

(2025) 01 JH CK 1802

In the Jharkhand High Court

Case No : Criminal Appeal (S.J.) No. 574 Of 2006

Ram Sahay Yadav @ Ram Sahay Mahto

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision : 28-01-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 222, 222(2), 313
Indian Penal Code, 1860 — Section 34, 302, 306, 328, 498A

Citation : (2025) 01 JH CK 1802

Hon'ble Judges : Pradeep Kumar Srivastava, J

Bench : Single Bench

Advocate : Rajesh Lala, P.D. Agrawal

Final Decision : Allowed

Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. Present criminal appeal is directed against the judgment of conviction and order of sentence dated 29.03.2006 passed by learned Additional Sessions Judge, FTC, Koderma in S.T. No. 539(A) of 1999, whereby and whereunder the appellant has been held guilty for the offence under Section 328, 498A and 306 of the I.P.C. and sentenced to undergo R.I. for 05 years for the offence under Section 306 I.P.C. along with fine of Rs. 1,000/-, R.I. of 03 years along with fine of Rs. 5,00/- for the offence under Section 498A I.P.C. and R.I. for 5 years along with fine of Rs. 5,00/- for the offence under Section 328 of the I.P.C. with default stipulation. All the sentences were directed to run concurrently.

FACTUAL MATRIX

3. The factual matrix giving rise to this appeal is that informant's daughter Dewanti Devi was married before 7-8 years with one Dhanpat Yadav in accordance with Hindu rites and customs. It is alleged that after marriage, the

husband and wife were living in very good and cordial atmosphere for 3-4 years, but there was no issue to the informant's daughter. It is further alleged that due to no issue, informant's daughter was being subjected to cruelty and tortured both mental and physical by in-laws family members. The informant convened Panchayati 3-4 occasions to mend the conduct of the accused persons, but no virtual result yield. It is further alleged that on 06.05.1999, the son-in-law of the informant and his brother Ram Sahay Yadav (present appellant) had brutally assaulted the informant's daughter while she was insisting to go to her parental home. Thereafter, again on 09.05.1999, the informant's son-in-law Dhanpat Yadav and his brother Ram Sahay Yadav (present appellant) committed murder of his daughter and the information was given by the present appellant to the informant on 10.05.1999 at about 5:00 A.M.

4. On the basis of aforesaid information, FIR being Jayanagar P.S. Case No. 30 of 1999 for the offence under Section 302/34 of the I.P.C. was instituted against the above-named accused persons. After completion of investigation, the police submitted charge sheet against the accused persons for the offence under Sections 302, 328, 498A of the I.P.C.

5. The case was committed to the court of Sessions, where trial proceeded in Original Sessions Trial No. 539 of 1999 Dhanpat @ Dhanpat Yadav faced trial, but the present appellant was absconding, therefore, his trial was separated and split case S.T. No. 539A of 1999 was continued. The present appellant appeared and also faced the trial and after conclusion of trial, he has been held guilty and sentenced as stated above.

6. Learned counsel for the appellant has vehemently argued that the appellant happens to be brother-in-law of the deceased. Admittedly, the marriage was solemnized about 8-10 years prior to the incident. It is admitted case of the prosecution that the deceased was murdered by administering poison. It is further submitted that the Viscera was sent to FSL Ranchi for chemical examination which was not available during trial of the case and has not been proved. The Doctor, who conducted, the autopsy on the dead body of the deceased, has also not been examined in this case. Therefore, the cause of death has not been proved by the prosecution. It is further submitted that the charges were framed under Section 302, 328, 498A read with Section 34 of I.P.C. and the husband of the deceased was convicted and sentenced in the original Sessions Trial No. 539 of 1999 vide judgment dated 24.05.2004 passed by same Court. It is utter surprising that it was never the case of the prosecution that the accused persons have abetted the deceased to commit suicide due to her barrenness. It is also not proved by the prosecution that the deceased was unable to give birth to a child, therefore, she was subjected to cruelty by the present appellant. The case of administering poison to the deceased has also not been proved. Altogether seven witnesses were examined by the prosecution, who were close relative of the informant. The Investigating Officer was also not examined to elicit the contradictions and improvements appearing in the evidence of

witnesses. The learned trial court in the statement under Section 313 of the Cr.P.C. of the present appellant has put a single question as regards incriminating circumstances appearing against him, which is that "on 06.05.1999, he along with his brother Dhanpat Yadav assaulted to deceased and again on 09.05.1999 brutally assaulted to deceased and when she became unconscious, the present appellant along with his brother administered her poison and killed her." No question regarding any kind of abetment to commit suicide by the deceased has been proved through oral or documentary evidence nor the question was put to the appellant under Section 313 of Cr.P.C. for getting his explanation. Therefore, the circumstance, on the basis of which the appellant has been held guilty and sentenced in this case, have never been explained and known to him under Section 313 of the Cr.P.C. and the conviction on that basis of the appellant is absolutely vitiated under law.

7. It is further submitted that offence under Section 302 of the I.P.C. and Section 306 of the I.P.C. are mutually exclusive having different ingredients. The offence under Section 306 of the I.P.C. cannot be treated as a minor offence in connection with murder under Section 302 I.P.C. Therefore, when charge has been framed for the offence under Section 302 of I.P.C., no conviction can be maintained for the offence under Section 306 of the I.P.C. with aid of provision of Section 222 of Cr.P.C.

8. In this regard, learned counsel for the appellant has placed reliance upon judgment of Hon'ble Apex Court in the case of Sangaraboina Sreenu Vs. State of Andhara Pradesh reported in (1997) 5 SCC 348.

9. In the above premises, it is submitted that there is merit in this appeal, which is fit to be allowed by setting aside the judgment of conviction and order of sentence of the appellant.

10. On the other hand, learned APP for State has opposed the aforesaid contentions raised on behalf of the appellant and defended the impugned judgment and order and has submitted that the learned trial court has very wisely and aptly considered the circumstances proved against the appellant and rightly passed the impugned judgment and order, which suffers from any illegality, calling for any interference. This appeal has no merits and is fit to be dismissed.

11. I have gone through the record of the case along with impugned judgment and order in the light of the contentions raised on behalf of both side.

12. It appears that the simple fact of the case pertains to unnatural death of deceased at her matrimonial home after 8-10 years of marriage, due to non-bearing of child. It is alleged that she was taunted and tormented and also treated with cruelty both physical and mental. It is suspicion of prosecution that deceased was killed by administering poison, but later on, the learned trial court twisted the prosecution story assuming the circumstances that it was not a case of murder, rather the deceased has taken poison, due to cruelty and torture

meted to her on instigation by her husband and present appellant.

13. In the course of trial, altogether seven witnesses were examined by the prosecution:-

P.W.- 1 Doman Yadav has stated that Dewanti Devi was died in her sasural on 09.05.1999, due to poisoning. He has also stated that Ram Sahay Yadav (present appellant) and her husband have assaulted her brutally and after getting information of the incident, he along with family members of the deceased has also gone to her sasural. She was brought to Parwati Clinic and Holy Family Hospital, but could not be admitted and died in the way. Her husband and brother-in-law were also present, who told that Dewanti has been died. He also came to know that due to non-bearing of child, she was poisoned.

In his cross-examination, he admits that he usually resides at Bikaner, Rajasthan in connection with his work. Rameshwar Yadav is the maternal Uncle of the deceased from whom he got information about this incident.

14. P.W.-2 – Hari Yadav has also stated in the same line as P.W.-1 and stated that Dewanti Devi died in her sasural. Her husband and in-laws were always scuffling with her due to no issue born to her and in this regard, Panchayati was also convened. Ultimately, on 09.05.1999, he came to know that Dewanti has consumed poison and her husband and other family members brought her to Hospital, but she could not survive. He also went to sasural of the deceased, where husband of the deceased told that she has consumed poison. The deceased was also brought to Parwati Hospital and Holy Family Hospital, but in the way, she died. The father of the deceased namely, Bandhan Yadav lodged case as regards the incident.

15. P.W.-3 Rameshwar Yadav has stated that present appellant and Dhanpat Yadav (husband of the deceased) were always scuffling with the deceased due to no issue born to her since long gap of the marriage. He has further stated that due to frequent scuffle, she has consumed poison and died. He has also admitted that the deceased was never assaulted by accused persons in his presence.

16. P.W.-4 Budhan Yadav is the uncle of the deceased. He has proved the contents of his fardbeyan and has stated that his niece was married with Dhanpad Yadav about 8-10 years ago. She has no child since after her marriage. He further states that on 05.10.1999, she was assaulted in her sasural. There was frequent scuffle with the deceased by her husband and brother-in-law due to no issue to her. She was brutally assault. Thereafter, she was administered poison. He received information from his brother-in-law, Rameshwar Yadav (P.W.-3) and went to the matrimonial home of Dewanti Devi and found her dead body lying on a cot. Her husband was present there, but present appellant was absconding. He lodged FIR before the police. His attention has been drawn towards his statement before police, wherein he admits to have stated that the accused persons were frequently assaulting to his niece due to no issue born to her.

17. P.W.-5 Bandhan Yadav is father-cum-informant of the deceased. According to his evidence, the deceased was living quite well in her sasural about four years of her marriage. Thereafter, she was being assaulted due to no issue born to her. In this regard, he has also got panchayat where husband of the deceased assured that he will not torture the deceased. He has further alleged that on 06.05.1999 his daughter was assaulted by Ram Sahay Yadav and her husband Dhanpad Yadav. She was assaulted and abused by catching her hairs. The deceased was desiring to come back to her parental home, but they stopped her and again on 07.05.1999, Ram Sahay Yadav (appellant) came to the house of this witness and informed that he had slapped to Dewanti and also requested to come with him to her sasural, but this witness did not went to matrimonial home of the deceased and again on 08.05.1999, he sent his son Prem Chand, but at that time his daughter was admitted in Hospital. On 09.05.1999 his son-in-law Dhanpat brought Dewanti, his wife for treatment in Parwati Clinic Telaiya, where he told that she has consumed poison. Hence, Hospital declined to admit her. They brought to Holy Family Hospital, but where she died. He also noticed mark of injuries on the body of deceased and there was finger print mark on neck also.

This witness has not been cross-examined and further no opportunity was given to the prosecution to cross-examine this witness.

18. P.W.-6 Sanjay Yadav has only seen the dead body of the deceased and has expressed no other knowledge about the occurrence.

19. P.W.-7 – Kuldip Kumar is a 09 years old boy. According to his evidence, Dewanti was his mousi. He has also stated that his mousa Dhanpad Yadav was assaulting her by stones and present appellant was holding her hairs. He has stated nothing about the poison, rather admits that on the date of occurrence, he was present at the house of his mousi (deceased).

20. On the other hand, no oral or documentary evidence has been adduced by the defence, rather the case of defence is denial from occurrence and false implication being brother of the main accused Dhanpad Yadav.

21. It further appears that in the instant case, only post-mortem report has been marked Exhibit-I without formal proof and no other documentary evidence has been adduced. The post-mortem report of deceased shows following ante-mortem injuries:-

(i) Bruise 3" x ½", 2" x ½" both side of the neck (finger like impression). The aforesaid bruise are 3" x ½" left of the neck and 2" x ½" of right of the neck.

(ii) Lacerated wound ½" x ½" separated due to pulling of earrings. Pinna of the right ear.

(iii) Bruise 2" x ½", 4" x 3" rigal seapular region.

(iv) Bruise 3" x ½", 5" x 3", 2" x 2" – left seapular region.

(v) Bruise 2" x ½" 3" x 1" left thigh.

The cause of death was opined due to cardio respiratory failure due to strange poison may be Organo Phosphorous. Viscera was preserved for chemical analysis and sent to Forensic Science Laboratory on 30.07.1999, but no report has been obtained and produced during trial of the case. It was also opined that even injuries caused to the deceased cannot be a cause of death of the deceased.

22. From perusal of the impugned judgment, it is quite obvious that the learned trial court found that the charge under Section 302 of I.P.C. has not been proved by prosecution, but recorded finding that it was the accused persons, who have abetted the deceased to commit suicide due to her barrenness. It was also found that the deceased was frequently subjected to cruelty through harassment and torture by appellant both physically and mentally driving her to commit suicide. It was also found that due to conduct of the appellant, deceased was compelled to take poison and it was not her voluntary act. It was also held that exercising the powers under Section 222 (2) of the Cr.P.C. the accused can be held guilty for lesser offence like Section 306 of the I.P.C.

23. The above findings of the learned trial court do not appear to be justified under law. The offence under Section 306 of the I.P.C. cannot be categorized as minor offence to murder punishable under Section 302 of the I.P.C.

24. The Hon'ble Apex Court in the case of Sangaraboina Sreenu (Supra) has held that conviction under Section 306 of the I.P.C. assuming that it is minor offence in relation to Section 302 I.P.C. is illegal inasmuch as the basic constituents of the two offences are of distinct and different categories. Therefore, Section 306 of the I.P.C. cannot be said to be a minor offence in relation to an offence under Section 302 I.P.C. within meaning of Section 222 of Cr.P.C. It was further observed that while the basic constituent of an offence under Section 302 of the I.P.C. is homicidal death, those of Section 306 I.P.C. are suicidal death and abetment thereof.

25. In the instant case, the prosecution has miserably failed to prove the cause of death of the deceased. The prosecution has not proved either the death of the deceased to be homicidal or of suicidal through any cogent and reliable evidence.

26. It further appears that the allegation of cruelty meted with the deceased is also hypothetical, only two incidents have been pointed out in the evidence of witnesses, which have happened in quick succession, just within 2-3 days of the death of the deceased. Moreover, the present appellant happens to be brother-in-law of the deceased, having no concern with the matrimonial dispute between husband and wife. Birth of child to his elder brother has no relevance with his own family responsibilities and he has least concerned with the birth of child to his own brother or sister-in-law. The entire approach of the learned trial court appears to be beyond the weight of evidence against the appellant. He has been convicted and sentenced only on the basis of conjecture and surmises.

27. In view of above discussions and reasons, I am of the firm view that the impugned judgment of conviction and order of sentence of the appellant is not

justified under law, which is hereby set aside.

28. Accordingly, this appeal is allowed.

29. Appellant is on bail, as such he is discharged from the liability of bail bond. Sureties are also discharged.

30. Pending I.A., if any, stand disposed of.

31. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.