
(2010) 01 JH CK 0135

In the Jharkhand High Court

Case No : Criminal Appeal No's. 294 and 354 of 2002

Islam Ansari and Sultan Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-01-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B

Citation : (2010) 01 JH CK 0135

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : Rana Pratap Singh, Mahesh Tiwari and Pratiush Lala, for the Appellant; Prem Prakash, APP, for the Respondent

Judgement

Pradeep Kumar, J.—Both the criminal appeals Nos. 354 of 2002 and 294 of 2002 arising out of the same judgment of conviction dated 23.5.2009 and order of sentence dated 24.5.2002 passed by Shri Arun Kumar Rai, IIIrd Additional District & Sessions Judge, Dhanbad in Sessions Trial No. 13/1996, by which judgment he found both the appellants, namely, Islam Ansari and Sultan Ansari guilty u/s 304(B) of the Indian Penal Code and sentenced them to undergo R.I. for 10 years.

2. It is submitted by the learned Counsel for the appellants that the prosecution has failed to prove that the victim, Fazrun Nisa died within seven years of her marriage to attract the provisions of Section 304(B) of the Indian Penal Code and as such the conviction is bad in law and fit to be set aside. He has further submitted that there is no evidence that soon before her death she was subjected to torture for dowry and in that view of the matter also the ingredients of Section 304(B) of the Indian Penal Code are not fulfilled and hence the conviction is bad in law and fit to be set aside. Learned Counsel further submitted that there is no allegation against the appellant, Islam Ansari (In Cr. Appeal No. 354 of 2002), appellant i.e. father-in-law of the deceased, Sultan

Ansari (In Cr. Appeal No. 294 of 2002) and hence it is bad in law and fit to be set aside.

3. On the other hand, learned Counsel for the State has supported the prosecution case and stated that there is direct allegation of torture for dowry against both the appellants and the father has given date of marriage in his marriage and hence it is wrong to say that no date of marriage has been given and as such the judgment passed by the learned Sessions Judge requires no interference by this Court.

4. After hearing both the parties and going through the record, I find that the prosecution case was started on the basis of a Fardbeyan given by Ramjan Ali father of the deceased on 30.5.1995 before Officer-in-Charge, Govindpur Police Station at 12 noon stating therein that his daughter, Fazrun Nisa aged about 16 years was married about 6-7 years back with Islam Ansari son of Sultan Ansari, but subsequently he visited her daughter's sasural then, her daughter stated that her husband and his family members assault her and asked her to bring Rs. 10,000/- from her father. On hearing this, he talked to his son-in-law and subsequently gave him Rs. 10,000/-. After that she stayed happily for about six months. When, he again gone to his daughter's sasural then she told that her husband, father-in-law had again started assaulting her and they demanded more Rs. 15,000/- and also says that he had developed illicit relationship and as such used to constantly threaten her that he will perform court marriage with her. Out of fear he again gave Rs. 15,000/- so that he may not take any wrong step and assault her. His daughter got one son and one daughter from the marriage, but the torture and demand continued and suddenly today on 30.5.1995 he received information that she was done to death. Then he along with co-villager, Belal Ansari, Raghunath Chaurasia, Md. Sajam, etc. went to her daughter's sasural and found her dead body was lying on a cot and foam was coming from the mouth and as such he alleged that it is a case of dowry death.

5. On the aforesaid Fardbeyan the police registered a case u/s 304(B) of the Indian Penal Code read with Section 3/4 of the Dowry of Prohibition Act and after investigation submitted charge-sheet under both sections. Since, the case was exclusively triable by a Court of Sessions the learned Magistrate after taking cognizance of the case, committed the same to the Court of Sessions and lastly the case was tried by learned Sessions Judge and after framing of charges against both the appellants u/s 304(B) of the Indian Penal Code started the trial and finally the trial was concluded by IIIrd Additional Sessions Judge, convicted the appellants as aforesaid.

6. It appears that in course of trial the prosecution has examined as many as 8 witnesses and have also proved the postmortem report, forensic science laboratory report, fordbeyan, inquest report, formal F.I.R. Etc. The Witnesses examined are P.W.1, Dr. Shailendra Kumar; P.W.2, Belal Ansari; P.W.3, Md. Jalil Ansari; P.W.4, Raghunath Chaurasia; P.W.5, Md. Sahjan Ansari; P.W.6, Md. Sadique; P.W.7, Ramjan Ali and P.W.8, I.O. Emanuel Hembrom. The prosecution

has also examined 3 defence witnesses. D.W.1, D.W.2 and D.W.3.

7. The doctor-P.W.1, Dr. Shailendra Kumar, who examined the dead body of the deceased on 30.5.1995 and found that the stomach contained about 100 C.C. of yellowish fluid and walls of the stomach were also found stained yellow and after taking the viscera he opined that the final opinion will be made after chemical and analysis of the viscera. He proved the post-mortem report, which is as Ext. 1

P.W.2, Belal Ansari; stated that on 30.5.95 the informant Ramjan Mian came to his house and said that his daughter has been killed at her "Sasural". Then, he along with Ramjan Mian went to the house of Sultan Ansari and they found the dead body was lying on a cot. Subsequently the police came and prepared inquest report. He proved the signature on the inquest report. He also stated that she used to be tortured for dowry and assault. Due to the torture he gave Rs. 15,000/- & 10,000/- to the accused-appellant.

P.W.3, Md. Jalil Ansari also stated the same thing that he accompanied with Ramjan Mian went to the house of Sultan Ansari and they found the dead body was lying on a cot. He also stated that she used to be tortured for dowry and Ramjan had also given Rs. 15,000/- & 10,000/- to the accused-appellant.

P.W.4, Raghunath Chaurasia has also said the same thing.

P.W.5, Md. Sahjan Ansari has also supported the said fact and submitted that he accompanied with Ramjan Mian went to the house of Sultan Ansari and they found the dead body was lying on a cot. He also stated that she used to be tortured for dowry and Ramjan had also given Rs. 15,000/- & 10,000/- to the accused-appellant.

P.W.6, Md. Sadique also accompanied with the informant and he also supported the prosecution case.

P.W.7, Ramjan Ali, is the informant. He has stated that his daughter was married with the accused-appellant, Islam Ansari on 27th June, 1989 in his village, Fakridih and after marriage she went to her sasural and she used to stay at her sasural and also used to visit her father's house. After three years of her marriage the accused-appellant and his family members started assaulting her for more dowry. When, his daughter complained about the same he gave Rs. 10,000/- to accused-appellant. After that 3-4 months she lived peacefully, but after six months they again started assaulting her daughter and her daughter came to her house and said that they are again demanding Rs. 15,000/-. Then, he gave Rs. 15,000/- to her husband, Islam Ansari. Thereafter, she stayed peacefully for one month. After that they again started more money and assaulting and torturing her. Then, he went to the house of the accused-appellant and asked them not to do so, but they said that they will contact another marriage of the body. Subsequently on 30.5.95 he received information in his house from a man that his daughter is dead. Then, he along with his villagers went to the house of the accused-appellant and saw the dead body was

lying on a cot and foam was coming out from the mouth. Then he gave F.I.R. to the police and the dead body was sent for post-mortem examination.

In his cross-examination, he stated that he had told the police that his daughter was married on 27.2.89 with accused-appellant, Islam Ansari. He further told to the police that his daughter used to be assaulted even in his presence. He also stated, in his cross-examination, that for giving 15,000/- rupees just six months before he had taken loan from Saffi Mian. He also stated that he had taken loan in February, 1995 of Rs. 15,000/- and given to the accused-appellant, Islam Ansari.

P.W.8, I.O. Emanuel Hembrom, Investigating Officer of the case, has proved the formal F.I.R. as well fardbeyan. He proved the inquest report as Ext. 4 and Fardbeyan as Ext. 5 and formal F.I.R. As Ext. 3.

8. Thus, after going through the evidence of witnesses and the statement of the informant and other witnesses, it is clear that there was a demand of dowry on behalf of the accused-appellant, Islam Ansari just after 3 years of the marriage and just 2 months before the accused-appellant and his family members were torturing the victim girl for more dowry. In his cross-examination, in para 15 he stated that by taking loan he gave Rs. 15,000/- to the accused-appellant. He further stated in para 2 that even if getting Rs. 15,000/- they will still demanding more money and assaulting his daughter and the informant does not fulfill the same his daughter was done to death on 30.5.1995. The report of the viscera report, which has been proved as Ext. 2 shows that that chemical examination of the viscera and the dark fluid recovered from the stomach of the victim contained pesticide, which is highly poisonous and as such there is no doubt that the victim girl was done to death for not fulfilling the demand of dowry and soon before her death the demand, torture and assault were continued. In that view of the matter, I find that the conviction of the appellant No. 1, Islam Ansari is well founded and it requires no interference by this Court.

9. The judgments relied upon by the appellants which rules that there has to be allegation of torture for dowry soon before her death does not apply in these cases since in spite of giving dowry just before two months there was again demand and torture for dowry resulting into the death, which is unnatural death and as such it attracts Section 113B of the Evidence Act as well and hence the conviction of the appellant, Islam Ansari requires no interference and Cr. Appeal No. 354 of 2002 filed by Islam Ansari is accordingly dismissed.

10. However, as far as appellant, Sultan Ansari in Cr. Appeal No. 294 of 2002 is concerned, it appears that D.W.3, Sunil Kumar Goswami has stated that on the date of occurrence i.e. 29.5.1995 the appellant Sultan Ansari was on duty. He also stated that Sultan Ansari had been leaving at the BCCL quarters and his son and daughter-in-law used to stay in the village. There is no direct allegation that the father-in-law, Sultan Ansari used to assault the victim girl since he was not residing with them as per defence witness. More so, the father-in-law is an old

man and since he was not residing with the main accused, Islam Ansari and his wife in the village. In that view of the matter, he is given benefit of doubt and acquitted from the charges. The finding of conviction and sentence against the accused, Sultan Ansari by the impugned judgment dated 24.5.2002 passed by the 3rd Additional District & Sessions Judge, Dhanbad in Sessions Trial No. 13 of 1996 is set aside.

11. Since the appellant, Sultan Ansari (in Cr. Appeal No. 294 of 2002) is on bail. He is discharged from the liability of his bail bond and the appellant, Islam Ansari (in Cr. Appeal No. 354 of 2002) is on bail. His bail bond is cancelled and the learned court below is directed to issue warrant of arrest for serving out the sentence.