

Khatoon Bibi and ors. Vs. State of Bihar

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Court : Jharkhand

Decided On : Feb-12-2004

Reported in : 2004(1)BLJR792; 2004CriLJ3017; [2005(2)JCR384(Jhr)]

Judge : Hari Shankar Prasad, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 304B

Appeal No. : Crl. Appeal No. 135 of 1998 (R)

Appellant : Khatoon Bibi and ors.

Respondent : State of Bihar

Advocate for Def. : Amaresh Kumar, APP

Advocate for Pet/Ap. : A.K. Sahani, Adv.

Disposition : Appeal dismissed

Judgement :

Hari Shankar Prasad, J.

1. This appeal is directed against the judgment of conviction dated 20.5.1998 and order of Sentence 21.5.1998 passed in Sessions Trial No. 265 of 1995 whereby and whereunder the learned 5th Additional Sessions Judge, Giridih held the appellants guilty under Section 304B of the Indian Penal Code (IPC) and held the

appellants guilty and convicted and sentenced them to undergo R1 for ten years.

2. Prosecution case in brief is that Jumman Mian gave a fardbeyan on 22.4.1994 at about 9.45 a.m. in the courtyard of sasural of his sister (Gulshan Bibi) that a coal loader gave information that his sister had hanged herself and died. On that piece of information, he along with other villagers went to Ghaghra and found the dead body of his sister (Gulshan Bibi) lying on cot. His sister was married with one Usman Mian three years ago and they had no issue and family members of her in-laws used to threaten her to bring cash and articles from her naihar, otherwise they would kill her and his sister always told this thing in her naihar. His sister was always tortured, abused and assaulted by the family members of her sasural people. His sister was killed by her sasural people and Bhawani Mian died during the pendency of the case on 21.4.1994. On this piece of information, a case under Section 304B of the Indian Penal Code was registered and after investigation, police submitted charge-sheet. Cognizance in the case was taken and the case was committed to the Court of Sessions where 5th Additional Sessions Judge recorded evidence of witnesses-both oral and documentary-came to a finding and held the appellants guilty and convicted and sentenced them as aforesaid.

3. Altogether eleven witnesses have been examined by the prosecution. PW 1 is Muslim Ansari, PW 2 is Jahur Ali. PW 3 is Tulsi Sao. PW 4 is Dhanraj Sao. PW 5 is Kewal Sao. PW 6 is Jumman Mian, he is informant of the case. PW 7 is Dr. B.P. Singh who conducted postmortem examination on the dead body of Gulshan Bibi. PW 8 is Tuplal Yadav. PW 9 is Dasrath Yadav. PW 10 is Kantu Pandit and PW 11 is the I.O. of the case.

4. PW 1 has come to say that informant Jumman Mian (PW 6) told him that he got information that his sister (Gulshan Bibi) has been murdered. On this piece of information, Jumman Mian along with others including him went to the sasural of his sister and saw her dead body lying on the cot. He has further deposed that Gulshan used to tell the informant that she is tortured in her sasural for fulfillment of dowry such as cycle, watch and money. He has further deposed that from perusal of the dead body, it appeared that she was strangulated to death. He further deposed that Gulshan was married three years before the occurrence. He

says that he had personal knowledge about the relationship between the parties as he used to be told by the informant.

5. PW 2 is Md. Jahur Ali. He says that Gulshan (deceased) was married three years before the occurrence. He also learnt from the informant that he got information from the same person that she has been murdered. He also learnt from the informant that his sister was tortured in sasural for fulfillment of dowry.

6. PW 3 is Tulsi Sao. He has also given same evidence. PW 4 has deposed that he had accompanied the informant to the sasural of Gulshan Bibi where he saw her dead body lying on cot. He also learnt from the informant that his sister was tortured for dowry in her sasural.

7. PW 5 is Kewal Sao. He is shopkeeper and he has also accompanied informant who went to the sasural of his sister on getting information about the murder of his sister.

8. PW 6 is Jumman Mian. He is informant of the case and brother of the deceased Gulshan Bibi. He has supported the prosecution case. He has come to say that sasural people of his sister used to demand dowry and due to non-fulfillment of the same, they used to torture and assaulted her. On 22.4.1998 he got information that his sister has been murdered and he went there and saw dead body of his sister lying on cot.

9. PW 7 is the doctor who conducted postmortem examination on the dead body of Gulshan Bibi (deceased). In course of postmortem examination, he found following ante-mortem injuries on the dead body of Gulshan Bibi :

'Tongue inside, teeth intact, face pale, bloody froth at mouth and nostrils. No evidence of bleeding from left internal ear. Bloody froth was found external ear and anti-mortem ligature mark round the place about the thyroid cartilage and directed obliquely upwards following the line of mandible.'

According to the doctor, cause of death was Asphyxia as a result of hanging. According to him, death occurred within 24 hours of the postmortem examination.

10. PW 8 has been declared hostile and he has not supported the prosecution case. PW 9 has also been declared hostile and PW 10 has been tendered for cross-examination.

11. PW 11 is the I.O. of the case. He received rumours at 8.30 a.m. and went to the village Ghaghra where he recorded fardbeyan of Jumman Mian (informant). He took up investigation and investigated the case. He found dead body of Gulshan (deceased) lying on cot and in presence of two witnesses, he prepared inquest report. He visited the P.O. According to him, P.O. is the southern room of the house of Bhawani Mian. Cot on which the dead body was lying, was placed north-south in the room. This room is thatched room.

12. On behalf of defence, three witnesses have been examined. DW 1 has deposed that relation between both the sides are cordial and there was no demand of dowry. DW 2 and DW 3 have also given the same evidence as DW 1 has given.

13. On this piece of evidence on record, learned Court below after scrutinising the evidence--both oral and documentary--came to a finding and held the appellant guilty and convicted and sentenced them as above.

14. Learned counsel appearing for the appellants submitted that no case is made out under Section 304B, IPC and it was not accidental but Gulshan Bibi had committed suicide after being dissatisfied with her life as a result of the fact that after three years of marriage, she has not been able to deliver a child and because of her frustration, she has committed suicide. He further pointed out that ingredients which constitute offence under Section 304B, IPC are lacking. It was further pointed out that there was no demand of dowry and there was no torture or misbehaviour with the deceased as alleged by the prosecution.

15. So far as evidence of other witnesses are concerned, they are consistent on one point that Gulshan Bibi was tortured for dowry and due to non-fulfillment of dowry, she has actually been murdered by her sasural people.

16. On perusal of evidence on record, it appears that there are two sets of witnesses, one set of witnesses are from the place where informant resides and other sets of witnesses belongs to the place of the appellants. PWs. 8 and 9 are witnesses who belong to the village Ghaghra which is the sasural of Gulshan Bibi (deceased) whereas other witnesses are from village where informant resides. Admittedly, as per evidence and material brought on record, it appears that Gulshan Bibi was married three years ago prior to the date of occurrence and defence has not shown any suggestion whether she was married eight or ten years or fifteen years ago and no one had seen that marriage was solemnised three years prior to the date of occurrence. It is also admitted fact that Gulshan Bibi died to Asphyxia as a result of hanging as observed by PW 7, the doctor who conducted postmortem examination on her dead body. It has also come in the evidence of some witnesses that hook from where Gulshan Bibi (deceased) got herself hung was not high, it was about 5 ft. high and in such a place, nobody, would try to hang herself. Hanging is possible from some height and not from the height as has been found by I.O. (PW 11) when he visited the P.O. According to the doctor, from such short height one cannot commit suicide by hanging herself or himself and in such a situation, it can safely be said that she has purposely been hanged, otherwise hanging would not be possible from such a short height.

17. It is true that in such a case of dowry death, whenever any demand is made for more dowry, there are very reasons behind it. Sometimes husband is so greedy that knowing his father-in-law to be moneyed man, demands more dowry even after marriage and if demand of dowry is not fulfilled, then he starts torturing his wife for fulfillment of demand of dowry and hapless father goes on meeting demands till he becomes helpless but further concedes to the demand and in that case, his daughter is tortured by her husband. There are cases where husbands are so helpless even if he feels that his wife should not be tortured for fulfillment of demand of dowry or for anything else, still he is not in a position to oppose his parents and other family members other than his wife and becomes mute spectator to the process of torture being perpetrated on his wife and when an occurrence takes place in which husband and other family members becomes a party or made a party, then husband without any fault on his behalf becomes target of the sasural people. Here in the instant case also, allegation is that

demand of dowry was in the form of cycle, watch and money and cycle and watch are such items with which mother-in-law, the appellant No. 1 has got no concern, it can safely be said that appellant No. 1 was demanding money and appellant Nos. 2 and 3, who are husband and brother-in-law of the deceased, respectively, are such persons who have got more concern for cycle and watch. In the circumstances, it appears that all the appellants are responsible for the occurrence which took place.

18. In that view of the matter, this appeal is dismissed. Since the appellants are on bail, their bail bonds are cancelled and they are directed to surrender before the learned Court below to serve their sentences. At the same time, learned Court below is directed to take all coercive steps to apprehend these appellants to serve their sentence.

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