
(2011) 08 JH CK 0101
In the Jharkhand High Court
Case No : Criminal Appeal No. 68 of 2002

Shaligram Dubey @Shalik Dubey

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

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

Citation : (2011) 08 JH CK 0101

Hon'ble Judges : Jaya Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Jaya Roy, J.—The Appellant has filed this appeal against the judgment dated 15.1.2002 and the order sentence dated 16.01.2002 passed in S.T. No. 232 of 1999 by the Sessions Judge, Garhwa whereby he has convicted the Appellant u/s 304B I.P.C. and sentenced him to undergo R.I. for ten years for the said offence.

2. The instant case was initiated on the basis of the written report of one Mithilesh Choubey (uncle of the deceased) lodged on 15.9.1998 at about 2.30 P.M. wherein he has stated that his niece, namely, Usha Devi, daughter of Hardeo Choudhary was married with Shaligram Dubey about four years ago and whenever his niece used to come to her Maik, used to complain that her brother-in-law (Bhaisur) namely Surendra Dubey and his wife (Gotni) namely Promila Devi used to torture and assault her for the dowry. On the eve of Rakchha Bandhan, Usha Devi had come to her Naihar and told that Surendra Dubey and Pramila Devi had threatened her to bring golden chain, Palang, T.V. and one set of utensils otherwise she would be burn to death and after four days Usha Devi returned to her in-laws place. The informant has further alleged that the financial position of his elder brother, namely Hardeo Choubey was not good, as such, he was not able to fulfill the demand of dowry. The informant had further told Usha Devi that he would come to pacify the matter but due to illness of his elder brother, he could not. On 15.9.1998, in the morning hour, a co-villager, namely,

Mahesh Choudhury informed the informant that his niece has sustained burn injury and she died on the last Sunday. On this information, the informant went to Garhwa Hospital and came to learn from one Sandhya Devi and Ramanuj Dubey that Sandhya Devi has also sustained burn injury while she tried to save Usha Devi from burning. The condition of Sandhya Devi was also serious. It is further alleged in the said written report that Sandhya Devi told the informant that Usha Devi was burnt to death by Pramila Devi and her husband Surendra Dubey by sprinkling the Kerosin oil on her for the non fulfillment of their demand of dowry. As the elder brother of the informant was ill and Shanti Devi, wife of the elder brother, had gone to her Maikhe, the informant has lodged this written report at the Police Station. A formal F.I.R was drawn and a case was registered against Pramila Devi and Surendra Dubey u/s 304B/34 of the I.P.C.

3. After investigation, the police has submitted charge-sheet u/s 304B/34 I.P.C. against Surendra Dubey and Pramila Devi and also against the present Appellant namely Shaligram Dubey (the husband of the victim). After taking cognizance, the case was committed to the Court of Sessions. In order to prove its case the prosecution has examined ten witnesses but P.Ws.1,2,3,6,7 and 9 have been declared hostile by the prosecution.

4. P.W.1, Shyamacharan Dubey has stated in his evidence that the deceased, Usha Devi was married three years back with Shalik Dubey. One year back at about 12-1 P.M., on hearing hulla, he went there and found her badly burnt and Kerosene oil was lying near the place of occurrence. He stated that he could not say as to who burnt her. He was cross-examined by the P.P. and he denied that he has stated before the police that Surendra Dubey, Shalik Dubey and Surendra's wife, Pramila Devi used to torture her for not bringing proper dowry and they put fire on her body.

5. P.W.2, Raj Kumar Choudhary stated in his evidence that one year back the occurrence took place in which Usha Devi was burnt. Hearing hulla, he went to the place of occurrence and found her badly burnt. He was also cross-examined and stated that he had never given any statement to the police that the deceased Usha Devi was often tortured for not bringing proper dowry by her in-laws and they put fire on her body.

6. P.W.3, Lalit Choudhary stated in his evidence before the trial court that Usha Devi was married with Shaligram Dubey two years before the occurrence. The occurrence took place at about 2 P.M. He heard hulla and went to the house of Usha Devi and found her burning in fire. He does not know the cause of burning. He denied that he stated before the police that Usha Devi was often tortured by her husband and in-laws. They used to rebuke her and assaulted her for not bringing proper dowry and they put fire on her body.

7. P.W.4, Banarsi Ram Paswan stated in his evidence that he knows the deceased, Usha Devi and the occurrence took place one year ago. When he came to his house, he heard that Usha Devi has been burnt to death but he does not

know as to how Usha Devi was burnt. He was also cross-examined by the P.P. and stated that he never stated to the police that Usha Devi was often tortured by her husband and in-laws for not bring proper dowry and they assaulted her and finally burnt her to death.

8. P.W.5, Smt. Sandhya Devi stated in her evidence that deceased was her Gotani and accused Pramila Devi is her elder Gotani and Surender Dubey is her Bhaisur. She has further stated that one and half year back, Usha Devi died due to burning and when Usha Devi was bruning, she made attempt to put off fire. The occurrence took place at about evening. In her cross-examination she has stated that Shaligram Dubey or his family members never demanded any dowry either from Usha Devi or from her parents. She was never assaulted by them. She was kept with proper love and affection in her Sasural. She has further stated that when Usha Devi caught fire at the home, she and Usha Devi were only in her house. She had also received injury when she tried to save Usha Devi and for that she was also treated in the Hospital for sometime. She has got sign of burn injury in her hand and neck even today. Usha Devi caught fire while she was cooking food.

9. P.W.6, Bidyawati Devi stated in her evidence that her father's house is in village Halubanta in Nagar Untrari in the Mohalla of Shaligram Dubey. At the time of occurrence, she was at her father's house. She heard that the wife of Shaligram Dubey has been burnt, she went to his house and saw Usha Devi was badly burnt. She identified all the three accused persons in the court. She stated that Shalik Dubey was married with Usha Devi 3 or 4 years back. She further stated that when Sandhya Devi tried to save Usha Devi she had also received burn injuries and for the same, she was treated in the hospital. P.W.6 was also declared hostile and cross-examined by the P.P. She denied that she stated to the police that the deceased, Usha Devi was often rebuked with filthy language and tortured by the accused persons and her husband put fire on her body, causing her death. She denied that all the accused persons were torturing her for not bringing proper dowry and finally killed her.

10. P.W.7, Sabita Devi stated in her evidence that she resides by the side of the house of the accused and at the time of occurrence, she was residing to her father's house. The occurrence took place two years back. Shalik's wife died due to burning. She was married three years before the occurrence. She saw the victim in burnt condition under a Bair Tree. She also heard that Sandhaya Devi also got burn injury while trying to save Usha Devi. She denied that she stated before the police that accused Pramila Devi and Shalik Dubey used to rebuke Usha Devi with filthy language and also used to torture her for not bringing proper dowry. She also denied that she has stated before the police regarding the alleged occurrence.

11. P.W. 8, Dr. Jwala Prasad Singh, who did the post mortem, has stated before the court that he examined the dead body of the deceased, Usha Devi and found burn injury on her face, neck, back, front and back of temple and abdomen with

skin pilled off at places. Both upper limbs aspect with skin pilled off at places. Both lower limbs injury with anterior and posterior were also burnt with skin pilled off. The Doctor has opined that the death was caused due to shock resulting from burn.

12. P.W.9, Mithilesh Choubey stated before the court that Usha Devi was married with Shalik Dubey @ Shaligram Dubey four years back. On the day of Jitiya when she was in her Sasural, he received information that Usha Devi was burnt and then he went to the police station and gave his statement. He proved his signature on the F.I.R. (Ext.1). He has been declared hostile by the prosecution.

13. P.W.10, Ramjee Mahto has proved the formal F.I.R. as Ext.1 in the trial.

14. Mr. Kashyap, Sr. counsel for the Appellant has contended that practically all the witnesses i.e. P.Ws. 1,2,3,6,7 and 9 have been declared hostile by the prosecution even the informant Mithilesh Choubey has also been declared hostile. The persons who are named in the F.I.R. as accused i.e. Surendra Dubey and Pramila Devi who are Bhaisur and elder Gotni have been acquitted by the trial court on the basis of the aforesaid evidence of the witnesses. But the trial court without any basis, convicted the Appellant on the same evidence only because he is husband of the victim lady.

15. Mr. Kashyap has further argued that the I.O of this case has not been examined by the prosecution and No. reason has been assigned for his non-examination. The Appellant is highly prejudiced for non-examination of the I.O. as the witnesses before the trial court have denied that they have stated before the police regarding the commission of the offence by the present Appellant. In this situation, only I.O. is the person who could have said that he has recorded the statement of witness himself. Therefore, non-examination of I.O. has completely demolished the statements recorded in the case diary. At any stretch of imagination it can not be treated as substantive evidence on record. P.W.6 and other witnesses have not supported the prosecution case in the court in their evidence and none of them has stated anything regarding commission of the alleged offence by the Appellant.

16. The learned Counsel for the Appellant to fortify his argument in this regard, placed the decision of the Hon'ble Apex Court reported in Hazari Lal Vs. State (Delhi Administration), . At para-8 of the said judgment the Hon'ble Apex Court has held:

The Court below were clearly wrong in using as substantive evidence statements made by witnesses in the course of investigation.

17. Mr. Kachyap rightly pointed out that the parents of the deceased have not been examined in this case by the prosecution. Therefore, it can be said that the persons who are actually aggrieved did not turn up to prove the prosecution case which also casts a great doubt on the prosecution case. He has contended further that the two important witnesses namely P.W.5 Sandhya Devi who has tried to

put off the fire and save the victim and for that she had also received some burn injuries and other one the informant, P.W.9 have not supported the prosecution case. Therefore, there is No. evidence on record to substantiate the allegation against the Appellant. Therefore, the Appellant ought to have given at least benefit of doubt.

18. The learned Counsel for the State, Mrs. Sadhna Kumar could not point out any evidence of any of the witnesses who has stated about the commission of the offence by the Appellant. She has stressed her argument wholly on the statements made by the witnesses before the I.O. But she could not deny the fact that No. explanation has been given for non-examination of the I.O.in this case.

19. After going through the evidence of the witnesses, I find none of the witnesses has stated before the trial court regarding commission of the offence by the Appellant. Even the P.W.6, who tried to save the victim and herself had also received some burn injuries on her body, could not stated anything about the Appellant. It has further come that she has denied in her evidence that she ever stated before the Police regarding any torture made by the Appellant to the victim and also denied that the husband of the victim had put fire on the victim causing her death. Therefore, in the facts and circumstances of the case, I find that the prosecution has failed to prove the prosecution case against the Appellant beyond all reasonable doubts. Furthermore, I find that on the same evidences, the trial court has acquitted the other two co-accused namely Surendra Dubey and Pramila Devi giving them benefit of doubt from the same charges levelled against them.

20. For the reason aforementioned, I allow this appeal on giving benefit of doubt to the Appellant and set aside the judgment of conviction dated 15.01.2002 and sentence dated 16.01.2002 passed by the learned Sessions Judge, Garhwa in S.T. No. 232 of 1999 against the Appellant namely Shaligram Dubey @ Shalik Dubey. As the Appellant is on bail, he is discharged from the liability of his bail bonds.