

Chando Devi Vs. the State of Bihar

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Court : Patna

Decided On : Mar-13-2002

Judge : Indu Prabha Singh, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 160, 304B and 498A; Evidence Act - Sections 113B; Dowry Act - Sections 4; Code of Criminal Procedure (CrPC) - Sections 164

Appeal No. : Crl. Appeal (SJ) No. 21 of 1991

Appellant : Chando Devi

Respondent : The State of Bihar

Advocate for Def. : Ashwani Kr. Sinha, A.P.P.

Advocate for Pet/Ap. : Yogen Chandra Verina and A.R. Haque, Advs.

Disposition : Appeal allowed

Judgement :

Indu Prabha Singh, J.

1. All the appellants have been convicted under Sections 304B/34 and 498A/34 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for seven years under Section 304B/34 and three years under Section 498A/34 of the Indian

Penal Code. However, both the sentences have been ordered to run concurrently.

2. The prosecution case in short is that one Chaukidar, namely, Baleshwar Paswan gave statement before the police on 9-8-1987 at about 3.15 p.m. alleging therein that he heard Hulla that the wife of Shankar Sao has committed suicide. He went there and saw the deceased (wife of Shankar Sao) lying dead on a cot and all the family members were not present there. He saw one black mark swelling on the neck of the deceased. It has been further stated that the grand mother-in-law of the deceased Chando Devi in the morning had stated that the deceased used to quarrel with her. He deputed another Chaukidar, Arjun Prasad near the deceased and then he went to the police station where his Fardbeyan was recorded and on that basis formal FIR was registered. Police started investigation and after completion of the same submitted charge sheet against the accused persons. Accordingly, cognizance was taken and the case was committed to the Court of sessions. Finally the trial concluded with the result as indicated above.

The appellants pleaded not guilty.

3. The prosecution in order to prove its case examined six witnesses. P.W. 1 is Baleshwar Paswan, P.W. 2 is Krishnadeo Tiwary, he has been declared hostile. P.W. 3 is Sita Ram Chaudhary, he is a formal witness, who has proved Ext. 2. P.W. 4 is Dr. Anil Kumar who had conducted post mortem examination on the dead body of the deceased. P.W. 5 is CD. Singh, I.O. of this case and P.W. 6 is Arun Kumar Singh, Judicial Magistrate. He had recorded the statement of the father, mother and brother of the deceased under Section 164 of the Code of Criminal Procedure (hereinafter referred to as 'the Code').

4. P.W. 1 has fully supported the case of the prosecution and has stated that he learnt about the death of the deceased and he went to the house of the deceased and saw the deceased was lying on a cot. There was mark on the neck and swelling. Nobody was available at the house of the deceased. He went to the police station and informed about the occurrence. His statement was recorded by the S.I. of Police. He has also stated that in the morning the grand mother-in-law of the deceased informed him that her grand daughter-in-law used to quarrel with

her. Therefore, she had left the house. According to him inquest report was also prepared when police came in his presence and dead body was sent to the police station and from there it was sent for post mortem examination.

5. P.W. 4, Dr. Anil Kumar held postmortem examination on the dead body of the deceased on 10-8-89. In his opinion the cause of death was asphyxia due to hanging and was possible if some body fastens the neck. In his cross-examination he has stated that he did not find any mark of violence on the dead body.

6. P.W. 5, I.O. has also supported the case of the prosecution. According to him, he recorded the statement of P.W. 1, Ext. 2. He inspected the place of occurrence and saw the dead body and sent the same for postmortem examination to Nawadah. He did not find anybody in the house of the deceased. He also recorded the statement of independent witnesses. According to him, P.W. 2 stated that there was no good 'relation with the grant-mother-in-law and the deceased. He also recorded the statement of mother, father and brother of the deceased during investigation. They stated before him that there was no complaint of ill-treatment and harasment of her daughter with the in-laws. He did not find broken piece of bangles on the place of occurrence where the dead body was lying on a cot. He did not find any mark of violence on the body of the deceased other than black mark on her neck. P.W. 6 has been examined to prove that he got the statement of mother, father and brother recorded under Section 164 of the Code. These statements are marked as Exts. 6, 6/1 and 6/2. He has also stated that he observed all the procedure and precaution before recording the statement of mother, father and brother of the deceased.

7. Learned counsel for the appellants has submitted that there is total lack of material in this case to prove the case under Section 304B of the Indian Penal Code. Even in the first information report there is no mention of demand of dowry. It has been submitted that statement under Section 164 of the Code was recorded after three months of the occurrence and the persons whose statements were recorded did not turn up to depose in the Court. As such, there is no evidenciary value of their statements under S. 164 of the Code. It has been also submitted that even if there was demand of dowry, the same was for doing business and it had

no connection with the marriage. Therefore, it could not be said that the death was due to demand of dowry. He has relied on a decision reported in the case of *S. Gopal Reddy v. State of Andhra Pradesh* AIR 1996 SC 2184 :(1998 Cri LJ 3237).

8. In the present case the deceased died unnatural death by being hanged. This fact also find support from the evidence of P.W. 1 as well as P.W. 4, the doctor, who had conducted postmortem examination of the deceased. However, on demand of money, harassment and torture meted to the deceased P.W. 12 only has stated to P.W. 5 I.O. that the deceased was tortured by the in-laws. However, he did not support the case and declared hostile. The other piece of evidence is the statement of father, mother and brother of the deceased under Section 164 of the Code. However, this statement was recorded after three months of the occurrence. That apart, they did not turn up before the trial Court to be examined in spite of efforts made by the prosecution. Besides this, the investigating officer in his statement clearly stated that when their statement was recorded during investigation, they stated that there was no complain of her daughter about her ill-treatment by her in-laws. They also did not say any thing about demand of dowry by the in-laws. Even if there was alleged demand as per the statement of father, mother and brother, whether this demand was a dowry demand or not. On this point learned counsel has drawn my attention to the decision aforesaid of the Apex Court in which it was held that the demand of dowry made before or at the time or after the marriage where such demand is referable to the consideration of marriage is only dowry punishable under Section 4 of the Dowry Act. In the present case the demand was for starting business by the bridegroom of the deceased and that too prosecution could not prove this point beyond all reasonable doubts. The initial ingredients to attract punishment under Section 304B of the Indian Penal Code and also to attract presumption under Section 113B of the Evidence Act are lacking in this case. For that the prosecution had to prove that the death 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 should have been nexus between cruelty or harassment or demand of dowry. However, in this case the alleged demand of money was for starting business. Even there is no evidence to prove that there was cruelty soon before the death of the deceased as

such, presumption under Section 113B of the Evidence Act against the appellants cannot be drawn. To prove dowry death it was basic duty of the prosecution to prove that the deceased was subjected to cruelty and torture and she was done to death by the appellants. Thus the prosecution could not establish the case against the appellants beyond reasonable doubts. They are therefore entitled to get benefit of doubt. Accordingly, conviction and sentence passed by the Court below are set aside. The appellants are on bail. Their bail bonds stand discharged. In the result, this appeal is allowed.

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