
(2002) 09 JH CK 0077

In the Jharkhand High Court

Case No : Criminal Appeal No. 179 of 1996 (R)

Nakul Manjhi and Another

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 03-09-2002

Acts Referred:

Evidence Act, 1872 — Section 113A

Penal Code, 1860 (IPC) — Section 302, 304B, 328, 34

Citation : (2003) 2 DMC 802

Hon'ble Judges : Vinod Kumar Gupta, J; Vikramaditya Prasad, J

Bench : Division Bench

Advocate : N.N. Sinha and S.N. Sinha, for the Appellant; J.P. Gupta, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Vishnudeo Narayan, J.—This appeal has been preferred by the appellants named above against the judgment and order dated 4.9.1996 passed by Shri Ashok Kumar Verma, Judicial Commissioner, Ranchi at Camp Court, Khunti in Sessions Trial No. 279 of 1994 whereby and where under they have been found guilty for the offence punishable u/s 304B of the Indian Penal Code and they were accordingly convicted and sentenced to undergo R.I. for life. However, they were not found guilty for the charge Under Sections 302/34 and 328/34, I.P.C. Accused Nirsha Devi has been acquitted of the charge Under Sections 304-B, 302/34 and 328/34 of the Indian Penal Code.

2. The prosecution case has arisen on the basis of the Fardbeyan (Exhibit 2) P.W. 6, Bhushan Chandra Manjhi, father of Aloka Devi, the deceased of this case and the wife of appellant, Sanjay Manjhi recorded by SI Sahay Lakra of Torpa P.S., District Ranchi at village Kasmar, P.S. Torpa on 30.4.1993 at 13.30 hours regarding the occurrence which is said to have been taken place in the house of the appellant in village Kasmar, the date and time of which have not been mentioned therein.

3. The prosecution case in brief is that the informant has three married daughters, namely, Subhadra Devi, Kanan Devi and Aloka Devi, the deceased of this case besides one unmarried daughter Namita Kumari and a son Satya Narayan Manjhi. The said Aloka Devi stands married with appellant Sanjay Manjhi son of appellant, Nakul Manjhi. One, RoVji Manjhi resident of village Kasmar came to his house and informed him that Aloka Devi aforesaid is seriously ill and in a critical condition and on getting this information he along with his wife P.W. 7, Shakuntala Devi came to the house of appellant where he found his daughter Aloka Devi dead and they enquired from the appellants as to how Aloka Devi had died but they evaded to answer their query. The prosecution case further is that the appellants always used to intimidate Aloka Devi that she shall not be kept in her matrimonial home unless she brings Rs. 10,000/- from his father and Aloka Devi had to come to his house several times and had .demanded money but he could not manage money for paying to the appellants and assured her that the said demands shall be fulfilled. It is also alleged that Aloka Devi had come on the occasion of Shakranti Mela in the month of January, 1993 and had again asked for Rs. 10,000/- as demanded by appellant Nakul Manjhi failing which she shall be done to death and on some pretext she was sent back to her matrimonial home. But while she was going to her matrimonial home she has told that the appellants shall commit her murder but he did not attach much importance to her statement. It is also alleged that thereafter she did not even send a letter and also did not make any demand and he was of the impression that things were moving nicely. It is apparent from her dead body that she has been done to death and broken bangles and one container of poison was found there and he believes that both the appellants besides Puroshotam Manjhi, the brother of her husband and Nirsha Devi, Phuwa, of her husband have committed her murder by poisoning and perhaps one Rai Manjhi has assisted them in committing her murder and they wanted to cremate her dead body but they could not succeed in their venture due to the intervention of local Mukhiya. It is also alleged that appellant, Nakul Manjhi had earlier committed the murder of his sister by poisoning and cremated her dead body when the sister of Nakul Manjhi did not obey regarding her being sold.

4. Charge-sheet has been submitted on investigation against both the appellants and also against accused Nirsha Devi who was acquitted.

5. The appellants have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case. It has also been contended that the deceased has committed suicide being fed up with her domestic chores in her matrimonial home as well as she was under depression due to physical incapacity of her husband to satisfy her sexual desire.

6. The prosecution has examined 7 witnesses in all to substantiate the charge levelled against the appellants before the Trial Court. P.W. 6, Bhushan Chandra Manjhi, the informant and P.W. 7 Shakuntala Devi are the father and mother

respectively of Aloka Devi, the deceased of this case and they are the resident of village Parasdih, P.S. Gundu, District Ranchi P.W. 1, Birendra Manjhi, P.W. 2, Anand Manjhi, P.W. 3, Ramdeo Pradhan and P.W. 5 Bhim Kharwar are the neighbours of the appellant, resident of his village Kasmar. P.W. 4, Dr. Lalita Verrrta has conducted the post-mortem examination on the dead body of deceased and the post-mortem report is Exhibit 1. The Investigating Officer has not taken oath in this case: Exhibit-2, the Fardbeyan, Exhibit-3 the seizure list, Exhibit-4 the inquest report and Exhibit-5 the protest petition have been proved by P.W. 6, a formal witness. No oral or documentary evidence has been brought on the record on behalf of the defence.

7. While assailing the impugned" judgment it has been submitted by the learned Counsel for the appellants that the learned Court below has failed to scrutinize the evidence on the record in right perspective and has gravely erred in coming to the finding of the guilt of the appellants. It has been contended that there is no iota of evidence at all on the record that the deceased Aloka Devi has ever been subjected for demand of dowry in her matrimonial home by either of the appellants and the word "demand of dowry" is conspicuously absent in the Fardbeyan (Exhibit-2) of the informant as there is averment that a sum of Rs. 10,000/- is being demanded by appellant, Nakul Manjhi with threat that if the said demand is not fulfilled, Aloka devi shall be done to" death and she shall not be kept in her matrimonial home and even P.W. 6, the informant in his evidence on path has simply stated in para 11 of his testimony that appellant, Nakul Manjhi has asked for money for harvesting of paddy and P.W. 7, Shakuntala Devi, the mother of the deceased in para-2 of her cross-examination has deposed that appellant,: Sanjay Manjhi had told her that she will have to give Rs. 10,000/- for purchase of a motor cycle when the informant retires from service and in this view of the aforesaid evidence there is no legal evidence at all that Aloka Devi has been treated with cruelty for demand of dowry immediately soon before her death. It has further been contended that P.W. 6, the informant in para 9 of his evidence has deposed that the marriage of his three daughters, namely, Subhadra, Kanan and Aloka was solemnized on the same day in one mandap and in their marriage nothing was given to the bridegroom"s party as dowry and there is no system of giving of dowry prevalent in his community and furthermore, no other witness has even whispered regarding any torture on the deceased for demand of dowry by the appellants immediately soon before her death. In view of the aforesaid evidence, it has been submitted that the learned Court below has gravely erred in finding the appellants guilty for the offence u/s 304-B, I.P.C. It has also been submitted that as per averment in the Fardbeyan of the informant the allegation of demand of Rs. 10,000/- from the deceased has. been made by appellant, Nakul Manjhi and not at all by appellant Sanjay Manjhi. it has also been submitted that P.Ws. 1, 2, 3 and 5 have come to the place of occurrence and the deceased had reported to them that she had committed suicide by taking poison as she has become fed up with the household chores and she does not like to live as she has immense trouble in cooking for

this big family and she has unable to bear the burden of entire family and attempts were taken by the appellants to administer liquid cow-dung to the deceased for inducing her to vomit when doctors called by Narayan Manjhi for her treatment did not turn up. It has also been submitted that even Robi Manjhi was dispatched to inform the informant regarding serious illness of Aloka Devi and the bonafide conduct of the appellants totally negates that the appellants have committed the murder of Aloka Devi. It has also been submitted that attempts by the appellants to disgorge the poison substance swallowed by Aloka Devi by administering liquid cow-dung and the non-cremation of her dead body hurriedly and surreptitiously are indicative of the fact that the appellants have not committed the murder of the deceased by poison and also the appellants have not administered poison to her. It has also been submitted that there is no evidence at all on the record to show that death of deceased has been caused by poisoning as viscera report has not been brought on the record and there is no explanation also on the record by the prosecution in respect thereof. Lastly it has been contended that the non-examination of the I.O. has caused serious prejudice to the appellants as they stand debarred from eliciting facts in. the cross-examination of the I.O. showing their innocence.

8. The learned A.P.P., has submitted that Aloka Devi, the deceased has died in her matrimonial home within seven years of her marriage and her death is unnatural one due to poisoning and the ligature marks on her wrist and ankle do support the fact that poison has been administered forcibly to her by the appellants and the container of poison and broken bangles were recovered by the I.O. from the place of occurrence. It has also been submitted that P. W. 6, the informant and P.W. 7 have in their evidence on oath stated regarding the demand of Rs. 10,000/- by appellants from the deceased on threat being given that she shall not be kept in her matrimonial home and also done to death and in this view of the evidence, there is not illegality in the impugned judgment. .

9. There is no denying the fact that the marriage of Aloka Devi, the deceased of this case, was solemnized with appellant, Sanjay Manjhi in the year 1990 and her marriage was performed along with her other two sisters in a common Mandap on the same day and the marriage of all the three daughters of the informant was performed without dowry as there is no system of dowry prevalent in his community. Aloka Devi has died within seven years of her marriage in her matrimonial home and her death in view of the post-mortem, Exhibit-1, cannot definitely be said a natural death. P.W. 4, the medical witness had conducted the post-mortem examination on the dead body of the deceased and had deposed to have found the following on the dead body of the deceased :

- (1) Both eye-lids were swollen, bluish in colour.
- (2) There was bleeding from noses mixed with froth.
- (3) Both lips were swollen and teeth exposed.
- (4) Face on both sides was blue and buccal mucosa was cyanosed.

(5) There was ligature mark on both the wrists and bangles were absent in left hand and present on right hand - 5 in number.

(6) Ligature mark on both the ankles, both the feet were in adducted position (bending towards medial side) dorsum of both feet were extended and abducted.

The medical witness has further deposed that he has preserved the viscera of the deceased for chemical examination and has also reserved his opinion regarding the cause of death of the deceased. He has also deposed that ligature marks aforesaid are ante mortem in nature and these marks indicate that hands and ankles of the deceased were tied with the ropes and when the hands and feet are tied, one cannot drink or swallow anything by himself. The medical witness has also deposed that from the data mentioned above it could not be a case of suspected poisoning. It is pertinent to mention here that viscera report has not been brought on the record, therefore, it cannot be said that the cause of death of the deceased is by poisoning. The I.O. has not taken on oath in this case and as such the recovered container from the place of occurrence has not been brought on the record and there is no report regarding the chemical examination of container aforesaid and this aspect of the matter appears to be a fatal lacuna of the prosecution case which cast a cloud of suspicion to the very credibility of the texture of the prosecution case. It is equally pertinent to mention here that there is evidence on the record deposed by P.Ws. 1, 2,3 and 5 that they had come to the house of appellants and found Aloka Devi lying on a cot and she has told them that she has swallowed poison being fed up with life due to domestic chores, and in their presence when doctor was not available for treatment; liquid cow-dung was administered to her with a view to induce poison so that Aloka Devi might be saved, if at all she has taken poison. No person in her senses will swallow liquid cow-dung. Therefore, there is every probability that the hands and ankles of Aloka Devi might have been tied with a view to administer liquid cow-dung to induce her to vomit and disgorge any harmful substance which she has swallowed. The intention here is to save her life and for that the appellants had taken steps in the right direction. Therefore, the existence of ligature mark cannot be taken as a circumstance in favour of the prosecution case. Furthermore, there is no whisper in the averment made in the Fardbeyan of P.W. 6, the informant, that Rs. 10,000/- has been demanded by the appellants from Aloka Devi in connection with any demand of dowry and for that she has been subjected to cruelty or harassment by the appellants. There is no whisper that Aloka Devi, the deceased of this case, was subjected to cruelty and harassment or torture by the appellants for fulfilment of the said demand. Even P.W. 6, the informant in para-11 of his testimony has given a go-bye to the prosecution case when he has deposed that appellant, Nakul Manjhi has asked for money for paddy harvesting and P.W. 7, the mother of the deceased has deposed that the appellant, Sanjay Manjhi has told her when he had come to take the deceased from her house to her matrimonial home that a sum of Rs. 10,000/- may be given to him on the retirement of P.W. 6. Therefore, the evidences of P.W. 6 read with P.W. 7 does not show at all that demand of Rs. 10,000/- as averred in the

Fardbeyan is in connection with demand of dowry. And last but not the least there is absolutely no. evidence on the record adduced by the prosecution to show that the deceased has been tortured and subjected to cruelty immediately soon before her death. The learned Court below has wrongly taken the aid of Section 113-A of the Indian Evidence Act in finding the appellants guilty in the absence of any cogent evidence on the record brought by the prosecution proving the torture of deceased or subjecting her with cruelty or harassment immediately soon before her death for demand of dowry in view of the fact also that the deceased has not even told P.Ws. 1, 2, 3 and 5 about any cruelty perpetuated on her for the demand of dowry even immediately soon before the occurrence.

10. Viewed thus, there is no legal evidence at all on the record to come to the conclusion that the deceased of this case has been done to death for the fulfilment of demand of dowry and she was subjected to cruelty immediately soon before her death. The alleged demand of dowry by the appellants as averred in the FIR has not at all been supported by legal evidence on the record and there is also no evidence to prove the ill-treatment or torture of the deceased. The defence version in the facts and circumstances of this case appears to be probable. In this view of the matter, the impugned judgment is unsustainable and the learned Court below has erred in finding the appellants guilty.

11. There is merit in this appeal and it succeeds. The appeal is hereby allowed. The impugned judgment of the learned Court below is hereby set aside. Both the appellants are not found guilty for the offence u/s 304-B of the Indian Penal Code and they are accordingly acquitted. Appellant, Nakul Manjhi is discharged from the liability of his bail bonds. Appellant, Sanjay Manjhi is ordered to be set free forthwith, if not wanted in other case.

Vikramaditya Prasad, J.

12. I agree.