
(2004) 09 JH CK 0092

In the Jharkhand High Court

Case No : Criminal Appeal No. 4 (SJ) of 1992 (P)

Piyari Mandal and Others

APPELLANT

Vs

State of Bihar (Now Jharkhand)

RESPONDENT

Date of Decision : 23-09-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304B, 489A

Citation : (2004) 3 BLJR 1900 : (2005) 1 DMC 783

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Advocate : A.K. Chaturvedi, for the Appellant; Indra Nath Gupta, APP, for the Respondent

Final Decision : Allowed

Judgement

R.K. Merathia, J.—This appeal is directed against the judgment dated 25.1.1992 passed by Shri Kali Dayal Mishra, Additional Sessions Judge, Deoghar in Sessions Trial No. 9 of 1991, convicting the appellants u/s 304B, 498A and 201, IPC and sentencing them to undergo RI for 10 years u/s 304B. No separate sentence was passed u/s 498A, IPC. They were also sentenced to RI for one year u/s 201, IPC. Both the sentences were ordered to run concurrently.

2. On 16.7.1990 at about 7.45 p.m., fardbeyan of the informant-Munsi Mandal (PW 11) was recorded by the Investigating Officer (PW 14). The informant stated that his daughter-Kaushalaya Devi (deceased) aged about 16 years was married with Kongress Mandal (appellant No. 6), son of Piyari Mandal (appellant No. 1) in the month of "Vaishaikh" of the year 1988 according to the Hindu Rites. As per the village custom, she came back to her father's house. The second marriage (Gauna) was performed in "Aghan" of the year 1989, when Kaushalaya was sent to her in-laws house and since then she was residing there. Four days prior to the date of occurrence, Jiblal Mandal (PW 2), the father of the informant and grandfather of Kaushalaya went to bring back Kaushalaya but her in-laws did not send her and the appellants demanded a wrist watch from him saying that the

said demand has not been fulfilled since the marriage and unless the same is given Kaushalya will not be sent back and she will be killed, Informant further stated that in-laws of Kaushalaya were making demand for wrist watch since the time of her marriage which he could not fulfill due to his poverty. Kaushalaya told to her grand-father that the appellants are treating her cruelly and on occasions they beat her and do not provide her food because the wrist watch was not given. Jiblal Mandal returned and narrated the aforesaid facts to the informant. On 16.7.1990 in the evening, the informant was proceeding to Soluraidih village to meet his daughter when in the way, his brother-in-law (sister's husband) Sahdeo Mandal (PW 1), who is also a resident of Soluraidih met him and informed him that Kaushalaya has been killed by the appellants as the demand for the wrist watch was not fulfilled. He also informed the informant that the dead body of Kaushalaya has been taken away for cremation. Informant reported the matter to police alleging that the appellants by entering into a conspiracy with an intent to realize dowry from him ill-treated his daughter, killed her and are in a bid to cremate her dead body without informing him or the police to destroy the evidence of their guilt.

During investigation, the half burnt dead body of Kaushalaya was seized and sent for postmortem.

3. The defence was that Kaushalaya fell in the well by accident and died due to drowning. 15 witnesses have been examined by the prosecution. PW 1, Sahdeo Mandal, the brother-in-law of the informant and PW 6, Mahadeo Mandal, the brother of PW 1 are important witness. They both reside in Soluraidih village where Kaushalaya was residing with her in-laws. PW 11-Munsi Mandal is the informant and PW 12 Jiblal Mandal is the father of informant. PW 14 is the Investigating Officer. Defence also examined three witnesses.

4. The evidence of doctor (PW 7), who conducted the postmortem and the postmortem report are of no much relevance. No definite opinion could be given regarding the cause of death as the body was practically burnt in cremation. However, learned counsel for the appellants submitted that there was no congestion in the neck and the thyroid bone and cricoid cartilage were intact and that nothing obvious was found to make out the case of murder.

Regarding the demand of wrist watch, it is submitted that the evidence are inconsistent PWs 1, 6, 11 and 12 are relatives of the deceased and they have made out a case of demand though it has also come in the evidence of PW 12 that the relations between the parties were cordial. Kaushalaya used to visit her parents but there is nothing to show that she complained about any such demand and torture and that any action was taken by the prosecution party in this regard. He further submitted that PW 12, the grandfather of the deceased, stated that PW 8-Bhim Mandal (brother of the deceased) used to accompany his sister-Kaushalaya to and fro her sasural but PW 8 has not said anything about any such demand or torture. He further submitted that it has come in the evidence that "janta" watch worth Rs. 300/- 350/- was demanded at the time of

marriage and at the time of "Gauna" which the informant promised to give. The informant said that he incurred expense of about Rs. 10,000/- in the marriage. Therefore, learned counsel submitted that it cannot be believed that for a watch worth Rs. 300/--350/-, the appellants will kill the deceased.

5. Regarding the conduct of the appellants in cremating the body of the deceased and not informing her parents and the police, learned counsel for the appellants submitted that sister of the informant-Raina Devi and her husband Sahdeo Mandal (PW 1) and Mahadeo Mandal (PW 6), brother of PW 1 were residing in the same village. PW 6 Mahadeo Mandal has said that he reached near the place of occurrence and saw the dead body which was rescued from the well. He asked his brother-Sahdeo Mandal (PW 1) to inform the parents of the deceased. It was submitted that in the aforesaid circumstances, parents of the deceased were not informed separately by the appellants. It was further submitted that before cremation several preparations were made and several persons gathered, therefore, it cannot be said that the dead body was cremated in hurry. However, learned counsel admitted that at least police should have been informed but he submitted that only by this conduct, it cannot be conclusively said that the appellants were guilty of the offence.

He further submitted that there are contradictions in the evidence. The prosecution has tried to improve it's case during evidence. The story of demand of wrist watch and cremation of dead body hurriedly cannot be believed.

6. Learned counsel for the State submitted that it is a case of unnatural death during seven years of marriage. There is consistent evidence of demand of wrist watch and bad relations due to this. The conduct of the appellants in cremating the dead body without informing the parents and the police also creates serious doubts against the appellants. He further submitted that even if it is a case of suicide, the appellants must be held guilty of the charges.

7. In reply, learned counsel for the appellants submitted that it has come in evidence of PW 1 that the well was half built. He further submitted that though DWs 1 and 2 are relatives of the appellants but there is no reason to disbelieve them. DW 1 Champa Devi has said that when Kaushalaya was drawing water second time, she fell in the well, she raised hulla, on which Sukhdeo Mandal, DWs 2 and 3 and others came and took out Kaushalaya from the well, Kaushalaya died after vomiting some water; the appellant No. 1 Piyari Mandal is her uncle-in-law, who along with his sons were in the field and they came after about one hour from the said incident. She has further said that Kaushalaya was her "Chacheri Gotni". Learned counsel further submitted that PWs 2 and 3 have stated that they took out the dead body from the well. They have said that the body of Kaushalaya was not swollen. DW 3, is an independent witness. Learned counsel for the appellants further submitted that there are general allegations regarding the demand and torture against the appellants. He lastly submitted that in any event the appellants have faced this case for more than a decade. Moreover, appellant No. 6 Kongress Mandal, husband of the deceased has

remained in jail for about three years and appellants No. 3, 4 and 5 the brothers of appellant No. 6 have remained in jail for about two months and appellants No. 1 and 2 have remained in jail for about 3 and 4 months respectively.

8. In my opinion, only because DW 1 is related with the appellants, her evidence cannot be discarded. There are general allegations about demand of wrist watch against the appellants. Some witness said that appellant No. 6, the husband demanded it, some witness said that appellant No. 3, Takdhu Mandal reminded for the wrist watch. It further appears that there was no complaint by Kaushalaya about such demand and torture and if there was any such complaint the appellants did not take any step in this regard. Her grandfather has said that she went to her sasural happily. Her brother Bhim Mahto (PW 8), who accompanied her also did not say anything about the said demand and torture etc. Informant has said that the appellant No. 1 used to torture Kaushalaya at the instance of Jamun Mandal, the brother-in-law of appellant No. 1 PW 4 Ramdhani Mahto, one of the Chowkidars of the village has become hostile. He has said that Kaushalaya died due to fall in the well. PW 1, who is husband of sister of informant said that appellant No. 6 used to assault Kaushalaya and did not give her proper, food and his brother also tortured her due to wrist watch, though the grandfather of Kaushalaya promised to give the same but thereafter, he was declared hostile.

It appears that the relations between the appellants and the deceased were strained due to wrist watch but there is reasonable doubt whether the appellants have killed and threw her in the well due to the said differences over wrist watch. It is also doubtful whether Kaushalaya committed suicide or it was a case of accidental death. In these circumstances, in my opinion, the appellants can be given benefit of doubt.

9. In the result, this appeal is allowed. The judgment under appeal is set aside and the appellants are discharged from their bail bonds.