

(2009) 05 JH CK 0015
In the Jharkhand High Court
Case No : Criminal Appeal No. 5 of 2002

Purushottam Mahto

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 19-05-2009

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 34, 498A

Citation : (2009) 05 JH CK 0015

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Advocate : H.K. Mahto, H.K. Sikarwar, for the Appellant; Tapas Roy, for the Respondent

Judgement

Pradeep Kumar, J.—Heard learned Counsel for the petitioner and learned Counsel for the State as well as learned Counsel for the informant.

2. It appears that as the appeal is directed against the judgment dated 13th December, 2001, and sentenced passed on 15.12.2001, passed by Sri William Minz, 1st Additional Sessions Judge, Bokaro at Chas in Sessions Trial No. 368 of 2000, by which judgment, the appellant Purushottam Mahto was found guilty u/s 304B of the Indian Penal Code and sentenced him to under go rigorous imprisonment for ten years.

3. The prosecution case was started on the basis of the frad beyan given by P.W.1, informant, Jagdish Mahto on 13.1.2000 at about 4:30 hours at Bishunghar police station, stating therein that his deceased sister, Manju Devi was married to accused Purushottam Mahto and as his elder brother Baijnath Mahto used to torture his sister for dowry and sometime also used to assault her. They never allowed her to visit his house and they were demanding Hero Honda Motor-cycle. Both the brothers had said that until and unless the Hero Honda Motor-cycle is given to them, they will not allow his sister to visit his house. It is stated subsequently that his brother-in-law Purushottam Mahto got employed at

Jerangdih Colliery and his sister started living with him in block No. 4, quarter No. 6 in the Sabitri Colony. It is stated that when they visited Sabitri Colony, Block No. 4, quarter No. 6, his brother-in-law demanded motorcycle from him. It is alleged that on 12.1.2000, when his cousin brother Teju Mahto went to bring his sister, then Purushottam Mahto became furious and by giving leg blow upon his sister, whereupon his brother came back weeping to his house. It is alleged that, on that day in the morning, his elder brother-in-law Sushil Kumar informed him that his sister has been murdered and her dead body had been brought for cremating, whereupon they rushed to Govindpur and saw her dead body lying on the "varamda" of the house of his brother-in-law who was making preparation for cremation and he came to know that his sister has died due to strangulation and her dead body has been brought here, whereupon they took the dead body to the police station. Purusottam had also come to the police station and on the allegation that Purusottam Mahto and his brother Viduyat Mahto had committed the murder of his sister for not bringing the motorcycle as dowry. The case u/s 304B of the Indian Penal Code and 3/4 of the Dowry Prohibition Act was registered by the police and after investigation, the police submitted charge-sheet against both the accused persons u/s 304B/34 of the Indian Penal Code as also u/s 498A of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. Since the case was triabled by Court of Sessions and the same was committed to the Sessions and subsequently the case was transferred to the court of first Additional Sessions Judge, Bokaro, where charges were framed. Both the accused persons were found guilty for the offence under 304B of the Indian Penal Code as also u/s 3/4 of the Dowry Prohibition Act.

4. It appears that in course of trial, seven prosecution witnesses were examined but since the prosecution failed to prove the charges u/s 304B and 3/4 of the Dowry Prohibition Act against the accused Vidayut Mahot, hence he was acquitted from the charges and since the charges was not proved against this appellant and he was also acquitted under 3/4 of the Dowry Prohibition Act.

5. It is submitted by the learned Counsel for the appellant that prosecution has examined seven witnesses in course of trial and all are related to the family of the deceased and none of them have supported the prosecution case since no dowry was demanded for the marriage or that the victim girl Manju Devi used to be tortured for dowry by the appellant except the informant P.W.1. Even the statement of P.W.1 has not been supported by his brother.

6. It is important to note that the mother and the father were not examined in the case and as such, the prosecution case has become doubtful. Moreover non-examination of the doctor and the Investigating Officer has also caused prejudice to the prosecution and the prosecution case with regard to the death of the deceased. In that view of the matter, the appellant is entitled to be acquitted from the charges levelled against him.

7. On the other hand, learned Counsel for the informant has submitted that the informant P.W.1 has fully supported the prosecution case and in his cross-

examination, he has stated the case is against the accused person. In that view of the matter, the single evidence of the victim is sufficient and the trial court has rightly convicted him.

8. After hearing both the parties and going through the records, I find that the prosecution examined seven witnesses. P.W.1 is Jagdish Mahato, informant, P.W.2 is Bholi Mahato, brother of the deceased, P.W.3 Jamuna Mahato, another brother of the deceased, P.W.4 is Tejo Mahto, cousin brother of the deceased, P.W.5 is Narayan Mahto, cousin brother P.W.6 is Wakil Mahto and P.W.7 is Shambhu Mahto, he is also the cousin brother of the deceased.

9. It is important to note that P.W.1, in his statement has fully supported the prosecution case as given by him in the first information report and he stated in court that the deceased sister Manju Devi was married with the appellant Purushottam Mahto in the year 1994 and she started living at her husband house, when the appellant got employment at Bokaro Thermal Colliery, she started living in the quarter of Sabitari Colony, Block No. 4, quarter No. 6. He has stated that after two to four months, he started demanding a Hero Honda Motorcycle. His sister informed about this to her father and also informed him. His father was not in a position to give him a Motorcycle and hence could not fulfil the same. He stated that the non-fulfillment of the demand, he used to assault Manju Devi and never allowed her to come to her father's house. He also stated that on 12.1.2000, his cousin brother Tejo Mahto had gone to the house of Manju Devi for bringing her back to her "Maike" but the appellant Purushottam Mahto become furious and assaulted her in his presence and also threw foot blow on her whereupon, Tejo Mahto came back weeping and stated that unless motorcycle is given, he will not allow Manju Devi to go to her "maike". He stated in para-6 on 13.1.2000, his elder brother-in-law Sushil Kumar came to her "maike" on 9 A.M and stated that Purushottam was going to Govindpur for cremation of the dead body, whereupon he ran and saw the dead body of Manju Devi. The accused Purushottam Mahto stated to him that Manju Devi has committed suicide. He saw the dead body and found blue mark around her neck and injury on her back, then he took the dead body to the police station. The accused Purushottam Mahto also went with them and on his statement, the case was registered. He identified his signature on the fradbeyan and proved the same as exhibit-1. He also proved the inquest report as exhibit-2 and submitted that the dead body was sent for post mortem.

10. It is important to note that the statement given by the informant P.W.1 has not been supported by his brothers, who were examined as P.W.2 to 7 as stated earlier. The appellant stated that on 12.1.2000, his cousin brother Tejo Mahto had visited the house of Manju Devi, where it is alleged that the appellant Purushottam Mahto become furious and assaulted Manju Devi and threw a foot blow on her, but this statement of this informant at para-3 in examination-in-chief has not been supported by P.W.4 Tejo Mahto during his examination. P.W.4 was tendered for cross-examination. He stated that Manju Devi is his cousin

sister and she never made any complaint against her husband in his presence that her husband assaulted or put any demand for dowry. He stated that police never examined him. So the statement of P.W.1 at para-2 that Tejo Mahto visited to the house of his sister is not corroborated by the statement of P.W.4 Tego Mahto as stated. He stated that on 13.1.2000, his elder brother Sunil Kumar, informed that Purusottam Mahto, appellant has brought the dead body to Govindpur and is proceeding for cremation, but the said Sunil Kumar has not been examined in court and his statement can not be corroborated by any other evidence. Moreover in para-2 of his examination-in-chief, the informant, P.W.1 stated that the demand of motorcycle was firstly informed by Manju Devi to her father but it is important to note that his father has not been examined by the police, nor he was is examined in court to corroborate the statement given by the informant. As far as, other evidences are concerned, it is important to note that they have given contradictory statement to their elder brother, P.W.1 and P.W.2, Bholi Mahto. Another brother of the deceased Manju Devi stated in court that there was no demand of any dowry from the side of his brother-in-law. He stated that whenever he visited his house and met his sister, he always found her happy and she made no complain against her husband Purushottom Mahto. He never knew that Manju Devi is being tortured by her husband. He also stated that he could not understand as to how his elder brother has filed this case against his brother-in-law. He stated that his statement was recorded by police. He did not say to police that his brother filed a case against his brother-in-law.

11. Another brother, P.W.3 Jammuna Mahto stated in para-3 and 4 that he never saw his sister and brother-in-law fighting. It is important to note that P.W.5, another brother of the deceased, Narayan Mahto has stated that Manju Devi was his cousin sister and she was mentally disturbed. She committed suicide and there was no demand of dowry.

12. P.W.7, Shambhu Mahto seems to be an independent witness. He has stated that he knows Jagdish Mahto and his sister Manju Devi. He heard that Manju Devi committed suicide by putting a rope on her neck. He has also stated in para-4, that there was no complain against her husband. Whenever, he met Manju, she made no complain about her husband.

13. After going through the prosecution case, I find that the evidence of P.W.1 is not corroborated by any other witnesses, rather the very basis that before the occurrence on 12.1.2000, his brother Tejo Mahto visited to the house of Manju Devi has not been supported by Tego Mahot in court. His allegation that there was demand of motorcycle has also not been supported by his father and mother. They did not come in court but brothers were examined in court. They have not supported him. They did not know, as to why his elder brother Jagdish Mahto lodged this case against his brother-in-law Purushottam Mahto, who never assaulted his sister or demand motorcycle.

14. It is important to note that although post mortem report, marked as exhibit-3 but doctor was not examined. From the perusal of the postmortem

report, it appears that she died due to Aphyxia caused by hanging.

15. Although after the consideration of all the witnesses available on record, a question arises that as to why the deceased committed suicide, when there was no demand of dowry. As per the evidences of her brothers, P.W.2 to 7, that there was no torture from the side of the accused. It appears from the evidences of P.W.1 itself as he stated at para-21 that his sister and her husband Purusottam Mahto were running "Kitchripros" shop in the quarter itself and it was suggested to him in para-24 that Purusottam Mahto asked Manju Devi to make arrangement for the shop and then leave for her "Maikhe" whereupon she became sentimental and in the absence of Purusottam Mahto, she committed suicide by hanging herself.

16. As discussed above, since the statement of the informant is not supported by any family members of the deceased and since his statement given in para-2 and 3 have been denied by P.W.4. In that view of the matter, the prosecution case and the statement of P.W.1 is not free from doubt. The informant lodged this case and also supported the same in court but no one has supported him. In that view of the matter, the allegation against the appellant has not been proved by the evidences beyond doubts and the benefit of doubt is being given to the appellant.

17. As such the benefit of doubt is given to the appellant Purushottam Mahto and he is acquitted from the charges levelled u/s 304B of the Indian Penal Code and the judgment passed by first Additional Sessions Judge, Bokaro dated 13.12.2001 is set-aside. The appellant is on bail and he is released from the bondage of bail bond.