

Dileshwar Matho and ors. Etc. Vs. the State of Bihar

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Court : Jharkhand

Decided On : Apr-25-2006

Reported in : 2006CriLJ3562

Judge : D.P. Singh, J.

Acts : [Evidence Act, 1872](#) - Sections 113B; [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 201 and 304B; Code of Criminal Procedure (CrPC) - Sections 313

Appeal No. : Cr. Appeal Nos. 369 and 378 of 2000

Appellant : Dileshwar Matho and ors. Etc.

Respondent : The State of Bihar

Advocate for Def. : Alok Lal, APP

Advocate for Pet/Ap. : B.M. Tripathy,; K.S. Nanda and; N. Kumar, Advs.

Judgement :

D.P. Singh, J.

1. All the appellants stand convicted for the offence under Sections 304B and 201 of the Indian Penal Code and sentenced to serve imprisonment for seven years and one year respectively by the Additional Judicial Commissioner, Khunti (Ranchi) in Sessions Trial No. 180 of 1997. Since both the appeals arise out of the

same judgment, they are taken up together for disposal on merit.

2. Briefs facts leading to their conviction are that the informant Shatrughan Mahto in the night of 20-9-1996 stated before Bundu Police along with the dead body of his sister's daughter that deceased Sharthi Devi was married with appellant Bhuneshwar Mahto in the month of Baisakh of 1992 according to Hindu custom after giving dowry as per their capacity. However, after sometimes the appellant started asking for colour television, Godrej Almirah and further cash from said Sharthi Devi. According to the informant, these facts were reported to the parents of the deceased. It is further stated that in the evening of 20-9-1996, appellant Bhuneshwar Mahto came to the house of the informant in a Maruti Van and asked where about of his wife Sharthi Devi. Getting suspicious on the moves of appellant Bhuneshwar Mahto, the informant along with others proceeded in search of Sharthi Devi and during that course, her body was recovered from the well of the appellant. Further case of the prosecution is that the deceased was found having her neck tied with sari and one heavy stone, used as roller in flour making (Atta-chakki). The dead body was brought out in presence of the informant with the help of the villagers and the matter was reported to the police. According to the informant, Sharthi Devi was killed by the appellants just because he could not satisfy the demand of dowry and thrown in the well.

3. The police after recording the statement, prepared the inquest report and lodged Bundu Rs. Case No. 125 of 1996 under Section 304B/34 of the Indian Penal code. The dead body was sent for post mortem examination and investigation was taken up. After completion of the investigation, the police finally submitted charge-sheet against all the appellants to face trial. Their case was committed to the Court of Sessions for their trial. The learned trial Court framed charges against all the appellants under Sections 304B and 201 of the Indian Penal Code on 6-8-1999. The trial Court after examining the witnesses and considering the defence, found and held all the appellants guilty for the offences under Sections 304B/201/34 of the Indian Penal Code and sentenced them to serve imprisonment for seven years and one year respectively.

4. These appeals have been preferred on the grounds that the appellants were innocent. Further case of the defence is that the deceased Sharthi Devi has committed suicide and there is no evidence that the appellants used to demand dowry from the deceased. It is also asserted that the learned lower Court relying upon three letters said to be written by the deceased vide Ext. 3 series have not been brought on record properly. It is also asserted that in absence of any proof that the deceased was tortured in connection with dowry demands; conviction under Section 304B of the Indian Penal Code deserves to be set aside. It is also asserted that when appellant Bhuneshwar Mahto was frantically searching his wife, false allegation by these appellants has been made. According to other appellants, they were living separately from appellant Bhuneshwar Mahto and they had no idea about the conduct of appellant Bhuneshwar Mahto.

5. Learned Counsel for the appellant strenuously argued these points before this Court and submitted that the prosecution has miserably failed to prove the case against the appellants particularly in the circumstances where witnesses, examined on behalf of the prosecution before the trial Court, have contradicted themselves on material point.

6. Learned A.P.P. on behalf of the State opposed these contentions on the grounds that the death of Sharthi Devi in unnatural circumstance has been proved beyond doubts. It is also submitted that when the dead body of the deceased was brought out from the well, she was found having a heavy stone tied with her neck, itself shows that she has been done to death by the appellants. Therefore, presumption of guilt against the appellants is strange. My attention was drawn towards the judgment of the learned lower Court vide Para-14 where the provision of Section 113-B of the Evidence Act come into play and onus was shifted upon the defence to prove that the death has occurred in normal circumstances.

7. Having heard the learned Counsel for the appellants and after going through the materials on record carefully, I find that in the present case death of Sharthi Devi in between night of 19-20th September 1996 remains undisputed. The post mortem was conducted on the next day on the dead body of the deceased by Dr. K. K. Choudhary that death has occurred due to drowning having abrasions three

in numbers caused by hard and blunt substance, ante mortem in nature. The said post mortem report is Ext. 1. It is also found from the evidence of P. W. 1 Haradhan Munda that when they went in search of Bharthi Devi, dead body was recovered from a well and when it was brought out from the well, a heavy stone was found tied with the neck of the deceased. This witness has stated in Para-7 that appellant Bhuneshwar Mahto used to demand television from the deceased. I further find from the evidence of P.W. 3 Doman Mahto that appellant Bhuneshwar Mahto had came in the night at about 10.00 P.M. and enquired about the deceased. According to him, the dead body of the deceased was brought out from the well along with police and found having tied with her neck by stone. This witness has admitted in cross-examination in Para-9 that the appellants were present when the dead body was recovered. According to him, dowry demands were made by appellant Bhuneshwar Mahto. P.W. 4 has similarly supported the recovery of the dead body from the well in his presence and has signed over the inquest report marked Ext. 2. He admitted vide Para-12 that the father of the deceased has informed him that dowry demand was made by the appellants. P.W. 5 similarly supported the story of prosecution that appellant Bhuneshwar Mahto has gone in search of the deceased and thereafter, dead body was recovered from the well in his presence. These witnesses apparently not related with the informant and the deceased and they found that the dead body was recovered from the well having a stone tied with her neck.

8. P.W. 6 Lakhi Narain Mahto, P.W. 7 Lakhan Mahto, P.W. 8 Kahani Mahto and P.W. 9 Bimla Devi, are the witnesses on the demand of dowry. P.W. 8 and P.W. 9 are the parents of the deceased whereas P.W. 6 and P.W. 7 are the uncle and Mama of the deceased. P.W. 10 is the informant. P.W. 11 is the Investigating Officer of this case. According to P.W. 8 and P.W. 9, their son-in-law and other appellants used to torture her for colour television, Godrej Almirah and further Rs. 10,000/- in cash to meet their demands. P.W. 8 further stated that he consoled the deceased and informed the appellants after visiting them that he could not arrange for any more dowry. According to these witnesses, the deceased has sent letters to them alleging this fact, which has been brought on record, vide Ext. 3 series. P.W. 9 has also supported the prosecution case, in details, regarding demand for the colour television, Godrej Almirah and cash. She has also asserted that the

deceased has sent three letters to them alleging all these tortures. The statement of P.W. 6 and P.W. 7 supports the allegation that the deceased was asked to bring colour television, Godrej Almirah and cash, which could not be fulfilled. P.W. 6 has also identified the handwriting and signature of the deceased on the letters marked Ext. series. He has also proved the seizure list of these letters on which he has signed during seizure. Similarly P.W. 7 vide Para-2 as the Mama of the deceased has alleged that the dowry demands were made. The defence has cross-examined all these four witnesses at length, in which it was suggested that dowry custom was not prevalent in their castes. P.W. 6 has been cross-examined at length when the letter was written and when it was given to P.W. 2. His attention was drawn towards the colour of the Sari of the deceased etc., which is apparently irrelevant. Similarly attention of P.W. 7 was drawn towards these irrelevant facts when the inquest report was prepared and when he signed over it. Much reliance has been placed regarding the production of the letters before the police and the manner on P.W. 8 and P.W. 9 were cross-examined at length. The learned Counsel for the appellant criticized these witnesses on the point that they could not be probable witnesses of the demand of dowry and recovery of the dead body as well as production of the letters (Ext. 3 series) said to be written by the deceased. These two witnesses are the uncle and the maternal-uncle of the deceased and there is nothing on record to dispute them to be written by the deceased informing her parents about the dowry demands.

9. Father of the deceased Kanahi Mahto (P.W. 8) has admitted in cross-examination that just after one and half years of the marriage, the appellants started abusing, assaulting the deceased for dowry demands. It is also admitted vide Para-10 that the deceased was issueless after the marriage. He further asserted vide Para-17 that the letters marked Ext. 3 series was produced before the police on 20-9-1996 itself. P.W. 9 Bimla Devi, mother of the deceased supporting the statement of her husband, has been cross-examined on the point that how the stone was tied with the neck of the deceased, when she was examined by the police, who accompanied the dead body of the post mortem etc. These two witnesses were suggested that the deceased committed suicide because she could not get any issue during four years of her marriage, which appears afterthought. The informant Shatrughan Mahto has supported his earlier

statement made in the fardbeyan and before the police. He further asserted that just one day before the occurrence, the deceased has gone to Sasural and denied that he has got any dispute in joint business with the appellants. He has been cross-examined at length in what manner his statement was recorded by the police, who provided the Jhaggar for getting out the dead body and what happened after the dead body was cremated. He further admitted vide Para-17 that appellant Bhuneshwar Mahto came to him and asked for information regarding the deceased. In this context, the evidence of Investigating Officer is relevant who was informed regarding the incident and found the dead body hanging with the Jhaggar inside the well above the level of water. He further stated that when the dead body brought out from the well, inquest report was prepared in presence of P.W. 4 Dharmendra Mahto and P.W. 7 Lakhan Mahto. He further admitted vide Para-7 that he has prepared the seizure list of the letters marked Ext. 3 series in the police station, but he has not prepared any production list for bringing those letters before the Court. He has admitted vide Para-11 that though he has seized the stone and prepared the seizure list of stone and Jhaggar and those materials items were not available in the Court. Learned Counsel for the appellant criticized these two witnesses i.e. the informant and the I.O. on the grounds that seized stone and Jhaggar were not produced before the lower Court. It is also suggested that in absence of two material exhibits, the story of prosecution should be discarded. However, no contradiction has been brought on record by drawing attention of I.O. towards other witnesses discussed in foregoing paragraphs.

10. It is a case of death of a lady who was married only four years before the occurrence. It is also a fact that on record that her dead body was recovered from the well having stone tied with sari in her neck. All witnesses examined as P.W. 6, P.W. 7 and the other independent witnesses have supported the story of prosecution. The post mortem report (Ext. 1) also supports the prosecution version that the deceased was recovered from a well and she died of drowning. Therefore, death of deceased Sharthi Devi cannot be said in normal circumstances. Under the provisions of law when such death occurs with the allegation of dowry demands, then strong presumption arises that the death of the deceased was result of a torture in connection with dowry demands. In the present facts that after

the marriage within two years dowry demands were made and oral evidence is available on record to suggest that the appellants used to demand for colour television, Godrej Almirah and further cash etc. The said allegation is further corroborated with the material exhibit letters (Ext. 3 series), which is undisputedly in the writing of the deceased. The defence has not produced any document to challenge the writings of the deceased on their protest. It is also proved that the deceased was a literate lady having read upto Class-VIII. All the witnesses related with the deceased have supported the prosecution version that she was subjected to torture for dowry demands. In such view of the facts when dowry demands were made and the deceased was found dead in a well having stone tied with her neck, strong suspicion converts into presumption that death has occurred after the tortures made in connection with dowry demands. Section 113-B of the Evidence Act specifically mentions that in such circumstances, the onus to prove the innocence is shifted to the defence side. The lower Court has also discussed these aspects in the impugned judgment vide Paras- 14 and 15.

11. I further find from the stand taken by the defence, which is not consistent that the deceased might have committed suicide out of frustration that she could not get any issue even after four years of her marriage. It is even suggested faintly that she has met an accident and slipped inside well. These facts suggested during cross-examination, have not been specifically asserted during statement recorded under Section 313 of the Code of Criminal Procedure by the Court on 8-3-1999. Learned Counsel for the appellants suggested to this Court that even in absence of clear and specific defence taken by the appellants, the Court may presume that they were innocent and have not taken part in the alleged offence. I fail to agree with the learned Counsel because in such cases, presumption shall be that such death has occurred in connection with dowry demands. Defence was accordingly required to prove that actually the deceased met with an accident and her death has occurred, because of the accident so suggested.

12. It is also find from the facts available in the case records that except appellant Bhuneshwar Mahto the husband of the deceased, no direct evidence is available showing that these four appellants, the brother-in-laws and the sister-in-laws of Bharthi Devi, have participated in killing of the deceased. The learned Counsel for

the appellants (in Criminal Appeal No. 369 of 2000) submitted that they used to live separately and has no concern with the affairs of appellant Bhuneshwar Mahto, husband of the deceased. On careful consideration of facts and circumstances mentioned above where the prosecution witnesses have not asserted that these appellants also participated in committing torture for dowry demands, I am of the opinion that they cannot be presumed to have caused death of deceased Bharthi Devi. Accordingly, I find and held that Criminal Appeal No. 369 of 2000 filed on the behalf of the four appellants, deserves to be allowed on benefit of doubt. Accordingly, Criminal Appeal No. 369 of 2000 has got merit in it and is allowed. They are discharged from the liabilities of their bail bonds also.

13. So far as the complicity of appellant Bhuneshwar Mahto is concerned, evidence on record indicates his involvement in the alleged offence completely. It is also found that he tried to conceal the crime committed by him by claiming ignorance about his wife in the night of 19-20 September 1996 and misled the witnesses. As such I also find and held him guilty for the offence under Sections 304B/201 of the Indian Penal Code. Accordingly, Criminal Appeal No. 378 of 2000 preferred by appellant Bhuneshwar Mahto is found without merit and is dismissed. The judgment and order passed by the trial Court is hereby confirmed.

14. From perusal of the records, it appears that appellant Bhuneshwar Mahto has remained in custody from 21st September 1996 and he was never admitted to bail by this Court. As such, he appears to have completed the term of sentence imposed upon him by the learned lower Court. Accordingly, Office is directed to sent back the records of this appeal along with a copy of this order, . so that appellant Bhuneshwar Mahto, if not required in any other case, be released henceforth from custody.