

Dwarika Prajapati Vs. State of Bihar

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Court : Jharkhand

Decided On : Jul-15-2003

Reported in : II(2004)DMC250

Judge : Amareshwar Sahay, J.

Acts : [Dowry Prohibition Act, 1961](#) - Sections 4; [Indian Penal Code \(IPC\), 1860](#) - Sections 498A

Appeal No. : Criminal Appeal No. 6 of 1997 (R)

Appellant : Dwarika Prajapati

Respondent : State of Bihar

Advocate for Def. : S.N. Rajgarhia, APP

Advocate for Pet/Ap. : Jaya Roy, Adv.

Judgement :

Amareshwar Sahay, J.

1. The present appeal arises against the judgment dated 20.12.1996 passed by 2nd Additional Session's Judge, Hazaribagh in Sessions Trial No. 173 of 1989 whereby the learned Trial Court convicted the appellant under Section 498A of the Indian Penal Code and under Section 4 of the Dowry Prohibition Act and

sentenced him to undergo R.I. for 3 years under Section 498A, but no separate sentence was passed for the offence under Section 4 of the Dowry Prohibition Act, By the said judgment, the learned Trial Court acquitted the other 4 accused persons, namely, Loknath Prajapati, Smt. Tetri Devi, Smt. Khagni Devi and Arjun Prajapati who were tried with the appellant.

2. The prosecution case in brief is that Jayanti Devi, the daughter of the informant was married to the appellant Dwarika Prajapati. After 2 years of the marriage, the accused persons started torturing Jayanti Devi and demanded the money and jewelleries as dowry. It is said that the victim lady came to her parents' place after two years of the marriage and then her in-laws refused to take her back to her matrimonial house and they were making preparation for the second marriage of the appellant Dwarika Prajapati. The informant brought the matter to the Panchayat which was attended by Kaushal Babu, Krishan Babu, Murli Pandey, Gaffoor Mian, Jagdish Sah, Budhan Yadav, Deo Narayan Yadav, etc. The appellant i.e., the husband of the victim and her father-in-law also attended the said panchayati and it was resolved that the husband as well as the father-in-law of the victim girl, would take her back to her matrimonial house and would not extend any ill-treatment in future. It is said that though the victim Jayanti Devi was taken back by her in-laws to her matrimonial house but they again started ill-treating her and demanding dowry. Since the informant was a poor person he could not fulfil their demand of dowry, whereupon the in-laws again sent the victim girl to her parental house and thereafter deserted her.

Thereafter it is said that the informant submitted a complaint before the D.S.P., Hazaribagh, as a result of which the victim was brought again to her matrimonial house but even thereafter the victim girl was being assaulted, tortured and was not being provided minimum food by the In-laws, When the Informant visited the matrimonial house of her daughter, he was told by her about the Ill-treatment which was being extended to her. When the Informant talked to the in-laws i.e., the accused persons, it was told by them that the victim would not be allowed to stay in the matrimonial house, unless the demand of dowry is fulfilled, otherwise she would be killed.

3. On 5.11.1985, the informant came to know that his daughter Jayanti Devi died due to drowning in a well. He immediately rushed to the place of occurrence with the witnesses and also went to the Police but the police neither recorded his Fardbeyan nor seized the dead body. The informant took the dead body with him to his house, The Ichak Police which had registered the case of unnatural death on the direction of the Superintendent of Police a case under Section 498A of the IPC was registered on the basis of which investigation was made and charge-sheet was submitted against the 7 accused persons. Two of the accused persons died and, therefore, the trial was dropped against them and 5 persons were tried together out of which the present appellant was convicted as aforesaid and the rest 4 accused were acquitted from the charges levelled against them.

4. Altogether 7 witnesses were examined by the prosecution. The Investigating officer as well as the Doctor who held the post-mortem examination on the dead body of the victim were not examined by the prosecution. Out of the 7 P.Ws. examined, P.W. 1 Bishun Prajapati, stated that the victim was married to the appellant and after the marriage, she was residing in her Sasural but after some time the in-laws started torturing the victim on the demand of dowry. He further stated that the in-laws threatened that if the demand of dowry is not fulfilled then the victim girl should be taken back otherwise she would be done to death, He further stated that he came to know that the informant along with others went to the appellant's place, whether they found the dead body of the victim girl. In cross-examination this witness has stated that neither the dowry was demanded nor the girl was tortured in his presence, rather he came to know about the same from the informant. P.W. 2 Jodhan Sao has stated in his examination-in-chief that the girl was being tortured by the in-laws who were demanding dowry and jewellery. He has further stated about the previous panchayati in which the girl was handed over to the appellant and his father. He has further stated that even thereafter she was being ill-treated and tortured. He further stated that he sent the informant to the in-laws' place of the victim where he found the dead body of the victim. In cross-examination, this witness has stated that he was not examined by the police during investigation and he was deposing for the first time in Court. P.W. 3 Shivcharan Prajapati has been tendered. P.W. 4 is the informant, P.Ws. 5 and 6 are the formal witnesses and P.W. 7 Gaffoor Mian who is a resident of village

Manai i.e. the village of the appellant has stated in his examination-in-chief that while he was in his house he heard the halla that the daughter-in-law of Bhanu Prajapati has fallen in a well at this he went near the well and then he saw that the dead body of the daughter-in-law of Bhanu Prajapati was lying by the side of the well.

5. It appears that the learned Trial Court has convicted the appellant only on the statement of the informant Cheto Prajapati.

6. The learned Counsel appearing for the appellant has contended that the learned Trial Court has committed error in convicting the appellant only on the uncorroborated testimony of P.W. 4 i.e., the informant. There is no eye-witness to the occurrence.

It was further contended that P.W. 4 has not stated a word in his evidence that this appellant has tortured his wife but the Trial Court has given wrong finding on the said fact and hence, the appellant is entitled to be acquitted.

7. From a close scrutiny of the evidence of P.W. 4 the informant, it appears that he has stated in his evidence that the in-laws of his daughter were demanding dowry and were ill-treating his daughter. In paragraph 2 of his evidence in examination-in-chief itself, P.W. 4 has stated that his daughter has complained that Samdhi, Samdhin, Dewar, Nanad, etc. were demanding jewellery and they were ill-treating her and Videshi told him to bring jewellery, otherwise the girl would be killed. In his statement he has not stated a word specifically that this appellant ever demanded dowry or ill-treated his wife. The entire allegations are against the in-laws but on the same evidence, the learned Trial Court has acquitted the other accused persons who were tried together with the appellant.

8. In my view, there is no material on record against the appellant so as to establish the fact that he was demanding dowry or was ill-treating his wife in any manner. In view of the facts and circumstances stated above, I hold that the prosecution has failed to prove the charges against the appellant.

9. In the result, this appeal is allowed. The conviction and sentence passed against the appellant is hereby set aside. The appellant who is on bail is discharged from the liability of his bail-bonds.

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