

(2015) 03 JH CK 0038

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 282 of 2001

Raju Mahto and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 04-03-2015

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 313
Penal Code, 1860 (IPC) — Section 201, 304B, 304-B

Citation : (2015) 2 AJR 327 : (2015) 2 JLJR 250

Hon'ble Judges : Ravi Nath Verma, J.

Bench : Single Bench

**Advocate : Hemant Kumar Shikarwar and A.K. Choudhary, for the Appellant;
Anita Sinha, APP, Advocates for the Respondent**

Final Decision : Dismissed

Judgement

Ravi Nath Verma, J.—All the three appellants have assailed the judgment of conviction and order of sentence dated 28.06.2001 and 29.06.2001 respectively passed by Sessions Judge, Deoghar in Sessions Trial No. 217 of 1999 whereby and whereunder the three appellants have been convicted for the offence punishable under Sections 304B and 201 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for ten years under Section 304B of the Indian Penal Code and R.I. for three years for the offence under Section 201 of the Indian Penal Code. Both the sentences were directed to run concurrently.

2. The prosecution version, as unfolded during trial is as follows:-

A fardbeyan (Ext.-1) of the informant Mohan Mahto was recorded by Subhash Chandra Sethi, Officer-in-Charge, Kunda police station on 19.08.1999 at 11.30 a.m. at police station is that the daughter of the informant Nasha Devi was married with Raju Mahto according to Hindu rites and at the time of marriage sufficient dowry was given and after marriage Nasha Devi went to her Sasural and when she returned from her Sasural almost after ten days, she informed the informant and her mother that her Sasural people were demanding a motorcycle

and T.V. and have warned not to come to her Sasural without those articles. Almost after a month, the appellant Raju Mahto came for Bidai of his daughter and at that time also Raju Mahto demanded a T.V. and motorcycle from the informant. His Samdhi Gobind Mahto also came during this period and had demanded those articles but anyhow the informant pacified the matter and sent his daughter to her Sasural and whenever his daughter came to his house, she always repeated the demands of her Sasural people and she also used to say if those demands are not fulfilled, her Sasural people would kill her. It is also alleged that in the month of June, his daughter again came to his house and went back almost after ten days when her husband had come for her Bidai. This time also at the time of Bidai she had reminded the informant that as the demands have not been satisfied her Sasural people would kill her. On 17.08.1999, Arjun Mahto, the maternal uncle of his son-in-law came to his house and informed his wife that her daughter Nasha Devi has died in her Sasural. After getting this information, the informant along with his two sons Amin Mahto and Baleshwar Mahto came to the Sasural of his deceased daughter and enquired from the villagers but none of them whispered anything. Even his Samdhi Gobind Mahto, son-in-law Raju Mahto, his mother Ajhola Devi did not disclose anything before the informant but anyhow he came to know that his daughter died on 12.08.1999 itself and her Sasural people in a hurried manner burnt the dead body. On the basis of the said fardbeyan, F.I.R. was lodged and formal F.I.R. (Ext.2) was drawn. After investigation, the police submitted the charge sheet against the appellants. The court below after taking cognizance committed the case to the court of Sessions. The charge against the three appellants were framed under Section 304B of the Indian Penal Code for causing dowry death of Nasha Devi, the deceased and also under Section 201 of the Indian Penal Code.

3. The three appellants took the defence that the deceased died on account of ailment and she was cremated after informing her father and other family members. The appellants denied the charges and claimed to be falsely implicated.

4. In order to substantiate the charges, the prosecution examined altogether six witnesses. Out of them, P.W.5 Mohan Mahto is informant, P.Ws.1 and 2 Amin Mahto and Baleshwar Mahto are the two brothers of the deceased, P.W.3 is a co-villager. P.W.4 was tendered. The defence had examined three witnesses in support of the fact that the informant and his son were present at the time of cremation of the dead body of the Nasha Devi the deceased. Placing reliance on the evidence of prosecution witnesses, the trial court held that the informant P.W.5 and his two sons P.W.1 and P.W.2 have proved that the deceased before her death was subjected to torture and harassment due to non fulfillment of demand of motorcycle and T.V. and that the death of the deceased had occurred otherwise than under normal circumstances within seven years of her marriage. Accordingly, the trial court convicted and sentenced the appellants as stated above.

5. In support of the appeal, the learned counsel for the appellants submitted that the approach of the trial court in convicting the appellants is erroneous as the

trial court proceeded as if the burden to prove was on the defence. According to the learned counsel for the appellants, burden of proving that the deceased was subjected to harassment and cruelty due to non fulfillment of the demands of dowry was to be discharged by the prosecution but the prosecution has failed to discharge its burden. The conclusion of guilt, as arrived at by the trial court, cannot be maintained. The learned counsel further submitted that none of the witness has proved that the deceased was subjected to cruelty or harassment in connection with demand for dowry at the hands of the appellants soon before her death and as such on a mere vague statement of demand of dowry and harassment the judgment of trial court is bad in the eye of law.

6. In response, the learned counsel for the State submitted that after analysing the evidence in detail, the trial court has come to the conclusion about the guilt of the appellants and there is no scope for interference with the findings recorded by the court below.

7. Before I enter into the veils of submissions of the learned counsels for the appellants, I would like to examine the evidence of the prosecution witnesses to see as to whether the findings recorded by the trial court is sufficient to prove the guilt of the appellants or not. P.W.5 Mohan Mahto informant has almost reiterated the entire facts as given in the fardbeyan and further testified that whenever his daughter came to his house, she informed her about the demand of motorcycle and T.V. by Govind Mahto and Ajhola Devi father-in-law and mother-in-law respectively and the fact that due to non fulfillment of demand of dowry they always used to quarrel with the deceased. The witness has further confirmed that the deceased had also informed him that due to non fulfillment of the demand of dowry, she would be killed by the appellants. The witness also confirmed that his daughter died almost within a year of her marriage in unnatural circumstances and when after getting the information of death of Nasha, he came to her Sasural but none was present there and from the villagers he came to know that the appellants have killed his daughter Nasha Devi and cremated the dead body. This witness was subjected to extensive cross examination but nothing adverse came in the evidence. The other two witness P.Ws.1 and 2 the brother of the deceased have also confirmed the demand of motorcycle and T.V. by way of dowry and though the Raju Mahto was assured by them to fulfill the demand within six months, the appellants killed their sister. The witness has further confirmed that soon before the death, their sister was subjected to harassment and torture and was assaulted by the appellants. The witness has further confirmed that whenever their sister came to her Maik, she informed about the demand of dowry and the fact that she would be killed if they failed to fulfill the demand and further confirmed that they got the information about the death of their sister from Arjun Mahto the maternal uncle of Raju Mahto. Thereafter, they went to the Sasural of their deceased sister.

8. Admittedly, the deceased died when she was at the house of the appellants i.e. in matrimonial house within one year of her marriage and admittedly she was

cremated without any post mortem. The defence, as taken by the appellants, was that she died due to diarrhoea but nothing has been brought on record to show that the deceased died due to diarrhoea. Even there is no chit of paper on record to show that any attempt was made by the appellants to get her treated by any doctor before her death.

9. In *Kans Raj Vs. State of Punjab and Others*, , a three Judge Bench of Hon"ble Supreme Court dealt with the presumption available in terms of Section 113-B of the Evidence Act, 1972 and its effect on finding persons guilty in terms of Section 304B I.P.C., it was noted as follows:

"The law as it exists now provides that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative for or in connection with any demand of dowry such death shall be punishable under Section 304-B. In order to seek a conviction against person for the offence of dowry death, the prosecution is obliged to prove that:

(a) The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) such death should have occurred within 7 years of her marriage;

(c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband;

(d) such cruelty or harassment should be for or in connection with the demand of dowry; and

(e) to such cruelty or harassment the deceased should have subjected soon before her death."

Apparently, in the present case, the death had occurred otherwise than under normal circumstances within seven years of her marriage and she was subjected to cruelty or harassment due to non fulfillment of the demand of dowry as testified by P.W.5, P.Ws.1 and 2 and soon before her death demand of motorcycle and T.V. were made by the appellants. This expression "soon before" as appear in Section 113-B of the Evidence Act, is a relative term which is required to be considered under specific circumstances of each case and this term is not synonyms with the term immediately before. As stated above, the factual position of the present case goes to show that the death was not in normal circumstances rather under suspicious circumstances. The evidence of P.W.5, the father-in-law of the deceased to the effect that he was informed about the incident on 17.08.1999 was not challenged though the appellants took a defence that the informant and his one son were present during cremation of the deceased. This is a circumstance which weighs heavily against the appellants.

10. The defence in order to demolish the evidence of prosecution witnesses, that

they had no prior information of death of Nasha Devi before 17.08.1999, examined three witnesses. D.W.1 Khiro Mandal in his evidence has stated that the information regarding the death of Nasha Devi was given to the informant and his family members by Raju Mahto and thereafter the informant and his son came to the village of the appellant and participated in the cremation. This witness during cross examination has stated that Nasha Devi died in the morning of 15th and she was cremated on the same day at about 3.00 p.m. D.W.2 Kaleshwar Mahto has come forward to say that the deceased died due to diarrhoea and the information regarding her death was given to her family members. During cross examination, this witness has admitted the fact that deceased Nasha Devi was not treated by any doctor. D.W.3 Arjun Mahto has given a different date of death of Nasha Devi and has said that appellant Raju Mahto had informed him on 14th about the death of Nasha Devi and thereafter he had given the information of death to Maiké people of the deceased and thereafter the informant and his son came to the village of appellants and participated in cremation. During cross examination, he has given different date of death of deceased Nasha Devi and said that he got information of death of Nasha Devi on 15th. So after perusal of the deposition of the three witnesses, it appears that their evidences are not consistent and all the three witnesses have given different dates of the death of Nasha Devi. Though the appellants in their statement recorded under Section 313 of the Code of Criminal Procedure had given 12.08.1999 as the date of death of Nasha Devi. Apparently, the testimonies of defence witnesses are not reliable and trust worthy. From the circumstances on record and testimonies of defence witnesses, it is clear that the appellant did not take care to get the deceased examined by doctor or to take her to the doctor if at all she was suffering from diarrhoea. They also did not subject her dead body to post mortem so that the cause of death could be known. Admittedly, as per evidences of the prosecution witnesses there was demand of dowry which remained unfulfilled. These circumstances gave clear link to the fact that the deceased died in the unnatural circumstances and indicating her dowry death within a year of her marriage. So an adverse inference could be drawn against the appellant under Section 113-B of the Evidence Act. Since these circumstances and the evidence of the prosecution witnesses would bring the appellant under the mischief of Section 304B of the Indian Penal Code, they have rightly been found guilty of the offences under Section 201 of the Indian Penal Code. The appellants also did not care to inform father or other family members of the deceased immediately after her death and before her cremation and this was done with a clear motive to hide their guilt. I find that the demand of dowry, which is sine qua non for applying Section 304B of the Indian Penal Code has been established against the three appellants. In the result, I am of the considered opinion that the trial court was perfectly justified in convicting the appellants for the offence under Sections 304B and 201 of the Indian Penal Code and there is no justification in interfering with the order of sentences as well.

11. This appeal is accordingly dismissed. It appears from the record that all the

three appellants are on bail, hence their bail bonds are, hereby, cancelled. The three appellants are directed to surrender before the court concerned to serve the remaining period of sentence. The court below is further directed to take all coercive steps, if the appellants failed to surrender in court.