

Dhusasan Samal Vs. the State of Orissa

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Court : Orissa

Decided On : Nov-20-1992

Reported in : 75(1993)CLT515; 1993(I)OLR116

Judge : R.K. Patra, J.

Acts : Dowry Prohibition (Amendment) Act, 1986 - Sections 4 and 304B; [Evidence Act, 1872](#) - Sections 113B

Appeal No. : Criminal Appeal No. 278 of 1992

Appellant : Dhusasan Samal

Respondent : The State of Orissa

Advocate for Def. : Sisir Das, Standing Counsel

Advocate for Pet/Ap. : Bijan Ray, S. Das, M. Kanungo, B. Monanty, N.N. Satpathy, A.K. Mohanty and C. Choudhury

Disposition : Appeal allowed

Judgement :

R.K. Patra, J.

1. The appellant contending the he has been found guilty Under Section 304-B of the Indian Penal Code (in brief 1PC) and Section 4 of the Dowry Prohibition Act,

1961 (hereinafter referred to as 'the Act') not upon proof but upon suspicion and supposition seeks to set at naught his conviction recorded by the trial Judge.

2. The story ;

The appellant had married the deceased Minati on 20-6-1986. There was demand of dowry in the shape of cash of Rs. 2000/- and one cot (Palanka) by the appellant and his sister-in-law (who was arrayed as co-accused but acquitted by the trial Judge) from the father of the deceased Minati which was not acceded to in full. A sum of Rs. 1500/- was only paid and the balance cash and the cot were promised to be given at later stage. As the father of the deceased failed to keep up the promise Minati was assaulted and was subjected to ill-treatment in the appellant's house. When the assault and ill-treatment reached its peak to the point of intoleration she came to her father's house at Brahamanigaon where she stayed for about six months. The elder brother of the appellant came to Brahamanigaon and took Minati back to their house at village Talukpada. The story further narrates that there was no change of attitude towards the deceased Minati and she was subjected to assault and torture as before who ultimately on 24-1988 committed suicide. Following her death one U.D. Case was commenced which ended in final report. The brother of the deceased Minati, however, did not relent at this and lodged information at Binjharpur Police Station. But, as no action was taken, he moved the Deputy Inspector General of Police (H.A.D.D.), Cuttack on whose direction the matter was investigated which culminated in filing of charge-sheet against the appellant and his sister-in-law. They were put up for trial in the Court of Additional Sessions Judge, Jajpur to face charges Under Sections 304-B and 306 of IPC and Section 4 of the Act for having caused the death of Minati, abetted commission of suicide by her and demanded dowry from the father of the deceased Minati. The trial Judge acquitted the co-accused i.e. the sister-in-law of the appellant holding that she was wrongly roped in. The appellant has been found guilty Under Section 304-B of IPC and Section 4 of the Act and sentenced to undergo rigorous imprisonment for seven years and two years respectively; the sentences to run concurrently.

3. The appellant while not disputing his marriage with deceased Minati, denied all the charges levelled against him. As to the cause of the death of Minati, his version was that she was a chronic colic patient and as the pain became unbearable, she committed suicide.

4. Shri Bijan Ray, learned counsel, contended that the evidence adduced by the prosecution does not make out a case of dowry death punishable Under Section 304-B of IPC. He also contended that there is no evidence of demand of dowry so as to fasten the appellant with criminal liability punishable Under Section 4 of the Act.

5. Section 304-B came to be inserted by the Dowry Prohibition (Amendment) Act, 1986 in the IPC. It is a substantive provision creating a new offence which provides that where the death of a woman is caused by any burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or by any relative of her husband for or in connection with any demand for dowry, such death shall be known as dowry death and her husband or relative shall be deemed to have caused her death. The Dowry Prohibition (Amendment) Act, 1986 also simultaneously inserted Section 113-B in the [Evidence Act, 1872](#) which provides for presumption as to dowry death. It is a rule of evidence. From the conjoint reading of Section 304-B of IPC and Section 113-B of, the Evidence Act, it follows that before presumption of dowry death is raised, the prosecution has to establish the following essentials:

(i) the death of the woman was caused by burns or bodily injury or otherwise than under normal circumstances within seven years of her marriage ; and

(ii) she was subjected to cruelty or harassment by her husband or any relative of her husband which was for or in connection with demand for dowry.

In other words presumption Under Section 304-B of 1PC and Section 113-B of the Evidence Act applies only if it is established by the prosecution by adducing evidence as aforesaid.

6. Six witnesses were examined by the prosecution. PW 5 is the doctor who on 4-4-1988 conducted, autopsy on the dead body of the deceased Minati. On external examination he did not find any injury on her person except one legature mark around the neck, which was situated about the thyroid cartilage between the larynx and chin. In his opinion., the death was due to asphyxia and the 'cause of death was probably due to hanging'. PW 6 is the investigating officer. The remaining witnesses are PWs 1 to 4 on whom the entire edifice of the prosecution story rests. PW 1, the brother of the deceased, has stated that the appellant and his sister-in-law (since acquitted) demanded dowry articles to be given' in the marriage of Minati and out of the total demand of Rs. 2000/- and a 'Palank' a sum of Rs. 1500/- could be given and time was sought to pay the balance cash and the 'Palank'. He has further stated that his sister told him six months after the marriage that for non-payment of the balance cash of Rs. 500/- and the Palanka the appellant and his sister-in-law used to assault her. He has admitted in his cross-examination that in the F. I. R. lodged by him he had not mentioned that the appellant and other accused demanded dowry articles to be given in the marriage. This demand of dowry by them even was not stated before the investigating officer. Those are very vital omission on the part of PW 1 because the entire prosecution case centred round the demand of dowry leading to the death of Minati. PW 1 has further stated that after hearing from Minati that she was being assaulted, he brought her to his home at Brahmanigaon where she stayed for about eight months and during this period of her stay, Ramakanta the elder brother of the appellant, had sent the letter Ext. 1 which was received from Suresh Das, a betel shop owner. In the said letter Ext. 1 the brother of the appellant had requested PW 1 to drop Minati at their house before 'Sankranti day'. PW 1 who is the prime witness of the prosecution has stated that on 3-4-1988 after receiving information that Minati was 'engulfed with ailment', he went to the house of the appellant and found Minati was lying dead in the courtyard of the appellant. He has further stated that the appellant and the co-accused told him that Minati committed suicide by hanging but he found many marks of injuries at different places on the dead body of Minati. In the cross-examination he has admitted that in the F.I.R. he had not mentioned that on receipt of information that Minati was 'engulfed with ailment', he went to the house of the appellant. This witness was not

speaking truth is apparent when he stated in his evidence that he found many marks of injuries at different places on the dead body of Minati whereas the doctor has stated that he has not found any external injury except a legature mark around the neck. It is in the evidence of PW 1 that he brought Minati to their house when she complained that she was subjected to assault due to nonpayment of the dowry in full. This witness has admitted in his cross-examination that he has not informed to the police about the tortures given to Minati in the house of the appellant although she stayed at their house in village Brahamanigaon for about six months. He has not even informed about the assault on Minati to the Sarpanch or Ward-Member or the Police when he heard from Minati that she was being assaulted. This witness has further stated that his cousin one Chittaranjan Mahalik told him that Minati was being assaulted by the accused persons due to non-payment of the dowry in full. It is not known why Chittaranjan was not examined in the case who could have corroborated PW 1-For all these reasons the evidence of PW 1 has to be taken with a grain of salt. PW 2 is a neighbour of Minati in her village at Brahamanigaon. She has stated that after about one year of the marriage Minati had come to their village and she told her that for non-payment of balance cash amount and 'Palanka', she was being tortured by the appellant and his sister-in-law. She has further stated that Minati told her that her husband (appellant) has illicit terms with his sister-in-law (co-accused). This witness has not stated about the torture on Minati due to non-payment of dowry to the investigating officer. It is a very vital omission on the part of PW 2 in not informing this important aspect which casts doubt on the veracity of this witness. PW 3 was the barber in the marriage of the appellant and the deceased Minati. He has stated that he had gone to the house of the appellant 5 to 7 times carrying 'Bhara' and on each occasion Minati was telling him impress upon her brother PW1 to give the balance of the dowry as she was being assaulted by her husband on account of non-payment of dowry in full. In his cross-examination this witness has admitted that he has not stated to the police about the disclosure of Minati regarding the assault on her due to non-payment of dowry in full. He has even stated that Minati has given letters to her brother PW 1 through him on three occasions whereas PW 1 has stated that he has not received any letter from Minati mentioning about her torture for non-payment of dowry. The evidence of PW 3 thus cannot be accepted

on its face value. PW 4 is said to be the mediator in the marriage of the appellant with Minati. He has not stated anything about the allegation that Minati was subjected to cruelty or harassment by her husband for or in connection with demand for dowry. On the basis of analysis of evidence as mentioned above. I am of the firm view that the prosecution has not been able to prove the essential ingredient to attract the mischief of Section 304B of IPC, i.e., Minati was subjected to cruelty or harassment by the appellant or any of his relative for or in connection with demand for dowry. As the prosecution has failed to discharge the initial burden, there is no question of raising presumption Under Section 304-B of the IPC and Section 113-B of the Evidence Act against the appellant.

7. The appellant has been found guilty Under Section 4 of the Act. Demand of dowry by a person directly or indirectly from the parents or other relatives or guardian of a bride or bridegroom, as the case may be, makes him liable to be punished Under Section 4 of the Act. PW 1 has stated that the appellant and his sister-in-law demanded dowry in the shape of Rs. 2000/- in cash and a 'Palanka'. In his cross-examination he has admitted that about one and half months prior to the marriage Ramakanta samal (elder brother of the appellant) and he (PW 1) had talked about the marriage of Minati and on each occasion there was demand of dowry which he refused to give. According to him, many persons like Narayan Mahalik, Dasarathi Behera, Surendra Mohanty of his village were present. None of the persons named above was examined in the case to corroborate the statement of PW 1. He has further stated that on refusal to give dowry the talk of marriage failed and after about fifteen days, at the instance of the mediator (PW 4) the talk was again resumed in the village of the appellant when PW 1 agreed to give cash of Rs. 2000/- and a 'Palanka' and other articles. The mediator who was examined as PW 4 has stated nothing about the discussion over payment of dowry in the house of the appellant. In the cross-examination he has clearly stated that there is no demand from the side of the appellant for dowry and he has not participated in the discussion of the marriage of Minati in the house of the appellant. The evidence of PW 4 thus runs counter to the evidence of PW 1. There is no other evidence in respect of the story of demand of dowry by the appellant. Thus no case Under Section 4 of the Act is made out against the appellant.

8. For the reasons mentioned above, I am of the opinion that the conviction and sentence imposed on the appellant under Section 304-B of IPC and Section 4 of the Act cannot be sustained which are hereby set aside. In the result, the appellant is acquitted and the appeal is allowed.

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