
(2020) 02 JH CK 0067

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 971, 1052 of 2010

Jaideo Mahato And Ors

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 05-02-2020

Acts Referred:

Indian Penal Code, 1860 — Section 34, 302, 304B
Evidence Act, 1872 — Section 113B
Code Of Criminal Procedure, 1973 — Section 354(3)

Citation : (2020) 02 JH CK 0067

Hon'ble Judges : Shree Chandrashekhar, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Jitendra Shankar Singh, Soumitra Baroi, Shekhar Sinha

Final Decision : Dismissed

Judgement

Shree Chandrashekhar, J

1. On the basis of a written report dated 06.06.2007 of father of the victim lady, Baliapur P.S. Case No. 33 of 2007 has been registered under section 304-B read with section 34 of the Indian Penal Code against (i) Jaideo Mahato, who is husband of the victim lady, (ii) Bhikshakar Mahato, who is father-in-law of the victim lady and (iii) Sunita Devi @ Suniti Devi @ Susti Devi, her mother-in-law. After the investigation charge-sheet was filed against them and a common charge under section 304-B of the Indian Penal Code was framed against them vide order dated 03.04.2008.

2. In Sessions Trial No. 370 of 2007, Jaideo Mahato and his mother, namely, Sunita Devi have been convicted and sentenced to R.I for life under section 304-B of the Indian Penal Code; Bhikshakar Mahato has died during the trial.

3. To prove the charge under section 304-B of the Indian Penal Code against the appellants, the prosecution has examined 10 witnesses; the informant who is father of the deceased has been examined as P.W.7. The brothers of the

deceased, her uncle, aunt and mother have also been examined during the trial.

4. Death of Sanjyoti Devi has occurred within seven years of her marriage is not disputed by the accused-appellants and she met with her death otherwise than under normal circumstances is proved by the prosecution through the medical evidence.

5. Dr. Swapan Kumar Sarak-P.W.10, who has conducted the post-mortem examination on 07.06.2007, has found ligature mark over larynx, running obliquely backward and upward, both sides faint with a gap of 8" on the back of the neck. He has also observed abrasion of the size $\frac{3}{4}$ " x $\frac{1}{4}$ x $\frac{1}{4}$ " over left side of her lower jaw and abrasion of the size $\frac{1}{2}$ "x $\frac{1}{2}$ " over dorsum of right wrist. In the opinion of the doctor cause of death was asphyxia as a result of hanging. The abrasion found on dorsum of right wrist of Sanjyoti Devi in the opinion of the doctor could have been caused during struggle but in his cross-examination he has stated that it cannot be caused by broken bangles also. The doctor has also stated that the injury no. 3 can be caused by fall on a hard surface.

6. The doctor has not given a definite opinion on the nature of death suffered by Sanjyoti Devi - homicidal, suicidal or accidental, but from his evidence we find that possibility of accidental death of Sanjyoti Devi is completely ruled out.

7. Section 304-B has been incorporated in the Indian Penal Code by Act of 1986. A corresponding amendment has been made by incorporating section 113-B in the Indian Evidence Act, 1872. A conjoint reading of section 304-B of the Indian Penal Code and section 113-B of the Indian Evidence Act, 1872 would reflect that to attract the presumption against an accused the prosecution must prove that soon before her death the victim was subjected to cruelty or harassment by her husband or any relative of her husband for/or in connection with any demand for dowry. In "Baijnath and others Vs. State of Madhya Pradesh" reported in (2017) 1 SCC 101, the Hon'ble Supreme Court has dealt with the presumption under section 113-B of the Evidence Act, 1872, thus;

"29. Noticeably this presumption as well is founded on the proof of cruelty or harassment of the woman dead for or in connection with any demand for dowry by the person charged with the offence. The presumption as to dowry death thus would get activated only upon the proof of the fact that the deceased lady had been subjected to cruelty or harassment for or in connection with any demand for dowry by the accused and that too in the reasonable contiguity of death. Such a proof is thus the legislatively mandated prerequisite to invoke the otherwise statutorily ordained presumption of commission of the offence of dowry death by the person charged therewith.

30. A conjoint reading of these three provisions, thus predicate the burden of the prosecution to unassailably substantiate the ingredients of the two offences by direct and convincing evidence so as to avail the presumption engrafted in Section 113-B of the Act against the accused. Proof of cruelty or harassment by the husband or her relative or the person charged is thus the sine qua non to

inspirit the statutory presumption, to draw the person charged within the coils thereof. If the prosecution fails to demonstrate by cogent, coherent and persuasive evidence to prove such fact, the person accused of either of the abovereferred offences cannot be held guilty by taking refuge only of the presumption to cover up the shortfall in proof."

8. The father of the deceased who is the informant has made allegation of demand of dowry, harassment and torture of his daughter by the accused persons. In the court he has supported his fardbeyan which has been marked as exhibit-2/1. His wife who has been examined as P.W.4 has deposed in the court that the accused persons were demanding colour television and Hero Honda motorcycle. She has stated that her daughter had stayed with her for about 5 months and about 8 days before she has died she had joined her husband in her marital home. P.W.1 is brother of the deceased. He has also made allegation of demand of colour Television and Hero Honda motorcycle by the accused persons. P.W.5 is another brother of the deceased, P.W.3 is her uncle and P.W.6 is her aunt. They have stated about demand of dowry, but the brother and aunt of the deceased have made allegation of demand of dowry only against her husband. They have stated that the husband of the deceased was demanding colour Television and a vehicle.

9. The expression "soon before her death" has not be defined under the Code. It is not capable of any straight-jacket definition and that is the reason this exercise is conducted by the courts on the basis of the materials laid during the trial. Obviously, it would depend on the facts and circumstances of a case whether soon before her death the victim lady was subjected to harassment and torture by her husband or any relative of her husband for/or in connection to demand of dowry. The evidence on this; whether Sanjyoti Devi was subjected to harassment and torture in connection to demand of dowry by her husband and/or any relative of her husband, is not consistent against her mother-in-law. The witnesses have made specific allegation of demand of a colour Television and Hero Honda motorcycle by husband of the deceased, but the evidence led by the prosecution against Sunita Devi is not cogent and consistent and P.W.5 and P.W.6 have not spoken about her at all.

10. In a criminal trial the prosecution must prove its case beyond all reasonable doubt and a presumption under section 113-B of the Indian Evidence Act would arise only when it is found that the prosecution has laid sufficient evidence constituting the offence of dowry death. In this connection what has been observed by the Supreme Court in "Shambhu Nath Mehra Vs. State of Ajmer" reported in AIR 1956 SC 404; that a presumption in law does not relieve the prosecution of its duty to prove its case, has to be kept in mind.

11. In view of the evidences led by the prosecution against the appellants, we find that while the charge of dowry death has been proved against Jaideo Mahato it must fail against Sunita Devi @ Suniti Devi @ Susti Devi. Accordingly, conviction of Jaideo Mahato under section 304-B of the Indian Penal Code is

affirmed, however, conviction of Sunita Devi @ Suniti Devi @ Sustu Devi for the said offence is set-aside.

12. Mr. Shekhar Sinha, the learned Public Prosecutor states that Sunita Devi @ Suniti Devi @ Sustu Devi is on bail and, accordingly, she shall stand discharged of liability of the bail-bonds furnished by her.

13. Criminal Appeal (DB) No. 971 of 2010 is allowed.

14. On sentence, Mr. Jitendra Shankar Singh, the learned counsel for the appellants has contended that infliction of maximum punishment upon the husband of the victim lady under section 304-B of the Indian Penal Code cannot be as a matter of course.

15. Under section 304-B of the Indian Penal Code the minimum sentence is 7 years but it may extend to imprisonment for life. This section has been inserted in the Indian Penal Code with a view to combat the increasing menace of dowry death, but it would not mean that in every case the court must inflict the maximum punishment provided under section 304-B. The expression "but which may extend to" reflects that maximum punishment cannot be awarded in a mechanical manner. After weighing the evidences led by the parties if the court finds that it is a case for imposing maximum punishment then only punishment of imprisonment for life can be awarded to an accused under section 304-B of the Indian Penal Code.

By now it has been fortified into a court practice and as indicated under sub-section 3 of section 354 of the Code of Criminal Procedure that an accused should be offered an opportunity to lead evidence why maximum sentence should not be awarded to him, after weighing the aggravating vis-à-vis the mitigating circumstances a decision can be taken by the court on quantum of punishment. In the order dated 05.10.2010, the learned Sessions Judge has recorded the submissions made on behalf of the appellants; their age and no past criminal history, and he has also recorded that a young pregnant lady has died within two years of marriage but in the final analysis he has recorded that considering the facts proved he does not find any ground for leniency and, therefore, he has sentenced the appellants to R.I for life under section 304-B of the Indian Penal Code.

16. In "Hem Chand Vs. State of Haryana" reported in (1994) 6 SCC 727, the Supreme Court has observed thus:

"7. Now coming to the question of sentence, it can be seen that Section 304-B IPC lays down that:

"Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

The point for consideration is whether the extreme punishment of imprisonment

for life is warranted in the instant case. A reading of Section 304-B IPC would show that when a question arises whether a person has committed the offence of dowry death of a woman what all that is necessary is it should be shown that soon before her unnatural death, which took place within seven years of the marriage, the deceased had been subjected, by such person, to cruelty or harassment for or in connection with demand for dowry. If that is shown then the court shall presume that such a person has caused the dowry death. It can therefore be seen that irrespective of the fact whether such person is directly responsible for the death of the deceased or not by virtue of the presumption, he is deemed to have committed the dowry death if there were such cruelty or harassment and that if the unnatural death has occurred within seven years from the date of marriage. Likewise there is a presumption under Section 113-B of the Evidence Act as to the dowry death. It lays down that the court shall presume that the person who has subjected the deceased wife to cruelty before her death caused the dowry death if it is shown that before her death, such woman had been subjected, by the accused, to cruelty or harassment in connection with any demand for dowry. Practically this is the presumption that has been incorporated in Section 304-B IPC also. It can therefore be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the dowry death provided the other requirements mentioned above are satisfied. In the instant case no doubt the prosecution has proved that the deceased died an unnatural death namely due to strangulation, but there is no direct evidence connecting the accused. It is also important to note in this context that there is no charge under Section 302 IPC.

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Coming to the sentence the High Court pointed out that the accused-appellant was a police employee and instead of checking the crime, he himself indulged therein and precipitated in it and that bride-killing cases are on the increase and therefore a serious view has to be taken. As mentioned above, Section 304-B IPC only raises presumption and lays down that minimum sentence should be seven years but it may extend to imprisonment for life. Therefore awarding extreme punishment of imprisonment for life should be in rare cases and not in every case."

17. In "State of Punjab Vs. Manjit Singh and Others" reported in AIR 2009 SC 2888, the Supreme Court has observed thus:

"12. With regard to the quantum of punishment to be awarded to persons found guilty of offences dealt with in the IPC, the Code confers a wide discretion on the court in the matter of awarding appropriate punishment by prescribing the maximum punishment and in some cases both the maximum as well the minimum punishment for the offence. Though no general guidelines are laid down in the Code for the purpose of awarding punishment, generally the judicial discretion of the court is guided by the principle that the punishment should be commensurate with the gravity of the offence having regard to the

aggravating and mitigating circumstances vis-a-vis an accused in each case."

18. On a careful analysis of the evidences led by the prosecution and in view of the judgments on the point, we find that award of maximum sentence of R.I for life inflicted upon the appellant-husband for the offence punishable under section 304-B of the Indian Penal Code is not proper and sustainable and, accordingly, it is set-aside.

19. In view of the facts which are leaning towards the appellant-husband and circumstances of the case, we are of the opinion that the appellant, namely, Jaideo Mahato is liable to suffer sentence of R.I for Ten years under section 304-B of the Indian Penal Code.

20. In the result, while affirming the conviction of Jaideo Mahato under section 304-B of the Indian Penal Code the order of sentence dated 05.10.2010 passed against him in Sessions Trial No. 370 of 2007 is set-aside. He is sentenced to undergo R.I for Ten years under section 304-B of the Indian Penal Code.

21. Mr. Shekhar Sinha, the learned Public Prosecutor states that the appellant, namely, Jaideo Mahato has remained in custody for more than 12 years.

22. Accordingly, the appellant, namely, Jaideo Mahato in Criminal Appeal (DB) No. 1052 of 2010, who is in jail, shall be set free forthwith, if not wanted in connection to any other criminal case.

23. In the result, Criminal Appeal (DB) No. 1052 of 2010 is dismissed with the aforesaid modification in the order of sentence dated 05.10.2010.

24. Let lower-court records be transmitted to the court concerned, forthwith.