

Dalo Devi Vs. State of Jharkhand

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Court : Jharkhand

Decided On : Feb-16-2016

Appellant : Dalo Devi

Respondent : State of Jharkhand

Judgement :

1 Cr. Appeal (DB) No.1206 of 2005 with Cr. Appeal (DB) No.331 of 2010 (Against the judgment of conviction and order of sentence dated 11.03.2004 and 12.03.2004 respectively passed by Sri Birendra Nath Das, 7th Addl. Sessions Judge, Dhanbad, in connection with Sessions Trial No.203 of 2002 corresponding to G.R. Case No.204 of 2002 arising out of Putki P.S. Case No.09 of 2002) Dalo Devi Appellant (in Cr. Appeal (DB) No.1206 of 2005) Lakhiram Mahato Appellant (in Cr. Appeal (DB)No.331 of 2010) Versus The State of Jharkhand Respondent PRESENT: HONBLE MR. JUSTICE D.N. UPADHYAY HON'BLE MR. JUSTICE RATNAKER BHENGRA For the Appellants : Mr. A.K. Kashyap, Sr. Advocate Mr. Lalan Kr. Singh, Advocate (in Cr. Appeal (DB) No.331 of 2010) Mr. Shekhar Pd. Sinha, Advocate (in Cr. Appeal (DB)No.1206 of 2005) For the State : Mr. Azeemuddin, A.P.P. (in both the appeals) J U D G M E N T By Court: These criminal appeals have been directed against the judgment of conviction and order of sentence dated 11.03.2004 and 12.03.2004 respectively passed by the 7th Addl. Sessions Judge, Dhanbad, in connection with Sessions Trial No.203 of 2002 corresponding to G.R. Case No.204 of 2002 arising out of Putki P.S. Case No.09 of 2002 whereby the appellants named above have been

held guilty for the offence punishable under Section 302/34 of the Indian Penal Code and sentenced to undergo R.I. for life. 2. The prosecution case as it appears from the written report lodged by Mani Lal Mahato, in brief, is that his daughter Sarita Devi was married with appellant Lakhiram Mahato about three years ago but she was not happy in her matrimonial home. After few months of the marriage, Lakhiram Mahato started demanding a sum of Rs.25,000/ in terms of dowry and for nonfulfillment of dowry 2 amount, Sarita Devi was subjected to torture by various means on various occasions. It is disclosed that Sarita Devi was always transmitting the information to her parents regarding the torture committed on her. The deceased had further informed that her husband Lakhiram Mahato has developed illicit relation with appellant Dalo Devi. It is alleged that on 26.01.2002 both the appellants, after hatching out a conspiracy, set Sarita Devi and her daughter Baby Kumari aged two years, on fire consequently they died due to burn injury.

3. On the basis of written report Dhanbad, Putki P.S. Case No.09 of 2002 dated 27.01.2002 under Section 304B/34 of the Indian Penal Code was registered against both the appellants. The police, after due investigation, submitted chargesheet and accordingly, cognizance was taken and the case was committed to the court of sessions and registered as Sessions Trial No.203 of 2002. Charges under Section 302/34 of the Indian Penal Code and in alternative under Section 304B/34 of the Indian Penal Code were framed against the appellants. Appellant Lakhiram Mahato stood further charged for the offence punishable under Section 4 of the Dowry Prohibition Act and Section 497 of the Indian Penal Code. To substantiate the charges, prosecution has examined altogether 13 witnesses including the Doctor, Investigating Officer and the informant. The learned Addl. Sessions Judge, placing reliance on the evidence and documents available, held the appellants guilty for the offence punishable under Section 302/34 of the Indian Penal Code and inflicted sentence, as indicated above.

4. The appellants have assailed the impugned judgment mainly on the ground that Dhaneshwar Mahato PW1 and Adalat Mahato PW3 have turned hostile and they have not supported the prosecution case. Mani Lal Mahato, the informant has been examined as PW9 whereas Sulochana Devi PW8 happens to be wife of the

informant. Jagat Lal Mahato PW4 and Satya Narayan Mahato PW5 are the uncle and brother respectively of the deceased. All the family members of the deceased are hearsay witnesses and they have not seen the occurrence. They have repeated the same fact, as disclosed 3 in the written report that Sarita Devi was married with appellant Lakhiram and Lakhiram had been demanding Rs.25,000/ as dowry and for nonfulfillment of dowry amount Sarita was subjected to torture. They have said that Sarita was blessed with a female child who was burnt alive with her mother. The motive behind the murder has been assigned that Sarita had been raising objection against illicit relation of the appellants and in order to eliminate she has been killed with her female child aged two years. Learned counsel has submitted that on the basis of information lodged by father of the appellant, Putki P.S., U.D. Case No.02 of 2002 dated 26.01.2002 was registered. The inquest report was prepared by the Investigating Officer who had been conducting the investigation of that U.D. Case and post mortem on the dead bodies of the deceased were also done in connection with that U.D. Case. An information was lodged that Sarita with her female child aged two years was sleeping on a cot and to warm themselves she had kept a pot containing burning fire wood and accidentally fire broke out and the cot on which the deceased and her daughter were sleeping, caught under fire. When father of the appellant Lakhiram along with other villagers noticed smoke coming out from the house, they rushed to the place but till then Sarita with her daughter died due to burn injury. This information was given within three hours of the occurrence. The death of Sarita and her daughter had occurred due to burn injury which broke out accidentally and therefore, the conviction and sentence recorded against the appellants are liable to be set aside. Only because Sarita and her daughter died due to burn injury in the house of appellant Lakhiram, he could not be held liable in absence of cogent and reliable evidence. Admittedly, the prosecution case is based on circumstantial evidence and the circumstances have been explained by the prosecution according to them and that has been accepted by the trial court for holding the appellants guilty for the offence of murder but the learned Addl. Sessions Judge has forgotten to deal with the information lodged by father of appellant Lakhiram on the basis of which U.D. Case was registered. The Investigating Officer did not examine the I.O. of that U.D. Case in order to bring

the result of investigation of that U.D. 4 Case on record. The motive assigned by the prosecution has also not been established. The husband of appellant Dalo Devi has been examined as DW1 and he did not support that his wife Dalo was having illicit relation with Lakhiram. Not only that, the prosecution witnesses have also admitted in their deposition that Dalo Devi was living with her husband and child in another house situated at some distance from the house of Lakhiram. The I.O. did not find any trace that Dalo Devi was having illicit relation with appellant Lakhiram. Considering all these aspects, appellant Lakhiram Mahato has been acquitted from the charge framed under Section 497 of the Indian Penal Code. It is submitted that the circumstantial evidence available on record did not lead to a conclusion that appellants have committed the offence. The Investigating Officer has not examined the place of occurrence properly. Except the burnt bed, nothing incriminating has been recovered from the place of occurrence. 5. Learned counsel appearing on behalf of appellant Dalo Devi (Cr. Appeal (DB) No.1206 of 2005) has submitted that she has been held guilty only on the ground that the witnesses have stated that she was having illicit relation with appellant Lakhiram. Needless to mention that husband of Dalo Devi has been examined as defence witness and he has rejected the allegation. He has deposed that his wife Dalo with her children has been living with him. No witness has stated that at any point of time, any of them had seen Lakhiram and Dalo in objectionable condition. Only by leveling allegation that she was having illicit relation with Lakhiram, will not serve the purpose. Besides the above, there is no evidence on record that she has committed the offence of murder by setting the deceased on fire. Neither before nor after the incident, she was seen either at the place of occurrence or with appellant Lakhiram Mahato. The learned Addl. Sessions Judge has wrongly recorded the judgment of conviction and sentence u/s 302/34 of the Indian Penal Code against appellant Dalo Devi and therefore, the same is liable to be set aside. Last but not least, it was submitted on behalf of appellant Lakhiram that the evidence on record, if admitted to be true, would hardly constitute offence punishable under Section 304B of the 5 Indian Penal Code although he did not admit that he has committed dowry death. It is contended that if the court finds that appellant Lakhiram has committed dowry death, the conviction and sentence recorded under Section 302 of the Indian Penal Code may be altered to one under

Section 304B of the Indian Penal Code.

6. Learned A.P.P. has opposed the argument and submitted that both the appellants have rightly been convicted for the offence of murder for intentionally causing death of Sarita Devi and her female child. It was not a case of accidental burn. Dr. Shailendra Kumar PW12 has stated that skin deep ante mortem burn injuries were found all over the body of deceased with extensive charring. Thick soot was found all over the body, faint smell of kerosene oil was coming out of the body. The body had cooked appearance. The post mortem report and the opinion of doctor did not suggest that Sarita and her daughter died due to accidental burn. Smell of kerosene oil was also noticed on the burnt bed. Sarita with her daughter was killed in a planned manner in her matrimonial home. Smell of kerosene oil coming out from the burnt bed and from the dead bodies clearly suggest that the deceased and her daughter were set on fire after pouring kerosene oil. The offence was committed within four walls and therefore, availability of direct evidence is always remote. The circumstantial evidence collected by the I.O. and the evidence of witnesses lead to the conclusion of guilt of the appellants and they have rightly been held guilty for the offence of murder.

7. From the arguments advanced, admitted situation before us is that the prosecution case is based on circumstantial evidence and the circumstances are that the deceased Sarita Devi with her two years baby died due to burn injuries in her matrimonial home on 26.01.2002. In this connection Putki P.S., U.D. Case No.02 of 2002 dated 26.01.2002 was instituted on the basis of information lodged by father of the appellant. In course of investigation of said U.D. Case, inquest report was prepared and the dead bodies of Sarita Devi and her daughter were sent for post mortem examination. Mani Lal Mahto, who happens to be father of deceased Sarita, lodged a written report on the basis of which Putki P.S. Case No.09 of 2002 dated 6 27.01.2002 under Section 304B/34 of the Indian Penal Code was registered. The informant and other relatives of the deceased have said that a sum of Rs.25,000/ was demanded as dowry and for nonfulfillment of said sum of Rs.25,000/ Sarita was subjected to torture and treated with cruelty by her husband i.e. appellant Lakhiram Mahato. The torture committed on Sarita Devi was reported by her to her parents. The demand of dowry for Rs.25,000/ was regularly being insisted by appellant Lakhiram Mahato and for that Sarita was kept under

regular harassment and torture. The death of Sarita and her two years old baby occurred within seven years of her marriage in her matrimonial home due to burn injuries. The evidence on record further suggests that she was subjected to torture and treated with cruelty for or in connection with said dowry demand. Since ingredients of Section 304B of the Indian Penal Code were attracting, the Investigating Officer, after completing investigation, had submitted chargesheet under Section 304B of the Indian Penal Code and Section 3/4 of the Dowry Prohibition Act. Accordingly, cognizance was taken but after opening of the case, the learned Addl. Sessions Judge framed charges under Section 304B/34 and in alternative under Section 302 of the Indian Penal Code. Separate charge under Section 4 of the Dowry Prohibition Act and Section 497 of the Indian Penal Code against appellant Lakhiram Mahato had also been framed. The learned Addl. Sessions Judge has not given positive findings against the charge framed under Section 304B/34 of the Indian Penal Code and proceeded to discuss the evidence in order to come to a conclusion for the charge framed under Section 302/34 of the Indian Penal Code. The learned trial judge has considered the circumstantial evidence that the deceased with her two years old baby were found dead due to burn injury in her matrimonial home. The motive against the murder has been assigned that appellant Lakhiram Mahato was having illicit relation with appellant Dalo Devi. As per the seizure list and post mortem report, smell of kerosene oil was also present in the burnt bed and also on the dead bodies. Besides the motive assigned, the learned trial judge has further taken help of Section 113B of the Evidence Act 7 and considered the evidence that a sum of Rs.25,000/ in terms of dowry was demanded and Sarita Devi was subjected to torture for nonfulfillment of said demand.

8. For convenience, before deciding Cr. Appeal (DB)No.331 of 2010 preferred by appellant Lakhiram Mahato, we feel it desirable to give conclusive findings in connection with Cr. Appeal (DB) No.1206 of 2005, preferred by appellant Dalo Devi. Appellant Dalo Devi has been held guilty for the offence punishable under Section 302 of the Indian Penal Code with the aid of Section 34 of the Indian Penal Code. The prosecution has failed to adduce any evidence that appellant Dalo Devi was either present at the scene of occurrence at the relevant point of time or she had participated in any manner in the commission of the offence.

Admitted evidence on record is that she was living with her children and husband in another house situated at a distance of about 100 feet from the place of occurrence. No evidence has been adduced that Dalo devi and Lakhiram Mahato had hatched out any conspiracy to commit murder of Sarita Devi and her daughter. Lakhiram Mahato has been charged under Section 497 of the Indian Penal Code but he stood acquitted from that charge. The witnesses have levelled allegation that appellant Lakhiram Mahato was having illicit relation with appellant Dalo Devi but they had not seen them together at any point of time in objectionable condition. Involvement of Dalo Devi for committing murder of Sarita Devi and her daughter has not been substantiated by the prosecution either by direct or by circumstantial evidence. She cannot be held liable for the offence like murder with the aid of Section 34 of the Indian Penal Code because ingredients of Section 34 of the Indian Penal Code in the case at hand are not attracted from the evidence available and the same are highly lacking.

9. Now coming back to Cr. Appeal (DB) No.331 of 2010 preferred by appellant Lakhiram Mahato, we find that circumstantial evidence brought on record by the prosecution are not sufficient to hold him guilty for the offence of murder but then charge under Section 304B of the Indian Penal Code has also been framed and no finding by the trial judge on the said charge has been given in the 8 impugned judgment. In the circumstances, we would like to discuss the evidence whether the same attracts the offence of dowry death punishable under Section 304B of the Indian Penal Code? The consistent evidence available on record is that appellant Lakhiram Mahato had been demanding Rs.25,000/ as dowry and for non fulfillment of said sum of Rs.25,000/ Sarita was subjected to torture and treated with cruelty and for insisting the demand, continuous torture and harassment was committed on Sarita. The torture and harassment was continuing for or in connection with demand of dowry. Sarita died in her matrimonial home due to burn injury within seven years of her marriage and the death was otherwise than under normal circumstance. The death of Sarita and her daughter was due to accidental burn, has not been proved by the defence. The information on the basis of which U.D. Case was registered has not been proved. When we consider the evidence of Dr. Sahilendra Kumar, PW12 and the post mortem report, we find that smell of kerosene oil was coming out of the bodies of the deceased. Smell of kerosene oil

was also coming out from the bed seized in connection with this case. The aforesaid evidence rule out the story of accidental burn and therefore, it could well be held that death of Sarita and her daughter was homicidal and it was not due to accidental burn. The facts and circumstances available in the case at hand closely tally with the facts of the case appearing in the judgment reported in (2011) 11 SCC 733 (Sanjay Kumar Jain Vrs. State of Delhi) in which their Lordships have altered the conviction and sentence one under Section 304B of the Indian Penal Code after setting aside the conviction and sentence recorded under Section 302 of the Indian Penal Code and that is appearing in paragraphs 52 and 53 of the said judgment which are reproduced hereunder: 52. Evidence on record of this case clearly leads to the conclusion that all these three ingredients are available in full measure in this case. The deceased was subjected to cruelty and harassment by her husband, the appellant herein and the harassment was in connection with the demand of dowry. In the instant case the victim (deceased) died within one year and two months of the marriage. On proper analysis of the entire evidence on record it is abundantly proved that the appellant was 9 clearly guilty of committing an offence under Section 304B of the Indian Penal Code. 53. Consequently, we deem it appropriate to set aside the conviction of the appellant under Section 302 of the Penal Code but in the facts and circumstances of this case we proceed to convict the appellant under Section 304B of the Penal Code and sentence him to 9 years' rigorous imprisonment and fine of Rs.10,000. In case of nonpayment of fine, the accused would further undergo imprisonment for two months. Aforesaid view of Hon'ble Supreme Court finds support from another judgment reported in (2014) 3 SCC 196 (Donthula Ravindranath Vrs. State of Andhra Pradesh).

10. We have already dealt with the ingredients of Section 304B of the Indian Penal Code in the preceding paragraphs and it is observed that deceased Sarita Devi was subjected to torture and treated with cruelty for or in connection with demand of dowry, demanded in terms of Rs.25,000/ and for insisting the demand continuous torture was committed, the deceased died in her matrimonial home within seven years of her marriage due to burn injuries and the injuries were not caused because of any accident. The ingredients of Section 304B of the Indian Penal Code are attracted and an inference under Section 113B of the Evidence Act can well be drawn that it was a dowry death and the explanation extended by

the appellant Lakhiram Mahato against death of Sarita Devi is not tenable. 11. In view of the discussions made above and the evidence available on record, we feel inclined to allow Cr. Appeal (DB) No.1206 of 2005 preferred by appellant Dalo Devi. Accordingly, the judgment of conviction and sentence recorded against appellant Dalo Devi u/s 302/34 of the I.P.C. is hereby set aside. Appellant Dalo Devi who is on bail is discharged from the liability of her bail bond and set at liberty. So far Cr. Appeal (DB) No.331 of 2010 preferred by appellant Lakhiram Mahato is concerned, we feel inclined to alter the judgment of conviction and sentence recorded against him from the 10 offence punishable u/s 302/34 of the I.P.C. to Section 304B of the I.P.C. Accordingly, the conviction and sentence recorded against appellant Lakhiram Mahato u/s 302/34 of the I.P.C. is hereby set aside but on the basis of evidence available, we hold him guilty for the offence punishable u/s 304B of the I.P.C. Accordingly, he is hereby convicted u/s 304B of the I.P.C. It reveals from the record that appellant namely Lakhiram Mahato has already remained in custody for about 14 years and therefore, he is inflicted with the sentence for the period already undergone in custody u/s 304B of the I.P.C. and that will serve the purpose. In view of the modification in the judgment of conviction and sentence passed against appellant Lakhiram Mahato, he is directed to be released forthwith from jail custody, if not wanted in any other case and for that appropriate direction may be issued, if necessary, by the convicting/successor court. 12. In the result, Cr. Appeal (DB) No.1206 of 2005 preferred by appellant Dalo Devi stands allowed whereas Cr. Appeal (DB) No.331 of 2010 preferred by appellant Lakhiram Mahato stands dismissed with modification in the judgment of conviction and sentence, as indicated above. (D. N. Upadhyay, J.) (Ratnaker Bhengra, J.) Jharkhand High Court, Ranchi Dated : 16.02.2016 NKC// N.A.F.R.

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