
(2010) 01 JH CK 0163
In the Jharkhand High Court

Talib Ansari

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 30-01-2010

Acts Referred:

Dowry Prohibition Act, 1961 — Section 3, 4
Penal Code, 1860 (IPC) — Section 304B, 306, 498A

Citation : (2010) 01 JH CK 0163

Hon'ble Judges : Pradeep Kumar, J

Bench : Single Bench

Judgement

Pradeep Kumar, J.—Nobody appears on behalf of the appellant on repeated call and it is reported that learned Counsel for the appellant Sri N.N. Mahto has died. In absence of counsel for the appellant, on the request of the Court, Sri A.B. Mahto, Advocate argued the case on behalf of the appellant as amicus curie.

2. The instant appeal is directed against the judgment of conviction dated 15.5.1999 and order of sentence dated 17.5.1999 passed by Sri Krishna Murari, 1st Additional Sessions Judge, Jamshedpur in S.T. No. 189/153 of 1995 by which judgment the sole appellant has been convicted for the offence u/s 304B of the I.P.C and sentenced to undergo R.I. for 7 years.

3. It is submitted by learned Counsel appearing on behalf of the appellant that the conviction of the appellant u/s 304B of the I.P.C is bad in law since, the condition required for convicting a person u/s 304B of the I.P.C is that the death of the deceased (married lady) must have taken place within 7 years of her marriage and in unnatural condition or by any burn or bodily injury. Since, the prosecution has failed to prove the date of marriage and there is contradictory evidence regarding the same, the conviction of the appellant is bad in law and fit to be set aside.

4. On the other hand, learned Counsel for the state has supported the prosecution case and stated that the informant in the F.I.R had stated that the victim lady died within 6 years of her marriage in an unnatural condition in her

sasural and learned trial court has rightly relied upon the same and convicted the appellant.

5. After hearing both the parties and going through the evidences on record, it appears that the prosecution case was started on the basis of the written report given by Md. Hanif Ansari, P.W.5, father of the deceased, Shakila Begum on 1.11.1994 at 13.45 hrs stating therein that his daughter, Shakila Begum was married to Md. Talib Ansari about 6 years back and after some time the accused Md. Talib Ansari and his mother, Paro Bibi started assaulting and torturing her for dowry. Many a times, due to severe assault, she ran away from her sasural and came to his house and to the house of other relatives. Thereafter, they always went to the house of the accused and asked him not to behave in such a manner. He has stated that earlier to quench the thirst of dowry, he had paid Rs. 3000/- 3 or 4 times, but still he used to behave in same manner. He has stated that on 31.10.1994 when his son-in-law, Talib Ansari assaulted his daughter then taking her son aged about 4 years and daughter 1 1/2 years she ran away to the house of her younger brother, Md. Ismail, but on the very same day about 6 p.m. again the accused came and took her by force and today i.e. on 1.11.1994 he got information that his daughter, Shakila has been burnt to death about 4/5 a.m. in the morning. Then he came to the house of his son-in-law and has brought the dead body of the victim.

6. On the basis of the said F.I.R police registered a case u/s 498A and 304B of the I.P.C and 3/5 of the Dowry Prohibition Act and after investigation submitted charge sheet in the case. Since, the case was exclusively triable by the court of Sessions, learned C.J.M after taking cognizance of the case committed it to the court of Sessions and lastly the case was tried by 1st Additional Sessions Judge, Jamshedpur and found the appellant guilty and sentenced him as aforesaid.

7. In course of trial, the prosecution has examined 6 witnesses.

P.W.1 is Seikh Ismail @ Md. Ismail

P.W.2 is Kadir Ansari

P.W.3 is Alauddin Ansari

P.W.4 is Nabi Ansari

P.W.5 is Md. Hanif, informant of the case

P.W.6 is Dr. Akhilesh Kr. Choudhary, who did the post mortem examination and proved the same.

It is important to note that the Investigating Officer was not examined in this case.

8. From the evidences, it appears that P.W.1 Md. Ismail has stated that about 3 1/2 years back his niece, Shakila Begum came to his house and stated that she has been assaulted by her husband for dowry and she had come to his house for-

saving her life. She stayed for few hours, whereupon, accused Talib Ansari came and by force took her to his house. Subsequently, he heard that she was burnt to death. Then he along with his brother went to the village Susni and saw the dead body of Shakila. He identified the accused in the court. P.W.2, Kadir Mian has also stated that he came to know that his grand daughter, Guria has been burnt to death. He cannot say that she put herself on fire or somebody else has did that. She was staying in her sasural and she used to be assaulted and tortured for dowry. P.W.3 Alauddin Ansari, another uncle has stated that on 31.10.1994, she came to his house. She was married to Talib Ansari 6 years back. But, after marriage, Talib Ansari and her mother used to demand money as more dowry and also used to torture and assault Shakila. Shakila came to his house even 10 days before her death and stated that they are again demanding Rs. 500/- and they have assaulted her badly. Then he told that they will arrange for the money, but in the meanwhile, Talib Ansari came and took her by force and subsequently, his co-villager, Kadir Ansari informed that Shakila Begum has been burnt to death. He identified the accused in the court. In the cross examination at para 6, he denied that he had stated to the police that Shakila was married with Talib Ansari about 7 years back. He had admitted that earlier a Talak took place between the accused and victim and after 3 months they were again married. P.W.4 Nabi Ansari, another uncle also stated that he had seen the dead body of his niece which was burnt. P.W.5 Md. Hanif stated that his daughter, Shakila was married to Talib-Ansari about 12 years back. After her marriage, she was staying with her husband and gave birth to two children. She used to keep well in her sasural. He has stated that Iris daughter died by burning about 4 years back. He has proved his signature on the written report. He has stated that there was no demand of dowry. P.W.6, Dr. Akhilesh Kr. Choudhaiy has proved that the victim girl died due to-Ante Mortem burn injury which caused due to shock and toxemia and the burn was not accidental and natural.

9. Thus, from the evidences adduced, I find that with regard to the date of marriage of the deceased with the accused Talib Ansari, none of the witnesses have given any date. The father of the victim, P.W.5 in his F.I.R stated that she was married 6 years before her death. But, when he was examined as P.W.5, he re-siled from the previous statement and stated that she was married 12 years back from today. The informant, P.W.5 was examined on 15th September, 1998. The death of the victim lady took place on 1.11.1994 and since the informant says that she was married 12 years back, that brings the date of the marriage to 1986. Meaning thereby, that she died about 8 years after her marriage. Her other uncle has again tried to support the version given in the F.I.R that she was married 6 years before her death, but in cross examination at para 6 he has denied that he stated to the police that she was married about 7 years back and he also admitted that Talak took place between husband and wife, but after 3 months she was again remarried to him. Thus, from the evidences it appears that there is no cogent evidence that the victim lady died due to bum in unnatural condition within 7 years after marriage. For applying Section 304B

I.P.C the prosecution must prove, which is clear from the bare reading of Section 304B I.P.C "where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within 7 years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called "dowry death" and such husband or relatives shall be deemed to have caused her death". In the instant case, although there is evidence that victim was used to be tortured and assaulted for dowry. Even there is evidence of P.W.1, 2 and 3 that due to severe assault she used to run away from the house of the accused and just before her death when she ran away to the house of P.W.3, the accused took her by force and thereafter she died due to burn injury, but since the crucial point that she was married within 7 years has not been proved beyond reasonable doubt and as such conviction of the appellant u/s 304B of the I.P.C cannot be maintained. But, since either the victim was burnt by the accused persons or she herself committed suicide due to constant assault or demand of dowry which forced her to end her life, in both the cases, there is sufficient evidence to give a finding that the appellant is guilty u/s 3/4 of the Dowry Prohibition Act as also u/s 498A and 306 of the I.P.C.

10. Hence the appellant is sentenced to undergo R.I. for 4 1/2 years u/s 306 of the I.P.C and 3 years u/s 498A of the I.P.C. All the sentences are directed to run concurrently. No separate sentence is required u/s 3/4 of the Dowry Prohibition Act. It appears from the record that the appellant has remained in custody for about 4 1/2 years and in my opinion the custody of 4 1/2 years apart from the mental agony and torture undergone by the appellant, since 1994 is sufficient punishment. Accordingly, the sentence of 4 1/2 years, being sufficient, punishment, the appellant is discharged from the liability of his bail bond.

11. Appeal is allowed in part with the aforesaid alteration in the conviction & sentence of the appellant.