

(2004) 07 PAT CK 0096
In the Patna High Court
Case No : Criminal Appeal No. 121 of 2001

Sandhya Das and Others

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 01-07-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 304B, 498A

Citation : (2005) 1 DMC 252 : (2004) 4 PLJR 778

Hon'ble Judges : Ram Nandan Prasad, J; Mridula Mishra, J

Bench : Division Bench

Advocate : Arun Kumar Tripathy, Amicus Curiae, for the Appellant; Lala Kailash Bihari Prasad, Addl. P.P., for the Respondent

Final Decision : Allowed

Judgement

Mridula Mishra, J.

1 This appeal is directed against the judgment and order of conviction and sentence dated 9.2.2001 passed in Sessions Trial Case No. 743 of 1998/Tr. No. 93 of 1998 by Additional Sessions Judge, Kishanganj by which all the three appellants have been convicted under Sections 498A and 304B of the Indian Penal Code. Appellant Sandhya Das and Amresh Das @ Ashok Das have been sentenced to rigorous imprisonment for life for the conviction u/s 304B of the Indian Penal Code and rigorous imprisonment for three years for conviction u/s 498A of the Indian Penal Code. Appellant Symli Das @ Shyamli Das has been sentenced to rigorous imprisonment for seven years for conviction u/s 304B of the Indian Penal Code and rigorous imprisonment for two years for conviction u/s 498A of the Indian Penal Code with a direction that sentences passed against the appellants shall run concurrently.

2. The FIR was drawn in this case on the basis of Complaint Case No. 99-C/ 97 filed by Ashok Kumar Das, father of the deceased, on 25.2.1997. The complaint petition was sent to the police u/s 156(3), Code of Criminal Procedure and on

that basis Kishanganj Police Case No. 34 of 1997 under Sections 304B and 120-B/34 of the Indian Penal Code was registered against six persons. In the complaint petition, it was the case of the complainant that he had married his daughter Jhunu Das @ Sonu with Amresh Das @ Ashok Das two years back according to Hindu rites and rituals. At the time of marriage, the complainant had given dowry according to his capacity. After marriage for three months relationship of his daughter was cordial with the accused persons but subsequently they started torturing her for demand of dowry i.e., they demanded television, cow and Rs. 3,000/- in cash. The daughter of the complainant informed to her father, mother and uncle but the complainant could not meet the demands due to his poverty. Jhunu Das was being tortured physically and mentally by the accused persons. On the date of occurrence all the accused persons mentioned in the complaint petition except accused No. Yogmaya Singh sprinkled kerosene oil on the body of Jhunu Das and set fire to her body and when she started shouting, the neighbours came and they witnessed the occurrence. The accused persons just in order to show their concern took Jhunu Das to a nearby hospital. In the hospital, accused No. 6, Yogmaya Singh, who was aunt (mausi) of husband of the deceased, was working as nurse and she was pressurising Jhunu Das to give some statement before the police and after recording of her statement by the police, she (Yogmaya Singh) gave her water to drink which was against the medical science due to which Jhunu Das died. It is said that the persons who were present there objected this act of Yogmaya Singh but she did not take notice of that. From Kishanganj hospital Jhunu Das was referred to Siliguri hospital where she died. The dead body of Jhunu Das was brought to Kishanganj by the brother of the complainant after post-mortem examination and institution of U.D. Case at Matigara PS. at Kishanganj last rites to the dead body of Jhunu Das was performed. The complainant was in mental agony and he was also under impression that first information report might have been instituted on the basis of U.D. Case and he did not take any step for institution of the FIR. Subsequently after having learnt that no FIR has been instituted, on 25.2.1997 the complainant filed the complaint case. The said complaint petition was forwarded to Kishanganj Police Station for institution of a case and after instituting the case, Officer-in-charge of Kishanganj P.S. investigated the case and on completion of investigation submitted charge- sheet against five accused persons. Out of five accused, two accused namely Uma Das and Manka Das after inquiry were found Juvenile and their case was transferred to Juvenile Court and case of three accused i.e., the appellants was committed to the Court of Session. After trial, the appellants have been convicted and sentenced as stated above.

3. The defence of the appellants is that they have been falsely implicated in this case. The deceased was not tortured by them and her death was an accidental death.

4. The prosecution examined altogether 18 witnesses in order to substantiate its case. P.W. 2 Rajendra Sahani, P.W. 3 Md. Arif, P.W. 4 Uday Chand Roy and P.W.

11 Sephali Das have been declared hostile. P.W. 5 Puran Sahani, P.W. 6 Narayan Roy, P.W. 12 Tilak Das and P.W. 13 Bijay Kumar Das are hearsay witnesses. P.W. 7 is a doctor who has certified that the deceased was fully conscious when her statement was recorded by the police in the hospital. He has also proved his signature on the statement of the deceased which has been marked as Exhibit 1. P.W. 8 is Dr. Urmila Kumari. P.W. 9 is Dr. Shankar Lal Ramdas and P.W. 10 is Satya Narayan Prasad who was posted as Dresser at Kishanganj Hospital when the deceased was admitted for treatment. P.W. 8 has stated that she did not remember that her opinion was taken before water was given to the deceased. P.Ws. 8 and 9 have stated in their evidence that the opinion was not sought for at the time when water was given to the patient but they stated that they did not remember whether the deceased Jhunu Das was admitted in hospital, P.W. 10 Satya Narain Prasad was posted in the hospital as Dresser. His evidence is that he did not remember that the deceased Jhunu Das was treated at that time in the hospital. He also stated that his statement was not recorded by the police in connection with this case. P.W. 12 Tilak Das, P.W. 13 Vijay Kumar Das, P.W. 14 Bimal Pal, P.W. 15 Antim Kumar, and P.W. 17 are witnesses on the facts. P.W. 16 Mitilesh Kumar Jha is the Investigating Officer. P.W. 18 Md. Firoz is a formal witness who has proved the station diary.

5. P.W. 12 Tilak Das has stated that he heard that Jhunu Das was killed by (sic)-in-laws. He came to know that on the date of occurrence Jhunu Das had been burnt by her sasural people and she is in the hospital. He went to the hospital at Kishanganj and saw the saline was being administered to Jhunu and the nurse who was posted there was talking to Jhunu's mother-in-law for giving water to her. He opposed for giving water even then nurse gave water to Jhunu. In his cross-examination, this witness has stated that there is distance of 100 mtrs, between his house and house of Jhunu's father. He seldom visited Jhunu at her sasural. He also stated that he is not medical expert and he admitted that Jhunu was not burnt by her sasural people in his presence. He came to know that (sic) Das gave her statement before the police but he had no knowledge that she gave this statement that she caught fire when she was taking out ashes.

6. P.W. 13 is uncle of the deceased Jhunu Das. He has stated that his niece died because of burn injuries. She was married to Amresh Das one year prior to the date of occurrence and having come to know that his niece has been burnt, he immediately went to hospital and saw her in burnt condition. Saline was being administered to her and police was there. He stated that this statement was recorded by the police and there he had stated that accused persons killed his niece because of non-fulfilment of demand of dowry. The accused persons are husband, mother-in-law, sister-in-law and brother-in-law of the deceased. He further stated that the statement of the deceased recorded by the police bears his signature which has been marked as Exhibit A. He has further stated that he never instituted any sanha with regard to demand of dowry or torture. His elder brother i.e., father of the deceased, Jhunu also never filed any application or sanha with regard to demand for dowry, stated that a panchayati was held three

and half years earlier in which some village people from both sides had participated but no resolution came not since accused persons stated that no such occurrence will happen in future. He further stated that Jhunu Das had stated that she caught fire when she was taking out ashes. He admitted that the case has been instituted because of suspicion.

7. P.W. 14 Bimal Pal is hearsay witness and resident of same locality where house of father of Jhunu Das is situated. He has stated that he heard about torture meted out by the husband of Jhunu Das and in this respect a panchayati was convened and thereafter Jhunu died because of burn injuries. His statement was recorded by the police and there also he had stated like this. In his cross-examination he stated that he never used to visit Jhunu Das at her sasural and whatever statement he has made, is on the basis of hearsay.

8. P.W. 15 Ashok Kumar Das is the informant of this case and father of the deceased. He has stated that two years prior to the occurrence his daughter Jhunu Das was married to Amresh Das @ Ashok Das. She started residing at her sasural. She was being tortured there by her husband, brother-in-law and mother-in-law because of demand of dowry. They were demanding television, jewellery and cash. Her daughter was beaten by her husband and in this respect a panchayati was held in which the accused persons made commitments that in future no such occurrence will happen. Even after panchayati they tortured and she was ousted from the house after assault 10-12 times and thereafter the accused persons killed his daughter by burning her. His brother-in-law Antim Kumar Das had gone to bring Jhunu Das from her sasural for attending a marriage but the accused persons did not allow her to come. At 3 O'clock in the evening his brother-in-law came and at 5 O'clock his younger brother came and informed that his daughter has been killed. Immediately he went to sasural of Jhunu Das where he could not meet his daughter and in the morning he saw the dead body of his daughter. The accused persons thereafter left the place. He received dead body after post-mortem and brought it to her sasural where she was cremated. He stated that he was under the impression that First Information Report might have been instituted on the basis of U.D. Case and when no FIR was instituted he filed the complaint case which was sent by the Court to Police for institution of police case. In his cross-examination, he stated that he never filed any application or any sanha at any place in connection with torture and demand of dowry. A panchayati was convened at the door of the accused persons in which the mohalla people Vijay Kumar Das, P.W. 13, Santosh Kumar Das, Subodh Kumar Das, Sephali Das P.W. 11 and persons from accused side had participated. Accused persons gave an undertaking that in future no such occurrence will happen. P.W. 15 admitted that persons who participated in the panchayati have never been examined by the police. He also admitted that he did not mention about the panchayati in the complaint and the case was instituted after 3/4 days of the occurrence because he was under impression that the police case had already been instituted. He also stated that he never intended that accused persons should be punished.

9. P.W. 17 Antim Kumar Das is maternal uncle of the deceased. He stated that Jhunu Das was married to Amresh Das @ Ashok Das three years prior to the date of occurrence. Just after marriage for two and half months relationship of the deceased with her husband was cordial but thereafter it became strained. A panchayati was held in this respect. He also participated in the panchayati. Thereafter he went to sasural of Jhunu Das in the year 1997 to give invitation to Amresh Das on the occasion of marriage of his second brother. Amresh Das said that he will accompany him if he will come to take him. In the month of February, 1997 he went at the residence of Amresh Das to bring him to attend the marriage but Amresh refused to come and said that if Jhunu Das goes she will have to face consequence. He returned back to his residence and on the same day he came to know that Jhunu Das has been killed. Immediately we went to Kishanganj and there he learnt that Jhunu has been shifted to Siliguri. He went there and heard about her death. He admitted that he heard about the incident and has deposed on the basis of hearsay. This witness has also stated that he did not remember the date when panchayati was held. He admitted that he never lodged any information at any place regarding demand of dowry and torture meted out by the sasural people to Jhunu Das.

10. P.W. 16 Mithilesh Kumar Jha is the Investigating Officer who has stated that in February/March, 1997 he was posted as Sub-Inspector of Police at Kishanganj Police Station. On the basis of Complaint Case No. 99-C/97, Kishanganj P.S. Case No. 34 of 1997 was instituted on 18.3.1997. After instituting formal FIR he took up investigation, recorded statement of witnesses, inspected place of occurrence and also recorded statement of those doctors who were present in the hospital on the day when Jhunu Das was admitted at Kishanganj Hospital. He obtained the post-mortem report of Jhunu Das and upon the direction of the superior authority he submitted charge-sheet under Sections 304B and 120B of the Indian Penal Code against five accused persons and arrested the accused. He has admitted that in connection with the said occurrence, an U.D. Case No. 76 of 1997 was instituted at Matigara Police Station. On the basis of the statement of the deceased U.D. Case was instituted which was found to be false as the same was subsequently investigated with the present case. He stated that at the place of occurrence he did not find any burn mark. Nothing abnormal was found there. Three witnesses Ranjeet Kumar, Md. Arif and Rajendra Sahani had stated before him regarding torture but all these persons have not supported the case at trial. He has stated that none of the witnesses who were examined in course of investigation have stated that they have witnessed the occurrence. He admitted that there was no direction of the superior authority to examine them u/s 164, Cr.P.C, as such he did not file any petition for recording their statement under the said section and he has not interrogated any one who had participated in the panchayati.

11. The deceased Jhunu Das died because of burn injuries is an admitted fact. What is disputed by the defence is that the death of the deceased was an accidental one. It has been submitted that the informant and other witnesses

have mentioned about panchayati but they have not stated about the date on which the panchayati was held and no such paper has been produced. In the complaint petition also there is no mention about panchayati and the story of panchayati has been introduced for the first time by the prosecution in course of trial. In that circumstances, it cannot be believed that any panchayati was held with respect to torture and demand of dowry. It has also been submitted that for the conviction under Sections 304B and 498A of the Indian Penal Code the prosecution has first to prove that alleged offences came within the parameter of Section 304B of the Indian Penal Code. For conviction u/s 304B of the Indian Penal Code the prosecution has to prove that within seven years of marriage occurrence took place, the death was unnatural death, there was demand for dowry soon before the occurrence and the torture was with respect of demand of dowry. Unless all these are proved by the prosecution, there cannot be presumption u/s 113 of the Evidence Act regarding participation of the appellants in the alleged occurrence. Although the prosecution witnesses have stated that they heard that deceased was tortured by the appellants for demand of dowry but considering the statement of the deceased recorded by the police just before her death, the case of the prosecution falls in totality. The deceased in her statement recorded just before her death has admitted that earlier she was tortured by the in-laws and husband but for some days her relationship had become cordial and everyone including her husband started liking her. P.Ws. 12 and 13 have also admitted that the statement of the deceased was recorded by the police in the Hospital. P.W. 7 Dr. Dayanand Rai, Deputy Superintendent, Kishanganj Sub-divisional Hospital also stated that the deceased was fully conscious and mentally alert when her statement was recorded by the police. There is no evidence that she was either influenced or coerced to make such statement. In this view of the matter, it has been submitted by learned Counsel for the appellants that considering the evidence of the witnesses there is nothing to indicate that the deceased was being tortured just before her death by the appellants in connection with demand of dowry, simply there is evidence that the deceased died unnatural death within seven years of marriage, it is not sufficient for conviction u/s 304B of the Indian Penal Code. On consideration of the evidence which has been brought on the record by the prosecution it is apparent that there is no convincing evidence that the deceased was tortured by the appellants just before her death in connection with demand of dowry. In this situation, since evidence is not convincing, it is not safe to affirm the judgment of conviction of the appellants for offence u/s 304B of the Indian Penal Code as well as u/s 498A of the Indian Penal Code.

12. Considering the facts and circumstances of the case, the judgment of conviction and order of sentence is set aside and they are acquitted of the charges levelled against them. The appeal is accordingly allowed. Appellants Sandhya Das and Symli Das @ Shyamli Das who are on bail, are discharged from the liabilities of the bail bonds. Appellant Ashok Das @ Amresh Das @ Ashok Kumar Das who is in custody is directed to be released forthwith if not required

in any other case.

R.N. Prasad, J.

13. I agree.