
(2004) 06 JH CK 0016
In the Jharkhand High Court
Case No : Criminal Appeal No. 168 of 2002

Saro Rana and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 23-06-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 201, 304B, 34

Citation : (2005) CriLJ 65 : (2006) 1 RCR(Criminal) 75 : (2006) 2 EastCriC 362 : (2005) 1 RCR(Criminal) 648 : (2005) 2 MarriLJ 122 : (2005) 1 HinduLR 222 : (2004) 3 BLJR 2022 : (2004) 2 DMC 827

Hon'ble Judges : S.J. Mukhopadhaya, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : Laljee Sahay, Shipra Shalini and Arun Kr. Sinha, for the Appellant;
T.N. Verma, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Lakshman Uraon, J.—Appellants have preferred this appeal against the judgment of conviction and order of sentence dated 30th April, 2002 passed by Shri Sita Ram Mahato, learned 1st Additional Sessions Judge, Deoghar in Sessions Trial No. 47 of 2001/19 of 2001 convicting the appellants u/s 304B, I.P.C. and sentencing to undergo R.I. for life and further convicting them under Sections 201 /34,I.P.C., but no separate sentence under the said section was passed against the appellants.

2. The prosecution case has arisen on the written information (Ex. 1) lodged by informant Leela Devi (P.W. 11) on 27.7.2000 at 15.45 alleging therein that her daughter Renu Devi (since deceased) was married with appellant No. 2 Shyam Sundar Rana of Kurmidih in the month of May, 1997. Shyam Sundar Rana was demanding money for construction of house. As the informant was unable to pay, hence on 25.7.2000 appellant No. 2 Sham Sundar Rana and his family members, who are the remaining appellants, murdered Renu Devi and threw her dead body into the well. They also burnt the dead body. All the appellants are resident of

village Kurmidih within the jurisdiction of Madhupur P.S., District Deoghar.

3. Prosecution examined 14 witnesses in order to support its case P.W. 1 Sukhsagar Choudhary, P.W. 2 Jaldhar Rana, P.W. 3 Naresh Rana, P.W. 4 Bal Kishan Bhaiya and P.W. 5 Nawal Singh are hostile witnesses. P.W. 6 Kunti Kumari and P.W. 7 Sukhdeo Sharma are the eye-witnesses who have deposed that Renu Devi fell down into the well while taking bath along with P.W. 6. P.W. 7 Sukhdeo Sharma rushed there and saw Renu Devi fallen down into the well and she had died. The information was given to her parents by Shyam Sundar Rana himself. P.W. 8 Rajesh Prasad Sharma is the brother of the deceased. P.W. 9 Rajendra Prasad Sharma received information that Renu Devi is serious. P.W. 10 Ram Lai Sharma, P.W. 11 Leela Devi (informant and mother of the deceased), P.W. 13 Mahendra Sharma (uncle of the deceased) and P.W. 14 Manu Kumar Sharma (brother of the deceased) have developed the prosecution case and have alleged regarding demand of money and for non-fulfilment of the demand, torturing Renu Devi causing her death and throwing the dead body into the well. P.W. 12 Kaushalendra Kumar Jha is the Investigating Officer of this case.

4. The defence has also examined D.W. 1 Maleshwar Pd. Rana, D.W. 2. Shyam Sundar Rai and D.W. 3 Durga Pd. Rana who have deposed that Renu Devi met with accidental death due to fall into the water while she was taking bath. They have also deposed that there was cordial relationship in between her and her husband appellant No. 2 Shyam Sundar Rana. The learned 1st Addl. Sessions Judge, Deoghar relying the evidence of P.Ws. 8,9,10,11,13 and P.W. 14, convicted these appellants u/s 304B, I.P.C. and also Section 201/34, I.P.C. for disposing of the dead body in absence of the parents of the deceased Renu Devi.

5. Challenging the order of conviction and sentence passed by learned 1st Additional Sessions Judge, Deoghar, the learned Counsel for the appellants have submitted that prior to the alleged occurrence, there was never any demand of dowry from the parents of the deceased Renu Devi, rather they were leading happy marital life which has been corroborated by the hostile witnesses-P.W. 1. P.W. 2, P.W. 3, P.W. 4 and P.W. 5. It was submitted that Renu Devi went to the well to take bath and bring water, but unfortunately she slipped into the well and died which gets support from the evidence of P.W. 6 Kunti Kumari who was also taking bath along with Renu Devi at the well. On her Halla, the other villagers went there and took out the dead body of Renu Devi. This also gets support by the evidence of P.W. 7 Sukhdeo Sharma regarding accidental fall due to slip of Renu Devi into the well. All these witnesses have deposed that there was cordial marital relationship in between Shyam Sundar Rana and the deceased. There was never any demand of dowry from the parents of the deceased. P.Ws. 8, 9,10,11/13 and PW. 14 have deposed mechanically regarding demand of Rs. 25,000/- for construction of house. All these witnesses are closely related and interested witnesses. They have contradicted their statement made before the I.O. (P.W. 12) and have improved the prosecution case regarding demand of dowry, torture and causing murder for non-fulfilment of Rs. 25,000/-. The

learned Counsel in course of his argument has relied a case report in 2001 SAR (Cri.) 856 S.C. in Sunil Baja v. State of Madhya Pradesh, in which offence of demand of dowry punishable u/s 304B of the I.P.C. has been considered that ingredients to be satisfied are (i) death of a woman must have been caused by burn of bodily injury or otherwise than under normal circumstances, (ii) such death must have occurred within seven years of her marriage, (iii) soon before of death the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband, (iv) such cruelty or harassment must be for or in connection with demand of dowry. Only on establishment of these ingredients by acceptable evidence shall be called a dowry death. Failure of the prosecution to prove the crucial and necessary ingredient that the deceased woman was subjected to cruelty or harassment by the accused soon before her death for or in connection with demand of dowry, conviction of the offence u/s 304B, I.P.C. cannot be sustained. Learned Counsel for the appellants has further relied a case reported in 2002 (2) E Cri. Cas 480, Jharkhand Suresh Pd. Sao v. State of Bihar now Jharkhand and 2003 (3) LJLR 245, Tilak Bedia and Hirua Bedia v. State of Bihar now Jharkhand, and has submitted that demand for construction of house for peaceful and happy living and prosperous conjugal life can in no stretch of imagination be termed as dowry. In this present case, the demand was for construction of house. Hence, the basic ingredient for demand of dowry is wanting.

6. Learned Counsel for the appellants has further submitted that the interested witnesses, who are closely related with the deceased, who are P.Ws. 8, 9, 10, 11, 13 and P.W. 14 have developed the prosecution case in course of their evidence in Court which is just contradictory to their statement recorded u/s 161, Cr.P.C. by P.W. 12 Kaushalendra Kumar Jha, the I.O. Hence, their evidence cannot be relied which was erroneously believed by the learned Court below and has relied a case reported in 2004 (1) LJLR 579, in Ramlakhan Mandal, and 2 Ors. v. State of Bihar now Jharkhand.

7. Learned Counsel for the appellants has lastly argued that in this present case, appellant No. 2 Shyam Sundar Rana informed the deceased's parents but due to long distance, they could not reach in time rather stayed at night at Madhupur. In presence of Sarpanch of the village, the dead body was disposed of. There is no evidence on record that the deceased was subjected to cruelty or harassment soon before her death for demand of dowry. There is no eyewitness of the alleged harassment and torture, rather only on surmises, these appellants have been made accused. On the other hand, Renu Devi met with her accidental death due to fall into the well while she was taking bath. On this point, reliance was laid in a case reported in 2000(3) BBCJ 578, in Digeshwar Rana and 2 Ors. v. State of Bihar. On these grounds, it was submitted that all the appellants deserve acquittal giving them benefit of doubt.

8. Refuting the argument advanced by the learned Counsel for the appellants, the learned A.P.P. has submitted that it is an admitted fact that appellant No. 2

Shyam Sundar Rana had married with deceased Renu Devi who died in her in-laws' house within seven years of her marriage. Prior to her death, the appellants had demanded Rs. 25,000/- for construction of house. When the demand was not fulfilled, Renu Devi was done to death and her dead body was thrown into the well. On alarm raised, the villagers assembled there. They took out the dead body, but without waiting for the arrival of the parents of the deceased, the dead body was disposed of. The I.O. (P.W. 12) did not find any remnants of the dead body as the flood of the water washed it away. It was submitted that the learned Court below has considered all these evidence and has convicted the appellants u/s 304B, I.P.C. and also under Sections 201/34, I.P.C.

9. The appellants have been convicted u/s 304B, I.P.C. which is dowry death. Section 2 of the Dowry Prohibition Act defines dowry as any property or valuable security given or agreed to be given either directly or indirectly-(a) by one party to a marriage to the other party to the marriage or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any person, at or before [or any time after the marriage] in connection with the marriage of the said parties but does not include Dower or Mahr in the case of person to whom the Muslim Personal Law (Sariyat) applies. In Explanation II the exception "valuable security" has the same meaning as in Section 30 of the Indian Penal Code.

10. In this present case, according to the written report, Ext. 2, which is the basis of this case, written by Mahendra Sharma (P.W. 13) on the statement of the informant Leela Devi (P.W. 11) on which she signed is clear that appellant No. 2 Shyam Sundar Rana was saying his wife Renu Devi (deceased) to demand Rs. 25,000/- from his parents for construction of house. This written information gets corroboration by the evidence of P.W. 8 Rajesh Pd. Sharma, brother of the deceased, who has deposed that husband and the other members of the in-laws of his sister demanded Rs. 25,000/- for construction of house. Similar is the statement of P.W. 9 Rajendra Pd. Sharma. But these statements have been contradicted by P.W. 10 Ram Lal Sharma who has deposed that a sum of Rs. 25,000/- was demanded in lieu of dowry. Informant Leela Devi (P.W. 11) has also contradicted her written information and in course of her evidence has deposed that a sum of Rs. 25,000/- was demanded as dowry. But Rajesh Pd. Sharma (P.W. 8) and Rajendra Pd. Sharma (P.W. 9) have not stated before the I.O. (P.W. 12), in their statement u/s 161, Cr.P.C. regarding demand of Rs. 25,000/-. P.W. 13 Mahendra Prasad in course of his evidence has also deposed that Renu Devi was being tortured and harassed for dowry amount of Rs. 25,000/-. P.W. 14 Manu Kumar Sharma, brother of the deceased, has also deposed that a sum of Rs. 25,000/- was demanded as dowry. The I.O. in course of his evidence has deposed that the witnesses, who are of the same family and interested, have not stated that Renu Devi was being tortured for demand of dowry of Rs. 25,000/-. Thus, I find that these witnesses, P.W. 8, P.W. 9, P.W. 10, P.W. 13 and P.W. 14, have improved and developed the prosecution case to attract Section 304B,

I.P.C. and have deposed in course of his evidence in Court that a sum of Rs. 25,000/- was being demanded as dowry. But Leela Devi (P.W. 11) and her son P.W. 8 Rajesh Pd. Sharma are very specific that a sum of Rs. 25,000/- was demanded only for construction of house which gets corroboration by the written information (Ext. 2) which is the basis of the H.R. (Ext. 1). Considering all these contradictory evidences and improvements, the truth remains that amount was demanded for construction of house which is not demand of dowry as defined u/s 2 of the Provision of Dowry Prohibition Act, referred to above.

11. Now I take up as to whether Renu Devi just prior to her death was subjected to cruelty or harassment. As the witnesses of Kurmidih village which is the village of the appellants, who are P.W. 1 Sukhsagar Choudhary, P.W. 2 Jaldhar Rana, P.W. 3 Naresh Rana, P.W. 4 Bal Kishan Bhaiya P.W. 5. Nawal Singh, have deposed that Renu Devi died due to drowning as she fell accidentally into the well while taking bath. They have deposed that there was good relationship of the appellants with the deceased. P.W. 6 Kunti Kumari was taking bath along with her Aunt Renu Devi. She has deposed that Renu Devi fell down into the well along with rope and bucket. She raised alarm. On hearing alarm, about 100-150 villagers assembled there who brought out Renu Devi, but by that time she had died P.W. 7 Sukhdeo Sharma when heard the alarm that Renu Devi had fallen down into the well, went there. Renu Devi had never complained against her in-laws regarding any torture, rather she was living happily in her matrimonial house. The message was sent to the parents of the deceased by appellant Shyam Sundar Rana himself regarding the alleged death due to drowning of Renu Devi. The other witnesses, P.W. 8, P.W. 9, P.W. 10, P.W. 11, P.W. 13 and P.W. 14, are the witnesses of village Mohandih, the village of the informant. Their village is 60-70 km away from village Kurmidih, the village of the appellants. On receiving information they started for Kurmidih, but they remained throughout the night at Madhupur and next morning they went to Kurmidih. By that time, dead body was disposed of. D.W. 1 Maleshwar Pd. Rana has deposed that Renu Devi died due to drowning as she fell down accidentally into the well. Information was sent to her parents, but when they did not come, then on 26.7.2000 the dead body was disposed of. D.W. 2 Shyam Sundar Roy of village Chaka Navada within Madhupur, Deoghar is the Sarpanch of Govindpur Panchayat. Kurmidih village is within Govindpur Panchayat. He knows both the parties. He has deposed that Shyam Sundar Rana was married with Renu Devi in the year 1997 and was living in her matrimonial house. She had never complained regarding ill-treatment by her in-laws. She died due to drowning as she fell down accidentally into the well. On his suggestion, information was given to the parents of Renu Devi, but when no one came in time, then the dead body was disposed of. D.W. 3 Durga Pd. Rana on hearing the alarm that Renu Devi had failed down into the well, went there and he was also among those in taking out the dead body from the well.

12. When this evidence is considered meticulously, I came to the conclusion that just prior to her death, Renu Devi was not harassed or tortured. There is no

evidence, oral or documentary, to support this allegation of torture, just prior to her death, rather the evidence conclusively leads my mind to come to conclusion that Renu Devi was living in her matrimonial house with appellant No. 2 happily. But accidentally, while she had gone to the well along with P.W. 6 Kunti Kumari for taking bath and to fetch water from the well, she fell down and died. Sarpanch of Govindpur was also there. The dead body was brought out by the villagers who had assembled on hearing alarm raised by P. W. 6 Kunti Kumari. They brought the dead body out of the well. Information was sent to the parents of the deceased to village Mohandih, but when no one arrived in time, the dead body was disposed of. The learned 1st Additional Sessions Judge, Deoghar was misled by emotion that a young lady died in her in-laws' house just within seven years of marriage. He failed to consider the evidence of the witnesses who have deposed that there was cordial relationship and the deceased was leading happy marital life along with appellant No. 2, her husband Shyam Sundar Rana. There is no demand of dowry rather demand was only for construction of house. Moreover, there is no evidence that just prior to death of Renu Devi, she was being harassed or tortured by her in-laws for non-fulfilment of dowry. The ingredients to attract Section 304B, I.P.C. are wanting in this facts and circumstances of the case. Hence the order of conviction and sentence passed by learned 1st Additional Sessions Judge, cannot be sustained in the eye of law.

13. In the result, I find merit in this criminal appeal which succeeds. All the appellants are acquitted from the charges levelled against them under Sections 304B/34 and 201/34, I.P.C. As appellant No. 3 Kanti Rana and appellant No. 4 Byas Rana are on bail, they are discharged from the liability of their bail bonds furnished in this case. So far appellant No. 1 Saro Rama and appellant No. 2 Shyam Sundar Rana are concerned, they are in custody. Hence, they are ordered to be released forthwith from the custody if not wanted in any other case.