

(2017) 01 JH CK 0221
In the Jharkhand High Court
Case No : 16 of 2004

Rajesh Mandal @ Sah @ Rajesh Kumar Sah

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 10-01-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 201](#),
[Section 34](#), [Section 498A](#), [Section 306](#), [Section 304B](#) - Causing
disappearance of evidence of

Citation : (2017) 01 JH CK 0221

Hon'ble Judges : Ananda Sen

Bench : SINGLE BENCH

Advocate : Krishna Shankar, Pooja Kumari, Anjani Kumar

Judgement

1. This appeal is directed against the judgment of acquittal dated 19th June, 2003, passed by the Additional Sessions Judge, Fast Track Court III, Bokaro in Sessions Trial No. 202 of 1993, whereby and whereunder the accused persons/respondents have been acquitted of the charges framed against them for the offence punishable under Sections 304 B, 306/34, 201/34 and 498A/34 of the Indian Penal Code.

2. The case of the prosecution as per the dying declaration of the deceased, recorded on 24.05.1990 in the Hospital, is that on 19.05.1990 at about 07.30 AM her motherinlaw, elder brotherinlaw and Sisterinlaw (Gotni) were abusing her brother, father and mother and were pressurizing for constructing new house and, as such, she went to the room situated on the first floor and put herself on fire by pouring kerosene oil. When she raised hulla, her husband came and extinguished fire by covering her body with quilt. Thereafter, on 08.06.1990 PW3 Kartik Rajak, brother of the deceased submitted a written report to the OfficerinCharge, Chas Police Station, stating that the marriage of his sister Laxmi Devi (deceased) was solemnized with Manbodh Razajk (PW8), who is resident of Chas. On 19.05.1990, Devar (the younger brotherinlaw) of the deceased came at

Raniganj and informed him that his sister got burnt. The informant went to Chas and came to know that his sister is admitted in Bokaro General Hospital. When the informant reached hospital to see his sister, he found her in unconscious condition and the Doctor told that she got 90% burn injury. On 04.06.1990 at about 08.30 PM the deceased died during course of treatment at Hospital and this information was given to the informant on 05.06.1990 at about 09.00 PM through telephone. Thereafter, the informant alongwith his family members went to Chas and attended the cremation of the deceased and on 06.06.1990 he returned to his house at Raniganj due to sudden illness of his father and, therefore, he could not lodge the FIR in time. It is alleged by the informant that the death of his sister is not natural, rather she has been intentionally burnt to death by her inlaws.

3. On the basis of the information given by the informant (PW3), an F.I.R being Chas P.S. Case No. 84 of 1990 was registered against the accused persons and after completion of investigation the police submitted charge sheet under Sections 498(A)/306 and 201 of the Indian Penal Code, upon which cognizance of the offence was taken against them and the case was committed to the Court of Sessions where they were put on trial.

4. In order to prove its case, the prosecution has examined as many as 12 witnesses including the Doctor and defence has also examined one witness namely Vishwanath Dey Modak, who is the neighbour of the respondents, as DW1.

5. The learned trial court, who tried the case, after examining the prosecution witnesses and the materials available on record, passed the order of acquittal on 19.06.2003.

6. After considering the evidences of the prosecution and the defence, the learned trial court came to a finding that PWs1 & 3, are the persons who claimed that on the next date of the occurrence the deceased had complained to them about the participation of the accused persons including the husband and younger brotherinlaw(Devar), but the husband and Devar were not made accused. It has further been observed that PWs1 & 3 both have stated that at the time of making statement by the victim no one was present there. It is further observed that at the time of recording of the F.I.R., there was no whisper about the demand of dowry and further there was lack of evidence with regard to torture and cruelty soon before the death due to nonfulfillment of the demand of dowry, by the respondentsaccused persons.

7. Mr. Krishna Shankar, learned Addl. P.P. appearing for the appellantState submits that the trial court has committed infirmity and illegality by acquitting the accused personsrespondents since the dying declaration was recorded by the Doctor (PW5) under Ext.2 and that the occurrence took place within one year from the date of marriage in an unnatural circumstances and thus the onus is on the accused to show as to how the deceased sustained burn injury on her

person. He submits that the order of acquittal be set aside.

8. Ms. Pooja Kumari, learned Amicus Curiae appearing on behalf of the respondentsaccused persons vehemently opposed the submission made on behalf of the State and contended that there is no infirmity and illegality committed by the trial court in acquitting the respondents. She further submits that there is no dying declaration in the eyes of law. According to prosecution, this dying declaration was recorded by the Doctor (PW5), which was not sent for registration of the FIR, rather it was entered in the Station Diary, which was marked as Ext.3 and that there was delay in lodging of FIR as the occurrence took place on 19.05.1990 but the FIR was lodged on 08.06.1990 and the prosecution has not explained the delay with regard to lodging of the FIR and, therefore, the FIR was nothing but an afterthought. Further the prosecution has also not been able to prove that the deceased was subjected to cruelty and harassment by her husband and inlaws due to nonfulfillment of the demand of dowry soon before the death. Therefore, there is no infirmity and illegality committed by the trial court in acquitting the accused personsrespondents from the above charges.

9. Perused the lower court records and have gone through the evidence on record minutely. It is settled principle of law that to prove a case under Section 304B of the Indian Penal Code, the prosecution should satisfy the court the following four ingredients: (i) The death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances.

(ii) Death must have occurred within 7 years of her marriage.

(iii) Soon before her death the woman must have been subjected to cruelty or harassment by her husband or by relatives of husband.

(iv) Such cruelty or harassment must be for on in connection with demand of dowry.

10. We have examined the matter. In the instant case PW1 Ram Kisun Malakar, who is a neighbour of the informant, has specifically stated about the demand of Scooter. PW2 Jaldhar Rajak is the brotherinlaw of the informant. He deposed that he alongwith informant Kartik Chandra Rajak (PW3) rushed to the Hospital on 19.05.1990 and found that the deceased was admitted in Intensive Care Unit (ICU) and she was in unconscious state. He further deposed that on the next day the deceased became conscious. He further deposed that the informant stated before him that the deceased Laxmi told the informant that her brotherinlaw (Devar), elder brotherinlaw (Bhaisur), sisterinlaw (Gotni), motherinlaw and her husband pressed cloth into her mouth and put her on fire by pouring kerosene oil on her body due to nonfulfillment of the demand of Scooter in dowry. He further deposed that he and Ram Kisun (PW1) went to SectorIV police station and gave information about the incident.

11. PW3 Kartik Chandra Rajak is the informant and brother of the deceased

Laxmi. He specifically stated that at the time of marriage Rs. 13,000/cash, three Tolas of gold, bed, dressing table etc. were given. He further deposed that whenever his sister came to her paternal house, she always said that her husband and inlaws use to torture her for fulfilling the demand of Scooter as dowry. He further deposed that on 19.05.1990 at about 07.00 pm Makhan Rajak ((PW4) came and informed him about the occurrence and said that Laxmi Devi was admitted in hospital on receiving burn injury. He has stated in evidence in chief that when they went to the hospital the deceased was in unconscious position. On the next day when he again went to the hospital and met his sister at that time she was in complete sense and she stated that due to nonfulfillment of the demand of dowry and Scooter, 5 persons, i.e. her husband, Bhaisur, Devar, Gotni and motherinlaw pressed cloth into her mouth, tied her mouth, covered her face by a wet towel and put her on fire after pouring kerosene oil on her body. Thereafter, he alongwith PW2 Jaldhar Rajak went to the police station and requested to lodge the case but the police told that the information has already given by the hospital and the investigation is going on. On 05.06.1990, he got the information about the death of his sister Laxmi Devi and then he, alongwith Binayu Bishwakarma, Jaldhar Rajak, Bhopal Rajak went to Bokaro General Hospital. Thereafter, they participated in the cremation of the deceased. On the next day, he alongwith Jaldhar Rajak went to SectorIV police station and intimated the police about the death of his sister but the police said that the investigation is being done. On 20.06.1990 his statement and the statements of Ramkishun Malakar, Jaldhar Rajak and Bhopal Rajak were recorded. In his crossexamination, he admitted that when he had gone to meet his sister in hospital, there was no nurse or doctor present at that time. He had not given any written information to SectorIV police station as the police told him that they already got information about the incident.

12. PW5 is Dr. Tripti Prasad Singh. He deposed that on 24.05.1990 he was posted in the casualty ward of Bokaro General Hospital. He further deposed that he had written the dying declaration of the victim Laxmi at about 08.30 pm in presence of A.S.I. Rameshwar Singh and after recording her dying declaration, he put his signature on it, which was marked as Ext.2. She further deposed that at that time Laxmi Devi was in complete sense and she also put her signature on the dying declaration. In his crossexamination, he had admitted that he had not issued any requisition for dying declaration.

13. PW6 is Rameshwar Singh, ASI of SectorIV Police Station. He proved the dying declaration and deposed that the dying declaration was recorded by the Doctor (PW5) in his presence and he had also put his signature on it. In his crossexamination, he admitted that Laxmi Devi was answering what the Doctor had inquired from her. He further deposed that one O/D Slip was sent to the police station from the hospital and he had not put his signature on the BedHead Ticket. He further deposed that he had not stated in the police station that the FIR was lodged on the basis of the dying declaration of Laxmi Devi. He only registered S.D.E. 919 dt. 26.06.1990 on the basis of the dying declaration.

14. PW7 is the Dr. Gyanendra Singh, who had conducted the autopsy of the dead body of the deceased Laxmi Devi. The post mortem report is exhibited and marked as Ext.4. He opined that the death was caused due to suppuration and septicemia.

15. PW8 is Manbodh Rajak, who is the husband of the deceased Laxmi Devi. In his examination in chief, he deposed that on 19.05.1990 at the relevant time he was washing his face and Laxmi was making Chapati in the kitchen. Suddenly, he heard the sound of shouting of his wife Laxmi and came out but he did not find Laxmi in the kitchen and then he rushed towards the sound, which was coming from upstairs, and found that his wife Laxmi was running and there was fire on her body and then he put quilt on the body of Laxmi and extinguished the fire and raised alarm. Thereafter, Ravindra Modan, Asha Devi and others came. The deceased was unable to talk for 1012 hours after the occurrence. In his cross-examination, he deposed that the police had recorded the statement of Laxmi in his presence and in presence of Ravindra Modak, wherein she stated that at the time of putting down the Pan from the stove, she caught fire and her husband came to extinguish her fire. The police and the Doctor again tried to take her statement, but she was unable to speak.

16. PW9 is Ravindra Modak, who is a neighbour. He deposed that on hearing hulla of Laxmi Devi he reached at the place of occurrence and saw that Manbodh was trying to extinguish fire with quilt. On hearing hulla, Harendra Rajak and his wife also came there and thereafter, Laxmi was taken to the Hospital. Police of Sector IV Police Station also came there and took the statement of Laxmi Devi as at that time she was in sense. In his cross-examination, he deposed that after 45 hours of giving statement, she became critical and was not in a position to speak.

17. PW10 Asha Devi is also a neighbour, who deposed that after hearing hulla of fire, she came at the place of occurrence but by that time fire was extinguished. She further deposed that she heard that the deceased caught fire when she was making Chapati.

18. PW11 Harendra Nath Rajak has been declared Hostile.

19. From scanning and scrutinizing the evidences, it is crystal clear that the FIR lodged after 15 days from the date of occurrence and after 4 days from the date of death of the deceased. The dying declaration was recorded on 24.05.1990 by the Doctor (PW5) in presence of one ASI Rameshwar Singh (PW6) but the same was not registered as FIR. The said ASI also admitted that the deceased did not make any statement on her own, rather she was only answering what the Doctor was inquiring from her. No explanation of delay in lodging the FIR has been given by the prosecution and there was no specific evidence with regard to demand of dowry and that the prosecution has also failed to prove cruelty soon before death. The Hon'ble Supreme Court in the case of "Harijana Thirupala and others versus Public Sector, High Court of A.P., Hyderabad reported in (2002) 6 SCC 470" has held that the High Court would not be justified to interfere with the

order of acquittal merely because it feels that sitting as a trial court would have proceeded to record a conviction; a duty is cast on the High Court while reversing an order of acquittal to examine and discuss the reasons given by the trial court to acquit the accused and then to dispel those reasons. If the High Court fails to make such an exercise the judgment will suffer from serious infirmity.

20. In view of the above, we are not inclined to interfere with the impugned judgment of acquittal passed by the Additional Sessions Judge, F.T.CIII, Bokaro in S.T. No. 202 of 1993.

21. In the result, this appeal is dismissed.