

Sona Devi and ors. Vs. State of Bihar

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Court : Patna

Decided On : May-14-2004

Judge : Ram Nandan Prasad and Mridula Mishra, JJ.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201, 304B and 498A; [Dowry Prohibition Act, 1961](#) - Sections 3 and 4; [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Crl. Appeal(DB) Nos. 89 and 200 of 2001

Appellant : Sona Devi and ors.

Respondent : State of Bihar

Advocate for Def. : Lala Kailash Behari, A.P.P.

Advocate for Pet/Ap. : Kanhaiya Pd. Singh, Ganesh Pd. Singh, Ashutosh Kumar, Atul Behari and Chandra Mohan Jha, Adv.

Disposition : Appeal dismissed

Prior history : Mridula Mishra, J. 1. Appellants have preferred these appeals against the judgment and order of conviction dated 8.2.2003/13.2.2001 passed by the 3rd Additional Sessions Judge, Bhojpur at Arrah in Sessions Trial No. 258 of 1999. Appellants suffered conviction under Sections 304B/34, 498A and 201 of the Indian Penal Code as well as under Section 4 of the Dowry Prohibition Act and have been sentenced to undergo rigorous imprisonment for life under Sections 304-15/34 of the Indian Penal Code, RI

Judgement :

Mridula Mishra, J.

1. Appellants have preferred these appeals against the judgment and order of conviction dated 8.2.2003/13.2.2001 passed by the 3rd Additional Sessions Judge, Bhojpur at Arrah in Sessions Trial No. 258 of 1999. Appellants suffered conviction under Sections 304B/34, 498A and 201 of the Indian Penal Code as well as under Section 4 of the Dowry Prohibition Act and have been sentenced to undergo rigorous imprisonment for life under Sections 304-15/34 of the Indian Penal Code, RI for one year each under Sections 498A and 201 of the Indian Penal Code and RI for six months under Section 4 of the Dowry Prohibition Act with a rider that the sentence shall run concurrently.

2. Ramjee Prasad submitted his written report at Sahar Police Station on 16.5.1998 informing about the death of his daughter by her husband, mother-in-law, father-in-law and brother-in-law at her in-laws' house on account of non-fulfilment of their demand of dowry. The informant stated that his daughter Pushpa Devi was married with Brajesh Kumar on 29.4.1996 according to Hindu rites and rituals at his village Bhadwar. After marriage His daughter went to her susural on 30.4.1996. She came back to her father's house after two months. On 6.2,1998 Pushpa's second marriage (Dwiragaman) took place but on that occasion his son-in-law (Brajesh Kumar) did not come, Bindeshwari, the younger brother of Brajesh, came. On inquiry he disclosed that Brajesh will never come unless his demand for television and motor-cycle would be fulfilled. The informant showed his inability on the ground that he had to get married other daughters also and only thereafter he could meet the demand of Brajesh Kumar, In the written report it is also stated that prior to Dwiragaman on 12.12.1997 mother-in-law of Pushpa had sent a letter through some messenger in which it was written that Brajesh was annoyed for non-fulfilment of his demand of television and motor-cycle. After Dwiragaman the nephew of the informant, Ramesh Chandra Sinha went to meet Pushpa and while he was returning on 4.4.1998 Pushpa gave him three letters which were addressed to her father, brother and sister-in-law and her sister. In all three letters it was disclosed that she was being tortured by her husband, father-in-law, mother-

in-law and brother-in-law because television and motor-cycle had not been provided. It was also disclosed in these letters that she was being threatened by them that she will be killed. The informant thereafter personally went to Pushpa's sasural and requested her husband and in-laws to give him some time to fulfill their demand. The husband and in-laws of Pushpa said to him that he should arrange for television and motor-cycle immediately otherwise some mishap might take place. The informant thereafter came back to his village. On 14.5.1998 he received an Inland letter posted by Pushpa in which it was written that her husband and in-laws were torturing her for their demand of television and motor-cycle and they were threatening her that she would be burnt or poisoned. The informant became nervous and he along with his brother, Lal Mohan Singh and nephew, Anil Singh, went to village Sakhuana, sasural of Pushpa, and wanted to meet his daughter on which his son-in-law, brother of the son-in-law and mother and father of the son-in-law started abusing and threatening. They were asked to leave that place otherwise they would be sent to the same place where his daughter had been sent. The informant made inquiry from the villagers and came to know that his daughter was burnt and killed by her husband Brajesh Kumar, father-in-law Indra Kumar Singh, mother-in-law Sona Devi and brother-in-law Bindeshwari Prasad. They also got disappeared the body. The informant personally went in the room where his daughter used to stay and found that the room is totally burnt.

3. The informant along with his written report submitted letters written by Pushpa, before the officer-in-charge of Sahar Police Station and Sahar P.S. case No. 56 of 1998 was instituted for the alleged offence under Sections 304B, 201/34 and Section 498A of the Indian Penal Code and Sections 3/4 of the Dowry Prohibition Act, against all the appellants. After investigation the police submitted charge-sheet. The case was committed to the Court of Sessions and the Trial Court convicted the appellants and sentenced them as stated above.

4. Altogether eight witnesses were examined by the State to prove charges attributed against the appellants about the death of Pushpa due to harassment and torture on her for failure to fulfil the demand of television and motor-cycle by husband and in-laws. P.W. 1 and P.W. 4 are the cousins, P. W. 2 is the full brother

and P.W. 3 is the uncle of the deceased. P.W. 5 Ramjee Prasad is father of the deceased and the informant in this case. P.Ws. 6, 7 and 8 are police officials who have recorded Fardebyan and registered the formal FIR submitted charge-sheet and conducted investigation in the case.

5. Manifold contentions were raised at the Bar on behalf of the appellants to assail the propriety of finding recorded by the Court below. It is urged with stress that to bring the case within the ambit of Section 304B of the Indian Penal Code, the prosecution was not merely obliged to lead satisfactory evidence about unnatural death of the deceased in matrimonial home but it must be shown that the death of a woman had been caused by burn or bodily injury as death occurred otherwise, than under normal circumstances within seven years of her marriage and it is to be also shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand for dowry. It has been submitted that neither has been good evidence about the appellants asking for dowry from the parents of the deceased nor there has been good and satisfactory evidence about torture meted out to the deceased by the appellants and that too with particular reference of time and also that all this was made immediately before her death.

6. It is needless to say that to invoke penal provisions of Section 304B of the Indian Penal Code it is quite incumbent upon the prosecution to establish that there was proximity or nexus between torture inflicted on the deceased and her death for dowry related demand. In the backdrop of this legal provision I proceed to consider submissions canvassed on behalf of the appellants and the State. A brief analysis of testimony of the witnesses is needed to reach any conclusion. I may begin my exercise with the testimony of Ramjee Prasad (P.W. 5), father of the deceased Pushpa and the informant in this case.

7. P.W. 5 has stated that the deceased was his daughter and she was married on 29.4.1996 with Brajesh Kumar at village Bhadwar according to Hindu rites and rituals. On 30.4.1996 Pushpa went to her sasural and two months thereafter she was brought to her father's house. On 6.2.1998 Dviragaman of Pushpa took place but her husband Brajesh did not come on that occasion. Bindeshwari, younger

brother of her husband, had come and when the family members enquired about Brajesh Kumar, he informed them that he (Brajesh) would not come unless the television and motor-cycle were provided to him. P.W. 5 showed his inability on the ground that his brother Prasad replied that everything will be set at right. Further it has been disclosed by P.W. 5 that prior to Dwiragaman, on 12.12.1997 mother-in-law of Pushpa had sent a letter (Ext. 1) through a messenger wherein it was disclosed that Brajesh was not ready to go to his sasural unless television and motor-cycle were provided to him. P.W. 5 has further deposed that Ramesh Chandra, his nephew, had gone to sasural of Pushpa on 2.4.1998. On 4.4.1998 when he was returning Pushpa gave him three letters which were addressed to her father Ramjee Prasad, her brother and sister-in-law and her sister. In these letters it was disclosed that Pushpa was being subjected to cruelty, harassment and torture by her husband and in-laws for non-fulfilment of demand of television and motor-cycle, Ramesh Chandra (P.W. 1) also narrated this fact before P.W. 5 and other family members that Pushpa's in-laws and her husband used to torture her for demand of dowry. P.W. 5 soon thereafter went to village Sakhuana i.e. Pushpa's sasural and requested, husband and in laws of Pushpa to give him some time to provide television and motor-cycle. The accused persons agreed to wait for some time but said that in case of failure to fulfil their demand, his daughter would be killed. On 14.5.1998 the informant P.W. 5 received an Inland letter written by Pushpa dated 30.4.1998 (Ext. 1/4) in which she had written about alleged demand of television and motor-cycle and also about torture and threatening by her husband and in-laws to commit her murder. After reading this letter P.W. 5 along with his brother Lal Mohan (P.W. 3) and nephew Anil Singh (P.W. 4) went to sasural of Pushpa. P.W. 1 and P.W. 2 also followed him after some time and went to village Sakhuana. At Pushpa's sasural he came to know from the villagers that Pushpa had been burnt to death in the night of 6/7th May, 1998 and her dead body has been disposed of P.W. 5 has disclosed the names of Janardan Singh, Subhash Singh, Pawan Pandit and Chandra Shekhar Singh of village Sakhuana who informed him that they have seen the occurrence of burning as well as disposing of the dead body of Pushpa by the appellants. P.W. 5 has also stated that these persons have been gained over by the accused-appellants and did not come to depose in Court. P.W. 5 has also stated that, since investigation of the

case was not being done properly by the investigating officer, he filed protest petition in the Court, P.W. 5 has also stated that all letters (Exts. 1 to 1/4) were handed by him to the officer-in-charge of Sahar Police Station, who asked him to submit the photostat copies of the letters and accordingly he submitted photostat copies of letters along with the written report. He has also stated that he and other witnesses had seen the living room of Pushpa completely burnt. P.W. 5 has proved the letter dated 30.4.1998, sent by Pushpa through post as Ext. 1/4.

8. P.W. 1, P.W. 2, P.W. 3 and P.W. 4 have narrated the prosecution story in similar manner as P.W. 5. These witnesses have stated about the marriage of Pushpa with appellant No. 1 on 29.4.1996, bidai on 30.4.1996 and her return from sasural after two months. All these witnesses have stated that a letter was sent through a messenger on 12.12.1997 by mother-in-law of Pushpa, disclosing annoyance of Brajesh Kumar regarding non-fulfilment of his demand of television and motorcycle. They have also stated that Brajesh did not come at the time of second marriage on 6.2.1998 but his brother Bindeshwari came and on inquiry he stated that Brajesh will come only when demands will be fulfilled. All these witnesses have specifically stated about visit of P.W. 1 to sasural of Pushpa on 2.4.1998, and also about sending of three letters (Exts. 1/1, 1/2, 1/3) by Pushpa through P.W. 1 addressed to her father, brother, sister-in-law and sister, which disclosed torture meted out to her by the appellants due to non-fulfilment of demand of dowry. These witnesses have also stated that P.W. 5 went to sasural of Pushpa to pacify the matter but he was asked by the appellants to provide demanded articles without any delay or to face the consequences. These witnesses have supported the statement of P.W. 5 that on 14.5.1998 an Inland letter dated 30.4.1998 posted by Pushpa was received by P.W. 5, in which it was written that she was being threatened by the appellants, if demand of television and motor-cycle will not be fulfilled, she will be killed. They along with P.W. 5 went to village Sakhuana, sasural of Pushpa and came to know that Pushpa has been killed by burning. Her dead body has been disposed of. They also stated that they saw that room where Pushpa used to reside was completely burnt. Suggestion was given to all these witnesses that they have not stated all these things before Investigating Officer which has been denied. P.W. 1 has proved letters dated 12.12-1997 sent by mother-in-law of Pushpa as Ext. 1, and three letters written by

Pushpa to her father, brother and sister-in-law and sister as Exts. 1/1,1/2 and 1/3. All these witnesses, who are closely related to the deceased, are consistent.

9. P.W. 6 (Harish Chandra Paswan) was the officer-in-charge of Sahar Police Station at the relevant time. He simply registered the case. He also admitted that P.W. 5 had produced some letters before him along with the written report. P.W. 7 (Rakesh Kumar Gupta) is another officer-in-charge of Sahar Police Station who has only submitted charge-sheet in the case on the direction of his superior authority.

10. P.W. 8 (Brahmdeo Prasad) is the investigating officer. He has stated that on 15.5.1998 he was posted as A.S.I, at Sahar Police Station. In course of investigation the informant produced letters written by the deceased, marriage card of the deceased and some books of the deceased on which she had written her name in her own handwriting. Seizure list of these articles was prepared (Ext. 8a). P.W. 8 has stated that he went to the place of occurrence and found the living room of Pushpa completely burnt. He recorded statements of Subhash Singh, Pawan Pandit, Janardan Singh. He has also stated that even after great efforts he could not record statement of any witnesses who had witnessed the burning of Pushpa but in the same breath he has stated that though there were local people at the place of occurrence but he did not record their statements. A suggestion was also given to him that he did not go to the place of occurrence but it was denied by him. P.W. 8 has admitted that he did not investigate the case in compliance of the direction made by the Supervising Authority in the supervision note wherein it was directed that the letter should be sent to a hand writing expert for its comparison and statement of witnesses on the point of burning should be recorded. P.W. 8 has totally denied in his evidence that P.W. 1, P.W. 2, P.W. 3 and P.W. 4 have made all those statements before him which they have deposed in the Court. A suggestion was given to him that he has not conducted the investigating properly and impartially which has also been denied.

11. Learned Counsel for the appellants has emphatically submitted that deposition of P.W. 1, P.W. 2, P.W. 3 and P.W. 4 cannot be relied because they have not made all these statements before the investigating officer, in their statements

under Section 161 of the Code of Criminal Procedure. The submission has no force considering the evidence of P.W. 5 who is the competent witness being the father of the deceased and regarding whom no such statement has been made by P.W. 8. This submission cannot be considered specially when P.W. 5 in his evidence has stated that since the investigating officer was not conducting investigation properly, a protest petition was filed by him which is marked as Ext. 3. A suggestion was given to P.W. 8 regarding faulty and improper investigation in this case. P.W. 8 although denied it but it is proved by Ext. 3 as well as the evidence of P.W. 5.

12. There is no dispute that Pushpa was married on 29.4.1996. It is proved by the testimony of P.W. 1 to P.W. 5 as well as Ext. 4, which is the invitation card. It is also proved that Pushpa was in her matrimonial home at the time of her unnatural death. P.W. 1 and P.W. 5 have also stated that Pushpa disclosed before them that she was being tortured by the appellants for demand of motor-cycle and television. The letters Exts. 1/1 to 1/4 have also been proved by P.W.1 and P.W. 5 who are competent to prove it being brother and father of the deceased. The contents of these letters are sufficient to prove the demand for dowry by the appellants and also torture attributed to the deceased due to non-fulfilment of demand of dowry soon before her death in unnatural circumstances. There is sufficient evidence that Pushpa died in unnatural circumstances within seven years of her marriage at her in-law's house by the appellants on account of torture as her parents could not fulfil the demand of dowry of the appellants.

13. P.W. 1 to P.W. 5 have also stated in their evidence that Pushpa was in good health and also that the appellants did not inform them regarding the death of Pushpa. They suspected some mishap after receiving the letter dated 3.4.1998 on 14.4.1998 written by Pushpa to her father (P.W. 5). Concealment of the news of Pushpa's death is a strong circumstance against the appellants.

14. From discussions made above, I find that the prosecution has proved that the death of Pushpa was not in normal circumstances and was within seven years of marriage and also soon before her death she was subjected to cruelty, harassment and torture due to demand of dowry. To be more specific, there was

nexus between cruelty, harassment and demand of dowry, as such presumption under Section 113B of the Evidence Act, can be drawn against the appellants. Thus the prosecution has established the case beyond reasonable doubt against the appellants,

15. In the facts and circumstances, I affirm the judgment of conviction passed by the Court below as the appellants are found guilty for commission of offence under Sections 304B/34, 498A and 201 of the Indian penal Code as well as Sections 3/4 of the Dowry Prohibition Act. Appellant No 1 in Criminal Appeal No. 89 of 2001, Sona Devi, is on bail, her bail bond is cancelled. It is directed that she should be taken into custody. Both the Criminal Appeals are hereby dismissed.

Ram Nandan Prasad, J.

16. I agree.

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