

(1997) 11 PAT CK 0023
In the Patna High Court
Case No : Criminal Appeal No. 87 of 1993 (R)

Kunjlal Yadav	Vs	APPELLANT
State of Bihar		RESPONDENT

Date of Decision : 20-11-1997

Acts Referred:

Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 304, 304B

Citation : (1998) 1 BLJR 534

Hon'ble Judges : Lok Nath Prasad, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Lok Nath Prasad, J.—This appeal is directed against the judgment dated 5th May, 1993 passed by Sri Raja Ram Singh, Sessions Judge, Giridih, in Session Trial No. 200/91 thereby and thereunder the sole appellant was found guilty u/s 304B of the Indian Penal Code and also u/s 201 IPC and he was sentenced to undergo rigorous imprisonment for seven years but no separate sentence was passed for the offence punishable u/s 201 IPC. The learned Sessions Judge by the same judgment also acquitted the parents of the appellant, namely, Kamal Yadav and Sabitri Devi.

2. The prosecution case, in short, is that, Munia Devi daughter of the informant Heman Gope was married to the appellant Kunjlal Yadav in the month of Asardh, 1989 and had gone to her Sasur and when she came back she stated to her parents and brother that her husband Kunjlal was demanding Rs. 10000/- in cash and one Rajdoot Motor cycle and further the husband was threatening that unless this demand was fulfilled, he would not keep Munia Devi with him. The informant then requested Kamal Yadav the father of the appellant not to press the dowry demand and expressed his inability to fulfil the same and then pursued them and some how or other sent Munia Devi to her Sasural. After that, it has been alleged that this appellant began to threaten Munia Devi that as Rs.

10,000/- and motor cycle was not given to him, she had to face the consequence of death and this fact was disclosed by Munia Devi to her elder sister Dropadi Devi P.W. 3. It is also the prosecution case that in the night of 9.2.90 the informant got information about the death of his daughter so he rushed to village Cheraghat tola Barai the Sasural of the deceased and found her daughter dead. The informant could learn that the deceased was done to death by the appellant and her parents and a false case was set up that she died due to fall in a well. On the next day, that is, on 10.2.90 at 2.30 P.M. the informant had gone to Bagodar Police Station and submitted a written report that is Ext. 1 and on that basis, this case was instituted as against the appellant and her father and mother. The police after completing the investigation submitted charge-sheet as against the appellant and his parents.

3. In the trial Court, that is before the learned Sessions Judge, Giridih, the appellant claims himself innocent and a defence was set up that while the deceased was pulling water from the well, she slipped in the well and consequently died and so the matter was reported to police which initially instituted a U.D. case and at the instigation of enemies of the appellant, the informant instituted this false case. However, the trial Court found the appellant guilty for the offence u/s 304B and that of Section 201 IPC and convicted him in the manner indicated above. But his parents were found not guilty and so they were acquitted. Being aggrieved and dissatisfied with this order of acquittal, the appellant had preferred this appeal.

4. It is admitted case of the parties that the deceased Munia Devi who is the daughter of the informant (Heman Gope) was married to the appellant Kunjlal Yadav in Ashardh 1989 and admittedly he had gone to her Sasural immediately after the marriage.

5. Admittedly the deceased died otherwise than under normal circumstance on 9.2.90, that too, in her Sasural in village Cheraghat tola Barai, that means, within seven years of the marriage and in order bring home the guilt u/s 304 IPC, in such a situation, the prosecution has to prove that she was subjected to cruelty or harassment by her husband, that is, the appellant in connection with demand of dowry and for that the death took place otherwise than under normal circumstances.

6. To prove dowry death and demand of dowry and cruelty, on behalf of the prosecution, P.W. 1 Heman Gope who is the informant and father of the deceased, P.W. 3 Dropadi Devi, the elder sister of the deceased; P.W. 4 Barni Devi mother of the deceased, P.W. 5 Mukhlal Gope, the brother of the deceased were examined. The evidence of P.W. 1 Heman Gope who is the informant and father of the deceased is very important and this witness has stated that marriage of the deceased took place in Ashardh 1989 and she had gone to Sasural and after one month, that means, in Sawan, 1989, she came and then she disclosed that her husband alongwith her parents were demanding Rs. 10,000/- in cash and a motor cycle and as such he requested the father of the

appellant not to press for the dowry amount as he is unable to pay the same and again sent her daughter to her Sasural. Consequently he learnt from his another daughter Dropadi who is also married near about the Sasural of the deceased that deceased also disclosed to her in a market that her husband and father in law are again pressing for the cash amount and motor cycle and threatened that unless the dowry demand is fulfilled, she will be killed. This witness has further stated that he learnt about the death of his daughter on the relevant night and so he immediately rushed to P.O. village on 10.2.90 alongwith his son and found his daughter dead and also learnt from the villager that her daughter was done to death for non-fulfilling the dowry demand. So he rushed to Bagodar P.S. and submitted a written report, that is Ext. 1. Ext. 1 corroborates the evidence of this witness and the FIR was lodged on the next date of occurrence when the informant learnt about the same.

7. No doubt it is the defence version that the deceased died an accidental death due to fall in the well. If that is so, there was no prior enmity or ill-relation between this witness and the appellant save and except demand of dowry and in such a situation, it is not expected from the father of the deceased-giri to institute a false case as against the appellant.

8. Moreover, the evidence of this witness also finds support from the evidence of P.W. 3 the elder sister of the deceased and that of P.W. 4 and 5, the mother and brother of the deceased. From the evidence of these witnesses, it can be said that the marriage took place in Asardh, 1989 and in Sawan the deceased came from her Sasural and narrated to them that her husband and in-laws are demanding Rs. 10,000/- in cash a motor cycle and she is subjected to threatening and torture. From the evidence of P.W. 3 Dropadi Devi who also got her Sasural near the Sasural of the deceased, it appears that after Sawan of 1989 when the deceased was asked to go to her Sasural, then she met her in a market near Bagodar and the deceased again disclosed that a threatening is being given to her that unless the dowry demand is fulfilled, her life is in danger. So the evidence of these witnesses clearly demonstrate that immediately after the marriage in Ashardh, 1989 when the deceased came to her Naihar, she disclosed about the torture and cruelty and demand of dowry and again then she was sent after Sawan, such demand and threatening was being repeated by the appellant, who is the husband of the deceased.

9. Moreover, from the evidence of the D.W. 4 Kalu Yadav examined on behalf of the defence, this fact is also well proved that after the marriage of the deceased with the appellant, she had gone to her Naihar about 4-5 times which clearly supports the evidence of the informant and other witnesses that after the marriage she came to their house and disclosed about the dowry demand. So this fact is well proved that immediately after the marriage, the deceased lady was subjected to torture and cruelty in connection with demand do dowry.

10. The prosecution case also finds support about the death of the deceased in unnatural circumstances from the evidence of P.W. 2 Dr. Bhupendra Pd. Singh

who held post mortem examination on the dead body of the deceased on 10.2.90 at about 4 P.M. and apparently no external injury was found on the body of the deceased and the viscera was preserved for chemical examination and the doctor has also clearly expressed his opinion that it is not a case of drowning because in case of drowning, some water enters through mouth and practically no water was found inside the stomach of the deceased. No doubt it is the defence version and some witnesses were also examined to show that on 9.2.90 the deceased while pulling water from a well had slipped down in the well which was in the Bari and immediately she was removed from the well but she died. If at all the deceased was pulling water from a well, then in that situation when the well was deep having water to the extent of about 6' or so, as admitted by defence witnesses, in such a situation, there could have been some external injury on the deceased due to fall in the well and in case of drowning, the water could have been located in the stomach. So this is a strong circumstance to show that the deceased had not died due to fall in the well and she died either by committing suicide due to demand of dowry and cruelty or she was done to death.

11. If that is so and if the deceased died in unnatural circumstances, that too in connection with cruelty and torture given to her in connection with demand of dowry and death took place in her Sasural under unnatural circumstances, then the presumption of Section 113B of the Evidence Act will lend support of the prosecution case. In that view of the matter, the prosecution has been able to bring home the guilt as against the appellant u/s 304B of the IPC.

12. So far defence version is concerned, on behalf of the defence, as many as four witnesses were examined, out of them, D.W. 2 and 3 (Bhekhilal Yadav) is more or less formal in nature as they simply stated that they learnt that the appellant was not torturing her wife or making demand of dowry. On the other hand D.W. 1 Budhdeo Yadav and D.W. 4 Kalu Yadav had claimed that they had seen the deceased pulling water from the well situated in a Bari. In the process she fell inside the well and immediately they along with several villagers rushed to the spot and D.W. 1 and one Janki had gone down the well and brought the deceased on the surface where she was found dead and so they have tried their best to establish the case of defence version. They also stated that at that time Kunjlal was not present in the house and he came after 1/2 an hour and he had reported the matter to the police about the accidental death of the deceased. The evidence of these two witnesses appears to be thoroughly unreliable because it does not stand to reason that if at all anyone will fall in a well, that too, in a pucca well from a distance, then the lady will not sustain any external injury. On the other hand, the doctor clearly stated that no external injury was found and there was no water in the stomach which is essential in a case of drowning. In that view of the matter, the evidence of D.Ws. 1 and 4 is not at all convincing and not to be accepted.

13. No doubt from the evidence of P.W. 6 Rajendra Prasad, Bhagat, who is the I.O. of this case, it can be said that on 9.2.90, the appellant reported to the

police about the unnatural death of the deceased and so an U.D. case was instituted, but from his evidence, it is clear that UD case was closed and this very case u/s 304B IPC was investigated and FF was submitted. If that is so the UD case about the unnatural death of the deceased was not found to be true. Moreover, no step was taken on behalf of the defence to bring on record to show as to what findings he recorded in the UD case. So the defence has thoroughly failed to prove that the deceased lady died on accidental death due to fall in a well.

14. On the other hand, from the evidence as discussed above, this fact is well proved that this appellant being the husband was demanding dowry in the shape of Rs. 10,000/- and a Rajdoot Motor Cycle immediately after the marriage and he was also threatening his wife occasionally that unless the dowry demand is fulfilled, her life is in danger and the deceased definitely died in an abnormal circumstances within seven years of marriage. In such a situation, the case u/s 304B IPC is well proved as against the appellant.

15. The appellant was also found to be guilty u/s 201 IPC but no separate sentence was awarded on this count. In my opinion, the offence u/s 201 IPC is not at all proved because of the fact that the dead body. was not concealed rather brought out from the well and immediately the appellant also reported about the death of the deceased to the police.

16. In the result, it can be said that the trial Court was perfectly justified in convicting and sentencing the appellant u/s 304B of the IPC and the trial Court has simply sentenced him to undergo rigorous imprisonment for seven years. So it does not require any interference. However. the conviction of the appellant u/s 201 IPC is set aside. In the result, there is no merit in this appeal and so it is dismissed and the bail bond of the appellant is hereby cancelled and he is directed to surrender before the trial Court to undergo remaining part of the sentence as awarded u/s 304B IPC.