
(2002) 07 JH CK 0024

In the Jharkhand High Court

Case No : Criminal Appeal No. 125 of 1994

Radha Kant Yadav and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 302, 34

Citation : (2003) 1 DMC 7

Hon'ble Judges : Vikramaditya Prasad, J; Lakshman Uraon, J

Bench : Division Bench

Advocate : P.K. Verma, for the Appellant; R.P. Gupta, Assistant Public Prosecutor, for the Respondent

Final Decision : Dismissed

Judgement

Vikramaditya Prasad, J.—The appellants were convicted for offence under Sections 302/34 and 201, 1.P.C. and they were sentenced to undergo R.I. for life and R.I. for 7 years respectively for the aforesaid, offences. They have preferred this appeal against the aforesaid conviction and sentence.

2. As per the written report of one Ganesh Yadav (P.W. 1) submitted before the police, Ext. 1, the prosecution case is that Kavita Devi (deceased) was his daughter and she was married to Pradip (appellant No. 3) three years prior to her death. About 2-3 months prior to date of filing of the Fardbeyan, which was on 22.9.1992, there was some quarrel between Kavita Devi and his Samandhi, Damad and Samandhin. Receiving this information, the informant had gone to the village Pasai where his Samandhi and Samandhin had complained to him that his daughter was a rogue and was always quarrelling in the house. When the informant enquired from her and also tried to make her pacified, then her daughter informed him that her mother-in-law, father-in-law, brother-in-law and the husband together are always prone to assault her and also perpetuated in many times to torture her in various ways. Then there was Panchayat in

presence of Mukhia of Pasai and other villagers and in that Panchayat the appellants had promised that his daughter will not be put to any harassment and thereafter the informant had returned back and his daughter started living in her in-laws' house. On 21.9.1992 at about 6.00 p.m, son of one Sukumar Mahamarick of village Pasai came to the house of the informant and informed him that Kavita Devi has been poisoned by Pradip Yadav, Mahesh Yadav, Radhakant Yadav, Ahtlya Devi at 11.00 a.m. and thereafter they had disappeared the dead body. Receiving the information, the informant went to the said village along with his mother Jhalak Devi, cousin brother Nukul Yadav, Jamai Narayan Yadav and arrived there at 12.00 noon and thereafter they found the house of his daughter locked and no body was available. On inquiry, Bichu Mahamarick, Kanti Manjhi and Kedar Mahamarick informed that his son-in-law, his (son-in-law) brother, his (son-in-law) mother administered poison to his daughter, assaulted her and thereafter disappeared her dead body. Then the informant and others started searching for his daughter in the village and they further came to know that these persons with the help of Kumode Mahamarick and Ganga Mahamarick had disappeared the dead body because in the night they did not go to the police station and thereafter in the following morning the matter was reported to the police. On the basis of the written report, a police case was registered and the formal F.I.R., Ext. 4, was drawn.

3. Then it transpires that during the investigation, the dead body of the victim girl was recovered from a well on 22.9.1992 of one Kumud Mahamarick and the inquest report, Ext. 5, was prepared in presence-of Nukul Yadav RW. 4, Ganesh Yadav, P.W. 1. The autopsy on the dead body was conducted by the Dr. Kulanand Choudhary P.W. 8, who also proved the post mortem report, Ext. 2. It transpires that the informant had also filed an informatory petition, vide Ext. 3.

4. The defence of the appellant Radha Kant Yadav was that when the informant had gone to the village, he was not in the house, rather he was in the house of Supi Mahamarick and the rest of the accused persons were in the house. The allegation that the house was locked was denied. It was also denied that any assault was made on the deceased or any Panchayat was held.

The defence of Pradip Yadav is the denial of the occurrence and setting of a claim that on 21.9.1992 at about 11.00 a.m. Kavita Devi had herself taken poison and died and her dead body was already there in his house itself. He further denied that the informant and others had come to his house but he further said that he was not in his house in that night but the house was not locked.

The offence of the appellant, Ahilia Devi, appellant mother-in-law, is that she does not know about the death of Kavita Devi, but she had gone to see Doctor. She has also said that she was not in the house but she does not know anything about her death.

5. The appellants had entered in defence during trial and on their behalf, two D.Ws. 1 and 2 were examined. D.W. 1 was examined on behalf of one co-

accused Ganga Mahamarick, who has been acquitted and D.W. 2 was examined, it appears, on behalf of the accused and on the entire case Diary Ex. (sic).

6. The death of Kavita Devi is neither disputed nor the identification of the dead body is in dispute, rather the defence of the appellant-husband is that she took poison and committed suicide. In the aforesaid background, the fate of this appeal depends upon the determination of the following points :

(i) Whether the death is suicidal or homicidal ?

(ii) Whether there is any eye-witness, particularly RW. 2, Had Narayan Yadav, on any part of the occurrence on the fatal day ?

(iii) Whether the informant party received information of rumour of poisoning of Kavita Devi and disappearing her dead body and went to the village Pasai and found the house of the appellants locked in the dead hours of night with nobody being there and if this circumstance is proved, whether it can lead towards the guilt of the appellants ?

(iv) Whether the dead body was recovered from the well, and what will be the effect of evidence of the recovery father of the deceased, who is also the informant about the recovery ?

(v) Whether statements" of the appellants, particularly of the husband Pradip Yadav, that the deceased had taken poison made u/s 313, Cr.P.C. can be considered, and if so, in what way ?

7. Point No. (i)-Whether the death is suicidal or homicidal ?

P.W. 2 is the son-in-law of the informant. In his evidence, he said that on 31.9.1992, he had gone to the village Pasai because he had got a relationship in that village and he had seen the accused persons committing assault on Kavita Devi and during assault, he had left the place and he came to Pasai Hat where he could not get any bus to come to the village of the informant, therefore, he was waiting for the bus there. In the meantime, the informant party came there and he informed them about the occurrence, vide para 2. In the cross-examination, vide para 6, he has reiterated this fact that the appellant Pradip Yadav was assaulting Kavita Devi by a small stick, but no blood had come out on assault. In para 12, he said that he had stated before the I.O. that he had seen her sister-in-law (Sali) being assaulted. But the I.O., P.W. 9, vide para 16, has stated that this witness had not stated before him that he had seen his Sali being assaulted. Thus, on the point of assault this evidence comes for the first time from his mouth in the Court. Therefore, even though it is believed that he was present at Pasaihat Bazar, where he met the informant, it does not prove that he had seen Kavita Devi being assaulted. Thus, this witness is disbelieved on this point. And to find the answer to this question, I straightaway look to the evidence of the Doctor and post-mortem report.

The Doctor, P.W. 8, conducted autopsy on 23.9.1992 at 7.40 a.m. and found the

followings :

"A depressed linear mark stimulating bruises in the neck (all round circumference) one above the constriction mark and another below the constriction mark. Mark of ligature was found all round the neck at the level of lower end of thyroid cartilage placed horizontally. On dissection, underlie tissues are found whitish devoid of blood surrounding which extravassation of blood was found all over.

(ii) The skin of skull congested and blackish blood found on dissection. Brain matter showed mild congestion larynx and trachea. Trachea was found collapsed both the lungs congested. Right chambers of the heart contained dark and liquefied blood whereas left are empty.

(iii) Greenish discoloration of slain over the lower abdomen area laterally.

(iv) Blood found present inside and around the mouth cavity.

(v) Inside the stomach about 10 ml. of gastic juice was found. Intestine contains gas and faecal matter. Urinary bladder was found empty. Uterus non gravita.

(vi) Skin specifically of palms and sob found puccued due to submersion under water immediately after death only signs of decomposition were present. Bloated abdomen due to accumulation of gases inside Greenish discoloration of both iliac thossae. Blisters appeared over the neck and abdomen mostly on lateral aspect with pilly at places oozed blood was found in and around the nostrils, mouth and both the ears.

5. Time since death about 72 hours.

6. Cause of death in my opinion is due to asphyxia as a result of strangulation (homicidal) but before strangulation of deceased seems to have poisoned also for the confirmation of which the viscera has been preserved."

8. from the contents of para 6 of the evidence of the Doctor, it is clear that the death was due to strangulation (homicidal) and prior to death, in the opinion of the Doctor, she "seems" to have been poisoned and for that viscera report was preserved. There is no evidence on record that the report of viscera was ever received to convert the word, "seems" in proof. Therefore, it is doubtful whether the poisoning was done but the evidence of the Doctor clearly shows that the death was due to strangulation and that was homicidal. No doubt, to a Court question, the Doctor said that there was no finger mark over the neck. But the finding of the Doctor, particularly in the face of ligature mark around the neck over the thyroid cartilage horizontally and other symptom found by him suggest clearly that this strangulation could not have been done by the victim herself and that some person/persons were involved in it. The Doctor has further denied the suggestion of the defence that if somebody takes poison and then strikes the head with some hard substance, then the blood will come from nose and not from mouth and ears. This denial by the Doctor further goes to support the

factum of strangulation. On the basis of this evidence, it can safely be said that the poisoning may be doubtful for want of viscera report, but strangulation by some person(s) is established beyond doubts and the death is homicidal and not suicidal. This point is determined accordingly.

9. Point No. (ii)-Whether there is any eye-witness, particularly P.W. 2, Hari Narayan Yadav, on any part of the occurrence on the fatal day ?

It has already been answered in the preceding paragraphs.

10. Point No. (Hi)-Whether the informant party received information of rumor of poisoning of Kavita Devi and disappearing her dead body and went to the village Pasai and found the house of the appellants locked in the dead of night with nobody being there and if this circumstance is proved, whether it can lead towards the guilt of the appellants?

According to the Fardbeyan, it was the son of Sukumar Mahamarick, who had gone to the village of the informant and informed them of the rumour and of disappearing of dead body. This son has been identified and examined as P.W. 6, Pramod Yadav. He has been declared hostile and has denied to have given any such information to the informant party by going to the village of the informant. The I.O., P.W. 9, vide para 7, has stated that this witness made a statement before him that on saying of Kedar Yadav, his uncle P.W. 7, he had gone to the village of the informant to give information. There is some difference in describing the title as Mahamarick and Yadav, but this does not make any substantial difference. This Kedar Yadav has been examined as P.W. 7. He has also been declared hostile. But this witness has supported the prosecution on almost every point. In paras 15 and 16 of his cross-examination by the defence, he has categorically stated that he had asked his nephew Promode, to go to the village of the informant party, but it is not very much clear as to what he said, but he has reiterated that on his instructions, that Promode had gone at 2.00 p.m., vide para 16. Thus, it is clear that this witness, Promode, has spoken a lie though he had gone to inform | the informant about the rumour. The informant party, P.Ws. 1, 2 and 3 came to the village and while on the way to the village they met P.W. 2 at Pasai Hat and had come to the village together. They reached the village in night and on this point, there is consistency in their evidences that the house of the appellants was locked. Thus, P.W. 1, the informant said in para 4 that they reached the village at 12 in the night and found the house of Radha Kant Yadav (appellant) locked, vide para 7. Then he went to see other villagers, Kanati Mahamarick, P.W. 5, Kedar Mahamarick P.W. 7, Bichchu Mahamarick (not examined) to know about the occurrence and they informed them about the remour. On this point, all the witnesses are consistent and their evidences corroborated by the Fardbeyan, Ext. 3. Kedar Mahamarick P.W. 7, also said in his cross-examination by the defence that the informant, Ganesh Yadav, Nakul Yadav, P.W. 4 and the mother of Kavita Devi had come to him in the night at about 2.00 p.m. when he was sleeping, then they took him to the School where there is a Gohal. They enquired from his brother, Bichchu Mahamarick and Kanti

Mahamarick as to the rumour and the informant party stayed in the village for about 1 hour and went to the P.S. at about 4.00 a.m., vide paras 17,18 and 19. It is more than corroborated even by this hostile witness that the informant party had reached the village and had gone to his house and had talked to Kanti Yadav P.W. 5, and Bichchu Mahamarick. Kanti Yadav P.W. 5, has not corroborated this but there is no reason to disbelieve P.W. 7. Thus, it is proved that the informant party had gone to the village. There is no cross-examination on the point of locking of the house of the appellant at the deadly hours of 12 in the night. It is, therefore, proved that when the informant party went to the house of the appellant, the house was locked. All the three appellants have given different explanations for their not being present in the house at that deadly hours in the night, which is found from their defence made in their statements u/s 313 Cr.P.C. stated earlier, while stating the defence version of the case, each and every appellant has tried to say that he was not in the house but the others were in the house, but the net effect is that none was in the house. The moment it is proved that the house was locked at 12.00 in the night and none of the appellants was there, then this circumstance can be interpreted in two ways - firstly the death had already occurred, may be by poisoning and for fear of being arrested or otherwise, they fled away locking the house, even though they had not caused the poisoning and secondly they had committed the offence and had been conscious of the consequences and, therefore, they had run away, locking the house. The second interpretation lends support to the guilt of the appellants.

11. Point No. (iv)-Whether the dead body was recovered from the well, and what will be the effect of evidence of the recovery father of the deceased, who is also the informant about the recovery ?

According to the I.O., P.W. 9, the dead body was recovered from the well of Mukund Mahamarick and that place is a lonely place and the dead body was packed in a sack with the hands and legs tied. That inquest report, (Ext.) was prepared in presence of Nukul Yadav and Genesh Yadav.

In para 10 of his cross-examination, I.O. says that he had not prepared the seizure report of the sack and the rope with which the dead body was packed and the dead body was tied. The defence has referred to the evidence of P.W. 1, informant, and has argued that it was the I.O., who had gone to Pasai and had got the dead body recovered from the well and brought it to Thana where he (P.W. 1) saw the dead body in a sack and the sack was sealed and when the sack was opened, he saw and identified his daughter. Again he referred to para 11, where the witness said in his cross-examination that he had heard about Kavita Devi being poisoned, when the dead body was being recovered from the well. Further referring to para 20, it was argued that the informant had reached the police station directly from the house of Kanti Yadav P.W. 5, and he made his statement in the Thana and stayed there till 6-7 p.m., when it was darkening and at 4-5 p.m. Daroga had come with the dead body in a Maxi. Thus, referring to his evidence, the defence wanted to emphatically impress that the recovery of

the dead body from the well becomes doubtful because of the inquest report of the dead body, Ext. 5, which was allegedly prepared at the well and bears the signature of Ganesh Yadav, informant, evidence of Ganesh Yadav shows that he was not present at the time of inquest. Here I pause. The I.Q. says that he recovered the dead body from the well. The evidence of one of the witnesses of inquest, P.W. 1, does not lend support to the evidence of the I.O. Then the other witness of inquest was Nakul Yadav P.W. 4. His signature, according to the I.O., appears on the inquest report. It appears that the statement of this witness u/s 161, Cr.P.C. had been recorded earlier to the recovery of the dead body. But when the inquest report was already there on record and there was signature of Nakul Yadav, then the Public Prosecutor, during the course of evidence in the Court, should have asked Nakul Yadav whether he had signed this inquest report or not and much would have depended on his reply thereto. This was the duty of the Public Prosecutor, who was examining him before the Court. Here, the Public Prosecutor made a serious lapse by ignoring to ask such a question. So the effect of this is that Nakul Yadav legally cannot be said to have signed the inquest report.

Now, the question is, when witnesses of inquest do not support their signature on inquest report, then whether the police officer, who recovered the dead body and prepared the inquest report can be disbelieved on the ground of non-support by the witnesses. So far recovery is concerned, the I.Q. becomes a direct witness on this point and if any witness does not support this fact, then unless there is a motive on the part of the I.O. to create a false evidence, the direct evidence of the I.O. cannot be disbelieved only because the witnesses who signed the document have either become hostile or have not supported the recovery. There is no law that the I.O.'s evidence be looked with suspicion and his evidence always be corroborated by some witnesses. As there is nothing on the record to prove that the I.O. had any motive for creating this evidence, there is no reason to disbelieve the I.O.

12. Now I revert again to the previous question and try to find whether there is any link between the absence of appellants at the dead hours in the night from the house, locking the same and subsequent recovery of the sacked-packed dead body from a well at a lonely place. Death has occurred. There is no dispute that on the alleged date of occurrence, the victim was not in the house of the appellants. We are not watching a ghost serial where the ghost of a dead body packed the dead body in a sack and then ghost carried the dead body and threw into a well. Here we are examining a real life story; when the death occurred and as per saying of the informant also, due to the poisoning in the house of the appellants, then the circumstance of their absence in the night and subsequent dead body being found in the well in a lonely place leads to the inference that the dead body was packed and thrown into the well by the inmates of the house and none else to disappear the evidence. Therefore, this circumstance strongly leads to an inference of guilt against the appellants.

13. Point No. (v)-Whether statements of the appellants, particularly of the husband Pradip Yadav, that the deceased had taken poison, made u/s 313, Cr.P.C. can be considered, and if so, in what way ?

The settled principles of law is that any statement made u/s 313, Cr.P.C. can be considered. The word, "considered" means that it can be considered in favour of the accused as well as the prosecution, though on this consideration alone, the conviction cannot be based. Here particularly the appellant Pradip Yadav said that the deceased had taken poison herself on 21.9.1992 and had died in the house itself and the dead body was in the house itself. The appellant, Ahilia Devi, also stated the same fact but she said that she did not know as to where the dead body was.

14. As stated above, poisoning has not been proved, but the strangulation has been proved that the death has not been denied. The question is as to who strangled ? This statement in the total circumstances of the case and the evidences that have been discussed above can be considered in only one way that the death was committed in the house of the appellants though the story of poisoning is doubtful, particularly the ligature mark and homicidal strangulation are there and can be attributed to the appellants alone. Their disappearance from the house as per their own statements can be considered adversely, to them. If the death had occurred due to victim herself taking poison, then they should have informed the informant or the police, but they did not do it. So this statement must be considered in the only way which lends support to the prosecution case. This point is answered accordingly.

15. An argument was raised by the prosecution that the charge has not been framed u/s 304B, I.P.C., therefore, there can be no presumption u/s 113B of the Evidence Act against the appellants.

I agree to this contention because the evidence of demanding dowry is scanty and the act of cruelty sought to be proved by the Panchayati has also not been established. Therefore, the learned Trial Court rightly did not frame or amend the charge u/s 304B, I.P.C.

16. The circumstances that have been discussed above now show that, (i) death was due to strangulation; (ii) the death had occurred in the house of the appellants; (iii) the dead body was thrown into the well just to disappear the evidence; (iv) throwing of the dead body into a well at Vi km distance cannot be the work of a single hand; (v) these accused-appellants were absent in the night at 12 from there; (vi) subsequently the dead body was recovered from the well, (vii) the dead body itself did not get thrown into the well; and (viii) it required more than one persons to accomplish this job. All these circumstances, common intention on their part to do away with the life, which they did, of Kavita Devi and then sought to escape the punishment and attempted to destroy the evidence.

17. The defence has relied upon the judgment reported in Balwinder Singh Vs.

State of Punjab, , and (1994) Suppl. (3) 324.

In my considered opinion, in the facts and circumstances of the case that have been discussed in the previous paragraphs, none of the citations referred to above does apply in this case.

18. Thus, considering all these circumstances, I find that the prosecution successfully, on the basis of these circumstances, established the charge under Sections 304/34 and 201/34, I.P.C. beyond reasonable doubt. Thus, I find no merit in this appeal, which is accordingly dismissed. As the appellant No. 2, Smt. Ahilia Devi, is on bail, her bail bonds are cancelled and the Trial Court is directed to take her into custody for serving the sentence.

19. Before I part with, I must say that the Public Prosecutor, Mr. Lakhan Mahato, who was conducting this case, has shown deliberate negligence on his part by not asking Nukul Yadav the witness on the inquest report regarding his signature thereon and because of that, he tried to create confusion and he was successful in getting lost an important piece of evidence. He without any merit declared Kedar Yadav hostile. It is directed that the aforesaid Public Prosecutor, if he is still continuing, should be relieved from the job and in future he should not be entrusted with such an important responsibility by the Government.