
(2021) 09 PAT CK 0063

In the Patna High Court

Case No : Criminal Appeal (SJ) No. 1920, 2359 Of 2018

Indradeo Prasad @ Inardeo Prasad @ Inardeo Kushwaha

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 24-09-2021

Acts Referred:

Indian Penal Code, 1860 — Section 34, 201, 304B
Evidence Act, 1872 — Section 113B

Citation : (2021) 09 PAT CK 0063

Hon'ble Judges : Birendra Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. The appellants, above named, have challenged their conviction for offences under Sections 304B/34 and 201/34 of the Indian Penal Code by judgment dated 05.05.2018 passed by learned Additional Sessions Judge-VIII, Gopalganj, in Sessions Trial No.334 of 2007, arising out of Barauli P.S. Case No.105 of 1996. By the impugned order of sentence of the same date rigorous imprisonment for eight years along with fine of rupees twenty thousand was awarded for offence under Section 304B/34 of the Indian Penal Code and rigorous imprisonment for five years and a fine of rupees five thousand was awarded for offence under Section 201/34 of the Indian Penal Code. In default of payment of fines six months simple imprisonment was ordered. The sentences have been ordered to run concurrently against both the appellants.

2. The prosecution case as disclosed in the written report of PW 4 Rajendra Prasad is that his daughter 'S' was married with co-accused Pushpendra Kumar on 27.02.1996. After marriage S. went to her matrimonial house. 16 days thereafter the informant went to meet S. She complained that her husband Pushpendra, father-in-law (appellant Raj Kumar Prasad), the mother-in-law and maternal uncle of Pushpendra i.e., appellant Indradeo Prasad always torture and they demand a Colour TV and Gold Chain. The informant requested the family

members especially Nageshwari Devi, the mother-in-law, but the family members threatened that if Colour TV and Gold Chain would not be provided S. would have to face the consequences. One month thereafter the informant came to the matrimonial house of her daughter, she again made complaint of torture for non-fulfillment of the aforesaid demand. She further disclosed that the accused threatened her to be killed and Pushpendra would get married with another lady. On 11.05.1996 Rama Shankar Prasad (not examined) and Mr. Ashok Sahu (not examined) of the matrimonial village informed that S has been killed by her matrimonial relations and the dead body got cremated. Thereafter, the informant came to the matrimonial village of S and the people informed that S was done to death by the family members. Thereafter, the informant went to adjoining village Jagarnathpur i.e., the village of appellant Indradeo Prasad because Indradeo Prasad was mediator in the marriage and on the next day the matter was reported to the police. The written report is Exhibit-1 and the formal FIR is Exhibit-2.

3. After investigation the police submitted charge sheet against the appellants and others.

4. The husband of the deceased was found a juvenile along with his sister and proceeding against them was conducted before the Juvenile Justice Board, Gopalganj. The Board giving benefit of doubt, acquitted to the husband and sister-in-law of the deceased.

During trial prosecution examined altogether eight witnesses. PW 1 Shiv Prasad Sah of the village of occurrence deposed that he heard about death of the daughter-in-law of appellant Raj Kumar. He went there and found the dead body. The daughter-in-law of appellant Raj Kumar died of illness. Thereafter, her parents were informed. The father and maternal uncle came and participated in cremation of the dead body. After 3 to 4 days of Sradh the informant asked for return of the articles and money given to the deceased at the time of marriage and on non-refund the criminal case was lodged.

PW 2 Kamla Sah deposed that the daughter-in-law of appellant Raj Kumar Prasad was ill since long. After her death her parents had come and all had participated in the cremation. There was no demand of any dowry either at the time of marriage or thereafter. The deceased was happy in her matrimonial house. The family members were behaving with her properly. Dr. Alauddin had treated the deceased before her death. The doctor deposed that since the village is in remote area and it was inconvenient to reach Gopalganj or Siwan, hence, the victim could not be treated at those places.

PW 3 Narad Tiwari deposed that the daughter-in-law of appellant Raj Kumar died of illness. The witness is neighbour of Raj Kumar. According to this witness, Raj Kumar was behaving well with her daughter-in-law. The father and uncle of the deceased had come and had participated in the cremation. There was no demand of dowry.

5. The aforesaid witnesses are not hostile witnesses. The prosecution has relied on their evidence. In *Raja Ram V. State of Rajasthan* reported in (2005) 5 SCC 272 the Hon'ble Supreme Court said that if a witness is not declared hostile by the prosecution, the defence can rely upon the evidence of such witnesses and it would be binding on the prosecution. The aforesaid view was reiterated in *Mukhtiar Ahmed Ansari V. The State (NCT of Delhi)* reported in (2005) 5 SCC 258.

6. PW 4 Rajendra Prasad is the informant of this case. He has fully supported in his examination-in-chief what he had disclosed in the First Information Report submitted to the police that S was married with Pushpendra Kumar on 27.02.1996. Thereafter she went to her matrimonial house. After 16 days, the informant went to village Pet Biraicha (matrimonial village) then S disclosed that there is demand of Gold Chain and Colour TV by the husband, the father-in-law, mother-in-law, Sister-in-law and maternal uncle Indradeo Prasad. The witness tried to console them but they were adamant on their demand. One month thereafter, the witness again visited the matrimonial house of S and again she informed that there was demand of dowry and they were torturing her. The witness returned after making some promise. On 11.05.1996 the witness got information that the family members of matrimonial house had poisoned to death to his daughter and cremated the dead body. When the informant went to the village of the deceased the people informed that she has been done to death by the family members. Identical is the testimony of PW 5 Fuleshwari Devi, the mother and PW 6 Ajay Kumar, the brother of the deceased. PW 7 Kishun Deo Prasad has been declared hostile by the prosecution. PW 8 Ali Hussain is the Investigating Officer of the case, who has supported the investigation done by him.

7. Mr. Jagdish Prasad, learned counsel for the appellants, submits that testimony of PWs 1 to 3 depicts a different story than demand of dowry and torture for the same. These witnesses are not hostile witnesses and the prosecution has relied on their evidence. Thus, from totality of the evidence of occurrence two views are possible. In the circumstance, the view favourable to the accused is to be preferred which is settled by a catena of judicial pronouncements.

8. Learned counsel submits that there is delay in lodging of the FIR and the delay is deliberate which would be evident from the testimony of PW 4, the informant of this case, vide paragraph 8, wherein he stated that after getting information of death of his daughter he visited to her matrimonial village and thereafter he went to adjoining village Jagarnathpur and stayed in the night in the house of Singhashan Bhagat. In the next morning, he went to his own village Tekanbas within Mahmadpur Police Station in the District of Gopalganj. The witness admitted that from Jagarnathpur the Barauli P.S. is at a distance of six kilometers on the main road but informant went to Mahmadpur P.S. and the police informed to go and institute the case at Barauli P.S. then the matter was reported at Barauli. On the basis of the aforesaid evidence, contention is that during intervening period chances of deliberation and concoction cannot be ruled out. If

the informant was aware that the death was a dowry death he should have rushed to the Barauli police station at a distance of six kilometers rather than staying in the house of Singhashan Bhagat of Jagarnathpur in the night and in the next morning going to his own village and thereafter to the police station.

9. Learned counsel further submits that Rama Shankar and Ashok Sah, who allegedly gave first information of death to the informant were not produced as prosecution witness to corroborate the claim of the informant.

10. On the other hand, learned counsels for the respondent-State submits that the prosecution has successfully proved that unnatural death took place within seven years of marriage in the matrimonial house and there was demand of Colour TV and a Gold Chain and for non-fulfillment of the demand the victim was being tortured mentally by posing threat to her murder and physically by commission of assault. Therefore, the presumption under Section 113B of the Evidence Act would be attracted and the burden would shift on the accused persons to dispel the presumption.

11. As has been noticed above, three of the prosecution witnesses PWs 1 to 3 does not support the case of the prosecution that this was a case of dowry death. They are not hostile witnesses. The testimony of these witnesses creates a serious doubt on the trustworthiness of testimony of Pws 4 to 6. Assuming the testimony of Pws 4 to 6 as probable, two views are possible from the prosecution evidence. The law is settled that if two views are possible on the prosecution evidence the view favourable to the accused should be preferred. In the result the benefit of doubt would go in favour of the appellants.

12. Normally the delay of few days in reporting the matter to the police, of incident of dowry death is immaterial as in most of the cases the parents get delayed information about dowry death. However, in the present case it assumes importance especially when some of the prosecution witnesses are saying that the parents had participated in the cremation of dead body and thereafter they were demanding for refund of the gift items given to the deceased at the time of marriage and on non-refund the criminal case was lodged. Moreover, the delay is not due to the fact that the informant had delayed knowledge of the occurrence. The conduct of the informant in visiting the house of the deceased and thereafter not reporting the matter to the police at a distance of six kilometer on the main road; rather staying in the adjoining village whole night and, thereafter returning back to his own village and then reporting the matter to the police, the chances of concoction and deliberation cannot be completely ruled out.

Non-examination of the above referred persons who had informed about the occurrence to the informant creates doubt in absence of any evidence on the record that anyone had seen the victim being tortured by her husband or other relations for non-fulfillment of dowry demand. Similarly, there is no witness who claims to have seen the appellants or anyone involved in ensuring disappearance of evidence of offence i.e., disposal of the dead body of the victim of dowry

death. Hence, only on the basis of conjectures and surmises conviction under Section 201 of the Indian Penal Code is also not sustainable in law.

13. The aforesaid infirmities leave the prosecution case shrouded with doubts and the appellants are entitled for benefit of doubt. The learned trial Judge has not considered the aforesaid infirmities in the prosecution evidence.

14. In the result, the judgment of conviction and order of sentence under challenge is hereby set aside and both these appeals are allowed. Appellant Indradeo Prasad @ Inardeo Prasad @ Inardeo Kushwaha is already on bail. He is exonerated from the liability of his bail bonds. Appellant Raj Kumar Prasad is in jail. Let him be set free at once.