

State of Bihar Vs. Rudra Narayan Dev and ors.

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Court : Patna

Decided On : Aug-08-2007

Judge : Madhavendra Saran, J.

Appellant : State of Bihar

Respondent : Rudra Narayan Dev and ors.

Disposition : Appeal dismissed

Judgement :

Madhavendra Saran, J.

1. Government Appeal No. 39 of 1993 has been preferred against the judgment and order dated 27.5.1993 passed by Shri Om Prakash Pandey, 4th Additional Sessions Judge, Purnea in Sessions Tr. No. 93 of 1992 by which he acquitted all the respondents. Cr. Revision No. 558 of 1993 has been preferred by the informant Pandey Prasad Dev against the same judgment of acquittal dated 27.5.1993 passed in Section Tr. No. 93/92. Hence both these two matters have been heard together and are being disposed of by this common judgment.

2. The prosecution case, in short, is that on 7.8.1990 informant Panday Prasad Dev filed a written report before the Superintendent of Police, Purnia stating therein that his daughter Leela Devi was married to accused-respondent Amaresh Kumar Dev son of Rudra Narayan Dev of village Bhatta Bari P.S. Forbesganj,

District Purnia on 26th June, 1988. He further stated that her husband Amresh Kumar Dev, her father-in-law Rudra Narayan Dev, her mother-in-law Smt. Durgawati Devi, her deivars Bhupesh Kumar Dev and Brajesh Kumar Dev @ Pappu had assaulted her after putting/funda (noose) around her neck on 26.7.1990. Leela Devi on account of it died on 30.7.1990 and till the above period she remained unconscious. The informant learnt about the details of the death subsequently from his near relations living there i.e. at Bhatta Bari. He also alleged that the dead body of his daughter Leela Devi was disposed of without handing over the same to the police and after pouring petrol on the dead body it was burnt on 31.7.1990 at village Bhatta Bari. He further alleged that his daughter was being tortured for dahez by her husband, father-in-law, mother-in-law and dewars. The demand was made from the informant, his nephew and the informant's son as well but the same could not be fulfilled on account of economic circumstances of the informant. The informant thus asserted that he was confirmed that his daughter has been killed. He further stated that he was in Government service in Nepal and so he was not in a position to come frequently and see his daughter at Bhatta Bazar in India. It appears that the Superintendent of Police, Purnia directed the officer-in-charge of Forbesganj to register a case accordingly. Forbesganj P.S. Case No. 144/90 dated 7.8.1990 under Sections 302, 201 and 34 of the Indian Penal Code and Section 3/4 of Dowry Prohibition Act was registered. The police took up investigation and after concluding the same submitted charge-sheet on the basis of which the learned Chief Judicial Magistrate, Araria took cognizance on 2.7.1991. After commitment the accused-respondents were tried and the learned 4th Additional Sessions Judge, Purnia by judgment and order dated 27.5.1993 acquitted them. Against the said acquittal the State has preferred the present appeal before this Court. Similarly the informant against the said judgment of acquittal has preferred the present criminal revision application.

3. It appears that against the accused respondents charges were framed under Sections 304B, 498A and 201 of the Penal Code and Section 3/4 of Dowry Prohibition Act. To substantiate the charges the prosecution examined in all 16 witnesses and brought on record letters and diaries of the deceased in support of allegation. The defence took the plea that Leela Devi died of illness in normal course and she was treated at Sadar Hospital, Purnia and then in Heera Devi

Nursing Home at Purnia. She was several times examined by the doctors and on their advice she was being taken to Patna to Dr. Ramesh Chandra, Neuro Surgeon and while on way to Patna she died at Kursaila on 30.7.1990 during night hours.

4. It has been argued on behalf of prosecution that the learned Additional Sessions Judge has not examined all the evidence on record including the letters and diaries of the deceased. It has been further argued that the delay in lodging the F.I.R. was sufficiently explained and the accused-respondents completely failed in their duty to inform the parents and close relations about illness or death of Leela Devi. It has further been argued that why the accused did not inform the Police about the unnatural death of deceased Leela Devi especially when there was evidence of torture and demand of dowry. Learned Counsel thus argued that entire finding of trial Court is perverse and illegal.

5. As mentioned above in order to bring home the charges the prosecution examined in all 16 witnesses who are PW1 Pandav Prasad Dev, PW2 Jitendra Narayan Dev, PW 3 Awadh Narayan Dev, PW 4 Pulkit Narayan Dev, PW 5 Pushkar Dev, PW 6 Binod Kumar Dev, PW 7 Lambodar Choudhary, PW 8 Md. Yasin Ansari, PW 9 Bhogendra Choudhry @ Pursottam Choudhary, PW 10 Hari Narayan Dev, PW 11 Satya Narayan Dev @ Tek Narayan Dev, PW 12 Dr. Gyanendra Kumar Singh, PW 13 Dr. Krishna Kumar Singh, PW 14 Dr. Diwakar Prasad Singh, PW 15 Ram Pujan Singh and PW 16 Binod Kumar Yadav.

6. Before I proceed to examine oral and documentary evidence adduced in the case by the parties certain facts which have come on record may be seen. It is admitted case of the parties that Leela Devi was married to accused-respondent Amresh Kumar Dev on 26.6.1988. It is also admitted that she died on 30.7.1990 during night hours. It is also admitted case that Leela Devi was admitted in Sadar Hospital, Purnia in the night of 26/ 27.7.1990 by the accused persons and was treated. It is further admitted position that thereafter she was taken to Dr. V.N. Sinha in Heera Devi Nursing Home, Purnia where she was treated by Dr. S.K. Singh. She remained there till the evening of 30.7.1990 and at about 9.00 p.m. on 30.7.1990 on the advice of the doctor, she was being taken to Patna in a car

accompanied by accused Amresh Kumar Dev, Durgawati Devi and other relations along with the informant. It is also admitted case of the parties that when the deceased reached Kursaila her condition became serious and so a doctor was called who examined her but she could not survive. It is further admitted case that her dead body was brought to Forbesganj accompanied by the informant. It has come in the evidence of PW 1, the informant, that from Forbesganj he went to Katihar to bring his wife. It is further admitted position that the F.I.R. was filed by informant before the superintendent of Police, Purnia on 7.8.1990.

7. Sections 304B and 498A of the Penal Code deal with two distinct offences. Cruelty is a common essential of both sections and it has to be proved. The following are the ingredients of Section 498A, IPC:

(i) The woman must be married.

(ii) She must be subjected to cruelty or harassment; and (iii) Such cruelty or harassment must have been shown either by husband of the woman or by the relative of her husband.

8. The charge under Section 498A of the Indian Penal Code in the present case is for harassment of Leela Devi and cruelty to her for the purpose of dowry demand of Rs. 50,000 and ornaments kept at her father's place. The evidence on this point is of PW 1 Pandav Prasad Dev (informant), PW 5 Pushkar Dev (brother of the deceased), PW 9 Bhogendra Choudhary @ Pursottam Choudhary (cousin of the deceased), PW 11 Satya Narayan Dev @ Tek Narayan Dev, PW 2 Jitendra Narayan Dev, PW 3 Awadh Narayan Dev, PW 4 Pulkit Narayan Dev and some letters and diaries.

9. The informant in the written report has stated that demand of dowry will be proved by letters and diaries of the deceased. Exhibits 1/Ka, 1/Kha, 1/Gha and 1/Cha are the Hindi translation of the letters written by the deceased to her father and mother but in none of these letters there is not a whisper regarding demand of dowry. Similar is the position with diaries (Exhibits 2/2 and 2/3). In the diaries there are some allegations of ill-treatment by the in-laws and dewars but there is nothing to show that she was abused and harassed for not pressing her parents to fulfil the

demand of dowry. The contents of Exhibits 2 and 2/1 do not implicate accused-respondents Amresh Kumar Dev who is husband of deceased, for subjecting her to cruelty or harassment. Exhibit 1/2 which is a letter written by Rudra Narayan Dev to deceased Leela Devi only shows that the consent of Amresh Kumar Dev was not obtained before marriage.

10. It is not the prosecution case that any dowry was given or agreed to be given prior to performance of marriage. PW 1 in his evidence has said that his sons PWs 5 and 9 had gone with Leela Devi when she first went to her sasvral and after 5-6 days when rukhsati was demanded, respondent Tek Narayan Dev and Durgawati Devi asked them to send informant Pandav Dev as he had agreed to pay Rs. 50,000 as dowry for education of Amresh Dev. Similar is the evidence of PWs 5 and 9 but none of these witnesses in their evidence have said that the deceased ever complained of any act of torture committed by the accused for meeting the demand. In the letters and diaries also there is nothing to show that the deceased was tortured or harassed for not pressurising her parents to fulfil the demand of dowry. Some of the letters only show that there was no happy relationship between the deceased and the family members of her in-laws but there is no evidence to show that she was subjected to cruelty or harassment for meeting the demand of dowry. The trial Court after discussing the entire oral and documentary evidence on this charge has rightly disbelieved the prosecution case.

11. Now coming to the charge under Section 304B of the Indian Penal Code I find that in the written report Exhibit 4 the informant alleged that Leela Devi was tried to be killed by strangulation due to which she became unconscious on 26.7.1990 and ultimately died on 30.7.1990. PW 1 in his evidence stated that PW 6 Binod Kumar Dev told him that Leela Devi was hanged on 26.7.1990 but he admitted that Binod Kumar Dev (PW 6) himself had not seen Leela Devi being hanged. This part of evidence of PW 1 has not been corroborated by PW 6, on the other hand, PW 6 has said that accused Pappu told him that Leela Devi was hanging a photograph by standing over the chauki but she fell down and became senseless. PW 11 has said that the accused persons assaulted the deceased in the night of 26.7.1990 and thereafter she became unconscious. He has admitted in cross-examination that he informed the informant about the incident after 10-11 days when he had

come to participate in the panchayati.

12. It is admitted position that the deceased Leela Devi who became unconscious on 26.7.1990 was brought to the clinic of Dr. Alakh Niranjana, Forbesganj and thereafter she was taken to Sadar Hospital, Purnia. PW 12 Dr. G.K. Singh in cross-examination has admitted that he did not find any mark of violence over the body of the deceased. He has further stated that in his opinion the deceased was patient of Encephalitis. The other doctors PW 13 and DWs 1 and 2 also did not utter a word that they saw any injury over the body of the deceased. DW 1, on the other hand, very categorically stated that after examination he diagnosed it to be a case of Encephalitis. It appears that Lumbar puncture test was also done. It appears from the evidence of PW 1 that right from the night of 28.7.1990 till the night of 30.7.1990 he remained throughout with the deceased. From Forbesganj the informant went to Katihar to bring his wife but instead of coming to Forbesganj they both went to Rajbiraj, Nepal.

13. I find that the learned Trial Court examined the entire evidence very minutely and has rightly observed that the prosecution has failed to establish that the death of Leela Devi was homicidal and the same occurred otherwise than under normal circumstances and the story of death due to illness as propounded by the defence, cannot be ruled out.

14. After examining the entire oral and documentary evidence adduced in the case I also find that the prosecution has failed to prove that soon before death Leela Devi was subject to cruelty or harassment 'in connection with demand of dowry'. I also find that the death of Leela Devi occurred due to illness as propounded by the defence cannot be ruled out.

15. So far as the allegation under Section 4 of Dowry Prohibition Act is concerned, it appears from the evidence of PWs 15 and 16, the police officers, that before them PWs 1, 5 and 9 did not tell that in the year 1988 or 1989 when they went for bidagiri accused persons demanded Rs. 50,000. The evidence given by PWs 1, 5 and 9 in respect of demand made by accused persons, appears to be an improvement as there was no specific case of demand of Rs. 50,000 in the First Information Report.

16. It is settled view that the power of High Court while hearing appeal against an acquittal is as wide and comprehensive as in an appeal against conviction and it has full power to appreciate the entire evidence but if two views on the evidence are reasonably possible, one supporting the acquittal and other indicating conviction, then the High Court would not be justified in interfering with the acquittal.

17. I have examined the judgment of the trial Court. It cannot be accepted that the reasoning given by the trial Court is based on surmises and conjecture. It also cannot be accepted that the trial Court has overlooked the important aspects of the case and has examined the evidence in a most unreasonable manner.

18. In the result I find no merit in both these two applications. The judgment and order of the Trial Court is affirmed. The appeal and revision are accordingly dismissed.

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