
(2005) 06 JH CK 0052

In the Jharkhand High Court

Case No : Criminal Appeal No's. 245 and 342 of 2002

Premchand Mahto and Gomia Devi and Another

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 15-06-2005

Acts Referred:

Evidence Act, 1872 — Section 113B

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

Citation : (2005) CriLJ 3672 : (2006) 1 HinduLR 117 : (2005) 2 BLJR 1552 :
(2005) 2 DMC 624 : (2005) 3 JCR 253

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Advocate : P.S. Dayal, for the Appellant; T.N. Verma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Amareshwar Sahay, J.—Both the appeals arise out of the common Judgment of the trial Court and, as such, were taken up together for hearing and are being disposed of by common judgment.

2. The appellant Premchand Mahto of Criminal Appeal No. 342/02 is the son of Gomia Devi and Pati Mahto, the appellants of Criminal Appeal No. 245/02. All the three appellants were tried together for the charges under Sections 302, 304B/34 of the Indian Penal Code in Sessions Trial No. 327/1998. The learned trial Court by judgment dated 06.06.2002, held all the three appellants guilty for the offence punishable u/s 304-B of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of 10 years.

3. In short the prosecution case is that Chinta Devi, the niece of the informant Chandradeo Mahto (PW 3) was married to the appellant Premchand Mahto. In the marriage sufficient dowry was given to the bridegroom according to the capacity of the bride's father. The relationship between the husband and wife continued well for about two years. Thereafter, it is said that the husband Premchand Mahto and his father and mother Pati Mahto and Gomia Devi started

demanding loud-speaker and TV in dowry. They also threatened that if their demand of dowry was not fulfilled the result would be very bad. Chinta Devi disclosed this facts to her parents, when she came to her father's house. After she returned to her-in-laws place, it is said that her husband, father-in-law and mother-in-law subjected her to physical and mental cruelty. Further case of the prosecution is that on 26.4.1998 a resident of Village Pilpilo informed the informant that Chinta Devi had been killed. The informant went to village Pilpilo saw the dead body of Chinta Devi and, thereafter, lodged information to the police, on the basis of which the case was registered u/s 304-B of the Indian Penal Code.

4. The defence case was total denial of the occurrence and of false implication and that the deceased died due to heart attack.

5. In order to prove the charges, the prosecution examined altogether seven witnesses. Out of whom, PW 1 Narayan Mahto and PW 2 Tarkeshwar Mahto, did not support the prosecution case and hence, they were declared hostile. PW 3 is the informant, PW 4 Puran Mahto is the Grand Father of the deceased. PW 5 Jethu Mahto and PW 6 Tahal Mahto are the uncles of the deceased. PW 7 is the Doctor who conducted the Post Mortem examination of the dead body of Chinta Devi.

The IO was no examined.

On behalf of the defence one witness namely, DW 1 Moti Mahto was examined.

6. Mr. Dayal, learned counsel appearing for the appellants assailed the judgment of conviction and sentence mainly on the ground that PW 1 and PW 2 were declared hostile and they did not support the prosecution case, whereas the rest of the witnesses were only hearsay witnesses. Since the evidence of the hearsay witnesses were not admissible in evidence, and therefore, the conviction passed on the hearsay evidence is bad in law. It was further submitted that though the parent of the deceased were alive but they were not examined by the prosecution in order to prove that the appellants ever demanded dowry or that they tortured Chinta Devi due to non-fulfillment of the demand of dowry. This creates doubt on the prosecution story and makes it unbelievable.

7. In order to test the argument of the learned counsel for the appellants let us scrutinize the evidence adduced by the prosecution. PW 3 Chandradeo Mahto who is the informant has stated that Chinta Devi was his niece and she was the daughter of Bhola Mahto his brother. She was married to Premchand Mahto in the year 1995 according to Hindu rites. In the said marriage the bridegroom was give Rs. 15,000/-in cash, bicycle, wristwatch, utensils etc. in dowry. There was no complaint between the husband and wife for about two years but thereafter, the appellants started demanding loud-speaker and TV in dowry. Chinta Devi was threatened by the appellants to the effect that she would be done to death if the demands were not fulfilled. Since the parent of the deceased could not fulfill the demand and, therefore, Chinta Devi was subjected to cruelty and tortured by the

appellant, both physically and mentally and, thereafter, on 26.4.1998 a man from the Village Pilpilo reported the informant that Chinta Devi had been killed by the appellants. On receipt of such information the informant alongwith Jethu Mahto (PW 5), Jairam Mahto (not examined), Teklal Mahto (not examined) and other members of his family went to the in-laws place of Chinta Devi and saw the dead body of Chinta Devi. They found that there was mark of scratch on the face of Chinta Devi and her neck was twisted. The matter was informed to the police, on the basis of which FIR was registered, investigation was taken up and the dead body was sent for post-mortem and, thereafter, on completion of the investigation the charge-sheet was submitted against the appellants. In the cross-examination, this witness specifically stated that the neck of the deceased was twisted in such a manner that it had become loose and the face of the deceased moved towards her back freely that's why he was of the view that the deceased had been killed by throttling and twisting of neck.

PW 4 Puran Mahto, Grand Father of the deceased, has corroborated the statements of PW 3 regarding the demand of dowry and torture by the appellants. He also stated that the husband Premchand Mahto had sent letters to the in-law demanding dowry. The said letters were exhibited and were marked as Exts. 3 and 3/1. He further stated that since the demand of dowry was not fulfilled and, therefore, Chinta Devi was not being provided food and was also being assaulted by the appellants. He further corroborated the statement of PW 3 on the point of injuries on the face and neck of the deceased Chinta Devi.

PW 5 Jethu Mahto and PW 6 Tahal Mahto both uncles of the deceased have also corroborated the statement of the informant PW 3.

From the evidence of PW 7 Dr. Ratneshwar Prasad Verma, who conducted the post-mortem of the deceased, it appears that he found several abrasions on the face of the deceased of different dimensions and also found diffused swelling on left and right side of the lower part of her cheek. The injuries were found to be antemortem and caused by hard and blunt, substance. He further stated that the cause of death was cardio-respiratory failure due to asphyxia, which was possible due to tracheal injury and over stretching of neck was possible in extreme lateral twisting of the neck. The post-mortem report was proved by him and was marked as Ext. 4.

8. From the trend of cross-examination by the defence and from the statement of the defence witness it appears that, the defence has taken the plea that Chinta Devi was ailing and she was also admitted in DVC hospital for treatment where she had become senseless. It is stated that five years thereafter she died due to the heart failure.

9. There is no dispute of the fact that the deceased died at her in-laws place and that also under abnormal circumstances and within three years of her marriage. The defence has not brought anything on record to show that the deceased was ailing or that she was admitted in DVC hospital.

10. The learned counsel for the appellants has contended that the prosecution has not been able to prove that soon before the death of the deceased, there was any demand of dowry or that the deceased was subjected to cruelty either physically or mentally and, therefore, in absence of such evidence the appellants could not have been convicted u/s 304-B of the Indian Penal Code. Elaborating his argument Mr. Dayal submitted that in order to prove the charge u/s 304-B, IPC, the prosecution has to establish the fact that "soon before the death" of the deceased, there was demand of dowry, resulting in torture and harassment of the deceased but that evidence is lacking in the present case and thus the conviction u/s 304-B, IPC is bad. In support of his submission he has relied on a decision in the case of Hira Lal and Ors. v. State (Government of NCT) Delhi, reported in 2003 (2) JCJR 188 (SC).

11. From perusal of the aforesaid decision of the Supreme Court it appears that in the said case there was specific evidence of PWs 1, 5, 10 and 11 to show that at the time of marriage there was no demand of dowry but subsequently the demands were made and ill treatments were meted out and, therefore, on the said facts the Supreme Court held that crucial question was whether the demand of dowry and torture was made soon before the death. In the said case it was further noticed that it was candidly admitted that there was no mention about any dowry aspect while differences were ironed out and there was settlement between the wife and husband and, thereby, they were living separately. There was no definite evidence about the ill-treatment to the deceased at any time having immediate proximity to the death of the deceased. In those facts it was held that the presumption u/s 113-B of the Evidence Act, 1872 can be raised only where the following essential ingredients are established :--

"(1) The question before the Court must be whether the accused has committed the dowry death of a woman. (This means that the presumption can be raised only if the accused is being tried for the offence u/s 304-B, IPC).

(2) The woman was subjected to cruelty or harassment by her husband or his relatives.

(3) Such cruelty or harassment was for, or in connection with any demand for dowry.

(4) Such cruelty or harassment was soon before her death."

12. In the present case there is specific evidence on record particularly of PWs 3, 4 and 5 that after two years of marriage the appellants started demanding loud-speaker and TV in dowry and that due to non-fulfillment of the demand of dowry the deceased was subjected to physical and mental torture and she was also threatened that she would be killed. When the deceased had come to her father's place at that time she had disclosed these facts regarding demand of dowry and physical and mental torture to her by the appellants but she was sent to her in-laws place. Only after one month, the news came that the deceased was done to death by the appellants and the deceased was having several

antemortem injuries.

13. The point as to when the presumption u/s 113-B of the Evidence Act would be raised against the accused has further been dealt with by the Supreme Court in the case of Kaliyaperumal and Another Vs. State of Tamil Nadu, . It has been held by the Supreme Court in the said case that the determination of the period which can come within the term "soon before" is left to be determined by the Courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the concerned cruelty or harassment and the death in question. There must be existence of a proximate and live-link between the effect of cruelty based on dowry demand and the concerned death.

14. As noticed above, in the present case there is ample evidence on record that soon before the death the deceased was subjected to physical and mental cruelty and torture because of non-fulfillment of demand of dowry. It has come in evidence that the deceased had disclosed to her parent and witnesses regarding demand of dowry and torture on her by the appellants. Only after a month of the return to her "sasural" she was done to death. Therefore, it can very well be said that the demand of dowry and torture meted out to the deceased by the appellants, were soon before her death. In this situation, the presumption as envisaged u/s 113-B of the Evidence Act, 1872 for commission of the offence u/s 304-B of the Indian Penal Code would certainly be raised against the appellants.

15. In view of the above discussions and findings, the submission of the learned counsel for the appellants is rejected and I hold that the trial Court has rightly convicted and sentenced the appellants for the offence u/s 304-B of the Indian Penal Code and there is no illegality in it.

16. Accordingly, having found no merit in these two appeals, the same are dismissed.