

Santosh Kumar and Ors Vs. State of Bihar

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Court : Jharkhand

Decided On : Nov-21-2016

Appellant : Santosh Kumar and Ors

Respondent : State of Bihar

Judgement :

1 Cr. Appeal (DB) No.109 of 1992(R) Against the Judgment of conviction and Order of sentence dated 22.6.1992 passed by 1st Additional Judicial Commissioner, Ranchi, in Sessions Trial No.396 of 1989 / 296 of 1992. ----- 1. Santosh Kumar 2. Baidyanath Barnwal 3. Rani Devi Appellants -Versus- The State of Bihar (Now Jharkhand) Respondent. ----- For the Appellants : Mr. Rajiv Kumar, Advocate Mr. A.S. Dayal, Advocate For the State : Mr. Shekhar Sinha, A.P.P. PRESENT HONBLE MR. JUSTICE H.C. MISHRA HON'BLE MR. JUSTICE DR. S.N. PATHAK ----- By Court: Heard learned counsel for the appellants and learned counsel for the State.

2. Appellants are the husband and the in-laws of the deceased and they are aggrieved by the Judgment of conviction and Order of sentence dated 22.6.1992 passed by the learned 1st Additional Judicial Commissioner, Ranchi, in Sessions Trial No.396 of 1989 / 296 of 1992, whereby the appellants have been convicted for the offences under Sections 304-B and 498-A of the Indian Penal Code and upon hearing on the point of sentence, they have been sentenced to undergo life imprisonment for the offence under Section 304-B of the Indian Penal Code and rigorous imprisonment for the period of three years each, for the offence under

Section 498-A of the Indian Penal Code.

3. The written information was given by the informant Anup Kumar, who is the brother of the deceased lady, informing that the deceased was married to the appellant Santosh Kumar in the year 1987, and thereafter she was being subjected to cruelty and torture by the accused persons for demand of rupees twenty thousand as dowry, in lieu of T.V. etc. The informant received a telegram on 27.10.1988 that his sister died at her in-laws' place. Thereafter, he came to Ranchi on 28.10.1988, where he was informed that his sister was admitted in hospital on 23.10.1988, on which date, she died. The written information was given at Kotwali (Sukhdeo Nagar) Police Station on 29.10.1988, on the basis of which Kotwali Sukhdeo Nagar P.S. Case No.706 of 1988 was instituted and investigation was taken up. After investigation, the police submitted the charge-sheet against these appellants.

4. After commitment of the case to the Court of Session, the charge was framed against the appellants for the offences under Sections 304-B and 498-A of the Indian Penal Code, and upon denial of the charge, they were put to trial. In course of trial, five witnesses have been examined on behalf of the prosecution, who are PW-1, Anup Kumar, the informant and the brother of the deceased, 2 PW-2 Anil Kumar, who is the another brother of the deceased and P.W.-3 Sonulal Burnwal, PW-4 Lakshmanlal Burnwal. PW-5 Chandradweep Singh, is a formal witnesses, who has proved the endorsement on the formal FIR. The I.O. has not been examined in the case. There was no post mortem examination of the dead body of the deceased.

5. The defense has also examined four witnesses in the case out of whom DW -2 Dharm Prakash Arya and DW-3 Dr. Sunil Rungta are the main defense witnesses. The medical certificate issued by DW-2 Dr. Dharam Prakash Arya of Nagarmal Modi Sewa Sadan, has been proved as Exhibit-A and the ECG report of the deceased has been proved as Exhibit-C, apart from other medical documents, which were also marked exhibits. The defense case is that the deceased was admitted in Nagarmal Modi Sewa Sadan for heart disease and she died due to heart disease.

6. PW-1 Anup Kumar is the informant and the brother of the deceased, who had come to Ranchi on 28.10.1988 upon getting the information through Telegram on 27.10.1988 about the death of his sister. This witness has stated about the marriage of the deceased with accused Santosh Kumar in the year 1987 and though it is stated that she was being subjected to cruelty and torture at her in-laws' place by the accused persons, but in his evidence this witness has stated that the husband used to demand money for setting up a shop, and the deceased was being asked to bring money from her brother. He has also proved the written information, which was marked as Exhibit -1. In his cross examination this witness has stated that he has no evidence for the demand of any money. He has further stated that his brother Anil Kumar had gone to Ranchi on 15.10.1988 and he had seen his sister admitted in hospital and thereafter he came back stating that she was ill. Similarly, PW-2 Anil Kumar has also stated that his sister was being subjected to cruelty and torture at her in-laws' place and he has also stated that his sister had informed him, when he had gone to Ranchi, about demand of money. PW-3 Sonulal Bunwal has only stated that he had accompanied PW-1 Anup Kumar to Ranchi upon getting information about the death of his sister and he had also accompanied him to the police station, but he has stated that he was outside the police station when the FIR was lodged. He had not stated about the facts of the case. PW- 4 Laxmanlal Burnwal has been declared hostile. PW-5 is the formal witness, who has marked the endorsement on the FIR as Exhibit-2.

7. The defence witnesses examined on behalf of the defence have stated about the illness of the deceased. DW-1 Ramdas Mahto has stated that the deceased was admitted in Nagarmal Modi Sewa Sadan hospital for her treatment, as she was suffering from heart disease. DW- 2 Dharm Prakash Arya, who was Medical Superintendent of Nagarmal Modi Sewa Sadan, Ranchi, has proved the medical certificate issued by him as Exhibit-A, which certifies that the deceased was first admitted in the hospital on 8.10.1988 and she was discharged on 13.10.1988 after treatment for rheumatic heart. Again she was admitted on 23.10.1988 for rheumatic heart disease and she died on the same day in the hospital. He has stated that the deceased died of cardiac failure. This witness has also proved the signature of one doctor Rungta on the ECG report of the deceased as Exhibit-B, and upon looking into the ECG report, he has stated that the graph was grossly

abnormal and showed rheumatic heart disease. DW-3 Dr. Sunil Rungta has stated that he had done the ECG of the deceased lady, and also identified his signature on the ECG report, and the ECG report was proved as Exhibit-C. He has also supported the fact that the deceased was suffering from rheumatic heart disease. The other witnesses examined on behalf of the defense have also proved the medical documents relating to the treatment of the deceased. On the basis of the evidence on record, learned Court below, by the impugned Judgment and order, convicted and sentenced the appellants for the offence under Sections 304-B and 498-A of the Indian Penal Code, as aforesaid.

8. Learned counsel for the Appellants has submitted that the impugned Judgment of the conviction and Order of sentence passed by the Court below is absolutely illegal, in as much as, the Court below has failed to take into consideration the evidence adduced by the defense, which proved the fact that the deceased had died due to rheumatic heart disease. It has also submitted that the prosecution case is supported by only two brothers of the deceased, who are highly interested witnesses. Even though PW-1 has stated that on 15.10.1988, his brother had seen the deceased admitted in the hospital, but no information was given to the police. Had it been the case of subjecting the deceased to cruelty and inflicting any assault upon her, the natural consequence would have been to inform the police on that date itself. It has further been submitted by learned counsel that though PW - 1 has stated that the deceased was being subjected to cruelty and torture, but he has not stated that she was subjected to cruelty and torture for demand of dowry, as claimed in the FIR. He has only stated there was demand of money from the sister for setting up of a shop, but he has not given any evidence as to how he came to know about the said demand. Learned counsel further submitted that the I.O. of the case has not been examined in the case, which has caused serious prejudice to the defense. Learned counsel accordingly, submitted that the impugned Judgment of conviction and Order of sentence passed by the Court below cannot be sustained in the eyes of law.

9. Learned counsel for the State on the other hand has submitted that PW-1 and PW-2, who are the brothers of the deceased have fully supported the prosecution case that the deceased was being subjected to cruelty and torture for demand of

dowry and she had died an unnatural death within seven years of the marriage. In view of the evidence that she was being subjected to cruelty and torture for demand of dowry resulting in her unnatural death within seven years of the marriage, the appellants have rightly been convicted and sentenced for the offences under Sections 304-B as well as 498-A of the Indian Penal Code. 4 10. Having heard learned counsels for both the sides and upon going through the record, we find that there are only two witnesses, who are the brothers of the deceased, supported the prosecution case. The I.O. has not been examined in this case. There is a material contradiction in the FIR and the evidence of the informant P.W.-1, in as much as, in the FIR, it is stated that the demand of rupees twenty thousand was being made as dowry, in lieu of T.V. etc., but in his evidence he has stated that the said demand was for setting a shop. The defense has brought on record the evidence to show that the deceased was suffering from rheumatic heart disease, she was admitted in the hospital for the said disease and she died due to the said heart disease in the hospital. It is well settled principle of law that it is the responsibility of the prosecution to prove its case beyond all reasonable doubts, where as the defense is required only make a dent in the prosecution case by creating a reasonable doubt, and if the defense succeeds in creating doubt in the prosecution case, the accused is entitled to the benefit of doubt. On the basis of the evidence brought on record, we find that the defense has been able to create doubt about the death of the deceased due to cruelty and torture for demand of dowry, rather the defense has been able to make out a case that the deceased died in the hospital due to rheumatic heart disease. As such, we are of the considered view that the appellants are entitled at least to the benefit of doubt and the Judgment of conviction and Order of sentence passed by the Court below cannot sustained in the eyes of law.

11. In view of the aforementioned discussions, the impugned Judgment of conviction and Order of sentence dated 22.6.1992, passed by the learned 1st Additional Judicial Commissioner, Ranchi, in Sessions Trial No.396 of 1989 / 296 of 1992, are hereby, set-aside. The appellants are given the benefit of doubt and they are acquitted of the charges. The appellants are on bail, and they are discharged from the liabilities of their respective bail bonds.

12. Let the Lower Court Records be sent back forthwith along with a copy of this Judgment. (H.C. Mishra, J.) (Dr. S.N. Pathak, J.) Jharkhand High Court, Ranchi
21.11.2016 R.Kumar/ N.A.F.R.

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