
(2003) 05 JH CK 0009
In the Jharkhand High Court
Case No : Criminal Appeal No. 204 of 2002

Sukar Sao and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 07-05-2003

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 34

Citation : (2003) 2 DMC 531 : (2003) 3 JCR 325

Hon'ble Judges : Vinod Kumar Gupta, J;Lakshman Uraon, J

Bench : Division Bench

Advocate : M.M. Banerjea and A.K. Das, for the Appellant; T.N. Verma, APP, for the Respondent

Final Decision : Dismissed

Judgement

Vishnudeo Narayan, J.—This appeal has been directed by the appellant named above against the judgment and order dated 23.4.2002 passed in Sessions Trial No. 99 of the 1998 by Shri Anil Kumar Choudhary, Additional Sessions Judge, Bermo and Tenughat, whereby and whereunder all the appellants were found guilty for the offence punishable u/s 302/34 of the Indian Penal Code and they were convicted and sentenced to undergo R.I. for life. However, they were acquitted for the offence punishable under Sections 3 and 4 of the Dowry Prohibition Act, 1961 due to legal infirmity i.e., want of sanction of the prescribed authority as well as the demand of dowry not being the consideration of marriage. Co-accused Raju Sao was found not guilty of all the charges aforesaid and he was acquitted.

2. The prosecution case has arisen on the basis of the fardbeyan (Ext. 1) of PW 2, Manoj Kumar Sao, the cousin brother of Brijbala Devi, the deceased of this case, recorded by Shri Upendra Kumar Ram, S.I. of Dugda P.S. on 24.8.1997 at 18.45 hours at Dugda Basti P.S. Dugda, District-Bokaro regarding the occurrence which is said to have taken place on that very day at 17.30 hours in the house of the appellant. The case was instituted on the basis of the said fardbeyan by

drawing formal FIR on that very day at 20.30 hours and the said fardbeyan and the formal FIR were received in the Court empowered to take cognizance on 26.8.1997.

3. The prosecution case, in brief, is that PW 2, the informant was returning to his house situate in Dugda Basti from Dugda Market on 24.8.1997 and when he reached near the house of appellant in Dugda Basti he found several women standing near the said house and one of them told this informant that Brijbala Devi is being assaulted in her matrimonial home and on this information he kept his cycle there and went inside the house of the appellant where he saw rope around the neck of Brijbala Devi aforesaid which was being pulled by appellant, Rameshwar Sao and at that time appellants, Sukar Sao and Kaushalya Devi had caught the hands and legs respectively of Brijbala Devi and acquitted accused, Raju Sao was standing there watching the incident. The prosecution case further is that the appellants became nervous seeing him and all the appellants and the acquitted accused, Raju Sao fled away from there. It is alleged that he touched the hand of Brijbala Devi and found her dead and from there he rushed to his house and informed his father PW 6, Narayan Sao regarding the incident and PW 1, Ramdas Sao, the father of the said deceased was also informed. The prosecutions case further is that the informant along with others came to the house of the appellants and found Brijbala Devi dead. The prosecution case further is that the marriage of the deceased was solemnized with appellant. Rameshwar Sao fourteen years prior to the occurrence and she had a son born of the said wedlock. It is alleged that soon after the marriage, the appellants used to treat the deceased with cruelty for demand of dowry which led to a case against the appellants in which they were found guilty and convicted and sentenced to imprisonment. But thereafter the matrimonial dispute was resolved and compromise was entered into between the appellants and the deceased and the said case was thereafter not further prosecuted, the further case of the prosecution is that on 16.8.97 appellant. Rameshwar Sao along with acquitted co-accused, Raju Sao had gone to the house of PW 1. Ramdas Sao at Chan-dipur in the company of the deceased where the appellant has demanded a motorcycle from P.W. 1 and he will properly keep the deceased with him if the motorcycle is provided to him, failing which the matrimonial dispute shall continue and the appellants returned to his house on 19.8.1997 with the deceased. It is also alleged that the deceased has been done to death due to the non-fulfillment of demand of motorcycle in dowry.

4. The appellant have pleaded not guilty to the charges levelled against them and they claim themselves to be innocent and to have committed no offence and that they have been falsely implicated in this case on mere suspicion. It has also been stated that Brijbala Devi, the deceased in this case has committed suicide by hanging herself. It has also been contended that appellants, Sukar Sao and Kaushalya Devi had gone to their daughter's house at village-Kamlapur three days prior to the occurrence and they returned to their house in Dugda Basti at 6.30 p.m. on the day of the occurrence.

5. The prosecution has examined in all eight witnesses to substantiate the charges levelled against the appellants. PW 2, Manoj Sao is the cousin brother of the deceased and he claims himself to be the ocular witness of the occurrence, PW 1, Ramdas Sao, is the father of the deceased, PW 4, Chaitu Sao, PW 5, Gobardhan Sao are the uncle of the deceased and they are not the ocular witnesses of the occurrence in question. PW 3, Bhola Singh is the chowkidar of the village and he is also not the ocular witness of the occurrence. PW 7, Dr. Ratneshwar Prasad Verma has conducted the post mortem examination on the dead body of the deceased and the post mortem report per his pen is Ext. 3 in this case. PW 8, Upendra Kumar Ram is the I.O. of this case and he has proved the fardbeyan (Ext. 1) and the formal FIR (Ext. 5) and have prepared the inquest report (Ext. 2) of the dead body of the deceased. Six witnesses, namely, Jai Nandan Singh, Shulochana Devi, Surti Devi, Jagru Sao, Rakhal Dasaundhi and Indar Turi have taken oath in this case as D.W. 1 to 6 respectively in support of the defence version of the appellants.

6. The learned Court below has relied upon the ocular testimony of PW 2, Manoj Sao, the informant read with the testimony of PWs 4, 5 and 6 corroborated by the medical evidence on the record and disbelieved the evidence of all the defence witnesses having no right of truth therein and found the appellants guilty for the offence u/s 302/34 of the Indian Penal Code and convicted and sentenced them as stated above.

7. Assailing the impugned judgment it has been submitted by the learned counsel for the appellants that the learned Court below has misconstrued the evidence on the record in coming to the finding of the homicide of the deceased whereas the evidence on the record unerringly and unmistakably establishes the fact that the deceased has committed suicide by hanging herself from the ceiling fan of the house and the evidence adduced on behalf of the defence is relevant in respect thereof. It has also been submitted that the deposition of witnesses whether they are examined on the prosecution side or defence side or as Court witnesses, are oral evidence in the case and hence the scrutiny thereof shall be without any predilection or bias and no witness is entitled to get better treatment merely because he was examined as a prosecution witness or even as a Court witness and it is judicial scrutiny which is warranted in respect of the deposition of all witness for which different yardsticks cannot be prescribed as for those categories of witnesses. In support his contention the ratio of the case of State of U.P. v. Babu Ram AIR 2000 SC 1735 : 2000 (3) East Cr C 927 was relied upon. It has also been submitted that the learned Court below did not consider the evidence of the defence witnesses in proper perspective and has erred in coming to the finding of the homicide of the deceased. It has further been contended that PW 2, Manoj Sao has been deliberately set up as an eye witness to the case with mala fide motive and intention and his evidence as such is fit to be brushed aside in the facts and circumstances of the case read with the evidence of defence witnesses. It has also been submitted that there is material contradictions and inconsistencies also which cast a cloud of suspicion to the very

credibility of the prosecution case. It has further been submitted that appellants, Sukar Sao and Keshiya Devi were not at all present in the house where the said occurrence is alleged to have taken place as they were at the house of their daughter in village, Kamlapur at the relevant time and they had come back to their house at 6.30 p.m. on the fateful day and the evidence of alibi stands corroborated by legal and reliable evidence of the defence witnesses. It has also been contended that PWs 2, 1, 4, 5 and 6 are all closely related with the deceased and they are equally partisan and highly interested witnesses and there is no iota of evidence of any independent, natural and competent witness of corroborate their testimony and their evidence is also fit to be brushed aside on that score. Lastly it has been submitted that the acquittal of all the appellants for the charge under Sections 3 and 4 of the Dowry Prohibition Act gives a nail to the coffin of the prosecution case regarding the torture of the deceased for the fulfillment of demand of dowry and in this view of the matter the very genesis and motive of the occurrence pales into insignificance and is totally belied. Therefore, the impugned judgment is unsustainable.

8. Refuting the contention advanced on behalf of the appellants it has been submitted by the learned A.P.P. that the ocular testimony of PW 2, Manoj Sao who has deposed unequivocally and in the most clear terms that he has seen the actual commission of the murder of the deceased by the appellants is worthy of credit and PWs 1, 4, 5 and 6 besides PW 2, have also deposed regarding the torture perpetrated on the deceased for the fulfillment of demand for dowry prior to the occurrence by the appellants which had led to their prosecution for the offence u/s 498A of the Indian Penal Code in which they were convicted and sentenced and besides that maintenance was also awarded to the deceased in a proceeding u/s 125, Cr PC. It has also been submitted that the evidence of the witnesses of the prosecution though closely related with the deceased can not be discarded simply on the ground of there being relatives in the facts and circumstances of the case. It has further been contended that the learned Court below has considered the evidence of the defence witnesses and their evidence was found not worthy of credit and they were rightly disbelieved by the learned Court below and defence of alibi of appellants, Sukar Sao and Keshiya Devi was also disbelieved rightly in view of the evidence on the record. Therefore, the impugned judgment does not suffer with any illegality requiring an interference therein.

9. It will admit of no doubt in view of the evidence on the record that Brijbala Devi is the lawfully wedded wife of appellant, Rameshwar Sao, their marriage having been solemnized about 14 years prior to the occurrence and the said deceased had a son born of the holy wedlock. There had been aberrations in their conjugal relationship as a result of nagging conduct of appellant, Rameshwar Sao leading torture to the deceased for fulfillment of demand of dowry which compelled the deceased to initiate a criminal proceeding u/s 498A of the Indian Penal Code against the appellant, Rameshwar Sao and others and also a case for maintenance u/s 125, Cr PC. The proceeding u/s 125, Cr PC. has

terminated in favour of the deceased with a direction to appellant, Rameshwar Sao to pay Rs. 400/- per month as maintenance along with the arrears maintenance amounting to Rs. 16,500/-. The case u/s 498A, IPC, also ended in the conviction of all the appellants in which each of them was sentenced to undergo R.I. for two and half years. It appears that, being deterred by the order of conviction, good sense prevailed on the appellants and they entered into a compromise with the deceased for leading happy conjugal life as a result of which the deceased did not further peruse the matter and she returned to her matrimonial home for leading a happy conjugal life. But again the destiny has decreed otherwise. Old habits diehard and it appears that the conjugal life between the deceased and appellant, Rameshwar Sao did not proceed as desired as a result of compromise arrived at between the parties due to nagging conduct and behaviour, of appellant, Rameshwar Sao. The deceased came back to her matrimonial home and lived in a congenial atmosphere for sometime as a result of which she was blessed with a son during that period, but thereafter appellant, Rameshwar Sao again started torturing the deceased further for fulfillment of his suppressed desire of demand of dowry and started torturing and vexing her. There is evidence on the record that appellant, Rameshwar Sao in the company of acquitted co-accused, Raju Sao and the deceased came to the house of PW 1, Ramdas Sao at Chandipur on 16.8.97 and he made demand of a motorcycle from PW 1 with intimidation that unless the said demand is fulfilled, a happy conjugal life cannot be restored between him and the deceased and his torturous behaviour shall continue and thereafter appellant, Rameshwar Sao returned to his house in the company of his deceased wife. For this the evidence of PWs 1, 2, 5 and 6 appearing in para-2, para-1 at page-3, para-2 and para-3 of their respective deposition is referred to. However, PW 4, Chaitu Sao, in para-1 of his deposition has deposed regarding the demand of Rs. 20,000/- by appellant, Rameshwar Sao from PW 1, Ramdas Sao at Chandipur but the said demand of money was for business purposes. The evidence aforesaid of Chaitu Sao is no doubt inconsistent to what has been deposed by PWs 1, 5 and 6 in respect of demand made by the appellant at Chandipur from PW 1 but this inconsistency is not of such a magnitude to discredit the prosecution case in view of its background which led to the unnatural death of the deceased and furthermore, the evidence of PW 4, does not at all discredit the substratum of the prosecution case regarding the genesis and motive for the unnatural death of the deceased in the facts and circumstances of the case. It is pertinent to mention here that the acquittal of all the appellants who are the father-in-law, mother-in-law and husband respectively of the deceased for the charge under Sections 3 and 4 of the Dowry Prohibition Act, due to legal infirmities for the want of sanction for their prosecution does not at all wash away the genesis and motive of the occurrence in its macabre and grim background and getting rid of the deceased in a Machiavellian manner in her matrimonial home.

10. Let us now advert to the evidence on the record, the post mortem examination on the dead body of the deceased Bhagwanika Devi, the wife of

appellant, Rameshwar Sao was conducted by PW 7, Dr. Ratneshwar Prasad Verma on 25.8.1997 at 11.45 a.m. He has deposed to have found the following ante mortem injuries on the dead body of the deceased;

- (i) Swelling (Heamatoma) 1 1/2" x 1 1/4" left side of the forehead,
- (ii) Abrasion 1" x 1/2" back of the left forearm near elbow, and
- (iii) A transverse injury on the neck completely encircling the neck below the thyroid with abrasion about the edges of ligature mark with bruising of the neck muscle, the base was ecchymosed area. Double ecchymosed ligature mark on the left side with a broad about 1 1/2" ecchymosed area on the left side below the mastoid region.

The medical, witness has further deposed that on dissection the thyroid was found fractured. He has also deposed to have found the frothy material and vomiting coming out of her mouth mixed with blood and there was discharge from her genital and the hands of the deceased was partially clenched. The medical witness has further deposed that the Injury No. (i) and (ii) were caused by hard and blunt substance and the injury appearing on the neck has been caused by rope or string by ligature and the deceased has died as a result of cardio respiratory failure due to asphyxia caused by strangulation by ligature. The. medical witness has further opined that the time elapsed since death from the post mortem examination is within 24 hours. The post mortem report (Ext. 3) per pen of the medical witness corroborates his testimony. The inquest report (Ext. 2} shows the existence of the ligature mark on the neck of the deceased. It is, therefore, established that the death of the deceased has been caused due to asphyxia as a result of strangulation.

11. PW 2, the informant and the cousin brother of the deceased is the resident of Dugda Basti and his house is situated in that very village 50 yards away from the house of the appellant. In para-6 of his evidence he has deposed that the appellants also reside in that very village i.e., Dugda Basti. His evidence is further to the effect that there is a busy kachcha road in front of the house of the appellants which runs from east to west and the house of the appellants is adjacent south of the said road. He has also deposed that there are a large number of houses of several persons as well as shops, temple and Panchayat office in the vicinity of the place of occurrence and his house is Intervened by eighty houses from the Panchayat office. It, therefore, appears that it is the said kachcha road which is used for going to the house of the informant and in view of location of the said road passing north of the house of the appellants. There appears to be ring of truth that the informant was going to his house through that road where he was informed by one of the women who had assembled there regarding the assault being perpetrated on the deceased. He has further deposed that on the information furnished by one of the women assembled there he made his entry in the house of the appellant after keeping the cycle outside of the house of the appellant where he saw appellant, Rameshwar Sao pulling the string

which was put around the neck of the deceased and at that time appellants, Sukar Sao and Keshiya Devi had caught the hands and legs of the deceased. He has also deposed that all the appellants fled away from there on his arrival. He has further deposed that he touched the hand of Brijbala Devi and found her dead and thereafter he rushed to his house and informed his father (PW 6) and thereafter he along with his father and others came to the house of the appellant where the deceased was found dead. This witness in his cross-examination had very categorically stated that only a large number of women and some children from the house of the vicinity of the house of the appellants had assembled there in front of the house of the appellant. It, therefore, appears from his evidence that no male of the houses of the vicinity was found assembled there when the informant was informed regarding the assault being perpetrated on the deceased by the appellants and when he made his entry in the house of the appellants where he has seen the occurrence. Therefore, the evidence of DW 1 to DW 6 denying the presence of PW 2, Manoj Kumar Sao, the informant at the time of the commission of the murder of the deceased inside the house of the appellant cannot be relied upon. I will dilate in detail this aspect later on at the appropriate place. PW 2, the informant is an ocular witness of the actual commission of the murder of the deceased by appellant, Rameshwar Sap assisted by other two appellants and his evidence cannot be brushed aside and it cannot be said in the fact and circumstances of the case that PW 2, the informant has been set up as an eye witness of the occurrence as a result of consultation and deliberation and viewed thus, the contention of the learned counsel for the appellants has no leg to stand in respect thereof. It is equally pertinent to mention here that the medical evidence on the record materially corroborates the ocular account regarding the occurrence as deposed by PW 2, the informant. I, therefore, find ring of truth in the evidence of PW2.

12. PW 6, PW 5 and PW 4 have deposed to have learnt regarding commission of the murder of the deceased from PW 2, the informant. They have further deposed that they went to the house of the appellants on the said information and have found the deceased dead and all the appellants were not found present in the house. PW 6 has further deposed that the informant went to Chandipur to inform the father of the deceased regarding, the occurrence in question. PW 1 has also deposed to have learnt regarding the murder of the deceased from PW 2, the informant and he went to the house of the appellants where he learnt that the dead body has been taken to the police station where he saw the dead body of the deceased. He has also deposed that Manoj Kumar Sao had come to the Chandipur on motor cycle. It is true that PWs 6, 5, 4 and 1 are hearsay witnesses of the occurrence having come to know about it from PW 2, Manoj Kumar Sao but it renders credence to the evidence as deposed by PW 2 regarding the manner of assault on the deceased as told to them by the informant. PW 11, the I.O. at page-2 of his testimony has very categorically stated that when he reached at the place of occurrence, all the appellants were found absent. The defence version is that the deceased has committed suicide by

hanging herself from the ceiling fan. All the defence witnesses i.e., DW 1 to DW 6 have deposed in parrot like way that the deceased has committed suicide by hanging herself and they have also denied the presence of PW 2, the informant at that place. DW 1 has deposed that he was In his house intervened by two houses from the house of the appellant and on hearing alarms of some of the ladies assembled at the hand pump near the house of the appellants, he went there and found the deceased lying on a cot and appellant, Rameshwar Sao arrived with a tempo and he took her to the Dugda Hospital by the said tempo but she breathed her last in the way and the appellant Rameshwar Sao brought back her dead body on the said tempo. He has also deposed that PW 6 and PW 4 arrived at the house of the appellant at that point on time. He has also deposed that the deceased was in good terms with her husband and in-laws. To a pointed Court question, this witness has stated that he has nor seen the deceased hanging. It appears from his evidence that when he reached at the place of the occurrence he saw the deceased dead lying on a cot. Therefore, his evidence has no relevancy regarding the fact that the deceased has herself committed suicide. DW 2 has deposed to have heard that the deceased has committed suicide by hanging when she has gone to fetch water at the hand pump situated in front of the house of appellant, Rameshwar Sao and she saw the deceased hanging from a ceiling fan by a rope in her neck and appellant, Rameshwar Sao brought down the deceased and laid her on a cot and he had gone to bring a tempo and while being taken to the hospital on the tempo she died on the way and she was brought back. DW 1 has claimed to be a resident of Dugda Basti having his house in the close vicinity of the house of the appellant but DW 2 contradicts his evidence in para 18 of her deposition in which DW 2 has categorically deposed that the house of DW 1 is two kilometers away from the house of the appellant and at the time of the occurrence she did not see him there. In para-15 of her cross-examination, DW 2 has deposed that she came to the place of occurrence in the last and seeing the deceased hanging from the fan, she came outside the said house where people had assembled. In para-19 she has deposed that she has been brought before this Court for evidence by accused Sukar Sao. In this view of the matter, her testimony does not inspire confidence. DW 3 has deposed to have seen the deceased hanging in the ceiling fan and appellant, Rameshwar Sao was bringing her down from the ceiling fan and laid her in a cot and thereafter appellant, Rameshwar Sao brought a tempo to take her to the hospital but she died in the way and she was brought back to the house. In paras-14 and 16 of her cross-examination she has deposed that appellant, Sukar Sao was telling her to depose in this case for the last one and half month and for that he was visiting his house every day and he has also borne the expenses of her coming to the Court today. Therefore, her evidence also does not inspire confidence as she appears to be a tutored one. DW 4 is the close relative of appellant, Sukar Sao being a brother by relation. He has also deposed in para-16 of his evidence that he was prevailed upon by appellant, Sukar Sao to depose in this case, DW 5 in para-11 of his evidence, has deposed that appellant, Sukar Sao told him to give evidence in this case one month back and he further told

him as to what he has to depose in the case. DW 6 has also deposed that appellant, Sukar Sao told him to adduce his evidence in this case a week ago. Therefore, the evidence of DWs 1 to 6 that the deceased has committed suicide by hanging herself from the ceiling fan does not inspire confidence in the facts and circumstances of the case. The evidence of all the aforesaid defence witnesses about the non-presence of PW 2, Manoj Kumar Sao at the place of occurrence is also unworthy of credit. It is pertinent to mention here that the medical witness has found swelling (Heamatoma) 1 1/2" x 1 1/4" left side of the forehead and abrasion 1" x 1/2" back of the left forearm near elbow of the deceased. The existence of the aforesaid injuries on the person of the deceased is highly improbable in the case of committing suicide by hanging. Therefore, all the DWs in their evidence are suppressing material facts as to how the aforesaid two injuries have come to exist on the person of the deceased and they are lying on the most material aspect of the case with deliberate motive. Therefore, all the defence witnesses are all set up witnesses purposely brought on the record by the appellants. The defence of alibi by appellants. Sukar Sao and Keshiya Devi is also fit to be brushed aside in this case in view of the fact that her daughter or son-in-law, resident of Kamalpur has not come forward in this case to support it. The medical witness in view of his objective finding has opined that the death of the deceased is due to strangulation and has categorically ruled out thereby the case of death of the deceased by hanging. There are also apparent injuries on the person of the deceased caused by hard and blunt substance which negates the defence version of the suicidal death of the deceased. Therefore, the manner of death of the deceased is definitely not in consonance with the evidence as adduced by the defence witnesses. Therefore, on careful and caution scrutiny of the evidence of the defence witnesses I find them unworthy of credit and brushed aside their testimony in respect thereof. It, therefore, appears that death of the deceased in the facts and circumstances of the case is a homicidal death and the possibility of the suicidal death of the deceased is totally ruled out in this case. The learned Court below has meticulously considered the evidence on the record and has rightly disbelieved the defence version of the suicidal death of the deceased as well as the defence of alibi as alleged. I see no illegality in the impugned judgment of the learned Court below requiring an interference therein.

13. There is no merit in this appeal and it fails. The impugned judgment is hereby affirmed. The appeal is hereby dismissed. The bail bonds of appellants. Sukar Sao and Keshiya Devi are hereby cancelled and they are directed to surrender before the Court below for serving out the sentence. The learned Court below is also directed to take all coercive steps in accordance with law for the apprehension of appellants, Sukar Sao and Keshiya Devi for serving the sentence.