
(2010) 08 JH CK 0040
In the Jharkhand High Court
Case No : Criminal Appeal No. 421 of 2002

Suresh Yadav and Bishun Yadav

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 31-08-2010

Acts Referred:

Penal Code, 1860 (IPC) — Section 302, 304B, 34

Citation : (2011) 7 RCR(Criminal) 729 : (2011) 1 JLJR 267

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Pradeep Kumar, J.—This appeal is directed Against the judgment of conviction dated 11.7.2002 and order of sentence dated 16.7.2002 passed by Shri Ravindra Prasad Ravi, 8th Additional Sessions Judge, Hazaribagh in Sessions Trial No. 169 of 1999, by which judgment he found both the Appellants guilty under Sections 304B & 34 of the Indian Penal Code and sentenced them to undergo R.I. for 10 years u/s 304B read with Section 34 of the Indian Penal Code.

2. It is submitted by the learned Counsel for the Appellants that it will appear from the evidences and from the F.I.R itself that there was no demand of dowry nor there is any allegation that there was any torture for dowry. In that view of the matter, the conviction and sentence of both the Appellants u/s 304B & 34 of the Indian Penal Code is bad in law and only fit to be set aside.

3. On the other hand, learned Counsel for the State has submitted that it is a clear case of torture for not providing proper dowry and the husband-Appellant No. 1 never took his wife to Bombay, where he was working and whenever he came he assaulted her and was expecting more dowry and as such the Appellant No. 1, Suresh Yadav, has rightly been convicted and it requires no interference by this Court.

4. After hearing both the parties and going through the record, I find that the

prosecution case was started on the basis of a written report given by Murat Yadav on 4.10.98 stating therein that his daughter was married with the accused-Appellant No. 1, Suresh Yadav son of Bishun Yadav according to the Hindu Rites. After marriage Suresh Yadav left for his service and when he came in the month of Sawan he started living with his wife in his house and he used to rebuke his wife and does not give food in time and also he used to assault her. On 15.9.1998 his son-in-law, Suresh Yadav assaulted his daughter and left her in the house of the informant. Then on the next day i.e 16.9.98 the informant went to the sasural of his daughter and asked his "Samdhi" as his son in law was not present there. On 2.10.98 he came to know that at about 3 /4 a.m in the morning both the accused Suresh Yadav and his father, Bishun Yadav alleged to have killed his daughter and they threw her dead body into a well.

5. On the basis of the said written report police registered a case under Sections 302/34 of the Indian Penal Code being Chauparan P. S. Case No. 93/98 and after investigation submitted charge-sheet in the case.

6. Since, the case was exclusively triable by a Court of Sessions, the same was committed to the Court of Sessions and subsequently it was transferred to the Court of Additional Sessions Judge, Koderma where the charges were framed under Sections 304B/34 of the Indian Penal Code and subsequently the case was transferred back to the Court of 8th Additional Sessions Judge, Hazaribagh, who conducted the trial and passed the impugned judgment.

7. It appears that in course of trial, the prosecution has examined 8 witnesses. P.W.1, Nageshwar Yadav, who was declared hostile. P.W.2, Dr. Jai Brat Rai, who proved the postmortem report as Ext.-1. P.W.3, Rameshwar Yadav P.W.4, Gopi Yadav P.W.5, Raju Yadav P.W.6, Murat Yadav is the informant. P.W.7, Jitni Devi and P.W.8, Chhotu Yadav

8. P.W.2, Dr. Jai Brat Rai, who found anti-mortem injury on her fore-head, nose, cheek, shoulder and ear. However, he stated that she died due to asphyxia resulting from drowning.

9. P.W.6, Murat Yadav-informant stated, in his evidence, that his son in law was working outside the village, but his samdhi, Bishun Yadav used to say that his daughter is not properly living in the house and she always used to fight with mother-in-law. He further stated that his son in law, Suresh Yadav came he also assaulted his daughter and left her in his house. Thereafter, he brought her back to her Sasural and his "Samdhi" agreed to keep her. Whereupon, his son in law said that he will keep her only if Rs. 20,000/- is given, otherwise she will be killed. He proved his F.I.R as Annexure-3.

In his cross-examination, it is stated that he had earlier not stated in his F.I.R. that Samdhi used to demand of Rs. 20,000/-.

10. The other witnesses are also not eye witnesses and they have only stated that the husband-accused, Suresh Yadav used to ask his wife to demand of

money from her father.

11. Thus, from the evidences, it appears that although there is no allegation in the F.I.R. that there was any demand of money either by the accused-husband, Suresh Yadav or by her father-in-law, Bishun Yadav, but the informant-P.W.6 has clearly stated that although there was no demand by the father-in-law, who asked him that his daughter will live in his house, but the husband-accused said that she will not live in his house unless and until her father gives Rs. 20,000/-. All witnesses have stated that the husband-accused used to treat her badly and assault her.

12. In that view of the matter, I find that no case u/s 304B & 34 of the Indian Penal Code is made out against the father-in-law-Appellant No. 2 Bishun Yadav. Hence, finding of conviction and sentence against Appellant No. 2, Bishun Yadav-father-in-law is set aside and he is acquitted from the charges levelled against him. The Appellant No. 2, Bishun Yadav, who is on bail, is discharged from his bail bond.

13. As far as Appellant-accused No. 1, Suresh Yadav is concerned, although there is allegation right from F.I.R. and all witnesses have stated that he used to assault and torture his wife and the witnesses in Court have also stated that it was he, who used to demand dowry, hence finding of conviction against the Appellant No. 1, Suresh Yadav is maintained.

14. However, since admittedly the husband-Appellant No. 1, Suresh Yadav was not constantly living with the victim lady and it appears that demand of Rs. 20,000/- was also stated for the first time in Court, in my opinion, the period already undergone by the Appellant No. 1, Suresh Yadav from 6.10.99 till 27.11.2002 i.e. for about four years, is sufficient punishment; hence the sentence awarded is converted to the period already undergone by him. The Appellant No. 1, Suresh Yadav, who is also on bail, is discharged from his bail bond.

15. With the aforesaid modification in sentence, this appeal is allowed in part.