
(2012) 01 JH CK 0028

In the Jharkhand High Court

Case No : Criminal Appeal (D.B.) No. 1698 of 2003

Prem Narain Sao and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 24-01-2012

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3
Evidence Act, 1872 — Section 113B
Penal Code, 1860 (IPC) — Section 304B, 328, 34

Citation : (2012) 2 JLJR 36

Hon'ble Judges : R.K. Merathia, J;Dhrub Narayan Upadhyay, J

Bench : Division Bench

Advocate : A.K. Pathak, for the Appellant; Amaresh Kumar for the State, for the Respondent

Judgement

1. At the outset, Mr. Ajay Kumar Pathak, learned counsel for the appellants, submitted that appellant no. 2-Pandeo Sao has died during pendency of the appeal. Therefore, he is not pressing this appeal on his behalf. Accordingly, this appeal is dismissed as not pressed on behalf of appellant no. 2. This appeal is directed against the judgment of conviction and order of sentence dated 20.11.2003 and 21.11.2003 respectively, passed by Additional Sessions Judge, Fast Track Court, Latehar, in Sessions Case No. 79 of 1995, convicting the appellants under Sections 304-B/34, 328/34 of the Indian Penal Code and 3 of the Dowry Prohibition Act. They have been sentenced to undergo rigorous imprisonment for six months and fine of Rs. 5,000/- each and in default of payment of fine, simple imprisonment for six months u/s 3 of the Dowry Prohibition Act; rigorous imprisonment for ten years u/s 328/34 of the Indian Penal Code; imprisonment for life and fine of Rs. 5,000/- each and in default of payment of fine, simple imprisonment for a period of six months u/s 304B/ 34 of the Indian Penal Code. 60% of the fine was to be paid to the informant-father of the deceased. The sentences were to run concurrently.

2. The prosecution case in brief is that a fardbeyan was lodged by Laldeo Sao

(P.W. 13) on Friday (8.11.1991) at about 10.15 A.M. in the hospital to the effect that his daughter Munia Devi (deceased) was married about six years back with appellant no. 1-Prem Narain Sao but he used to commit "Marpit" and demand dowry, about which, Panchayti was held twice but such torture continued. Appellant No. 2 (father-in-law), appellant no. 3 (mother-in-law) also used to commit such torture. On the last Tuesday, two daughters of the informant Soni Devi (P.W. 14) and Kiran Kumari (P.W. 2) went to bring Munia Devi on the occasion of "Chhath". They insisted for "Bidai" but it was not done by appellant no. 1-Prem Narain Sao. P.W. 14 and P.W. 2 came back. Appellant No. 1-Prem Narain Sao told them that he will bring Munia Devi on Saturday but on the date of Fardbeyan at about 6 A.M. in the morning, one villager (P.W. 7) who had been to the village of the daughter of the informant was told by one Shankar Sao that she was administered poison, on which P.W. 7 reached there and found that one Dr. A. Ekka was treating her after which she was taken to the hospital by P.W. 7. On return, P.W. 2 told the informant that poison was administered to Munia Devi who was taken to hospital in the vehicle of P.W. 7. The informant went to hospital and found that Munia Devi was lying senseless and froth was coming out from her nose. During treatment, she died after one hour. The informant alleged that the appellants have together killed Munia Devi by administering poison.

3. The prosecution has examined 15 witnesses. P.Ws. 1, 3 and 4 are hearsay witnesses. P.Ws. 2 and 14 Kiran Kumari and Soni Devi are the daughters of the informant who went to bring the deceased. P.W. 5-Sunari Devi is the mother of the deceased. P.Ws. 6, 7 and 8 Parmeshwar Sah, Lakhan Sah and Dhunnu Shah have not supported the prosecution case. P.W. 9 Siddh Nath is the doctor who conducted post mortem. He provisionally found that the death was due to poisoning awaiting the viscera report. P.W. 10 Bihari Prasad Yadav is a witness who accompanied Prem Narain Sao to call doctor Ekka for treating the deceased. P.W. 11 Shanker Ram is the driver of the vehicle, in which deceased was taken to hospital. P.W. 12 Bhuneshwar Singh is a hearsay villager. P.W. 13 Lal Deo Sao is the informant. P.W. 15 Basu Deo Sao is a formal witness.

4. Mr. Ajay Kumar Pathak, learned counsel for the appellants, submitted that it is true that there are documents to show that the relationship between the deceased and the appellants was strained due to demand of dowry and for other reasons and for that Panchayti was held twice but after the last Panchayti was held on 3.4.1990, there is nothing to show that thereafter, till the alleged date of occurrence, there was any untoward incident except that the elder brother of Prem Narain Sao namely Ram Briksha (not sent up for trial) objected to sending Munia Devi in "Bidai" with P.W. 2 and 14 saying that only after the informant comes, a decision will be taken to send her. He further submitted that P.Ws. 2 and 14 have specifically said that Prem Narain Sao did not object for Bidai. There is nothing to show that poison was administered on her by the appellants. He further submitted that P.W. 2 and 14 did not whisper anything about any bad conduct of the appellants except that Prem Narain Sao supported his elder brother. He also submitted that some of the witnesses said that they heard that

Munia Devi had consumed medicine. He also submitted that P.W. 5, the mother of the deceased is the interested witness and due to strained relationship she made allegations against the appellants but such allegations are not corroborated by any other materials on record. He therefore submitted that prosecution has not been able to prove its case against the appellants beyond all reasonable doubts. He relied on the judgment of Pyare Lal Vs. State of Haryana, .

5. On the other hand, Mr. Amaresh Kumar, learned State Counsel, supported the impugned judgment. He submitted that there are documents to show that from the very beginning, even before the marriage, the deceased was tortured by the appellants for demand of dowry, in spite of Panchayti on two occasions. Therefore, the incident in question has occurred in continuity with the earlier incidents.

6. On this, Mr. Pathak, appearing for the appellants, submitted that appellant no. 1 Prem Narain Sao has remained in jail for more than 8 years by now which is more than the minimum sentence prescribed u/s 304B and therefore at least his case may be considered on the quantum of sentence. He further submitted that so far as the appellant-Tukani Devi (mother-in-law) is concerned, only P.W. 5 (mother of the deceased) has made allegations against her but the same is not corroborated by other witnesses. Even the sisters of the deceased, P.Ws. 2 and 14 have not said anything against Tukani Devi. Moreover, she must be around 60 years by now and she has remained in jail for 1 and 1/2 years before she was granted bail. He also submitted that this case relates to the incident said to have occurred in the year 1991. He lastly submitted that appellant no. 3 Tukani Devi is entitled to benefit of doubt.

7. After hearing the parties and carefully going through the records, at length, in our opinion, there is no reason to interfere with the judgment of conviction of appellant no. 1 Prem Narain Sao. There are documentary evidences supported, by oral evidence about torture meted out for demand of dowry from very beginning. It appears that there was a Panchayti, in which he admitted his guilt but even then torture continued and again there was a Panchayti on 3.4.1990. When P.Ws. 2 and 14 went to bring the deceased with them on the festival of "Chhath" and his elder brother objected, he also supported his brother that after the father of the deceased comes, it will be decided whether she should be sent back to her parents house or not. We are inclined to agree with the submission of learned counsel for the State that appellant no. 1-Prem Narain Sao continued torture and ill-treatment with the deceased till she died on 8.11.1991. The marriage took place within seven years of her death. The death was unnatural. In these circumstances, Prem Narain Sao was obliged to discharge his onus u/s 113B of the Evidence Act but he has failed to do so. Accordingly, we are not inclined to interfere with his conviction.

However, so far as sentence is concerned, we are inclined to modify the sentence to the period already undergone for both the offences under Sections 304B/34 and 328/34 of the Indian Penal Code. He has already undergone the sentence

under Dowry Prohibition Act. We are not inclined to interfere with the order of fine.

8. So far as appellant-Tukani Devi is concerned, it appears that P.W. 5 (mother of the deceased) has only said that she used to torture the deceased for dowry but her statement has not been corroborated by any other witness, even her daughters P.Ws. 2 and 14 who went to bring the deceased did not say anything against her. It has also come in evidence that she alongwith her husband resided separately from their son-Prem Narain Sao.

In the facts and circumstances of the case, we are inclined to give her benefit of doubt. In the result, the conviction and sentence dated 20.11.2003 and 21.11.2003 respectively, passed by Additional Sessions Judge, Fast Track Court, Latehar, in Sessions Case No. 79 of 1995 against appellant Smt. Tukani Devi, is set aside and she is discharged from her bail bonds.

However, the conviction of appellant-Prem Narain Sao is maintained but the sentence is reduced to the period already undergone.

It is made clear that the sentence of fine is not interfered.

Accordingly, appellant-Prem Narain Sao is directed to be released forthwith, if not wanted in any other case after he deposits fine.

This appeal thus stands disposed of.