

Bihari Sonar and Others Vs. the State of Bihar

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Court : Patna

Decided On : Feb-13-2014

Judge : Akhilesh Chandra

Appeal No. : Criminal Appeal (SJ) No. 62 of 1998

Appellant : Bihari Sonar and Others

Respondent : The State of Bihar

Judgement :

Oral Judgment:

1. The three appellants have preferred this Appeal against their conviction for the offence under Section 304(B)/34 of the Indian Penal Code and sentence to undergo rigorous imprisonment for 10 years and appellant, Bihari Sonar, has further been convicted for the offence under Section 4 of the Dowry Prohibition Act and sentence to undergo rigorous imprisonment for six months and to pay a fine of Rs.5,000/-, in default, further rigorous imprisonment for 2 months as awarded on 10th February 1998 by the learned 3rd Additional Sessions Judge, Bhabua in Sessions Trial No.701/68 of 1992/ 1997 arising out of Chainpur P.S. Case No. 134/92.

2. The prosecution case in short as reveals from Ext.3, the Fardbeyan of PW-3, Antu Paswan the village Chaukidar recorded on 22nd June 1992 at 10:00 hours by Sub-Inspector, Chaudhary Prakash Narain, PW-8 at the place of occurrence is

that when the informant arrived at the village at about 08:00 A.M. learnt that wife of appellant, Babu Lal Sonar, burnt dead in the previous night and when he went there found her dead in a room giving look of killing by family members who had left the place and earlier also she was not only tortured by them but also thrown out of the house complaining of bringing lesser dowry and father of the deceased, PW-6 resident of Banaras during his frequent visits assure to fulfill their demand but nothing could be done. Even in the previous night at about 11:00 P.M. the co-villager could hear some cries and marriage of the deceased was performed just within three years.

3. During trial the prosecution has produced the following documentary evidence besides, examining 8 witnesses, which is as under:

œ1. Signature of the Fardbeyan.

2. Post-mortem report.

3. Fardbeyan

4. F.I.R.

5. Inquest report.

6. Sanctioned letter.?

From the defense neither any documentary nor any oral evidence is placed and on consideration of the materials the trial Court convicted and sentenced in the manner aforesaid.

4. Out of eight prosecution witnesses, PW-1, Ram Bachan Singh, a school teacher has come to state that while he was sleeping at his roof could see flames in the house of the appellants and coming bad smell. He along with others arrived there and after knocking for substantial time the door was opened by the appellant no.3 and where they found the deceased dead. There were other members also besides the appellants but none could disclose the reason behind such incident and further said that there was differences for some sort of dowry for which panchayati etc. was also held recently. In cross-examination, this witness

explained the reasons for non-intimating the police in the night and non-participating in panchayati etc. Even about throwing out the deceased from the house he claims to be hearsay witness. Subsequently, this witness was re-examined on call and at this stage stated a bit different story.

5. PW-2, Jumrati Sah, in cross-examination said that he arrived there along with others including PW-1 on alarm and see flames etc. and further said about demand of scooter and assurance given by PW-6 i.e. father of the deceased but none of these two witnesses have ever said about finding of the dead body in the room and bringing her out from there and keeping in the courtyard which PW-3, the informant, Antu Paswan, who since did not support the prosecution case on all points and, said nothing about the panchayati etc., demand of dowry and throwing the deceased out of the house, was declared hostile. Again he was re-examined but at both the occasions declared hostile. There appears absolutely nothing to take from his evidence except that the deceased died under unnatural circumstances due to burn.

6. PW-4, Ram Briksh Ram, initially tendered for cross-examination during which stated about his arrival along with PWs-1, 2,3 and others had denied about any panchayati etc. Again, he was re-examined twice and on both the occasions declared hostile.

7. PW-5, Kallu Mian is a formal witness on the inquest report. PW-7 is the doctor who hold the post-mortem and approved the post-mortem report as Ext.2 had found following anti-mortem injuries on the dead body of the deceased:-

œThe death was due to cardiac respiratory failure due to severe dehydration and shock by following burns. Time elapsed between death and post-mortem was appropriately within 18 hours.?

8. PW-8, Choudhary Prakash Narain, the Investigating Officer of the case said about bringing of dead body from kitchen to courtyard earlier and found dibri in the kitchen. And last but not least, PW-6, Phoolchand, father of the deceased has given a depth blow to the entire prosecution version. He has completely denied any sort of demand of dowry and torture to the deceased by her husband and in-

laws i.e. the appellants. Rather according to him he could know that she died during preparation of meal accidentally when fire broken.

9. It is undisputed that the deceased died within three to four years of her marriage under unnatural circumstances owing to burn injuries. But at the same time, in absence of any sort of demand of dowry and torture etc. only death taking place within 3 to 4 years no one can presume as of dowry death, attracting offence under Section 304(B) of the Indian Penal Code.

10. In that view of the matter, conviction and sentence of the appellants as awarded by the trial Court is not at all sustainable. Consequently, it is set aside and Appeal is hereby allowed. And the appellants are set free from the liabilities of the bail bonds furnished on their behalf.

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