

Arbind Kumar Ambasta and Two ors. Vs. State

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Court : Jharkhand

Decided On : Mar-21-2002

Reported in : 2002(50)BLJR1720; 2002CriLJ3973; II(2002)DMC246

Judge : Sudhansu Jyoti Mukhopadhaya and; Lakshman Uraon, JJ.

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

Appeal No. : Criminal Appeal No. 123 of 1991

Appellant : Arbind Kumar Ambasta and Two ors.

Respondent : State

Advocate for Def. : S.N. Rajgarhia, A.P.P.

Advocate for Pet/Ap. : Hemant Kumar Sikarwar, Amicus Curiae

Disposition : Appeal allowed

Judgement :

Sudhansu Jyoti Mukhopadhaya, J.

1. This appeal has been preferred by the appellants against the judgment and order of conviction for the offence under Section 304(B) of the Indian Penal Code and sentence of life imprisonment dated 23rd March, 1991 passed in Sessions Trial No. 399 of 1989.

2. Before dealing with the case of prosecution and other evidence, it is desirable to mention the relationship between the deceased and appellants, as stated hereunder.

3. Rina Devi (deceased) was the wife of Arbind Kumar Ambasta (A.1), Basudeo Narain Ambasta (A.2) was the father-in-law of deceased, whereas Shanti Devi (A.3) was the mother-in-law of deceased, i.e. parents of Arbind Kumar Ambasta (A.1). The informant Nand Kishore Prasad was the father of Rina Devi (deceased).

4. The case of the prosecution, in brief, as was given in the Fardbeyan by informant Nand Kishore Prasad (P.W. 7) before the police on 19th April, 1989 that his daughter Rina Devi was married with Arbind Kumar Ambasta (A.1), son of Basudeo Narain Ambasta (A.2) about five years back. At the time of marriage, he had given a cash of Rs. 15,000/-, a golden ring, wrist watch, tape recorder, etc. as dowry. After the marriage, Rina was living in the house of in-laws (Sasural) and led conjugal life with her husband for quite some time. The trouble started when the husband Arbind Kumar Ambasta (A.1) and the in-laws (A. 2 and 3) started torturing her in different manner and assaulted her on many dates. Even she was assaulted by husband and in-laws sometimes in presence of informant and it was alleged that a sum of Rs. 20,000/- was demanded from the informant: so that the accused Arbind Kumar Ambasta (A.1) can obtain some employment. As the informant could not fulfil the demand, Rina Devi was further subjected to cruelty by her husband and in-laws. It is also alleged that Rina Devi was asked to leave the house of the in-laws twice, but on the request of the informant, she was allowed to remain in the house of the in-laws with her husband. The informant further alleged that he could come to know that Rina Devi was brutally assaulted in recent past and having come to know, the informant went to the house of her in-laws (Sasural) on 2nd April, 1989, when she was again assaulted in his presence by her husband and in-laws (A.1, 2 and 3). The informant further stated that on the alleged date of occurrence i.e. 18th April, 1989, when he was going to attend his duty, he was informed by a person from Sinodih that his daughter Rina Devi died. On receiving information, then the informant went to the house of in-laws of his daughter Rina Devi, found the daughter Rina Devi lying dead with scratches on both of her wrists with broken bangles scattered near her body. The informant claimed that the

accused (appellants herein) committed crime and murdered Rina Devi.

5. On the basis of Fardbeyan (Ext. 1/2), the police, drawn F.I.R. against the accused under Section 304(B), I.P.C., investigated the case and submitted charge-sheet under the aforesaid section against the appellants. The learned C.J.M. committed the case to the Court of Session on 4th August, 1989 under Section 304(B), which was tried by the learned 2nd Additional Sessions Judge, Giridih.

6. The learned Trial Court framed two issues, as quoted hereunder and held the appellants guilty of the charge under Section 304(B) of the I.P.C.

(1) As to whether the accused persons demanded dowry in the manner as alleged.

(2) And whether the prosecution has been able to establish the charge against the accused persons beyond all reasonable doubts.

7. Before discussing the evidence of one or other witnesses and statement of accused (appellants herein) given under Section 313, Cr. P.C., it is desirable to take into consideration the ingredients of Section 304(B), I.P.C.

8. According to the Counsel for the appellants, in a case under Section 304(B), I.P.C, certain conditions are required to be established like death of woman caused by burn or fatal injury or in abnormal circumstances, within seven years of marriage and because of cruelty of husband or relatives of husband for demand of dowry. In the instant case, it has not been established that the death of Rina Devi (deceased) took place within seven years of marriage and because of cruelty of husband or relatives of husband for demand of dowry.

9. The aforesaid provision, i.e. Section 304(B), I.P.C. fell for consideration before the Supreme Court in the case of Shanti v. State of Haryana, I (1991) DMC 187=A1R 1991 SC 1226, which held as follows :

'A careful analysis of Section 304(B) shows that this section has the following essentials-

- (1) the death of a woman should be caused by burns or bodily injury or otherwise than under normal circumstances;
- (2) such death should have occurred within seven years of her marriage.
- (3) she must have been subjected to cruelty or harassment by her husband or any relative of her husband;
- (4) such cruelty or harassment should be for or in connection with demand for dowry.

Section 113B of the Evidence Act lays down that if soon before the death such woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, then the Court shall presume that such person has committed the dowry death. The meaning of 'cruelty' for the purposes of these sections has to be gathered from the language as found in Section 498-A and as per that section 'cruelty' means 'any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, etc. or harassment to coerce her or any other person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand'. As per the definition of 'dowry' any property or valuable security given or agreed to be given either at or before or any time after the marriage comes within the meaning of 'dowry'...

10. Now, to examine the facts of the case, particularly, the period of marriage in the background of Section 304(B), I.P.C. and the ratio laid down by the Supreme Court, it is desirable to discuss the evidence of one or other witnesses.

11. Babu Lal Ram (P.W. 1); Jagarnath Yadav (P.W. 2); Ram Sewak Sharma (P.W. 3); Ashok Sinha (P.W. 4) and Bhattu Yadav (P.W. 6) are resident of village Sinodih i.e. the co-villagers of the accused. Nand Kishore Prasad (P.W. 7), informant is the father of the deceased. While Bhuvneshwar Ram (P.W. 5) is a tender witness, Dr. B.P. Singh (P.W. 8) conducted the post-mortem on the body of the deceased and Nageshwar Prasad Yadav (P.W. 9) was the Investigating Officer.

12. Babulal Ram (P.W. 1) stated that Rina Devi was residing in the house of accused persons since her marriage. The in-laws used to quarrel with her for dowry. Arbind (A.1) used to ask for money from his father-in-law for his service. This was the reason accused Basudeo (A.2), Arbind (A.1) and mother of Arbind (A.3) quarrelled with the daughter of Nand Kishore Prasad i.e. the deceased. He could come to know in the morning of a Wednesday at 6. a.m. that Daroga Jee had come to his village and then he went to the house of accused and saw the daughter-in-law of accused (i.e. the deceased) was lying dead on a Chouki (Cot). Near her dead body, pieces of bangles were lying. A jute rope was hanging in a bamboo and an iron rod was lying near the body.

In his cross-examination, P.W. 1 stated that the marriage of accused Arbind (A.1) took place about five to 6 (six) years back. However, he was not in a position to give the date, month or year of marriage.

The defence made certain suggestions in the cross-examination relating to enmity of P.W. 1 with the accused.

In cross-examination, P.W. 1 accepted that he sold a piece of land to the accused for a sum of Rs. 300/-, cost of which as on the date was about Rs. 50,000/-. However, he denied that he (P.W. 1) asked the accused to return back the land.

P.W. 1 further stated during his cross-examination that he had not seen anybody killing the deceased and has heard that in the night of a day earlier, Tuesday, the Daroga Jee visited the village and house of the accused. He also stated that he had not seen the husband-wife quarrelling amongst themselves, but used to hear their loud voice

P.W. 1 further stated that the accused Basudev Narain Ambasta (A.2) is a doctor practising at some other place and used to come to his house only once or twice in a week and rest of the days, he stayed out of his house. Accused Arbind (A.1) was studying at Ranchi and the accused Shanti Devi (A.3), who is an Angan Bari Sevika used to go for work in the morning at about 7 and 8. a.m.

13. Jagarnath Yadav (P.W. 2) made similar statement that he came to know of the incident at 6 a.m. (Wednesday), when the Daroga Jee came in the village and called him in the house of accused Basudev Narain Ambasta (A.2) through Choukidar. He informed the Daroga that Nand Kishore Prasad (informant-P.W. 7) is Samdhi of Basudev Narain Ambasta (A.2), who told him about 8 (eight) days back that he feared that they might kill his daughter for which he intended to lodge a case. Nand Kishore Yadav asked him (P.W. 2) to pacify the accused and, accordingly, he (P.W. 2) tried to make him understand the accused. He also stated that he had seen the dead body of the wife of Arbind Ambasta. A jute rope and a Shabdal of iron rod were lying near the dead body. Some broken bangles were also lying. According to him, accused Arbind (A.1) used to demand dowry and for such reason used to quarrel with his wife.

In his cross-examination, relating to marriage, P.W. 2 stated that Arbind (A.1) has a son of four years out of the deceased. The child born after about three years of marriage. P.W. 2 accepted that he had not seen any quarrel between the husband and wife and could come to know from the villagers that the accused used to demand dowry.

On the suggestion of the defence, in his cross-examination, he denied that rain water of the house of accused used to fall in his Bari (land) or that the accused wanted to purchase the Bari from him which he sold to a friend of his son-in-law four years back. P.W. 2 also stated that the Daroga Jee came in the night of the earlier day i.e. the Tuesday and he had not seen the accused (A.1) assaulting the deceased.

14. Ram Sewak Sharma (P.W. 3) stated that Arbind Kumar Ambasta (A.1) was married with the daughter of Nand Kishore Prasad, informant (P.W. 7) about five years back. In the night of 18th April, 1989 at about 12, a meeting was going on in the house of ex-Mukhiya for holding Ram Navmi. P.W. 3 was present in such meeting. He had seen Basudev Ambasta (A.2) and his wife Shanti (A.3) passing through said place. They told him (P.W. 3) that their daughter-in-law committed suicide by hanging herself for which they were going to the police station to give information. Receiving such information, P.W. 3 went to the house of accused and

found the dead body of Rina Devi kept on the floor in her sitting condition. A rope was found surrounded her neck tied with a Bamboo, but it was loose. He felt that the rope was later on tied with Bamboo. In the night, when the police reached, with the help of Choukidar, the dead body was taken out of room and kept on a Chouki (cot) in the outer Verandah.

In his cross-examination (P.W. 3) accepted that he had not said to the police that the accused Basudev and Arbind (A.1 and 2) demanded money from Nand Kishore (informant).

On 18th April, 1989, in the house of ex. Mukhiya, Hulash Singh, apart from himself (P.W. 13), there were other persons like Ram Swarath Baidya, Ishwari Ram, Kali Ram, etc. were present and in their presence, accused Basudev and Shanti asked them to come to their residence. He also stated that Basudev Narain Ambasta (A.2) used to go to his dispensary in the morning (9 a.m.) and the wife Shanti Devi (A.3) used to go for duty in the morning (7 a.m.). He further stated that Babulal Ram (P.W. 1) had lodged one case against the accused Basudev (A. 2) in the year 1981 in which Basudev was acquitted.

15. Ashok Sinha (P.W. 4) stated that the marriage of Rina Devi, daughter of Nand Kishore Prasad took place with the accused-Arbind Ambasta (A.1) about five years back. Thereafter, Rina used to stay in the house of her in-laws (Sasural). During the Holi festival in the year 1989, she (Rina) went to her parents' house. She also came to the house of P.W. 4 and talked with his wife. Rina told his wife that accused Arbind (A.1) is demanding money, but her father was not in a position to give the same. Accused Abind all the time threatening her that if she does not bring money, he will kill her. P.W. 4 also stated that he could come to know of the incident on 19th April, 1989 from a labourer, when he was coming from Giridih More.

In his cross-examination, he accepted that he (P.W. 4) is distantly related to informant (P.W. 7) Bhuvneshwar Ram (P.W. 5) being a tender witness, nothing requires to be discussed.

16. However, Bhattu Yadav (P.W. 6) son of Jagarnath Yadav (P.W. 2) stated that Arbind (A.1), husband of Rina (deceased), her mother-in-law, Shanti (A.3) and father-in-law (A.2) used to quarrel with her (deceased) for dowry. They also used to assault Rina (deceased). A number of times, he tried to make them understand not to misbehave with Rina, the father of Rina also asked him (P.W. 6) to make them understand. He stated that Rina was murdered in the night of 19th April, 1989, wherein after he saw the dead body of Rina in the Angan of the accused.

So far as marriage of Rina with Arbind (A.1) is concerned, P.W. 6 made specific statement that they were married about ten years back and Rina had a son of about 5-6 years born after about two years of marriage.

17. Nand Kishore Prasad (P.W. 7) is the informant and father of Rina (deceased). While he stated that the marriage of his daughter with Arbind Kr. Ambasta (A. 1) solemnised about six years back, in his cross-examination, the informant (P.W. 7) stated that he does not remember the year or the date of marriage.

P.W. 7 made other statement which corroborated the F.I.R. and stated that the accused used to torture his daughter. Earlier, he requested the son-in-law and Samdhi not to misbehave with Rina. In the year 1989, during Holi festival, Arbind (A.1) demanded from him (informant) a sum of Rs. 20,000/- for his service, but he could not pay, the informant having no such amount. This was the reason, Arbind took away Rina with him and when the informant wanted to give Kurta - Paijama, he refused to accept the same.

The informant stated that he saw the body of the daughter lying on a Chouki in the house of informant in swelling condition and bad smell was coming out of the body. There were scratches on her wrists and some pieces of bangles were lying near the body. One Shabble of iron was found in the dry well of the accused.

18. Dr. B.P. Singh (P.W. 8) conducted the post-mortem on the body of the deceased Rina on 19th April, 1989 and made the following statements :

'(i) Rigor mortis was absent. There was foul smell from the body. The body was swollen. Post-mortem peeling on skin and blister present. Tongue was protruded.

(ii) No apparent external injury was found on the body except ante mortem legature mark round the neck below the thyroid cartilage slightly depressed encircling the neck transversally and completely.

(2) On dissection subcutaneous tissues under the legature mark in the neck was acchymosed. Fracture of larynx and trachea was detected and their mucous membrane was red and congested. Lungs were congested. Heart contained blood in right side whereas left side of heart was empty. Stomach contained semi-digested food stuff and its mucous membrane was normal and nothing abnormal was detected in it. Other abdominal organs were congested and urinary bladder was empty. Uterus was bulky and contained product of conception of about six weeks duration. Brain substance was congested. Skull bones were normal.

(3) In our opinion cause of death was asphyxia as a result of strangulation. Time elapsed since death till the examination of post-mortem examination was two to three days.'

19. Nageshwar Prasad Yadav (P.W. 9) was the Investigating Officer. Though one or other prosecution witnesses suggest P.W. 1, P.W. 2 and P.W. 3 stated that the police reached in the night of Tuesday (18th April, 1989), the I.O. stated that he got the information on 19th April, 1989 at quarter to five of early morning that a lady died and the local people suspecting the death as unnatural. While the I.O. gave detailed position of the house of accused, proved the Fardbeyan (Ext. 3), inquest report (Ext. 4), stated that he found pieces of bangles, a jute rope and an iron Shabbe in the place of occurrence. He specifically stated that Sanha No. 363 recorded on 19th April, 1989, whereinafter he proceeded for Giridih and nobody gave any written information. He took the statement of Bhattu Yadav (P.W. 6) and further stated that a supplementary case diary was prepared in respect to one Scooterwala. However, no such supplementary case diary was produced before the Trial Court.

20. The Trial Court put question to the accused under Section 313/Cr.P.C. after witnesses for the prosecution had been examined. A number of questions were put to them by the Court in respect to the case to which specific reply was given by

one or other accused.

In respect to marriage, on 1st December, 1990 accused Shanti Devi (A.3) specifically replied that the marriage of Arbind and Rina took place about nine years back from the date of incident. The accused Basudev Narain Ambasta (A.2) replied to such query and stated that the marriage took place in the year 1980.

In his statement, the accused Arbind Kumar Ambasta (A.1) on 1st December, 1990 stated that he was married with Rina Devi about nine years back and thus a tentative period of marriage was shown to be about 1980-81 by all the accused.

21. From the evidence discussed above, there appears to be contradictory statements with regard to the period of marriage. Nand Kishore Prasad (P.W. 7) informant being the father of the deceased is one of the best persons to give the exact date of marriage. He merely stated that the marriage took place about six years back and specifically stated that he does not recollect the year of the date of marriage. Babulal Ram (P.W. 1), Ram Sewak Sharma (P.W. 3) and Ashok Sinha (P.W. 4) though corroborated the evidence of informant that the marriage took place 5-6 years back, but they have not specifically stated the year of marriage, nor stated that they had attended the marriage.

On the other hand, a different period of marriage has been shown by the other witnesses. Approximately, seven years stated by Jagarnath Yadav (P.W. 2), whereas Bhattu Yadav (P.W. 6) clearly stated that the marriage took place about ten years back.

Bridegroom and the parents of the families are the best persons to give the period of marriage. Arbind (A.1), the husband, Shanti Devi (A. 3), mother-in-law, while stated that the marriage took place about 9/10 years back, Basudev Narain Ambasta (A.2), father-in-law specifically stated that the marriage was solemnised in the year 1980.

22. Thus, from the statement of P.Ws. 2 and 6, as well as the statement of accused under Section 313, Cr. P.C, it appears that the marriage of deceased was solemnised with Arbind (A.1) prior to seven years of the date of death. The period

of marriage being vital, in this particular case, for punishment under Section 304(B), I.P.C. and there being dispute, in the present case, relating to period of marriage, specific period having not established, the accused are entitled to benefit of doubt.

23. Though, the issue relating to the period of marriage is one of the most important issues, but the Trial Court neither framed issue nor discussed the evidence, in detail. The issue so framed, in the present case, like a trial of a general case of murder under Section 302, I.P.C.

24. The Counsel for the State submitted that the specific issue relating to period of marriage having not framed or if it is decided that the period of marriage has not been established from the evidence of witnesses, the case should be remanded for trial of accused under Section 302, I.P.C. It was suggested that the Court has such power and in its support placed reliance on the decision of the Supreme Court in *Soni Devraj Bhai Babu Bhai v. State of Gujarat*, 1 (1991) DMC 392 (SC)=1 (1992) CCR 59 (SC)=1991 Cr. LJ 3135 (SC); and *Patel Jetha Bhai Chatur v. State of Gujarat*, AIR 1977 SC 294. '

25. However, this Court is not inclined to put the case for trial under Section 302, I.P.C., as the State cannot improve the case of prosecution, nor can improve the evidence of one or other P.Ws. None of the P.Ws. made any statement that they have seen or heard that the deceased, Rina Devi was done to death by any one or other accused (appellants herein). Materials, on record, do not warrant framing of any charge under Section 302, I.P.C. or its remand for trial under the aforesaid provisions.

26. In view of the findings given above, it is not necessary to discuss the other submissions as advanced by the Counsel for the appellants, including the conflicting/contradictory statement given by one or other witness.

27. For the reasons aforesaid, as the prosecution failed to make out a case under Section 10(B), I.P.C. against the appellants i.e. Arbind Kumar Ambasta (A.1); Basudev Narain (A.2); and Shanti Devi (A.3), the judgment and order of conviction and sentence dated 23rd March, 1991, passed in Sessions Trial No. 399 of 1989

is set aside, and the appeal is allowed.

28. Since appellant Nos. 2 and 3 i.e. Basudev Narain Ambasta and Shanti Devi are already on bail, they are discharged from the liabilities of the bail bonds.

29. So far as appellant No. 1 Arbind Kumar Ambasta is concerned, as he is in custody, he is directed to be set at liberty forthwith, if not wanted in any other case.

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