

Dashrath Bhuiyan Vs. State of Bihar

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Court : Patna

Decided On : Apr-04-2005

Judge : Syed Md. Mahfooz Alam, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 306, 498 and 498A

Appeal No. : Criminal Appeal (SJ) No. 184 of 2003

Appellant : Dashrath Bhuiyan

Respondent : State of Bihar

Advocate for Def. : Satya Narayan Prasad, A.P.P.

Advocate for Pet/Ap. : Md. Obaidullah, Vijay Bharti and Om Prakash Singh, Adv.

Disposition : Appeal allowed

Prior history : Syed Md. Mahfooz Alam, J. 1. This criminal appeal is directed against the Judgment dated 20.6.2002 and order dated 21.6.2000 passed in Sessions Trial No. 52/2000/374/2000 (SJ) by 5th Additional Sessions Judge, Gaya, Sri Ram Pravesh Sharma whereby he has been pleased to convict the sole appellant Dashrath Bhuiyan under Sections 306 and 498A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years under Section 306, IPC and rigorous imprisonment for three years u

Judgement :

Syed Md. Mahfooz Alam, J.

1. This criminal appeal is directed against the Judgment dated 20.6.2002 and order dated 21.6.2000 passed in Sessions Trial No. 52/2000/374/2000 (SJ) by 5th Additional Sessions Judge, Gaya, Sri Ram Pravesh Sharma whereby he has been pleased to convict the sole appellant Dashrath Bhuiyan under Sections 306 and 498A of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for ten years under Section 306, IPC and rigorous imprisonment for three years under Section 498A of the IPC.

2. The prosecution case, as per the Fardbeyan of Kuleshwari Devi, wife of late Bhuneshwar Bhuiyan of village Monia, P.S. Imamganj, District Gaya recorded by A.P. Mandal, O/C, Banke Bazar, Gaya on 8.10.1999 at 8.15 hours at village Singhpur Tola Naukadih, Police Station Imamganj, in brief, is that the informant's daughter Lalti Devi was married with appellant Dashrath Bhuiyan about 10 to 15 years ago. From the said marriage she gave birth to a male child aged about 5-6 years old and a female child aged about two years. About 4-5 months back, informant's daughter had come to her house (Maika) and told the informant that her husband Dashrath Bhuiyan (appellant) was having illicit relation with Maini Devi, niece of Jagu Bhuiyan and due to that her husband always used to assault her. She also told the informant that her husband used to put pressure upon her to commit suicide so that he may get an opportunity to marry with Maini Devi. After getting the above information from her daughter, the informant went to the Sasural of Lalti Devi and tried to persuade her son-in-law not to misbehave with her daughter but appellant Dashrath Bhuiyan did not listen to the advice of the informant and then the informant's daughter started living in village Monia along with the informant. Further case is that yesterday i.e. 7.10.1999 (on Thursday) at about 4-5 p.m. the informant along with her daughter Lalti Devi went to the house of her son-in-law and approached the family members of her son-in-law for negotiation but they refused to do any negotiation. When the informant's daughter made inquiry about the general condition of her in-laws, her in-laws did not give any reply. During the talk, it became dark and so, informant's daughter stayed in

her Sasural whereas the informant herself stayed in the house of her relative namely, Madan Bhuiyan. On the next morning, she again went to the house of her son-in-law and then she noticed that every member of the house of her son-in-law was sitting in sad mood and they were whispering among themselves. Nobody talked with the informant. However, the informant went inside the house and entered into the room of her daughter and then she saw her daughter lying dead in the room with burn injuries. Seeing the dead body of her daughter she wanted to return back to village Monia to call his son. In the meantime, she was informed that the police had already arrived at village Naukadih and so she stayed back and gave her fardbeyan before the police. The motive of the occurrence was that her son-in-law had illicit relation with another girl and due to that illicit relation he used to torture her daughter. Her daughter was fed up with the behaviour of her husband and so she committed suicide by burning herself.

3. The fardbeyan of the informant was forwarded to O/C Raushanganj Police Station on the basis of which Raushanganj (Bankey Bazar) P.S. Case No. 40/99 under Sections 306 and 498A of the Indian Penal Code was instituted and investigation of the case was handed over to the Sub-Inspector of Police, A.P. Mandal of Banke Bazar Police Station who investigated the case and submitted charge-sheet against the appellant.

4. On receipt of the charge-sheet, cognizance was taken and the case was committed to the Court of Session. On 20.6.2002 the judgment was pronounced by 5th Additional Sessions Judge, Gaya whereby the appellant was convicted and sentenced to undergo imprisonment, as stated above.

5. The defence of the appellant is that it was an accidental fire in which the deceased caught fire and in spite of the best effort made by appellant and his other family members, the deceased could not be saved.

6. From the lower Court's record it appears that appellant Dashrath Bhuiyan has been charged for the offence under Sections 306 and 498A of the Indian Penal Code. The charge as framed under Section 306 of the IPC is as follows:

'That you, on or about the 7-8th day of October, 1999 at village Singhpur Tola Naukadih, Raushanganj (Bankey Bazar) District Gaya, abetted Lalita Devi to commit suicide and the said Lalita Devi committed suicide on 8th day of October, 1999 at village Singhpur Tola Naukadih Roushanganj (Bankey Bazar, Gaya) in consequence of abatement and thereby committed an offence under Section 306 of the Indian Penal Code'.

The charge as framed under Section 498 of the Indian Penal Code is as follows:

'That you on or about the same day or same place you being husband of the woman Lalita Devi subjected such woman to cruelty and thereby committed an offence punishable under Section 498A of the IPC'.

7. Let me see what evidence the prosecution has adduced for proving the charge.

8. From perusal of the lower Court records, it appears that in this case the prosecution has examined altogether seven witnesses, namely, Sukhdeo Manjhi P.W. 1, Dukhan Bhuiyan P.W. 2, Madan Bhuiyan P.W. 3, Chandradeo Bhuiyan P.W. 4, Kuleshwari Devi P.W. 5, Dr. Arvind Prasad P.W. 6 and Akhilesh Prasad Mandal, Investigation Officer of the case is P.W. 7.

9. First of all, I would like to deal with the evidence of PW 6 Dr. Arvind Prasad. His evidence is that on 8.10.1999 he was posted in Anugrah Narayan Magadh Medical College and on the same day, he conducted post mortem examination of the deceased Lalti Devi at about 2.05 p.m. and found the following ante mortem injuries:

'(i) Smell of kerosene oil was found over remaining parts of clothings and from body surface carbonasius deposits were present over dermo epidermal burn involving scalp hairs, face, neck, whole trunk, both upper limbs and lower limbs except sole. Colour of wounds was red. Wind pipe contained carbon particles, all the tissues were found congested. Stomach was found empty. Mucus membrane of stomach was found normal. Time since death within 18 hqurs. Cause of death is asphyxia and shock produced by above injuries (dry heat).'

He has also proved the post mortem report which has been marked Ext. 1. He has further deposed that in the ordinary course injury is sufficient to cause death.

10. From the evidence of P.W. 6 Dr. Arvind Prasad and his post mortem report (Ext. 1) it is established beyond doubt that the deceased Lalti Devi died due to burn injuries received by her in between the night of 7/8.10.1999. The evidence of P.W. 6 further shows that he discarded the suggestion put forward by the defence that the burn injuries found on the dead body of the deceased were caused while she was preparing food. This witness has categorically stated that such injury cannot be caused while preparing food on stove by bursting of stove. However the defence of the appellant is that the deceased had not committed suicide rather she caught fire while she was preparing meal and although the appellant and his family members tried to save her but they failed and deceased succumbed to her injuries. Let me see which of the two story finds support from the evidence available on record.

11. The most important witness on the point of occurrence is the informant Kuleshwari Devi. She has been examined as P.W. 5 in this case. Her evidence is that the occurrence took place about three years ago. The time was 7 p.m. At that time her daughter Lalti Devi was preparing meal meanwhile her clothes caught fire and due to that she died. In her cross-examination she has deposed that she did not make any statement before the police rather the police has obtained her signature on blank piece of paper. She has been declared hostile by the prosecution.

12. The next witness on the point of the occurrence is P.W. 4 Chandradeo Bhuiyan. He is the own brother of the deceased. He has also deposed that while his sister was preparing food she caught fire and died. He has further deposed that the police had not recorded his statement. This witness has also been declared hostile by the prosecution. P.W. 1 Sukhdeo Manjhi is another brother of the deceased. He has also deposed that while her sister was preparing meal her clothes caught fire and she died. He has also been declared hostile by the prosecution. The rest witnesses, namely, P.W. 2 Dukhan Bhuiyan and P.W. 3 Madan Bhuiyan, are not family members of the informant but they have also

deposed that while the deceased was preparing food her clothes caught fire and she died. Thus, the evidence of the abovesaid witnesses shows that not a single prosecution witness including the informant has come forward to support the prosecution case that the deceased Lalti Devi had committed suicide. However, the judgment of the Trial Court shows that the Trial Court while believing the story that the deceased had committed suicide, has placed reliance upon the evidence (cross-examination) of Dr. Arvind Prasad (P.W. 6) in which he has deposed that injuries found on the person of the deceased were not possible due to bursting of stove at the time of preparation of meal. He has further placed reliance upon the evidence of P.W. 7, the Investigating Officer of this case, who has deposed that his statement shows that at the time of inspection of the place of occurrence, he did not find any article of food or utensils meant for preparing the food present at the place of occurrence and so, the learned Trial Court disbelieved the defence of the appellant that the deceased caught fire while she was preparing meal and came to the conclusion that the deceased had committed suicide.

13. The question is as to whether the view taken by the learned Trial Court can be accepted in view of the positive evidence of the prosecution witnesses that the deceased had caught fire while she was preparing food. The witnesses are blood relations of the deceased being mother of the deceased as well as two full brothers of the deceased.

14. It is true that initial case of the prosecution, as per the fardbeyan of the informant, was that the deceased had committed suicide but during the trial not a single witness has supported that very case of the prosecution and practically all the witnesses of the prosecution deposed that the deceased had caught fire while she was preparing meal. There is no reasonable ground to discard the evidence of the prosecution witnesses which has come on oath and specially when there is positive evidence of the Investigating Officer (P.W. 7) that he had found the surface of the P.O. room wet with water and half burnt blanket was also found there meaning thereby that efforts were made by the appellant or his family members to save the life of the victims. This circumstance also corroborates that the deceased might have caught fire while she was preparing meal and her in-laws had made positive attempt to save her life. Under the circumstances

mentioned above, I cannot agree with the view of the learned lower Court that the prosecution has succeeded in proving the case that the deceased had committed suicide.

15. Although I am not in agreement with the finding of the learned Lower Court that the deceased had committed suicide but even if it is presumed for the argument sake that the deceased might have committed suicide then the question is as to whether the prosecution has succeeded in proving that the appellant had abetted the offence of commission of suicide by Lalti Devi. In this regard, I again find that there is absolutely no evidence on record to come to the conclusion that at any stage the appellant had abetted the commission of offence of suicide by Lalti Devi. It is true that it was the initial case of the prosecution that the appellant had abetted the commission of offence of suicide but First Information Report or fardbeyan is not a substantive piece of evidence and its use is only for contradiction and corroboration. : 1972 CriLJ451 , Damodar Prasad Chandrika Prasad and Ors. v. The State of Maharashtra. However the evidence which is available on record establishes that at no stage the appellant had abetted the commission of offence of suicide. In this regard P.W. 5 (informant) has stated that her son-in-law never harassed her daughter, he was of good character and he had no affair with any other woman. P.W. 4, who is the own brother of the deceased, has stated at paragraph 7 that relationship between her deceased sister and her brother-in-law was very cordial. He has also denied the suggestion put forward by the State Counsel that he had stated before the police that his brother-in-law had illicit relationship with the Bhagini of Jaggu Bhuiyan and due to that he used to torture his sister. Likewise P.W. 1 who is also the own brother of the deceased, has stated in the very chief that the relationship between his deceased sister and his brother-in-law was very cordial. He has further deposed that the character of his brother-in-law was good. At paragraph 7 of his cross-examination, he has repeated the same sentence. All these evidences brought on record completely falsify and contradict the averments made in the fardbeyan (Ext. 2) of the informant (P.W. 5) that the offence of suicide was abetted by the appellant. I, therefore, hold that there is absolutely no material on record to hold that deceased Lalti Devi had committed suicide and this appellant had abetted the commission of offence of suicide by the said Lalti Devi. Accordingly, I hold that the conviction of

appellant under Section 306 of the I.P.C. is bad in law and must be set aside.

16. As regards the charge of Section 498A of the Indian Penal Code, I again find that there is absolutely no evidence on record to come to the finding that the appellant used to torture the deceased on account of the fact that he had illicit relationship with another woman. On the contrary there is uniform evidence of P.Ws. 1 and 4, both own brothers and P.W. 5 the mother of the deceased that the relationship between the deceased Lalti Devi and the appellant was very cordial and the deceased was never subjected to torture by the appellant. I do not want to repeat the evidence in this regard as in the above paragraphs I have already dealt with the evidence of the above mentioned witnesses. In such view of the matter, I further find and hold that the prosecution has also failed to prove the charge under Section 498A of the Indian Penal Code and the finding of the learned lower Court in this regard is not correct.

17. In the result, I find merit in this appeal and as such, the same is hereby allowed. The judgment and order of conviction and sentence passed against the appellant under Sections 306 and 498A of the Indian Penal Code are hereby set aside. The appellant is acquitted of the charge of Sections 306 and 498A of the Indian Penal Code. Since the appellant is in jail custody, as such, he is ordered to be set at liberty at once, if not wanted in any other case. Accordingly, this appeal is allowed.

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