

indradeo Sao and Others Vs. the State of Bihar

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Court : Patna

Decided On : Feb-28-2014

Judge : Akhilesh Chandra

Appeal No. : Criminal Appeal (SJ) No. 419 & 437 of 1998

Appellant : indradeo Sao and Others

Respondent : The State of Bihar

Judgement :

1. Since both these appeals arise out of one case, they are being taken up together and are disposed of by this composite judgment.
2. Perused the report received from the Superintendent of Police, Nalanda, confirming death of appellant no. 2, namely, Rajeshwari Devi (Cr. Appeal (SJ) No. 419 of 1998). Hence, the appeal with respect to her stands abated.
3. Heard learned counsels appearing on behalf of the parties.
4. The remaining two appellants in former appeal (Cr. Appeal (SJ) No. 419 of 1998) are non-else than the father-in-law and brother-in-law of the deceased, whereas, the solitary appellant in latter appeal (Cr. Appeal (SJ) No. 437 of 1998) is her husband and all have preferred these appeals against their conviction for the offences punishable under Sections 304(B), 498A and 201 of the Indian Penal Code and respectively sentence to undergo rigorous imprisonment for 10, 3 and 2

years as awarded vide judgment of conviction and order of sentence, respectively, dated 28th and 30th November, 1998 by 1st Additional Sessions Judge, Nalanda at Bihar Sharif in Sessions Trial Nos. 192 of 1994 / 134 of 1996 arising out of Hilsa P.S. Case No. 63 of 1994. However, all the sentences are to run concurrently.

5. The prosecution has come out with a case instituted on the statement of P.W.2, namely, Saudagar Sah, recorded by P.W.7, namely, Surendra Prasad Singh (Officer-In-Charge of Hilsa Police Station) at 8.30 p.m. on 04th March, 1994, is that his daughter was married with appellant, namely, Raj Kumar Sao, in latter appeal (Cr. Appeal (SJ) No. 437 of 1998) five years ago and at the time of Vidayee there was a demand of Rs. 10,000/-, anyhow, after some hesitations Vidayee could be performed after a month and, on returned, she explained about some sort of torture faced by her for such demand and further roughly after 2 years her Duragaman (second marriage) was performed and at that time, as per capacity, some gift etc. were provided, but initial demand continued and the in-laws also never permitted her to meet with her parents side, whenever they visited there. In the evening the informant could anyhow learnt about her death and disappearance of dead-body and when he arrived in the village in order to make query about the same, her in-laws had left the house, thus with suspicion raised against them, case was instituted, investigated and finally charge-sheet was submitted. Two days after institution of the case the dead-body was recovered from a ditch (Payeen).

6. To substantiate the charges the prosecution has examined altogether 7 witnesses besides producing following documentary evidence :-

(1) Ext.1 :- Postmortem report.

(2) Ext.2 :- A letter written by Sushila Devi.

(3) Ext.3 :- Signature of Sushila Devi on the letter.

(4) Ext.3/1 :- Signature of Saudagar Sah on the Fardbeyan.

(5) Ext.3/2 :- Signature of Saudagar Sah on the protest complaint.

(6) Ext.4 :- Formal F.I.R.

(7) Ext.5 :- Inquest Report.

On the other hand, the defence though placed no documentary evidence but examined two witnesses to suggest that the deceased died due to Cholera and her body was cremated on the same day at Fathua after due intimation to the informant, who also participated in such cremation but when he could not succeed to get the ornaments etc. back, a few days thereafter got the case instituted. The learned trial court on going through the materials available on the record finding the appellants guilty for the offences and convicted and sentenced them in the manner aforestated.

7. Out of total 7 prosecution witnesses examined, P.W.1, namely, Mathura Prasad, is the doctor, who conducted autopsy on the dead-body of the deceased, identified by the Chowkidars besides father of the deceased P.W.2, wherein, he found the death taking place 2 - 3 days before and also the Trachea was fractured anti-mortem and there was some poisonous substance in the stomach also. The viscera was kept for examination but the report is not available with the record. He proved postmortem report (Ext.1). It is stated and reveals from there that prior to death, somehow or the other, some poisonous substance was administered, neck was pressed and since muddy water in very small quantity was also found inside the Trachea, also indicating that perhaps body was put under such place while the lady was about to die.

8. P.W.2, namely, Saudagar Sao, is the informant and has stated the prosecution case and about recovery of dead-body in his presence on search and also states that his grand son, namely, Manoj (not examined) had gone to meet the deceased and, on return, produced a letter in her writing and signature which are respectively marked as Exts. 2 and 3. He has also proved his own signature Ext.3/1 on the Fardbeyan and Ext.3/2 in the protest complaint. This witness in cross-examination admits that Nand Kumar Sao (appellant no. 3 in Cr. Appeal (SJ) No. 419 of 1998) had called him on giving false information that the deceased was suffering from Cholera and saline was being administered but when he came found nothing. He has denied suggestion of defence that false case has been

instituted just to snatch some money and on the same day one line suggestion was also given but the dead-body recovered was not of his daughter. But, at the same time, there appears nothing to test or challenge whether the letter (Ext.2) is written by the deceased nor it contains her signature besides no dead-body was recovered at the time and place stated by the prosecution.

9. P.W.3, namely, Mahendra Sao, is a relative of the informant has stated the prosecution case with further addition that at 2 - 3 occasions he could be able to meet the deceased at her Sasural and received some complains from her about demand of Rs. 10,000/- and torture etc. for the same. In cross-examination, it is taken from this witness that on 04th March, 1994 he visited the place of occurrence at the village and could be able to learn that the body has been kept confined in a ditch.

10. P.W.4, namely, Ram Udit Prasad, is the son of the informant and elder brother of the deceased stated the prosecution version and is the person presents alongwith his father when the dead-body of the deceased could be recovered from ditch. As is further evident at this stage during examination-in-chief itself there was some dispute between the Lawyers representing the two sides resulting adjournment and ultimately the matter appears again being taken up only when another Presiding Officer joined the court and he took almost 10 months to conclude. Further, examination-in-chief and discharge of the witness on cross-examination, wherein, unsuccessful attempts were made to get the period of marriage of deceased back to 2 - 3 years, bringing out of rigors under Section 304 (B) of the Indian Penal Code. No doubt, this witness contrary to the informant has said that his sister, i.e., the deceased, visited parents place 2 - 3 times after Duragaman (second marriage). But he is also consistent about the demands, torture and complains raised by her.

11. P.W.5, namely, Rajkumari Devi, is the mother of the deceased and widow of the informant (who died during trial) has stated the prosecution version including the assertion that after Duragaman (second marriage) the deceased was not permitted to come back, but what was not stated by her in examination-in-chief. In cross-examination, it has been taken that she was a literate lady and capable to

write letters. In paragraph no. 8 it has also been taken that she had sent a letter through her nephew Manoj (not examined), which is a letter non-else than Ext.2, whereon, Ext.3 is her signature. It has also come in her cross-examination that after second marriage once she could be able to visit her parents place.

12. P.W.6, namely, K.K. Pandey, is the investigating officer and has proved Ext.4 onwards, but he is not the person involved in the recovery of the dead-body and preparation of inquest report, which appears done by P.W.7, namely, Surendra Prasad Singh, Officer-In-Charge of Hilsa Police Station, who prepared inquest report and at the relevant time two persons namely, Indradeo Sharma and Bachhu Singh (not examined) identified the dead-body and put their signatures on the inquest report.

13. Out of two defence witnesses, D.W.1, namely, Baliram Prasad, without giving specific date states that on 05th or 06th Day of first part of forming 1994, the deceased died due to Diarrhoea and while she was being taken for treatment in the way she died. Immediately, appellant, namely, Nand Kumar Sao, was instructed by his father (appellant) to inform the informant, who participated in cremation held at Fathua and has further said the husband of the deceased was at the relevant time not leaving at the village, but at Bokaro and about institution of the case only in retaliation of non-fulfillment of demand and return of ornaments etc. In cross-examination he said that just a day before death of the deceased, she started suffering from loose motion and was treated by the village doctor, namely, Fakira Mahto (not examined), who is non-else than uncle of this witness and both were available at the time of visit of police during investigation, but for no reason explained, they said nothing to the police. But he alone has come to say for the first time in court as defence witness.

14. Almost similar is the position of D.W.2, namely, Shiv Kumar, with only variation that the deceased after suffering from Cholera from 2 - 3 days died and she was treated by the doctor of another village, who had been coming from village Bara and this witness has been asked apart from others by Fakira Mahto (according to D.W.1 the person treated the deceased) to come and depose. There is no explanation, if said Fakira Mahto, who treated the deceased as per D.W.1 has

come to say anything.

15. The facts and circumstances emerging from the materials stated above attracts commission of offence of Dowry death punishable under Section 304B of the Indian Penal Code as well as the presumption of dowry death as defined under Section 113-B of the Indian Evidence Act, which reads as such :-

[304B. 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.

(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.]

16. In view of the above, there appears nothing to interfere with the judgment of conviction and order of sentence, as recorded by the trial court. Accordingly, finding no merit, both these appeals are hereby dismissed.

17. The appellants (in both the appeals) are required to serve the remaining period of sentence and the appellants were on bail, hence, their bail bonds are cancelled.

18. The learned trial court will take due steps for taking the appellants into custody.