
(2006) 09 JH CK 0013
In the Jharkhand High Court

Mahabir Mahto and Biglahi Devi and Another	APPELLANT
Vs	
State of Jharkhand	RESPONDENT

Date of Decision : 05-09-2006

Acts Referred:

Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 201, 210, 304B, 34

Citation : (2007) 1 JCR 392

Hon'ble Judges : Dhananjay Prasad Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.P. Singh, J.—Both these appeals have been preferred by the appellants named above, against the judgment, and order dated 25.6.2002 and 26.6.2002 respectively passed in Sessions Trial No. 142 of 2000/175 of 2000 by 5th Additional Judicial Commissioner, Ranchi, whereby and whereunder they were found guilty for the offences under Sections 304-B/201/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for ten years u/s 304-B/34 of the Indian Penal Code and one year for the offence u/s 201/34 of the Indian Penal Code and to pay a fine of Rs. 500/- each, in default thereof to serve rigorous imprisonment for one year. As both the appeals arise out of the same judgment, they have been heard together and are being disposed of by this common judgment.

2. Briefly stated the facts leading to these appeals are that deceased Lalo Devi was found dead in a well situated in village Kori, Police Station Burmu In the morning of 29.6.1999. According to informant Mahadeo Mahto, his daughter was married with one Suresh Mahto, four years ago but after two years her husband left her due to intimate relation between the deceased and appellant Mahabir Mahto. It is further asserted that when Suresh Mahto did not agree to keep Lalo Devi, villagers decided that appellant Mahabir Mahto should marry with the deceased. Accordingly, on 1.4.1999, appellant Mahabir Mahto put vermilion on

the head of Lalo Devi and she started living in his house as his wife. As alleged, this marriage was opposed by other appellants, Biglahi Devi and Palko Devi, the mother-in-law and the sister-in-law of the deceased. It is also asserted that she was not treated properly and tortured. According to the informant in the morning of 29.6.1999 when Munia Devi, the daughter-in-law of the Informant went to fetch water from the well, she found dead body of Lalo Devi floating inside the well along with one plastic bag. The matter was reported to the village Chowkidar and dead body brought out with the help of villagers. The Informant suspected that Lalo Devi was killed and her dead body was thrown in the well by the appellants.

3. His statement was recorded by S.I.S.C. Singh, Burmu Police Station. On the basis of which Burmu Police Station Case No. 36 of 1999 under Sections 304-B/201/34 of the Indian Penal Code was registered against four accused persons. The police after investigating the case, submitted charge-sheet against only three accused i.e., the appellants. Their cases were committed to the Court of Sessions. The trial Court framed charges against the appellants on 10.5.2000 under Sections 304-B/201/34 of the Indian Penal Code. The appellants pleaded innocence. However, the learned trial Court after examining the witnesses found and held all the appellants guilty under Sections 304-B/201/34 of the Indian Penal Code and sentenced them as stated above.

4. These appeals have been preferred on the grounds that the learned trial Court has misconstrued the facts and wrongly appreciated the materials on records. It is further asserted that there was no evidence to support the allegations that Lalo Devi was ill-treated and tortured for dowry demands. It is also submitted that in absence of any dowry demand immediately before alleged death, presumption could not be drawn against the appellants u/s 113-B of the Indian Evidence Act. It is asserted that when marriage between appellant Mahabir Mahto and deceased took place because of love affair, the question of demanding dowry does not arise. According to these memos of appeal, the learned trial Court having relied upon the evidence of interested witnesses and ignored that death was caused due to drowning. It has also been stressed that the post-mortem report does not show any external injury on the dead body. As such, the presumption used against the appellants for their conviction was not warranted.

5. All these points were stressed at the time of hearing of these appeals. Learned APP for the State opposed these contentions on the grounds that Lalo Devi died in unnatural circumstances within three months of her marriage with appellant Mahabir Mahto, which itself goes to prove that the offence under Sections 304B/210/34 of the Indian Penal Code was committed.

6. I have carefully gone through the materials on records along with the submissions advanced by both sides. The defence has examined two witnesses, who have stated that on the date of occurrence, deceased has come to the house of the informant and there was never any demand of dowry etc. DW 1 is the nephew of appellant Mahabir Mahto residing at a distance of one and half

kilometers. DW 2 Is the neighbour of appellant Mahabir Mahto, who admitted in para 10 that appellant Mahabir Mahto was not willing to marry with the deceased but under pressure from village Panchayatt, he kept her in his house. As against this, the prosecution has examined the Informant as PW 1 Sukho Devi, the mother of the deceased as PW 4, Santosh Mahato, the uncle of the deceased as PW 5, Raj Klshore Mahto, the brother of the deceased as PW 6, PW 2 Daharu Mahto. PW 7 Amarnath Mahto. PW 8 Tejnath Mahto and PW 9 Kamal Nath Mahto, the co-villagers of the deceased. PW 10 is Dr. R.S. Sahu, who has conducted the postmortem examination on the dead body of Lalo Devi PW 11 Is the Investigating Officer of this case. PW 10 has mentioned in his opinion that death was due to drowning. He further found abrasions over neck due to pressure. He has opined time elapsed since death is within 12 to 36 hours. The postmortem examination was held at 16.30 hours on 29.6.1999. As such, it appears that the death has taken place in the night of 28/29.6.1999.

7. PW 1, PW 4 PW 5 and PW 6 stand related closely with the deceased. It is undisputed fact on record that appellant Mahabir Mahto has taken Lalo Devi to his house as his wife after village Pandiayati just three months before the occurrence. According to PW 1, this has led to annoyance to the family members of appellant Mahabir Mahto. It is also admitted fact on record that the houses of the appellants and the informant are situated nearby. Vide para 3, he alleged that appellant Mahabir Mahto or his family members did not like Lalo Devi and used to torture the deceased. During cross-examination, this witness has admitted that relation between appellant Mahabir Mahto and ualo Devi got worst from the day when she was kept in his house. He denied that Lalo Devi used to visit her parental house. The dead body is admittedly found in a well situated in front of the houses of the appellants and the informant. PW 4, the mother of the deceased similarly stated vide para 2 that appellant Mahabir Mahto started annoying her girl just after the marriage with him, but her daughter has never complained this to her. This witness has further admitted in cross-examination that she cannot say what happened between appellant Mahabir Mahto and the deceased PW 5, the uncle of the deceased vide para 5 asserted that Lalo Devi has informed him that appellants were ill-treating her for dowry. According to him, vide para 7 that both of them used to fight. He contradicts the statement of PW 1 and PW 4 on this point where PW 6, the brother of the deceased, story of demand of dowry is made out. This witness has admitted in cross-examination vide para 6 that houses of the appellants and the informant was adjacent and after the marriage, the deceased did not visit her matrimonial house. He even denied that the deceased has met with him after the marriage.

8. In this context, if the evidence of PW 2, PW 3, PW 7, PW 8 and PW 9 is scrutinized; PW 2 asserted in cross-examination in para 3 that he was informed regarding demand of dowry by PW 1. This witness has admitted in para 11 that the deceased never visited the house of the informant after the marriage. PW 3 similarly asserted that appellant Mahabir Mahto used to demand for dowry but in cross-examination he admitted vide para 4 that he had never any talk with Lalo

Devi and Lalo Devi did not visit her parent's house. PW 7 was declared hostile. PW 8 is a witness on the inquest report. PW 9 is a witness on the seizure list, Ext. 1 and Ext. 1/2.

9. Therefore, only PW 1, PW 4, PW 5 and PW 6, the parents, brother and uncle of the deceased would have been in better position to say about any ill-treatment or torture meted out to deceased Lalo Devi by her in-laws in connection with dowry demands. The hearsay witnesses of the dowry demands. PW 2, PW 3 and PW 7 cannot be relied upon because if any information they got, it was from the informant and his wife (PW 4). I have already discussed the evidence of these two witnesses on this point. PW 1 has asserted vide para 3 that appellant Mahabir Mahto used to call names to him and to repent to have got married with a poor family. However, during cross-examination, he admitted in para 5 that his daughter and appellant Mahabir Mahto has got illegal relationship resulting in her earlier husband deserting her. This has been supported by PW 4 in para 2 but she asserted that Lalo Devi has not complained about this. She further admitted vide para 3 that Lalo Devi and appellant Mahabir Mahto has got good relation. She further admitted in para 4 that she cannot say what happened in the house of accused persons with Lalo Devi PW 6, the brother of the deceased has alleged that appellant Biglahi Devi used to torture Lalo Devi, but during cross-examination he admitted that after the marriage with appellant Mahabir Mahto, Lalo Devi did not visit her parent's house vide para 6. Therefore, there are major contradictions in the versions of PW 1, PW 4 and PW 6 regarding ill-treatment meted out to Lalo Devi and any complaint made by her to her parents and brother. It also becomes apparent when the houses, both the informant and the appellants are adjacent and situated nearby. If any such ill-treatment or torture was being met to Lalo Devi after 1st of April 1999, this could not have been kept concealed from her nearest relation. My views are further strengthened with the facts that the marriage was solemnized as per the prosecution case at the instance of villagers and in case, the appellants did not keep Lalo Devi properly and further demanded dowry, the matter could have been brought to the knowledge of the villagers for further Panchayati. The facts and circumstances as stated above, therefore, creates reasonable doubt in the alleged ill-treatment, torture etc. for non-fulfillment of dowry demands.

10. The place of occurrence described by the Investigating Officer and the witnesses is a well, which according to them was not having parameter with any wall. This well was partly covered and partly open. The Investigating Officer has further admitted vide para 23 that none of the witnesses has asserted that dowry was demanded by the appellants before him. It also appears that the witnesses have seen a plastic bag flouting by the side of the dead body seized by the police vide Ext-5. In this plastic bag two saress, one Dhoti, one blouse, one petticoat along with comb, powder, tickaly, sindur etc. were found. In case, the dead body was brought and thrwon inside the well, presence of personal articles belonging to the deceased could not have been available. The doctor has opined death due to drowning. The marks mentioned by the doctor on the neck have not been

explained by the prosecution. It is further found that appellant Mahabir Mahto has nearly remained in custody for three years before he was admitted to bail in the present appeal. The annoyance caused to the appellants particularly females i.e. Biglahi Devi and Palko Devi, after the marriage of Lalo Devi with appellant Mahabir Mahto is quite apparent because the villagers had forced appellant Mahabir Mahto to keep Lalo Devi in his house. The fard beyan mentioned that after the marriage, appellant Mahabir Mahto was made to flee away from the house but Lalo Devi continued to reside with other appellants.

11. However, the death of Lalo Devi in unnatural circumstances requires to be connected with dowry demands to hold the appellants guilty u/s 304-B of the Indian Penal Code. In admitted facts as is apparent from the evidence of PW 4 and PW 6, such complaint were not received by them from Lalo Devi, who has not visited them after she started living-with appellant Mahabir Mahto. In such circumstances, the prosecution version that Lalo Devi was ill-treated and tortured by the appellants for non-fulfillment of dowry demands cannot be taken to be true and correct.

12. Having considered all the facts and circumstances mentioned above, I find that the prosecution has not been able to bring home the charges against all the appellants that they were ill-treating the deceased Lalo Devi for non-fulfillment of dowry demands and Lalo Devi was killed by them. Accordingly, I find that the present appeal has got merit and deserves to be allowed.

13. In the result, the judgment of the learned Court below is set aside. The appellants being found not guilty of the charges levelled against them stand acquitted from all the charges and further released from their liabilities to the bail, bonds.