

Jamal Mian and Ors Vs. State of Jharkhand

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Court : Jharkhand

Decided On : May-07-2015

Appellant : Jamal Mian and Ors

Respondent : State of Jharkhand

Judgement :

1 Criminal Appeal (D.B.) No. 295 of 2003 --- [Against the judgment of conviction and order of sentence dated 01.02.2003 and 03.02.2003 respectively passed by Additional Sessions Judge, Fast Track Court-II, Hazaribagh, in Sessions Trial No.490/1993]. ----- 1.Jamal Mian son of Sahdali Mian 2.Sahdali Mian son of late Rahim Mian 3.Amna Khatoon wife of Sahdali Mian, All residents of village Nawada, PS Bisungarh, District Hazaribagh -- Appellants Versus The State of Jharkhand --- Respondent ---- PRESENT HONBLE MR. JUSTICE VIRENDER SINGH, CHIEF JUSTICE HON'BLE MR. JUSTICE P.P.BHATT ----- For the Appellants : Ms. Amrita Banerjee, Advocate For the Respondent-State : Mr. Shekhar Sinha, A.P.P. ----- Dated 7th May, 2015 Per Virender Singh,C.J.

Vide our short order dated 07.05.2015, the instant appeal stands allowed. The detailed judgment follows now.

2. All the three appellants (hereinafter to be referred to as accused) preferred this appeal against impugned judgment of learned Additional Sessions Judge F.T.C. II, Hazaribagh whereby and whereunder learned Additional Sessions Judge found and held all the three accused guilty for the charge of Section 302 IPC and under

Section 3/4 D.P.Act and sentenced them to undergo imprisonment for life for the charge of Section 302 IPC and R.I. for one year for the charge of Section 4 of D.P.Act with the rider that both the sentences shall run concurrently.

3. As appellant No.2 Sahdali Mian died on 08.08.2015 while on bail, the instant appeal stand abated against him. 2 4. The father of deceased PW-4 Buton Mian, who came to know from his nephew Kamruddin that his daughter Jamila Khatoon died, went along with his all family members to the matrimonial house of his daughter and saw that his daughter was lying dead on a cot. He noticed swelling on her face and neck. He also noticed fracture on her leg. It is alleged that the informant came to know from the neighbouring people that all the three accused persons viz Jamal Mian (husband), Sahdali Mian (father-in-law) and Amna Khatoon (mother-in-law) had killed his daughter last night and spread a rumour that Jamila committed suicide. The genesis of occurrence and motive behind crime has been stated as the in-laws of deceased had demanded cash Rs.5000/- from informants daughter on the eve of Id this year but informant could not fulfill their demand whereupon they had given death threatening to his daughter for which a panchayati was convened, as a result of which, the in-laws of his daughter had become annoyed with deceased, who ultimately killed her after eight years since marriage.

5. Prosecution in support of its case produced and examined altogether 8 witnesses. PW-8 Dr. A.A.Faruque, who conducted autopsy over dead body of deceased, got the postmortem report exhibited as Ext.2 rest witnesses of fact PW-1 Sobrati Mian (relative of deceased), PW-3 Md. Ali (relative of deceased), PW-4 Butan Mian (father of deceased), PW-5 Leko Mian (resident of other village), PW-6 Fakiran Khatoon (bhabhi of deceased), who reached at place of occurrence after occurrence stated hearsay evidence of killing but described about injuries 3 noticed over dead body and PW-7 Majbul Ansari proved the signature of witnesses made on inquest report.

6. Learned counsel for the appellants pointed out the vital flaws in the case of the prosecution viz. the initial statement within the fardbeyan is not duly proved when the first informant had stepped into the witness box; there is no eye witness to the

occurrence; I.O. has not been examined. The most fundamental defect in the prosecution case is that it has failed to prove cause of death of the deceased as the cause of the death was initially reserved for the reason that viscera was sent for chemical examination. Viscera report was never produced during the trial by the prosecution, therefore, cause of death is not proved.

7. Learned counsel further submitted that may be on the person of the deceased there appears to be abrasion on her lips and some red material was also noticed coming out from the mouth and nostril of the deceased, all these symptoms would not be enough to prove that the death was homicidal in nature. Learned counsel, in the same breath, submitted that there is no evidence worth the name to even prove that the death is suicidal, may be it happens to be an unnatural death, that too in the house of the accused only. Learned counsel added that assuming for the sake of argument, unnatural death of the deceased, by any stretch of imagination, is taken as suicidal death (although not proved by the prosecution), there appears to be no evidence worth the name to prove the ingredients of abetment so as to dilute the gravity of the offence from section 302 I.P.C to section 306 I.P.C. Learned counsel gave emphasis that Section 113-B of 4 the Indian Evidence Act, in any case, cannot be attracted in this case as the death of the deceased in the house of her in-laws is beyond the period of seven years and that the prosecution is to prove abetment to the hilt.

8. Per contra learned A.P.A. submitted that learned Trial Court opined that the cause of death of deceased, who died in her matrimonial house, as asphyxia quoting Medical Jurisprudence of Modi and there being sufficient evidence to show that it is case of homicidal death of deceased in her matrimonial house, hence the impugned judgment is correct, legal and based on reasoning, while this appeal is devoid of any merit in it deserves dismissal.

9. From the perusal of deposition of PW-8 Dr. A.A.Faruque as well as postmortem report, it appears that two external injuries (Lips swollen and (ii) Bruise around lips coupled with blood coloured discharge from mouth and nostrils were found at the time of autopsy (postmortem report is silent as to whether these two injuries are anti-mortem or not). Prima facie it appears to be a case of smothering (a type of

asphyxia) seeing both injuries as well as blood coloured discharge from mouth and nostrils. Smothering is caused by closing the external respiratory orifices either by hand or by other means or by blocking up cavities of the nose and mouth by introduction of foreign substance such as cloth, mud etc. But as per medical jurisprudence the asphyxial sign and symptoms are severe in case of smothering because death usually results due to slow asphyxia and often the fatal period is 3 to 5 minutes. In this case, blood stained frothy fluid is present in air passage. In the case at 5 hand, medical expert has not found any severe asphyxial sign or symptom rather he observed only that Larynx wall was congested. Further there is nothing to show that any blood stained frothy fluid was found present in air passage to block the pharynx. It appears that for the aforesaid reasons medical expert has not opined the cause of death of deceased as asphyxia.

10. As per HWV cox Medical Jurisprudence, in case of poisoning, there is swelling in mouth, throat, oesophagus and stomach. Kidneys show swollen appearance and liver and spleen are congested and heart may show fatty deposits. Postmortem report of deceased reveals that liver, kidney, spleen and stomach wall were found congested and both ventricles of heart were partially filled. In totality of above circumstances, it can be opined that medical expert has rightly reserved his opinion suspecting a case of administering poisonous substance but unfortunately due to lapses of prosecution, no viscera report was placed before medical expert for obtaining his final opinion and thus the opinion of medical expert remained reserved till conclusion of trial. Hence, the irresistible conclusion can be drawn that prosecution has not been able to prove the actual cause of death.

11. Informant PW-4 himself did not support his earlier version on the point of injuries noticed by him on the body of deceased as mentioned in FIR and produced a new exaggerated story on oath in Court by deposing that he had seen that cloth was inserted in mouth of deceased and a piece of wood was inserted in her private part, while FIR speaks about only the fact that informant had noticed fracture of leg and swelling on face and neck of deceased. This contradiction, in our considered view, is vital in nature and goes deep to the root of prosecution story.

12. Rest witnesses, PW-2 and PW-3 stated about the swelling on neck, while PW-1, PW-5 and PW-6 stated nothing about injury on neck.

13. It is also worth mentioning here that medical evidence has not corroborated the evidence of prosecution witnesses who deposed that they had noticed swollen neck of the deceased as there is nothing to show in autopsy report that any external injury or swelling was found on the neck of deceased. Viewed thus, the opinion of learned Additional Sessions Judge that deceased died due to asphyxia does not appear to be sustainable in the eye of law.

14. Statement of accused persons recorded under Section 313 Cr.P.C. also does not indicate any incriminating circumstance of definite nature, which points out towards guilt of any accused persons. It also does not suggest any cause of death like asphyxia, on the basis of which conviction has been ordered. This flaw also assumes importance independently and when seen with the above narrated vital flaws, demolishes the case of the prosecution to a great extent.

15. Another weakness in the prosecution case is that there is no eye witness in this case, who can say that he had seen any or all accused persons with deceased in the intervening night of 9th / 10th July, 1991 at place of occurrence, rather the omnibus allegation has been attributed against all three persons for causing death of deceased. Since there is nothing to show that 7 who actually is/are perpetrator of this crime, it can be said that prosecution has not been able to prove any specific inculpatory fact against any accused inconsistent with his/her innocence, thus there exists possibility of a circumstance capable of explaining any other hypothesis than the guilt of each accused person.

16. The allegation of demand of dowry for the first time after eight years since marriage of deceased appears to be ornamental and does not inspire confidence on the touchstone of probability. Moreover, there be vital contradiction also on the point of demand of dowry as well as panchayati convened for it which is also vital in nature. Therefore, conviction under Section 4 of D.P.Act cannot be said to be sustainable in the eyes of law on the basis of material available on the record.

17. As a sequel to the aforesaid discussions, we are of the considered view that the prosecution has not been able to prove the charge against the present two co-accused of section 302/34 I.P.C and Section 4 of D.P.Act beyond any shadow of reasonable doubt. Resultantly, the judgment of conviction and order of sentence passed by the learned trial court vide impugned judgment, deserves to be disturbed. Ordered accordingly. The judgment of conviction as well as sentence slapped upon appellants is hereby set aside.

18. The net result is that the appeal on hand stands allowed. Accused Jamal Mian, who is stated to be in custody for the last more than 13 years, shall be released forthwith in this case, if not required in any other case(s). 8 19. Accused Amna Khatoon, who is already on bail during pendency of the instant appeal, is discharged from the liability of bail bonds submitted by her. Sureties are also discharged.

20. Let the jail authority concerned be informed about the outcome of the instant appeal by the Registry without any delay. Trial Court shall also be intimated of the outcome of the appeal. Lower Court record (in original) be remitted. (Virender Singh, C.J.) (P.P.Bhatt, J.) High Court of Jharkhand at Ranchi Dated the 7th May, 2015 Birendra AFR

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