not say that he was responsible for sending intimation to the informant or to the father of the deceased. He however, states that he heard that Naseema Khatoon had been given some medicine which had caused severe vomiting. According to him, he along with the appellants took her to the house of Khurshid Alam where she was privately treated. It is said that she died on 10-4-1993 at 9.30 a.m. This witness has signed on the inquest report which has been marked as annexure-2 and his signature is Exhibit-2(1). Learned Counsel refers to the cross examination to show that this witness has stated that the appellant is a good man and he has a good nature. He has admitted that he has not stated before the Investigating Officer regarding the cause of death. It has been emphasized that PW 4 has not stated a word about the demand of dowry as a reason for administering the alleged medicine which resulted in the illness of the deceased.

9. Learned Counsel appearing on behalf of the appellants challenges the

evidence of the witnesses led on behalf of the prosecution on several grounds. The evidence of P.W. 3 has been attacked on the ground that it is not believable that P.W. 3 would be living in her daughter's "sasural" for 15 days, if there was any tension or apprehension of torture and harassment. Moreover, Hafiza Khatoon has not stated in her evidence in Court that she was aware that any demand of dowry was made nor has she disclosed that her daughter ever spoke to her about any torture meted out to her by her husband or other-in-Laws. A suggestion has been given to her that she was visiting her daughter because she was keeping ill health. This witness has not attributed any motive against Masroor Alam which would indicate the reason why he would administer poisonous medicine to his wife. The only aspect which is damaging to the defence is that the lady Naseema Khatoon is said to have disclosed to her mother that it was the Masroor Alam who have given her a tablet which led to vomiting etc. which made her very unwell. The submission further is that if the appellant had intended to kill his wife he would have not administered the medicine when the mother was also living in the same house. It is further submitted that it does not stand to reason that after having given her some medicine allegedly to kill her, for no reason as disclosed by P.W. 3, Masroor Alam along with his brothers and others would rush to the doctor to get her treated for the said ailment. Besides which the introduction of the story of being administered the medicine has only emerged after her death and is not supported by the independent witness.

10. Three Court witnessed have been examined in this case. Dr. J. P. Karn is the person who conducted the postmortem on the deceased lady. This witness has produced a carbon copy of the forensic report which has been marked with objection. The original was sent to the Superintendent of Police of that District. This witness proves the writing on the forensic report. The forensic report discloses that Methyl Parathion was detected in the fluid which was sealed in the bottle. An objection was raised by the defence that the original copy ought to have been on record, or at least the person who prepared the report should have been examined and as such the appellants have been highly prejudiced as they did not get an opportunity to cross-examine the Analyst who prepared the report.

11. CW 2 is the Investigating Officer of this case who was posted as ASI on 10-4-1991 in the said Police Station. He does not seem to recall how and when he received Information regarding the death of the deceased. He claims that he was not told by P.W. 1 the informant that Masroor Alam had administered poison to his wife because of demand of dowry. This witness has seized 10 files (vials) of used syringe and 10 saline bottles from the place of occurrence which he has produced and which was marked Exhibit-3 with objection. The Investigating Officer also admits that the deceased was being treated by Dr. Alimuddin. which has also been recorded by him in the case diary. It appears that the deceased was given at least six bottles of saline. Attention has been drawn to the statement made by the father of the deceased lady wherein he has stated in Court that the father wanted to take her to the medical college which the

appellant did not allow him to do. The Investigating Officer denies that any such statement was made when he examined the father of the deceased in this case. With respect to administering poison, this witness has specifically stated that the mother and Matlub Alam, the independent witness had neither made statement before him that the deceased was administered poison by her husband nor have they made any statement with respect to the demand of dowry by the appellant-Masroor Alam. On the basis of the findings of the Investigating Officer, the facts that emerge are that mother is an important witness and the independent witness does not support the case of demand of dowry. The independent witness further does not support the case with respect to administering tablets of poisonous substance to the deceased by her husband.

12. Defence witnesses have been examined to indicate that the deceased used to remain sick and that she was suffering from hysteria and was regularly being treated by doctors for her ailment during her three years of marriage.

13. Having considered the evidence of the witnesses, it appears that some doubt is created in the mind of the Court regarding two facts. Firstly, there is hardly any evidence to substantiate the case that there was a demand of dowry especially in view of the statement of the mother who was present at the place of occurrence and secondly none of the witnesses except the mother has stated that the deceased was administered poison by her husband. This aspect was not supported by her before the Investigating Officer during investigation. The father, P.W. 4, the independent witnesses and Matlub Alam have not come up with a case that P.W. 3 has specifically informed them that the deceased had disclosed to her that she was given a tablet by her husband which resulted in vomiting etc. The fact remains that the Forensic Laboratory indicates that Methyl Parathion was detected on examination of the deceased.

14. An argument has been advanced on behalf of the appellants that Methyl Parathion is a pesticide which is used to kill insects of crops. Usually, it is sprayed on the crops. Methyl Parathion comes in two forms; a pure form of white crystals and a technical grade solution (brownish liquid) which contains 80 per cent. of methyl parathion. It is, therefore, argued that the specific case of the prosecution is that the deceased was administered a tablet whereas according to the appellants, the methyl parathion is not found in the form of a tablet rather the pure form is found in white crystals. It is further argued that the pure form of methyl parathion is, usually not kept with farmers for the purpose of killing insects which attack the crops. Learned Counsel submits that Exhibit IV is actually indicates that brownish liquid was sent for examination rather than the organs which were preserved for examination.

15. The Investigating Officer C.W. 1 prepared the inquest report and found that there was "white froth" coming out from the mouth of the deceased. The cause of death is mentioned as "nishili padarth." Contrary to the finding of the Investigating Officer there was an allegation by the prosecution that there was blood dribbling from the mouth of the deceased which is not supported by Exhibit

II the inquest report.

16. Exhibit-IV is the report of the Forensic Science Laboratory. "Bihar indicates that the glass jar contained "dark brown fluid which could have been decomposed tissue of viscera." The result of examination indicates that "methyl parathion" was diluted in the brown fluid described above. Methyl parathion is an organic phosphorous pesticide which is commonly used in agriculture for killing pests is highly poisonous." In this context, it may be noted that C.W. 1. Associate Professor Dr. Arvind Prasad conducted the post-mortem and preserved the following:

- (a) Portions each of heart, liver, lung and spleen.
- (b) One whole kidney.
- (c) Stomach with its contents.

17. This Court cannot give any importance or credence to Exhibit IV for several reasons. Firstly the contents of the Jar Exhibit-IV simply do not tally with the Doctor's statement with respect to the parts of the body which were preserved for examination. Secondly as quoted above the report indicates that the dark brown fluid could have been decomposed tissue, which indicates uncertainty regarding the contents of the jar. Another factor which leads me to doubt the veracity of the Exhibit-IV is that the date of occurrence was 10-4-1991 and it was received in the Forensic Laboratory on 12-7-1991 and the report was prepared on 9-6-1992 after one year for which there is no explanation whatsoever. It leads the Court to doubt that the jar which was forwarded to the Forensic Laboratory was in fact the one which contained the viscera of the deceased.

18. Chapter 42 of the Police Manual deals with the procedure to be adopted for sending samples for examination to the Forensic Laboratory and details with respect to procedure are stated in the manual itself. It seems that the Investigating Officers attached no importance to the procedure to be followed while sending seized samples of organs or other material for examination. It envisages that after examination the exhibit is returned to the Investigating Officer. What this Court wants to emphasise is that admittedly delay in examining the organs causes putrefaction of organic materials. In this case not only is there extreme delay in sending the viscera but equal amount of delay in its examination. No explanation has been put forth for the delay. Therefore, this Court has to reject the report of the Chemical Examiner Exhibit-IV.

19. On behalf of the appellant of Criminal Appeal No. 442 of 2004, it would be apparent from the entire evidence that not a single word has been uttered to lead this Court to believe that the appellants-Eqwal Alam alias Akwal Alam alias Eqbal Alam and Md. Shdhid shared any common intention either for demand of dowry or for the subsequent cause of the death of Naseema Khatoon and as such the appellants are acquitted of the charges under Sections 304-B, 498-A and 328

of the Indian Penal Code and they are discharged from the liabilities of the bail bonds furnished earlier in this case.

20. In conclusion this Court therefore, does not find that the prosecution has been able to prove that there was a demand of dowry for the reason.

(a) Naseema Khatoon's (deceased) mother has not indicated in the Court that there was a demand of dowry.

(b) The independent witness Matloob does not support the demand of dowry, although he is related to the informant and was present throughout with P.W. 3 mother of the deceased.

(c) The father of the victim girl has attributed the demand of dowry, as the motive for the occurrence, he has not been able to give the date or the circumstances under which there was a demand of dowry.

(d) There is nothing specific to say as to who demanded the dowry/motor cycle.

(e) The allegations with respect to demand are not specific. It must be shown that by evidence that the father-in-law or husband had made a demand.

(f) There is no evidence of torture or harassment at all.

(g) The presence of mother of the victim girl at the place of occurrence makes the story of administering any type of poison highly improbable.

(h) The Investigating Officer has specifically stated that the witnesses had not disclosed to him that there was a demand of dowry and that the lady had not been adequately treated for illness.

21. The appeal of Masroor Alam is allowed for the reasons discussed above. He is directed to be released forthwith if not wanted in any other case.