

Ashok Kumar Singh and anr Vs. State of Bihar

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Court : Patna

Decided On : Sep-02-2013

Appellant : Ashok Kumar Singh and anr

Respondent : State of Bihar

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Criminal Appeal (SJ) No.267
of 2001

===== 1.
Ashok Kumar Singh Son of late Rajendra Singh 2. Naina Devi @ Maina Devi,
widow of late Rajendra Singh, All are resident of Village- Rajmal Pirari, P.S.
Revilganj, District- Saran. Appellant/s Versus State Of Bihar
Respondent/s

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Appearance : For the Appellant/s : M/S. Mukesh Kumar Singh & Anuradha Singh,
Adv. For the Respondent/s : Mr. S.N. Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA ORAL

JUDGMENT

Date:

02. 09-2013 Both the appellants have preferred this appeal against the conviction
for the offence under section 304 B, 201 I.P.C. and section 3 of the Dowry

Prohibition Act and sentenced respectively for R.I. ten years, five years and six months with fine of Rs. 2,000/-, in default of which further S.I. for one and half months, by learned 1st Additional Sessions Judge, Saran on 16 th August, 2001 in Sessions Trial No. 145 of 1992 arising out of Revilganj P.S. Case No. 24 of 1991, G.R. No. 636 of 1991. By the same judgment husband of the deceased and respectively brother and son of the appellant Manoj Kumar Singh was also convicted and sentenced, but due to his death during pendency of another Cr. Appeal (S.J.) No. 349 of 2001 the same has been disposed of as abated and another accused facing trial, namely, Prabhunath Singh was acquitted. 2.The prosecution case, in short, as revealed from Ext. 2 written (typed) application of P.W.6 Anandi Singh submitted to the Officer Incharge, Revilganj on 21st March, 1991 is that, his niece Baby Kumari daughter of his younger brother Vijoy Kumar, P.W.3 was married in the month of June, 1990 Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 2 with the deceased- convict Manoj Kumar, but she was being tortured by her in- laws persuading demand of motorcycle and just four days before on 10 th March, 1991 when the Informant had gone to their place with a request to permit the deceased to go for an hour and meet her mother, P.W.2 who had arrived at Chapra, but request was turned down with an specific assertion unless motorcycle is provided she will not be permitted to meet her mother. Any how Informant could meet his niece there and found she was depressed and weak but she also intimated about ill treatment for the Bike. The Informant immediately intimated his brother in writing through messenger and in the morning he could know that she has been done to death and dead bodies were concealed. There appears no date either typed or any signature of typist with date or even date with signature of the Informant, but in the light of statement in para-2 that he met his niece just four days before on 10th March, 1991 it may be treated that this written application was got prepared (typed) on 14th March, 1991 but handed over to police station only on 21st March, 1991, i.e. seven days after it was ready.

3. The police after investigation submitted charge-sheet and after commitment trial commenced against five accused persons, one of whom is Rajendra Singh respectively father and husband of present appellants died during pendency and remaining four faced trial and ultimately result came in as stated above.

4. In order to substantiate the charges, prosecution has produced altogether nine witnesses besides following documents:- Ext. 1- Written letter in the handwriting of Girl. Ext. 1/A- Written letter in the handwriting of Girl. Ext. 2- Application given by Anandi Singh to the police station along with his signature. Ext. 3- Seizure list on which signature of Anandi Singh. Ext. 3/1- Signature of Ram Bachan Singh on the seizure list. Ext. 4- Acceptance of prosecution (Consent for prosecution) dated 11.7.91. Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 3 Ext. 5- F.I.R. And besides cross-examining of the witnesses and putting their defence as of not involvement in the case and death of the deceased due to Jaundice, the defence also examined three witnesses besides producing following documents:- Ext. A- Prescription of Devi Kumari Devi. Ext. A/1- Pathological report (Blood) of Devi Kumari Devi Ext. A/2- Pathological report (Urine) of Devi Kumari Devi. And on consideration of the materials trial court arrived at the conclusion afore- stated.

5. Out of nine witnesses, P.W.1 Chunilal Singh and P.W.5 Krishna Singh have been declared hostile since they said nothing about the occurrence and P.W. 7 Murli Manohar Prasad and P.W. 8 Ramlochan Rai are simply formal witnesses respectively proved Exts. 4 and 5. Now remains only five witnesses whose testimony needs consideration.

6. P.W. 2 Uma Devi, mother of the deceased has come to support the prosecution version with addition that when she sent some one for Bidai of her daughter there was demand of Bike and her Bidai was denied. Further she had gone to her Maik in connection with marriage of her brother and from there send her father, P.W.4 with sweets in token and she could know about killing by burn injury of her daughter. In cross-examination she admits that there was demand of Bike since before, but it could not be given inspite of promise. Further she is unable to give detail of dates of her visit at Maik but there was festival Holi also and while her husband P.W.3 was at Delhi and she was at her fathers place, she could know about death of her daughter, in funeral of which his father was also present. She further denied about illness of deceased causing her death. She further states, due to shock she might have stated before police about demand of Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 4 Television instead of Bike.

7. P.W. 3 Vijoy Kumar Singh comes to support the prosecution version and proved Ext. 1 and 1/A, two inland letters said to have written by the deceased and further states about ill treatment and attempts made by his wife to meet the deceased while she was at her Maiké and informed by the Informant that she was being ill treated only for motorcycle and colour T.V. He denied in cross-examination that no such inland letter was written by the deceased since she was illiterate. Further in para-13 he admits that inspite of assurance he could not provide T.V. and Bike and he has no written proof about such demand. He further denied suggestion that she died of Jaundice inspite of treatment by Dr. Jaiswal, D.W.1.

8. P.W.4 Ram Bachan Singh, maternal grand father of the deceased and mediator in the marriage of deceased says that on 10 th March, 1991 there was marriage of his son and few days before his daughter P.W. 2 had arrived and on 11th Barat returned, on the following day Chouthari came and at the request of P.W.2 he went to Sasural of the deceased with some sweets where he could know about her death and last stage of funeral. Sweets were also taken by the villagers there and he came back to his village and intimated the family members. In cross-examination he says about distance between two villages (village of witness and the appellants) about two kilometers. Further marriage was performed peacefully and in cross-examination in para-7 he says P.W.2 was sent to her home on 14th March, 1991 and in para-9 he says about meeting with villagers who were 10 to 15 in numbers and the dead body was under flames at a distance of 10 to 15 laggis and there he was told that she had got herself burned. He further denied his participation in the funeral but admits he stayed there for 15 minutes and come back. Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-201

9. P.W. 6 Anandi Singh, Informant, states the prosecution version added with letter Ext. 1/1 and further admits he had gone to meet the deceased either on 10th or 11th March, 1991 (in Ext.2, 10th March) and any how he could meet her for a minute and communicated about her apprehension to be killed for Bike and T.V (T.V. not in Ext.

2) and further on 16th March he could know about her killing through Ajoy Kumar Singh (not examined) and Krishna Singh, P.W.5 and in para-5 he further explained

that initially he handed over written application to the Officer Incharge who after taking the same throne it, consequently typed application was produced before S.P. and proved Exts. 2, 3 and 3/1. In cross- examination he says, his village is at a distance of 21 kilometers from village of the appellants and there was demand of Scooter which could not be provided. He denied making any statement regarding T.V. and Scooter in Ext.2 and further in para-17 he says Nanihal of the deceased is at a distance of one and half kilometers from her Sasural and in para-18 he says that he along with P.W.2 had gone to Chapra from there he went to call the deceased only on information of her illness but she was not ill though was weak due to torture. He further denies that the deceased was illiterate and Ext. 1 and 1/1 are forged and fabricated.

10. Last witness P.W. 9 Shayam Deo Singh O/C and I.O. of the case states about receiving of typed application Ext.2 whereon formal F.I.R. Ext. 5 was drawn denied receiving and torning any hand written application as stated by P.W. 6 and he investigated the case and proved Exts. 6 and 6/A and submitted charge sheet. He never met during investigation with Dr. Ramesh Chandra Jaiswal, D.W.1 inspite of getting information about her illness and treatment by the said doctor through appellant Ashok Singh.

11. As is evident from the prosecution witnesses, deceased died within a year of her marriage and she was subjected to some torture due to non Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 6 supply of Bike and T.V. inspite of promise to do so by her parents, but at the same time there is no explanation from theses witnesses as to what prevented them inspite of knowing about her death either on 13 th or 14th March, 1991 to come in action and lodge a case. It is not a case that they had to wait for father of the deceased to lodge a case rather it is the uncle P.W. 6 who is the Informant. Further the Informant admits about information of her illness leading towards an attempt to meet her. He did so and found her weaken though asserts that she was not ill. Exts. 1 and 1/A the two inland letters said to be written by the deceased though inspite of challenge of being in her handwriting, since she was allegedly illiterate no attempt was made to produce any document or other material to show she was educated or literate, but even the contents therein indicates she was ill of course in earliest letter Ext. 1/A dated

24.2.1991 there is allegation of not providing any treatment, but in the subsequent letter Ext. 1 dated 6.3.1991 that allegation too is missing. Thus, one may arrive at the conclusion that the deceased was suffering from some ailment and due information was given by her in-laws to the parents and now coming to D.W. 1 Dr. Ramesh Chandra Jaiswal under whose treatment she was since 18th February, 1991 and also examined on 20th February and 8th March. Her pathological examinations etc. were done on first meeting with the doctor on 18th February, 1991 and documents Ext. A series are in support thereof indicating she was suffering from Jaundice.

12. D.W. 2 Bihari Singh, cousin of P.WS. 3 and 4 has also stated about her illness and treatment etc. and thereafter information received about her death.

13. The Additional P.P. at this juncture submitted that even if the prosecution has not been able to attract the provision as contemplated under section 304 B I.P.C. read with section 113 B of the Indian Evidence Act both Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 7 reads as such:- 304-B. Dowry death-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven 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 relative shall be deemed to have caused her death. Explanation- For the purposes of this sub-section, dowry shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961). (2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life. 113-B. Presumption as to dowry death. -When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death. Explanation- For the purposes of this section, dowry death, shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860). But there is consistent evidence about ill treatment due to demand of

dowry, so at least an offence under section 498 A I.P.C. is attracted, but at the same time learned counsel failed to explain any circumstances under which parents of the deceased inspite of their own admission regarding assurance to gift Bike and T.V. failed to do so. Moreover, there is nothing specific against these two appellants regarding such demand rather according to P.W. 3 in presence of others it was husband of the deceased who demanded Bike etc. and now undisputedly inspite of his conviction during pendency of the appeal husband of the deceased has also left the world.

14. Learned counsel for the appellants further pointed out that lady appellant no.2 was aged 60 years in the year 2001, consequently she has Patna High Court CR. APP (SJ) No.267 of 2001 dt.02-09-2013 8 completed 72 year of age, but appellant no.1 was aged 19 years in the eye of the court below recording his statement under section 313 Cr.P.C. on `12 th January, 2001. In that view of the matter, in the year 1991 he must have been aged nine years. Surprisingly enough statement of all the four accused persons including appellants were recorded again on 16th August, 2001 and in the eyes of the court below appellant no.1 was aged 27 years. Even then in March, 1991 he must be about 17 years, but the court below ignoring appellant no.1 being juvenile at the relevant time, not only tried jointly but also hold him guilty and sentenced. It is also submitted that neither there is any evidence nor normally in the family there is any evidence of junior member aged 19 or 17 years in such type of matters, but everything appears ignored.

15. Having regard to the facts and circumstances, the prosecution appears unable to prove charges against the appellants beyond shadow of reasonable doubts for which these two appellants are entitled for benefit accrued. Consequently, their conviction and sentence is set aside, appeal is allowed and they are set free from the liabilities of bail bonds furnished on their behalf. (Akhilesh Chandra, J) Abhay/-

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