

(2002) 01 PAT CK 0035

In the Patna High Court

Case No : Criminal Appeal No. 148 of 2000 (S.J.)

Shri Kishun Singh and Bando Davi

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision : 07-01-2002

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4

Penal Code, 1860 (IPC) — Section 201, 304B, 34, 398A, 498A

Citation : (2002) 1 PLJR 414

Hon'ble Judges : I.P. Singh, J

Bench : Single Bench

**Advocate : B.P. Pandey, A.B.V. Shrivastava and Vinita Sinha, for the Appellant;
Ashwini Kumar Sinha, for the Respondent**

Final Decision : Dismissed

Judgement

I.P. Singh, J.—Both the appeals arise from the same judgment and have been heard together and are being disposed of by this common judgment.

2. All the Appellants have been convicted u/s 304-B read with Section 34 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for 7 years. They have been further convicted u/s 201 of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year. Further they have been convicted u/s 398(A) of the Indian Penal Code and have been sentenced to undergo rigorous imprisonment for one year. All the sentences were ordered to run concurrently.

3. The prosecution case, in short, as disclosed in the written report filed by the informant Kamla Prasad Singh alias Kamlesh Singh resident of Village-Khanethi, P.S. Sonhan, District-Kaimur (Bhabua) is that his sister Shushila Devi deceased was married under Hindu rites with Appellant, Jaswant Singh, son of Appellant, Shri Kishun Singh, resident of Hariharpur, District-Kaimur on 15.5.1991. It has been further alleged that the second marriage of his sister was performed on 28.2.1993 and the deceased went to her in laws place. It has been further

alleged that on Chauthi he (informant) along with Ram Prayag Singh (P.W. 4), Ganga Singh (P.W. 2) and Sobha Nath Singh (P.W. 3) went to her sister's place at Hariharpur where Appellant, Shri Kishun Singh and Bando Devi wife of Shri Kishun Singh demanded a motor cycle, T. V. and cash of Rs. 10,000/-. It has been further alleged that when he wanted to meet his sister, they were not allowed to meet her and plainly told that until and unless dowry demand is not fulfilled they shall not be allowed to see his sister. Thereafter they without meeting the deceased came back to their village. It has been further alleged that he along with Ram Prayag Singh (P.W. 4) and Sobha Nath Singh (R.W. 3) again went to the in laws place of the deceased 4 or 5 times to pacify them but they did not give any heed to their requests. It has been also alleged that for this demand of dowry the Appellants used to harass her. Her sister has written several letters to her mother, sister and his (informant) wife about all these harassment. Further it has been alleged that in the morning of 3.10.1993 he learnt from Ram Prayag Singh (P.W. 4) that his sister was killed by setting fire to her by her husband and in laws. On this information informant went to the village Hariharpur at about 1.30 P.M. but none of the Appellants were available at their residence and the villagers were whispering that his sister had been killed by the Appellants in the night of 2.10.1993 itself and hurriedly to conceal the evidence they got the last rites of the deceased performed. On the written statement of the informant a case under Sections 304B, 201 of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act was registered on 4.10.1993. After investigation the police submitted charge sheet against the Appellants and cognizance was taken and case was put on trial. The learned Sessions Judge by its order dated 13.4.2000 convicted the Appellants as already stated in earlier paragraph.

4. The Appellants denied to have committed any offence and pleaded not guilty.

5. The prosecution to prove its case has examined altogether 7 witnesses including the informant (P.W. 5), P.W. 1, Kharpati Kuer, i is the mother of the informant and the deceased. P.W. 2 is Ganga Singh. P.W. 3 is Sobha Nath Singh. P.W. 4 is Ram Prayag Singh. P.W. 5, Kamla Prasad Singh alias Kamlesh Singh is the informant himself. P.W., Rafique Ahmad Khan, is the I.O. who got investigation started. P.W. 7, Ram Deyal Singh is a formal witness who has proved the FIR.

6. The defence has also examined 4 witnesses including the Doctor who proved that the deceased died of some ailment while she was being taken to the Hospital.

7. P.W. 1, the mother of the deceased has stated that her deceased daughter was married to Jaswant Singh and was given dowry as per the customaries. However, she has further stated that her Samdhi and her son-in-law demanded motor cycle and T.V. and also cash amounting to Rs. 10,000/-. She has further stated that two years after the marriage when second marriage was performed again there was demand of motor cycle, T.V. and the cash by the in laws. However, she

assured them that later on their demand shall be fulfilled in due course of time. She has further stated that since the demand of dowry could not be fulfilled the in laws started ill-treating her daughter. They also used to beat her and had snatched her jewellery. The deceased sent a letter to her and others about all these atrocities met to her. On receiving the letter she sent the villagers along with her son to pacify them. But her son and villagers were not even allowed to see the victim girl. Thereafter Ram Prayag Singh (P.W. 4) informed her that her daughter was killed by her husband and father-in-law. Then he sent her son to her Sasural who came back and informed him that the house of the deceased was locked and one of the members were present in the house and they had killed the deceased Shushila Devi. She has also stated that the in laws did not inform her about the death of her daughter.

8. P.W. 2 is a co-villager. He has also supported about the marriage and demand of dowry. He has also stated that when he went to the in laws place of the deceased he was not allowed to meet the deceased because dowry demands were not fulfilled. P.Ws. 3 and 4 have also more or less supported all these facts as narrated by P.W. 1.

9. P.W. 5 has fully supported the version as narrated in his Fardbeyan and has stated that the marriage was performed on 15.5.1991 and there was demand of dowry, motor cycle, T.V. and Rs. 10,000/- which were not fulfilled and his sister again went to the in laws place in February, 1993 where, she was being harassed and tortured. According to him they went to Village-Hariharpur to pacify the in laws of the deceased but since the demand of dowry was not met they were not even allowed to meet his sister. Thereafter he has stated that he got an information on 3.10.1993 that his sister was killed by these Appellants on 2.10.1993-itself and even dead body was consigned to fire hurriedly. On his information he went to the in laws place where he learnt about the killing of his sister. He has further stated that large number of letters were written by the deceased, Shushila Devi about the torture meted out to her. He has further stated that he gave the information to the police on 4.10.1993 about the occurrence.

10. P.W.6 is the I.O. of this case. He has stated that he had submitted the charge sheet against the Appellants.

11. Learned Counsel appearing on behalf of the Appellants has submitted that there is no direct evidence to prove that the deceased was harassed by the in laws. None of the prosecution witnesses have accepted to have seen the harassment and beating of the deceased. Even the original letters alleged to have been written by the deceased were not produced before the I.O. and it has been submitted that the deceased died due to diarrhoea and for which she was treated by a local Doctor who referred her to Mohania Hospital for better treatment.

12. In this case it is admitted fact that Shushila Devi was married with Appellant,

Jaswant Singh under Hindu customaries rites on 15.5.1991 and thereafter she went to her in laws place in Feb. 1993. It is also more or less established by the prosecution that when P. Ws. 2, 3 and 4 along with the informant (P.W. 5) went to in laws place of the deceased on customary visit they were not allowed to even see the victim. P.Ws. 1 and 5 mother and brother of the deceased have fully supported that there was demand of dowry. The other co-villager witnesses have also specifically supported that the in laws had demanded a motor cycle, T.V. and cash amounting to Rs. 10,000/- as dowry. Though the learned Counsel for the Appellants has submitted that there is no witness to say that they have seen the thrashing, torture and harassment being meted to the deceased but the act of the Appellants not allowing the co-villagers and brother to meet the deceased itself goes to prove a lot about the torture she was being met. Though the defence has tried to prove that the death was due to diarrhoea and for that matter a number of witnesses have also been examined. Even the defence witnesses have stated that D.W. 1, Sanjai Kumar Singh had gone to inform the brother of the deceased about her death. However, the testimony of this witness is not reliable since he has himself accepted in his deposition that he has gone to Hariharpur a day prior to the occurrence and he also could not say who others had gone to the house of Jaswant Singh. However, the deposition of other defence witnesses are also not trust inspiring and even the Doctor who examined the deceased did not write any prescription and has not mentioned what has happened to the deceased. It all goes to prove that she did not die a natural death and also that her last rites were performed without informing mother and brother of the deceased. This clearly shows the suspicious conduct of the Appellants.

13. From the discussions above it is apparently clear that the deceased died within 7 years of her marriage and just after her second marriage was tortured and harassed for non-fulfilment of the demand of dowry and she died an unnatural death. As such the prosecution could fully establish the case against the Appellants u/s 304B of the Indian Penal Code and since the body of the deceased was disposed of hurriedly without being properly examined by a Doctor. The Appellants also tried to conceal the evidence which must have gone against them. Thus act of the Appellants attracts the offence punishable u/s 201 of the Indian Penal Code as well. Further the demand of dowry has been established and for that she was physically and mentally tortured and as such the Appellants are also found guilty for the offence punishable u/s 498A of the Indian Penal Code. The court below has rightly convicted them under the aforesaid Sections. I do not find any reason to interfere with the conviction of the Appellants under Sections 304B/34, 201 and 498A of the Indian Penal Code.

14. Coming to the question of sentence the learned Counsel appearing on behalf of the Appellants, Shri Kishun Singh and Bando Devi, has submitted that both the Appellants are old persons aged about 60 years. He has further submitted that they have remained in jail for some time and there is no direct evidence to prove that they had set the deceased on fire, therefore, it requires consideration

on the point of sentence.

15. Considering the submissions raised on behalf of the learned Counsel for the Appellants and also considering the old age of the Appellants, I am of the opinion that the ends of justice shall be met if the sentence of these two Appellants, Shri Kishun Singh and Bando Devi, is reduced to the period they have already undergone in jail with a fine of Rs. 5,000/- each to be deposited by them within a period of three months from the date of receipt/production of a copy of this order failing which they shall have to undergo rigorous imprisonment for one year. The sentence awarded to the Appellant, Jaswant Singh, of Cr. Appeal No. 161/2000 is upheld.

16. Accordingly, Cr. Appeal No. 161/2000 is dismissed and Cr. Appeal No. 148/2000 is dismissed with the aforesaid modification in the sentence.