

Kaushal Singh and ors. Vs. State of Bihar

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Court : Patna

Decided On : Aug-04-1997

Judge : R.N. Sahay and P.K. Sarkar, JJ.

Appeal No. : Criminal Appeal Nos. 247 and 258 of 1994

Appellant : Kaushal Singh and ors.

Respondent : State of Bihar

Disposition : Appeal Allowed

Judgement :

P.I. Sarkar, J.

1. Both the criminal appeals have been taken up together as they arise out of a common judgment passed by Sri N.N. Singh, Second Additional Sessions Judge, Jamui, in Sessions Case No. 368/93 on 26.4.94.

2. The prosecution case in brief is that on 23.4.92 Sri Navin Kumar Singh of village Kharagpur, brother of the deceased Sulekha Devi gave statement before S.I. Tarini Singh of Jamui Police Station wherein he stated that his sister Sulekha Devi was married with Kaushal Singh (appellant in Cr. Appl. No. 258/94) son of Satya Narayan Singh @ Tahlul Singh in the year 1988. The second marriage (Gauna) was also performed after two years of the marriage. He further stated that dispute

arose over the demand of dowry by the father-in-law, husband, mother-in-law and the Gotni (wife of the brother of the husband of the deceased) and they used to torture and assault his sister Sulekha Devi. Kaushal Singh and his brother's wife used to demand two bighas of land or a tractor for keeping his sister well. It is further said that about four days before the day of occurrence the informant went to meet his sister and saw her weeping. She requested his brother either to give them a tractor or two bighas of land so that she can live peacefully. On 23.4.92 at about 8.30 a.m. the informant came to know about the death of his sister. So he along with some of his villagers came to enquire about the truth and found that the information was correct. The informant further stated that the accused Kaushal Singh husband of the deceased, father-in-law mother-in-law and the wife of brother of the husband of the deceased committed murder of his sister by administering poison for not meeting the demand of dowry. The aforesaid statement was recorded and was read over and explained to the informant and on being satisfied about its correctness he signed on the same. The Police, thereafter, took up the investigation of the case. An inquest report of the dead body was prepared and thereafter the dead body was sent for post-mortem examination. After completing the investigation Police submitted charge-sheet against all the four accused persons. A charge under Section 304B(2) of the Indian Penal Code was framed against all the four accused. The charge was read over and explained to them to which they pleaded not guilty and claimed to be tried. The trial was taken up by the Additional Sessions Judge, Jamui, and who on completion of the trial, found all the four accused persons guilty under Section 304B of the Indian Penal Code and convicted and sentenced each of them to undergo rigorous imprisonment for life.

3. Being aggrieved and dis-satisfied with the aforesaid order, the accused-appellant Kaushal Singh filed criminal appeal No. 258/94 and the rest of the three accused appellants filed criminal appeal No. 247/94. As mentioned above, both the appeals have been taken up together for consideration as these arise out of the same judgment/order arising out of the same occurrence.

4. Thus, the point for consideration in this case is whether the accused persons committed murder of Sulekha Devi by administering poison on the day of

occurrence as their demand regarding the dowry was not fulfilled as alleged.

5. The prosecution in all has examined five witnesses in this case out of whom P.W. 3 Navin Kumar Singh is the informant of this case. P.W.3 has fully corroborated his statement in the fardbeyan inasmuch as he has stated that he came to know about the murder of his sister at 8 a.m. on 23.4.92 itself by her husband father-in-law, mother-in-law and the Gotni. He has further stated that his sister was married with Kaushal Singh of village Khargaur. After two years of marriage, second marriage (Gauna) was also performed. After the marriage, the husband, father-in-law, mother-in-law and the Gotni (wife of the brother of the husband of the deceased) used to demand two bighas of land or a tractor as dowry. Since the same demand was not met, they used to torture his sister. P.W. 3 has further stated that four days prior to the occurrence he went to his sister's place and found his sister wearing a torn sari. She also said that unless a Tractor or two bighas of land are given to her in-laws she cannot live peacefully. P.W. 3 has proved his signature on the fardbeyan which has been marked as Ext. 1.

6. P.W. 2 Balmiki Singh is the father of P.W. 3 as also of the deceased Sulekha Devi. He has also stated that his daughter was married with Kaushal Singh of village Khargaur. After a year second marriage was also performed. After the Gauna (second marriage) who went to Khargaur where Satya Narayan Singh told him to give two bighas of land or a tractor in the name of Kaushal Singh and said that only then his daughter will be well or bad consequences will follow. He replied how can he pay the same. The Gotni of his daughter also threatened. P.W. 2 has further stated that after some period he learnt that his daughter was not well. He could not go but his son Navin Kumar Singh (P.W. 3) went to see his sister. Later, P.W. 2 also went to the hospital and found his daughter dead and post-mortem of her body was being conducted at that time. He learnt that the accused persons committed murder of his daughter by administering poison.

7. P.W. 1 Pramod Kumar Singh has only deposed on the point of demand of dowry. Thus, none of the three witnesses are eye-witnesses of the occurrence. P.Ws. 2 and 3 have stated that they learnt that the accused persons have committed murder of Sulekha Devi by administering poison. From the statement of

P.W. 3 it is also not clear when he went to the house of his sister and saw her dead body, whether the accused persons were present in the house and whether he enquired from them regarding the cause of death of his sister.

8. P.W. 4 Tarini Singh is the Investigating Officer of the case. He has simply proved the formal F.I.R. Ext. 2. He has also proved the inquest report of the dead body prepared by him which has been marked as Ext. 3. He has also stated that he took the statements of all the witnesses on 25.4.92. Postmortem report was received by him on 25.5.92. He also sent the viscera of the deceased to the Forensic Science Laboratory, Patna, for the examination and subsequently submitted, charge-sheet against the accused persons. Thus, P.W. 4 has also not stated whether he found the accused persons at their residences when he went to the place of occurrence. In his cross-examination he of course, has admitted that till now he has not received the aforesaid viscera examination report stating the death was caused by administering poison. He has also accepted that in the post-mortem report it is not mentioned that death was caused due to poison. He has also stated that he investigated the case for about two years. However, there was no conclusive proof before him in absence of any report from the Forensic Science Laboratory, Patna, still he submitted charge-sheet in the case.

9. P.W. 5 Dr. S.N. Singh has stated that he conducted the post-mortem examination on the dead body of Sulekha Devi on 23.4.92 at about 2 p.m. and found the following. Eyes were shrunken, skin of the body was wrinkled, facial loose matter around the anal office present, viscera were pale. In the opinion of the Doctor, no definite reason regarding cause of death can be given. The viscera have been preserved for chemical analysis. However, he has stated that the deceased may have died due to poisoning because the viscera were pale but no definite opinion can be given. From the aforesaid-statement it appears that the Doctor is not in a position to say whether the deceased died due to poisoning. The viscera report has also not been received from the Forensic Science Laboratory.

10. The Investigating Officer of the case has also not stated about anything detected at the place of occurrence from which a conclusion can be drawn regarding administration of poison.

11. From the evidence of the witnesses aforementioned. It appears, that the prosecution has been able to establish that deceased Sulekha Devi was married with the appellant Kaushal Singh. It has also been established that the occurrence took place after four years of their marriage.

Now, Section 113B of the Indian Evidence Act lays down that when the question is whether a person has committed the dowry death of woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment far or in connection with any demand for dowry, the court shall presume that such person had caused the dowry death. The explanation to this Section adds that for the purposes of this notion 'dowry death' shall have the same meaning as in Section 304B of the Indian Penal Code. From the evidence of the prosecution witnesses discussed in the foregoing paragraphs, however, it cannot be conclusively held that the deceased soon before her death or ever was subjected to any cruelty or harassment for or in connection with any demand of dowry. The witnesses have simply stated about demand of dowry and threatening regarding the consequences but there is nothing to show regarding any behaviour or action by the accused from which any cruelty can be inferred. Thus this presumption under Section 113B of the Indian Evidence Act cannot attract the facts in this case.

12. From the aforesaid evidences of the prosecution witnesses it appears that the prosecution has failed to prove its case beyond all shadow of reasonable doubt and failed to produce any cogent evidence on the point that the deceased Sulekha Devi died due to poisoning. From the facts stated above, it is clear that there is no eye-witnesses of the occurrence. Moreover, the witnesses examined have also not stated from whom they heard about the occurrence. It also appears that the informant did not go to the Police Station for lodging the information but it is not clear how the Police reached the place of occurrence, and where about of the accused persons at the time. Admittedly, the father and brothers of the deceased (P.W. 2, P.W. 1 and P.W. 3) reside at a distant place. But no neighbour who could throw light on the occurrence have been examined. There P.Ws. have also not stated from whom they learnt about the occurrence. No person in this connection have also been examined.

13. The learned Counsel appearing on behalf of the appellant submitted that admittedly no viscera examination report was received, till the Police submitted charge-sheet. The learned Counsel for the appellants referred in a decision of the Supreme Court in Bhupendra Nath Prasad v. The State of Bihar reported in 1992 (2) PLJR 45 (SC) and submitted that in the aforesaid case also viscera examination report was not received. The Apex Court In the above case held that in a criminal case the cause of death has to be ascertained conclusively. As already noted the post-mortem report does not in any manner establish the same. It was further observed that the viscera was preserved for chemical examination but the report was not submitted. The Doctor who conducted the post-mortem examination did not express any opinion of the exact cause of death, thence, it was concluded that the accused was found not guilty and his conviction and sentence was set aside. The learned Counsel submits that in the present case also viscera was preserved for chemical examination but no report was received. Placing reliance on the aforesaid decision of the Supreme Court in this case also, the learned Counsel for the appellants submitted that the fact that the deceased died due to poisoning has not been properly established. The prosecution has also failed to produce any satisfactory evidence either oral or documentary to establish the tract that the accused persons committed murder of the deceased by administering poison.

14. It is very unfortunate that in this case not only the investigation has not been conducted in a proper manner but the trial has equally been conducted unsatisfactorily. All the witnesses as mentioned in the charge-sheet have also not been examined specially the neighboured who were the most important persons to say about any cruelty inflicted on the deceased or not.

15. In the facts and circumstances I am of the opinion that the prosecution has failed to establish beyond all shadow of reasonable doubt that the accused persons have committed murder of the deceased Sulekha Devi due to non-fulfilment of their demand for dowry. Thus, the prosecution has failed to bring (sic) the charge under Section 304B of the Indian Penal Code against any of the accused persons. I am, therefore, unable to accept the Endings of the court below. The impugned order judgment dated 26.4.94 passed in Sessions Case No. 368/93

is therefore set aside.

16. In the result, the appeal is allowed. All the four accused persons of these two criminal appeals are found not guilty under Section 304B of the Indian Penal Code and they are acquitted of the said charge. Accused-appellant Kaushal Singh (Cr. App. No. 258/94) is in custody. He is set at liberty forthwith if not wanted in any other case and the rest of the three appellants (Cr. App. No. 247/94) who are already on bail are discharged from their liabilities of their bail bond.

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