

Pawan Paswan Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Jul-21-2017

Appellant : Pawan Paswan

Respondent : State of Jharkhand

Judgement :

-1- Criminal (Jail) Appeal (DB) No. 144 of 2010 Against the Judgment of conviction and order of sentence dated 22.03.2005 & 23.03.2005 respectively, passed by Sri Anant Kumar Singh, Additional Sessions Judge, Sahebganj in Sessions Case No. 101 of 2004. Pawan Paswan Appellant Versus The State of Jharkhand Respondent For the Appellant : Mr. P.K.Deomani, Amicus Curiae For the State : A.P.P. P R E S E N T The Honble Mr. Justice H.C.Mishra The Honble Mr. Justice Ananda Sen J U D G M E N T C.A.V. On 11/07/2017 Delivered on. 21 /07/2017 Ananda Sen, J.

After being convicted for committing an offence under Sections 304-B/34 and 316/34 of the Indian Penal Code, the appellant has preferred this appeal through the jail authority.

2. The Additional Sessions Judge-I, Sahebganj vide judgment dated 22.03.2005 in Sessions Case No. 101 of 2004, convicted this appellant for committing offence under Sections 304-B/34 and 316/34 of the Indian Penal Code and vide order dated 23.03.2005, sentenced him to undergo imprisonment for life for committing the offence under Section 304-B/34 of the Indian Penal Code and imprisonment

for seven years with fine of Rs. 5000/- for committing offence under Section 316/34 of the Indian Penal Code. It was further ordered that in default of payment of fine, the appellant will further undergo imprisonment for two years. However, both the sentences were directed to run concurrently.

3. The case of the prosecution, as per the fardbeyan of the informant Prabhu Paswan (PW2), is that the deceased Reeta Devi, the daughter of the informant, was married with Pawan Paswan, the appellant herein, about four years back. After some time of marriage, his daughter was tortured and assaulted by her inlaws including the appellant (husband) -2- for the demand of dowry. The deceased Reeta Devi often complaint against the said behaviour of his inlaws to her parents. It is alleged that in the night of 30.09.2003, the elder brother of this appellant namely Subodh Paswan came to the house of the informant and after waking him up, informed him that Reeta Devi has died. He informed that on the said date at about 01.00 a.m. in the night, he heard cry of Reeta Devi as a result of which he woke up and knocked the door of the room of Reeta Devi where the deceased was sleeping with Pawan Paswan, the accused. After some time the door was opened and he could see his mother and father (inlaws of Reeta Devi) in the room alongwith his brother, the husband of Reeta Devi. Reeta Devi was lying dead. The informant thereafter, went to the place of occurrence where the younger daughter of the informant Preeti Kumari, who was residing with her elder sister, narrated that at night this appellant pressed the neck and committed murder of Reeta Devi and the inlaws were catching hold of her feet and hands and assisted this appellant in committing murder.

4. On the basis of the said fardbeyan, Borio (M) P.S. Case No. 102 of 2003, was registered, against the appellant & others for the offence punishable under Sections 304 B and 120B of the Indian Penal Code and Sections 3 / 4 of the Dowry Prohibition Act.

5. The police investigated the case and submitted charge sheet under Section 304-B and 120-B of the Indian Penal Code and also under Section 316 of the Indian Penal Code as the deceased was pregnant. The charge sheet was also submitted under Sections 3 /4 of the Dowry Prohibition Act. Since the case was

exclusively triable by the Court of Session, the same was committed to the Court of Session. The charges against the accused were framed on 11.08.2004 for offence under Sections 304B/34, 316/34 of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act. The appellant claimed to be tried as he pleaded not guilty -3- of the charges.

6. The prosecution, in order to prove its case, examined altogether ten witnesses and also exhibited several documents. PW-1 is Preeti Kumari. PW-2 is Prabhu Paswan (the informant). PW-3 is Bhola Paswan. PW-4 is Moti Paswan. PW-5 is Dr. Lalit Mohan Prasad. PW-6 is Shamshad Ali (the Investigating Officer). PW-7 is Bauna Paswan. PW-8 is Ambika Paswan. PW-9 is Subodh Paswan and PW-10 is Ramchandra Kora.

7. The prosecution has also exhibited several documents in this case. Ext.1- Signature of the informant Prabhu Paswan on the fardbeyan. Ext.1/1-Signature of Santosh Kumar Sinha on the fardbeyan. Ext.1/2 - letter dated 05.06.2003. Ext. 1/3- letter dated 31.05.2003. Ext.2- is Post Mortem report. Ext.3- is the fardbeyan. Ext. 3/1- forwarding of fardbeyan by Umesh Ram to institute a case. Ext. 3/2- Endorse on fardbeyan by O/C Borio Police Station. Ext. 4- is the formal F.I.R. of this case.

8. After closure of evidence of the prosecution, statement of the accused was recorded under Section 313 of the Code of Criminal Procedure. No witnesses were produced on behalf of the defence.

9. The trial Court after analyzing the evidence adduced on behalf of the prosecution and after going through the records, vide its judgment dated 22.03.2005 and order of sentence dated 23.03.2005, convicted this appellant/accused for the offence punishable under Sections 304-B/34 and 316/34 of the Indian Penal Code, and sentenced him to undergo imprisonment for life for the offence under Section 304-B/34 of the Indian Penal Code, and to undergo R.I. for seven years alongwith fine of Rs. 5000/- for the offence under Section 316/34 of the Indian Penal Code.

10. Aggrieved by the said judgment of conviction and order of sentence, the appellant, who is in custody, has preferred the instant appeal through the jail authority.

11. Mr. P.K.Deomani, learned counsel, was appointed as amicus -4- curiae to assist this Court on behalf of the appellant.

12. Heard learned amicus curiae appearing for the appellant and learned Addl. Public Prosecutor appearing for the State and have perused the lower court records and have gone through the evidences, both oral and documentary.

13. Learned amicus curiae appearing for the appellant submits that the entire case hinges upon the evidence of PWs-1 & 9. He submits that if the statement of these two witnesses are scrutinized carefully, it will lead to the only conclusion that they are not the eyewitnesses and, hence, the entire case against this appellant fails. It is further submitted that as per the evidence, Preeti Kumari use to reside with her deceased sister in her in-laws house, which is not believable and her evidence also suggests that she has not seen the occurrence. He further submits that PW-9 Subodh Paswan, who happens to be the brother of the appellant, has not stated that he has seen the commission of murder. In fact, his statement suggests that he has not even seen the deceased lying on the bed. He further submits that none of the witnesses have supported the story of demand of dowry. He submitted that convicting this appellant under Section 304-B of the Indian Penal Code, is absolutely bad. He lastly, submits that this appellant is liable to be exonerated from the charges levelled against him.

14. On the other hand, learned APP submits that from perusal of the evidences of the entire prosecution witnesses, the only conclusion that can be arrived at is the guilt of this appellant. He submits that PW-1 is the eyewitness and her presence at the place of occurrence, is corroborated by the evidence of the other witnesses. It is further argued that this witness have seen the murder from her own eyes and there is nothing to disbelieve her statement. He further submits that the evidence of PW-9 has been corroborated by the evidence of the informant (PW-2). It is also submitted -5- that the medical evidence is supporting the entire prosecution story and thus, the conviction of this appellant is absolutely justified and his appeal is

liable to be dismissed.

15. As mentioned earlier there are ten prosecution witnesses in this Case. PW-1 Preeti Kumari, happens to be the younger sister of the deceased and the daughter of the informant (PW-2) and is an eyewitness to the occurrence. In her evidence, she has stated that she was residing with her deceased sister at her in-laws place. She stated that all the in-laws including the appellant were demanding colour television and money as dowry. She has also stated that for non-payment of the demand, her sister was often tortured by this appellant and his father and mother. She further stated that on the fateful night she was sleeping on the floor and her sister was sleeping on the cot. At night she heard noises when she woke up and saw that this appellant was throttling the neck of her sister and the father-in-law and the mother-in-law of her sister had caught hold of her hands and feet respectively. She has stated that because of the pressure given by this appellant on the neck of her sister, the deceased died. She has stated that this appellant threatened this witness not to divulge any fact. She further stated that her father reached in the night itself and she divulged the entire story to her father. She stated that two days prior to the date of occurrence, she went to her sister's house. She stated that she woke up and saw the in-laws of her sister in the room alongwith the appellant.

16. PW-2 is the informant Prabhu Paswan, who stated that his daughter Reeta Devi was married four years back with this appellant. There was persisting demand of Rs. 25,000/- and a colour television as dowry and her daughter used to tell him that her in-laws including her husband used to harass and torture her for non-fulfillment of the demand of dowry. He stated that as the deceased was pregnant, his younger -6- daughter Preeti Kumari (PW-1) went to the house of the deceased to take care of her. He stated that on 30.09.2003 at about 01.00 a.m. at night, the brother of this appellant came and informed this witness that he heard some sound of scream from the room of the deceased. On hearing such scream, he went and found the deceased lying dead and the husband of the deceased including the in-laws were standing there. On receipt of such information, the informant went to the place of occurrence and found the dead body of his daughter and his younger daughter Preeti narrated the entire story that this appellant has

throttle the deceased to death and his mother and father assisted him. He stated that he has recorded her statement before the police, which is the fardbeyan and he exhibited his signature as Ext.-1. The signature of one Santhosh Kumar Sinha on the bardbeyan was also exhibited by him. In cross-examination, he stated that after marriage, he brought her daughter to his house where she stayed for two months and during that period of two months, demand of money and a colour television was raised by the husband of the deceased, mother-in-law and father-in-law of the deceased. He also stated that there was constant torture and assault on the deceased for non-fulfillment of the demand. He also stated that his younger daughter Preeti was staying with his elder daughter. To a court question, he replied that just two days prior to the occurrence Preeti Kumari went to the house of his elder daughter.

17. PW-3 Bhola Paswan, is the uncle of the deceased. He stated that the deceased also told him that this appellant and her in-laws were demanding money and a colour television for which she was being tortured. He further stated that 2-3 days before the date of occurrence the deceased Reeta Devi came to her paternal house where she told this witness that Pawan Paswan (the husband), Dulo Devi (mother-in-law) and Rajendra Hazra (father-in-law) was demanding money and a colour -7- television and is also assaulting her and misbehaving with her. He stated that he also went to the house of Reeta after hearing the news of death and saw the body of the deceased on the cot and also saw Preeti at the place of occurrence as Preeti had went there earlier to look after the deceased as the deceased was pregnant. He also stated that Preeti told them that this appellant has throttled the deceased to death and his father and mother caught hold of the leg and hand of the deceased while this appellant was committing murder. In cross-examination, he confirmed that the deceased has informed him about the torture and assault for non-fulfillment of the demand of dowry. He also stated in his cross-examination that Subodh Paswan (brother of the appellant) had told him that on hearing scream from the room of Reeta, he went there and saw Reeta Devi lying dead.

18. PW-4 is Moti Paswan, has stated that the informant told him about the death of Reeta Devi. He accompanied PW-2 to the house of the deceased where he met

Preeti Kumari, who narrated the entire story to them. He further stated that PW-2 told him that his daughter was being tortured and assault for non-fulfillment of the demand of colour television and money. He confirmed that the marriage of deceased had taken place four years back.

19. PW-5 is Dr. Lalit Mohan Prasad, who conducted the post mortem examination on the dead body of the deceased. He found the following injuries:- (1) Bruise 1/2 x 1/2 on the right side of the neck. (2) Bruise 3/4 1/2 on the left side of the neck. (3) Abrasion on back of left knee 1 x 3/4. On dissection- All the abdominal and thoracic viscera found congested. Right chambers of heart dilated with dark liquid blood, left -8- chambers are empty. Stomach contains about 8 ounce of semi-digested food material. Bladder was empty. Brain is congested. Uterus was gravid of about 5 months size. Substance used was hard and blunt. He opined that the death was caused due asphyxia as a result of throttling, which is sufficient to cause death in an ordinary course of nature. He further stated that due to the death of Reeta Devi, the foetus of the womb also died. He further opined that injury no. (3) may be caused due to strangulation.

20. PW-6 Samshad Ali is the Investigating Officer of the case, who, after receiving information, went to the place of occurrence and met the informant. He recorded the fardbeyan of the informant. The fardbeyan was marked as Ext.-3. The forwarding report has been exhibited by him, which was marked as Ext.-3/1. The formal F.I.R was proved and marked as Ext-4 by him. He prepared the inquest report and had sent the dead body for post mortem examination. He recorded the statement of the witnesses under Section 161 Cr.P.C. After completion of investigation, he submitted charge sheet against the accused persons. He gave detail description about the place of occurrence. In cross-examination, he stated that he has not received the sanction order under Section 3/ 4 of the Dowry Prohibition Act. He stated that the body of the deceased was found on the cot in the room. He confirmed the statement given by the informant to him.

21. PW-7 is one Bauna Paswan, who is the neighbour of this appellant. He stated that he woke up after hearing the scream and the scream was coming from the house of the Pawan Paswan (the appellant). He stated that he went there and saw

the wife of Pawan was lying on the cot and Pawan Paswan and his other relatives were crying. After seeing this, he returned to his house and in the morning he came to know that -9- the wife of Pawan Paswan has died. He stated that before the date of occurrence on some occasions altercation used to take place between this appellant and the deceased. In cross-examination, he stated that he has not given any statement before the police. This witness was declared hostile.

22. PW-8 is Ambika Paswan, who is also a neighbour of this appellant. He stated that on hearing scream of the deceased in the night of the occurrence, he went to the house of the deceased and saw that the deceased was lying dead on the cot. He stated that he asked Pawan Paswan (appellant) about the reason of death, to which he replied that after taking medicine, she died. He stated that there was no dispute amongst the in-laws and the deceased. This witness has also been declared hostile.

23. PW-9 is Subodh Paswan, who is the brother of the appellant and the person, who had given information about the death of the deceased to the informant. He admitted the factum of marriage between the appellant and the deceased and also admitted the fact that the deceased died. He also admitted that he went and informed the informant at night about the death of the deceased. He stated that on hearing scream, he went to the room and from the window he saw that the deceased was lying dead on the cot. He stated that he did not enter into the room. He stated that before death there was no altercation between the deceased and the in-laws. He also stated that Preeti Kumari (PW-1) often use to reside in the house of the deceased. He was also declared hostile. He denied the suggestion that the demand was being made and for non-fulfillment of the demand, the deceased was tortured.

24. PW-10 is Ramchandra Kora. He stated that on hearing scream at the night of the occurrence, he went to the house of the appellant and on query, he was informed by this appellant that the deceased has died. Save -10- and except this, this witness has stated nothing.

25. From the evidence, adduced on behalf of the prosecution, it is established that PW-1, the younger sister of the deceased was staying at the house of the

deceased at the time of occurrence. This fact was narrated not only by PW-1 but also by PW-2, the father of the deceased and her uncle (PW-3). PW-9, the brother of this appellant, also stated that PW-1, the sister of the deceased, on time and again used to reside in the house of the deceased. The informant-PW-2 has stated that PW-1 used to reside in the house of the deceased as the deceased was pregnant as she needed care. The fact that the deceased was pregnant, also find support from the post mortem report. Thus, the presence of PW-1 at the place of occurrence is confirmed. This PW-1 has given vivid pictures as to how the deceased was murdered. She stated that she saw the appellant strangulating the deceased. This fact was narrated by this PW-1 to PWs- 2 and 3. PWs- 2 and 3 also corroborated the aforesaid fact. The medical evidence also corroborates the fact that the deceased died due to throttling. The witnesses, i.e. PWs- 7 and 8, who are the resident and neighbours of this appellant, though declared hostile but have stated that on hearing scream, they went to the house of this appellant and were informed that the deceased has died. Thus, this fact is established that the deceased died in her in-laws house. The evidence on the demand of money and colour television is consistent. PWs-1, 2 and 3 also support the said fact. PW-7, who is the neighbour of the appellant though declared hostile, but has admitted that some time there was some altercation between the husband and the wife. The brother of this appellant- PW-9, though has been turned hostile, but in his examination-in-chief, has admitted the fact that he went at the dead of the night to inform about the death of Reeta Devi to the informant, i.e. PW-2. The doctor also found sign of throttling and has opined that the death was caused due to throttling. He also opined that -11- the foetus in the womb also died due to the death of Reeta Devi.

26. Thus, after analyzing the evidence as above, there is nothing to disbelieve the statement of PW-1. The presence of PW-1 at the place of occurrence cannot be doubted. PWs-2 & 3 and even PW-9 suggest presence of this PW-1 at the place of occurrence. Thus, the prosecution has clearly established beyond all reasonable doubt about the murder of Reeta Devi by this appellant, which was committed by strangulation. It has also been proved that the foetus of the womb also died because of the death of Reeta Devi. From perusal of the entire evidence, I find that the the evidence of PWs- 1 & 2 are consistent and the defence could not

demolish them in cross-examination.

27. Thus, from the evidence adduced by the prosecution, it is proved beyond doubt that this appellant is guilty of committing offence under Sections 304-B/34 and 316/34 of the Indian Penal Code. The trial court thus, has rightly convicted the appellant for the offence under Sections 304-B/34 and 316/34 of the Indian Penal Code and sentenced him to undergo imprisonment for life for the offence under Section 304-B/34 of the Indian Penal Code, and R.I. for seven years alongwith fine of Rs. 5000/- for committing the offence under Section 316/34 of the Indian Penal Code. There is no illegality in the impugned judgment, which needs to be upheld and hence, is upheld. The appellant, who is in jail, will serve out the rest of the sentence.

28. In the result, this appeal is dismissed.

29. Before parting with the Judgment, it is to be noted that Mr. P.K.Deomani, learned amicus curiae has ably assisted this Court. The Secretary, High Court Legal Services Committee, is hereby directed to make the payment of the prescribed remuneration to the learned amicus curiae for his able assistance. Let a copy of this Judgment be sent to the Secretary, High Court Legal Services Committee, for the needful. -12- 30. Let the Lower Court Records be forthwith sent back to the Court concerned, along with the copy of this Judgment. (Ananda Sen, J) H.C.Mishra, J (H.C.Mishra, J) Jharkhand High Court, Ranchi The 21 July, 2017 NAFR/Mukund/cp.3

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