
(2007) 04 JH CK 0109
In the Jharkhand High Court

Krishna Ram

APPELLANT

Vs

State of Bihar (Now Jharkhand) and Another

RESPONDENT

Date of Decision : 11-04-2007

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 304B

Citation : (2008) 2 DMC 118 : (2007) 4 JCR 526

Hon'ble Judges : Rakesh Ranjan Prasad, J; Dabbiru Ganeshrao Patnaik, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.R. Prasad, J.—The appellant Krishna Ram was put on trial along with his grand-father Khakhan Ram to face charge u/s 304B of the Indian Penal Code for causing dowry death of his wife Lalita Devi. The trial Court having found the appellant guilty convicted him u/s 304B of the Indian Penal Code and consequently sentenced him to undergo rigorous imprisonment for life.

2. The case of the prosecution as transpired from First Information Report as well as evidence of the informant Ram Chandra Ram (P.W. 1) is that Lalita Devi, sister of the informant was married to the appellant Krishna Ram in the year 1989. After the marriage, the appellant started demanding Rs. 10,000/- and also a Luna Motor Cycle as well as golden ring, but the said demand could not be fulfilled as the informant was not capable of to afford the same. Further case is that in the month of October, 1992 when Lalita Devi came to her parent's house, she showed injuries inflicted upon her person and told them that she will not go to her in-law's house as they would kill her on account of non-fulfillment of the demand of dowry. Thereafter the informant on getting knowledge of all these things came before the appellant and his grand-father and paid Rs. 5000/- so that they may keep his sister properly. Thereafter the appellant came and made promise to keep his wife with all dignity and took her to his house. However, on 13.12.1992 accused persons killed her by administering poison and wrong

information was given to his brother Laxman Ram (not examined) that his sister is ill, upon which Laxman Ram came to the place of his sister and found his sister dead. When Laxman Ram felt that accused persons are intending to consign the dead body to flame surreptitiously, he objected it by saying that they first killed his sister and now are trying to dispose of the dead body. Upon it accused persons were about to assault him but he left the place and informed to the police. Statement made in the First Information Report does suggest that police on reaching place of occurrence took the dead body in his custody and got the post-mortem done but the Officer- in-charge did not take any effective steps to get the culprits booked though accused persons had caused death of his sister and due to that reason the informant Ram Chandra Ram gave written report (Ext. 5) on 8.1.1993, upon which case was registered and a formal First Information Report (Ext. 4) was drawn and the matter was taken up for investigation by the Investigating Officer (not examined), who took statements of the witnesses and collected post-mortem examination report (Ext. 7) of the postmortem conducted on the dead body by Dr. Kamendra Singh (P.W. 14) on 15.12.1992 in reference to Station Diary Entry No. 10 of 1992 of Bishrampur Police Station. According to Dr. Kamendra Singh (P.W. 14) he did not find any injury either external or internal and even the cause of death could not be ascertained. However, according to him, viscera was preserved for its chemical examination by Forensic Science Laboratory. It transpired from the record of the case that said viscera was sent to Forensic Science Laboratory, Patna and on being examined by P.K. Jha, Senior Scientific Officer of Forensic Science Laboratory, Patna, "Mythyl Parathion" was detected which is an organo phosphorous pesticide highly poisonous substance. The said report has been proved by P.W. 15 as Ext. 8.

3. After completion of investigation, Investigating Officer submitted charge-sheet, upon which cognizance of the offence was taken and in due course when the case was committed to the Court of sessions, charges were framed against the appellant and the co-accused Khakhan Ram, grand-father of the appellant, who died (during course of trial) to which they pleaded not guilty and claimed to be tried.

4. The prosecution in this case examined as many as 15 witnesses. Of them P.W. 1 Ram Chandra Ram is the informant. P.W. 2, P.W. 3, P.W. 5, P.W. 6, P.W. 7, P.W. 8, P.W. 9, P.W. 10, P.W. 11, P.W. 12 all have been declared hostile. P.W. 13 Ramkrishna Mishra is a formal witness, who has proved the formal First Information Report, written report and the charge-sheet as Exts. 4, 5 and 6 respectively. P.W. 4 Ramkesh Ram though has been declared hostile but on being examined by the prosecution, he did admit that he had made statement before the police that when Lalita Devi had come to her parent's house, she showed injury and had also told them that she apprehends danger to her life and conveyed to them that she would not go to her in law's place until and unless money is paid.

5. After the closer of the prosecution case the appellant was questioned u/s 313 of the Code of Criminal Procedure about the incriminating evidences brought against him to which he simply denied. No specific plea of his innocence was taken.

6. The trial Court having placed implicit reliance on the testimonies of P.W. 1 as well as P.W. 4 in part corroborated by the viscera report (Ext. A) did find the appellant guilty and accordingly convicted the sentenced him as aforesaid.

Being aggrieved with that the appellant has preferred this appeal.

7. Learned Counsel appearing for the appellant submits with all vehemence that though the trial Court has based its finding mainly on the evidence of P.W. 1 but P.W. 1 is quite silent on the point of manner in which the deceased was being subjected to torture and not only that he is also silent on the point of date and time when the alleged demand was made and moreover the testimony of P.W. 1 remained uncorroborated and even Laxman Ram, brother of the informant, who is said to have come to know at "the first instance about the death of the deceased has not been examined which is certainly fatal for the prosecution. It was further submitted that the factum of the demand of dowry or subjection to cruelty were never put to the appellant u/s 313 of the Code of Criminal Procedure and hence entire trial gets vitiated. Thus, it was submitted that the judgment under challenge is fit to be set aside and the appellant deserves to be acquitted.

Heard learned Counsel appearing for the State.

8. Having heard learned Counsel appearing for the parties and on perusal of the records, I do find that the informant P.W. 1 has testified that deceased was married to the appellant and after the marriage, she had occasion to come to her parents house in the month of October, 1992 and told them that until and unless they will give the appellant a Luna Motor Cycle, one golden ring and Rs. 10,000/-, she would not go to her in-law's house as accused persons will kill her on account of non-fulfillment of demand of dowry, upon this, he came to the place of the appellant and paid Rs. 5000/- and then the appellant made promise that he will keep the deceased properly. This witness has also testified that the deceased while was telling them about the demand of the articles, she also showed them the injuries inflicted on her person. Nothing seems to have been elicited by the defence to raise even a doubt over the testimony of P.W. 1. Moreover, testimony of P.W. 1 gets corroborated from the letter (Ext. 1) dated 3.12.1992 written by the appellant Krishna Ram to his mother-in-law stating in specific term about the demand of golden ring which she (mother-in-law) had promised to give him. The testimony of P.W. 1 coupled with the statement made by the accused in the said letter amply proves that the accused used to put forth demand of the money as well as golden ring. Not only that the testimony of P.W. 1 regarding injuries being shown by the deceased to them gets confirmed by P.W. 1 though declared hostile and also the disinclination shown by the deceased for

going to her in-law's place unless demand is being fulfilled amply proves that she was subjected to torture soon before the death.

9. Under these situations, I do not mad stay substance in the submission made on behalf of the defence that prosecution has failed to prove the factum of the demand of dowry and subjection to cruelty to the deceased soon before the death by the appellant. On the contrary, the prosecution has been able to establish that fact. So far submission regarding trial being vitiated on account of non-explanation of the in crimination evidences to the appellant u/s 313 of the Code of Criminal Procedure is concerned, that is also devoid of any merit. It be stated that the whole object of the provisions as enshrined u/s 313 of the Code of Criminal Procedure is to afford the accused a fair and proper opportunity of explaining the circumstances which appeared against him in the evidence. In other words, the facts which constitute the ingredients of the charge should be specifically put to the deceased, but at the same time it has been well settled that challenge to the conviction based on non-compliance of Section 313 of the Code of Criminal Procedure first time in the appeal cannot be entertained unless the appellant demonstrates that the prejudice has been caused to them. In this regard reference may be made of the case of Shabhit Chamar and Anr. v. State of Bihar 1998(2) PLJR 17 (SC). So far this case is concerned, I do find that it was specifically put to the appellant u/s 313 of the Code of Criminal Procedure that he on account of non-fulfillment of dowry committed murder of his wife by administering poison. By putting the circumstances in that manner how the prejudice has been caused to the appellant it has not been demonstrated. In absence of that if the evidence led by the prosecution is found to be trustworthy, which in this case has bund to be, conviction can easily be sustained. Now coming to the other aspect of the case.

10. I do find that it is a case of the prosecution that on getting information on 13.12.1992 that Lalita Devi has died, Lax-man Ram, brother of the informant came to the place of the deceased and found the dead body lying over there and felt that the accused persons have been intending to dispose of the dead body by consigning it to flame, which was objected by Laxman Ram but when he did find that accused persons are bent upon to dispose of the dead body, he informed it to the police station. It be pointed out here that this fact has been testified not by Laxman Ram, as he has not been examined but by the informant and the said assertion appears to be quite correct as post-mortem of the dead body seems to have been done on 15.12.1992 and in the said post-mortem examination report (Ext. 7) reference of station diary entry is there which certainly goes to suggest that some complaint regarding unnatural death of the deceased was received. However, it is the assertion of the informant that when no effective step was taken by the police, written report was submitted on 8.1,1993, though death of the deceased did occur on 13.12.1992, Therefore, under these circumstances, if there has been any delay in lodging the First Information Report by the informant, who at the relevant time was at his place of posting at Kagaria and could come on getting information through telegram that can not be said to be

fatal for the prosecution case. It is also the case of the prosecution that after holding post-mortem examination by Dr. Kamendra Singh (P.W. 14) when the cause of death was not detected, viscera kept for chemical examination seems to have been sent before the Forensic Science laboratory, Patna and on being examined report was submitted (Ext. 8) whereby it has been reported that viscera contained Methyl parathion a poisonous substance. Thus, all these aspects of the matter certainly go to establish that death occurred otherwise than under normal circumstances. Thus, I do find that prosecution has been able to establish successfully about the guilt of the accused and, therefore, the trial Court has rightly convicted the appellant.

11. Now coming to the point of sentence it be noticed that though the appellant has been sentenced to undergo rigorous imprisonment for life, but the fact and circumstances of the case does not call for infliction of maximum punishment. However, in the facts and circumstances of the case, ends of justice would be met if the appellant is sentenced to undergo rigorous imprisonment for ten years. Accordingly, he is sentenced.

With this modification in sentence, this appeal stands dismissed.

D.G.R. Patnaik, J.

12. I agree.