
(2022) 02 PAT CK 0056

Patna High Court

Case No: Criminal Appeal (DB) No. 137 Of 1995

Navlakho Devi

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 24, 2022

Acts Referred:

- Indian Penal Code, 1860 - Section 304B

Hon'ble Judges: A. M. Badar, J; Sunil Kumar Panwar, J

Bench: Division Bench

Advocate: Prince Kumar Mishra, Dr. Mayanand Jha

Final Decision: Allowed

Judgement

1. By this appeal, appellant/original accused no.1 Navlakho Devi who happens to be mother-in-law of deceased Lalita Devi is challenging the

Judgment and Order dated 18th April, 1995 passed by the learned Additional Sessions Judge-VIII, Patna, in Sessions Trial No.205 of 1994 thereby

convicting her of the offence punishable under Section 304B of the Indian Penal Code and sentencing her to suffer rigorous imprisonment for life.

2. The facts projected from the police report leading to the prosecution of appellant/original accused no.1 Navlakho Devi can be summarized thus:

(a). Lalita Devi (since deceased) married acquitted accused no.2 Madan Prasad and had started cohabiting with him in the house of her in-laws.

Appellant/convicted accused Navlakho Devi is mother of acquitted accused no.2 Madan Prasad.

(b). According to the prosecution case, on 15.02.1993, Lalita Devi was taking food at 12.00 Oâ€™™ clock in the night. At that time, appellant/accused

no.1 Navlakho Devi came near her, started abusing her, pulled her Saree, sprinkled kerosene oil on her person and set Lalita Devi on fire by a burning matchstick. Lalita Devi sustained burn injuries in this incident and then she was taken to the hospital of Dr. Shushil Kumar Singh at Khagaul. During the course of her medical treatment at the said hospital, other accused persons (who came to be acquitted) started threatening her to disclose that she sustained burns because of her own fault or else poisonous injection shall be administered to her. After her medical treatment for few days at the hospital of Dr. Shushil Kumar Singh P.W.4, Lalita Devi came to be discharged and was taken to her parental house by her parental relatives.

According to the prosecution case, nobody from her matrimonial side came to visit her during her stay at her parental house. As her condition deteriorated, her brother Binod Kumar P.W.3 got her admitted to the P.M.C.H. Hospital, Patna, on 05.03.1993. Nobody from her matrimonial side attended her in that hospital. According to the prosecution case, appellant/convicted accused Navlakho Devi and Madan Prasad (acquitted accused) used to threaten Lalita Devi to bring gold Nathuni (nose ring) with a consequential threat that on failure she would not be allowed to stay in her matrimonial house.

(c). During her medical treatment at the P.M.C.H. Hospital, Patna, Court Witness No.1 Rajnath Singh, a Police Officer from Pirbahore Police Station, recorded statement of Lalita Devi (since deceased) at the P.M.C.H. Hospital, Patna, on 13.03.1993 in presence of her brother P.W.3 Binod Kumar and on the basis of that statement, Crime No.21 of 1993 came to be registered against accused persons on 14.03.1993. Ultimately, during her medical treatment, Lalita Devi wife of Madan Prasad succumbed to burn injuries and P.W.6 Dr. Awadheshwari Prasad Narain Deo conducted autopsy on the dead body of Lalita Devi on 28.03.1993 at the P.M.C.H. Hospital, Patna, and concluded that she died due to antimortem burn injuries.

(d). Routine investigation followed. Statement of the witnesses came to be recorded and ultimately the Investigating Officer had filed charge-sheet against appellant/accused no.1 Navlakho Devi and other accused persons for the offence punishable under Section 304B of the Indian Penal Code.

(e). On committal, the learned trial court framed the charges for the offence punishable under Section 304B of the Indian Penal Code against the accused persons. They pleaded not guilty and claimed to be tried.

3. In support of the prosecution case, the prosecution has examined two neighbourers of the deceased Lalita Devi namely P.W.1 Laxman Das and

P.W.2 Dev Prasad Pandit. Brother of Lalita Devi namely Binod Kumar came to be examined as P.W.3. Dr. Shushil Kumar Singh of Khagaul who

gave medical treatment to Lalita Devi came to be examined as P.W.4. The Investigating Officer Ranjeet Prasad Sinha is examined as P.W.5.

Autopsy Surgeon Awadheshwari Prasad Narain Deo of the P.M.C.H. Hospital, Patna, is examined as P.W.6.

4. Defence of the accused persons was that of total denial. They examined Lalmani-mother of deceased Lalita Devi as D.W.1 and their own

neighbourer Lalan Kumar as D.W.2.

5. The learned trial court then summoned Rajnath Singh, the Police Officer, who recorded dying declaration of deceased Lalita Devi at the P.M.C.H.

Hospital, Patna, on 13.03.1993 which was treated as the F.I.R. of the subject case and this witness is examined as C.W.1.

6. After hearing the parties, the learned trial court was pleased to convict appellant Navlakho Devi of the offence punishable under Section 304B of

the Indian Penal Code by holding that she is guilty of the offence causing dowry death of her daughter-in-law Lalita Devi. Rest of the accused

persons including husband came to be acquitted. Hence this appeal by the mother-in-law.

7. We heard Sri Prince Kumar Mishra, learned Advocate, who is appointed to represent the appellant at the cost of the State. By taking us through

the entire records and proceeding, he argued that there is no evidence to conclude that the deceased was subjected to cruelty or harassment by the

appellant/convicted accused for or on account of dowry soon before her death. He argued that even mother of the deceased has supported the

defence so also the neighbourers from both sides. On the contrary, Dr. Jha, the learned Prosecutor appearing for the State vehemently opposed the

appeal by contending that the prosecution has brought on record the cogent evidence to establish that a married woman died due to burn injuries and

she was subjected to cruelty and harassment by the appellant soon before her death on account of demand of gold Nathuni.

8. We have considered the submissions so advanced and also perused the records and proceedings.

9. As the appellant is charged for the offence punishable under Section 304B of the Indian Penal Code, let us put on record ingredients of the said

offence, proof of which is necessary for recording conviction. The prosecution, in such offence is obliged to prove that : (a) the death of a woman was

caused by burns or bodily injury or had occurred otherwise than under normal circumstances; (b) such death should have occurred within 7 years of

her marriage; (c) the deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; (d) such cruelty or

harassment should be for or in connection with the demand of dowry; and (e) to such cruelty or harassment the deceased should have been subjected

soon before her death.

10. Let us scrutinize evidence of the prosecution witnesses in order to ascertain whether the prosecution has established all these ingredients through

its evidence in order to sustain the conviction of the appellant for the offence punishable under Section 304B of the Indian Penal Code.

11. P.W.4 Dr. Shushil Kumar Singh in his statement before the court has stated that he is running a hospital named "Sushil Nursing Home" at

Khagaul and on 16.02.1993, patient Lalita Devi came to be admitted at his hospital. As per his version, relatives from both sides of patient Lalita Devi

were with her at the hospital. P.W.4 Dr. Shushil Kumar Singh further stated that the patient informed him that as burning lamp fell on her person she

sustained burn injuries and at that time she was wearing synthetic Saree. P.W.4 Dr. Sushil Kumar Singh further testified that with passage of time,

medical condition of Lalita Devi improved and she was in a position to take her own care. According to Dr. Shushil Kumar Singh then there was

dacoity at his house and he became busy. Resultantly, Lalita Devi came to be discharged. This Medical Doctor further opined that injuries noted by

him on person of Lalita Devi were caused to her because of accidental fire.

12. Lalita Devi was being treated at the P.M.C.H. Hospital thereafter and at that hospital she succumbed to the burn injuries. Post-mortem

examination on her dead body was conducted on 28.03.1993 at the said hospital by P.W.6 Dr. Awadheshari Prasad Narain Deo. This Medical Officer

opined that Lalita Devi died because of antimortem burn injuries and his version is consistent with the report of post-mortem examination Ext.4. With

this evidence on record we hold that the prosecution has established the fact that Lalita Devi, a married woman, died because of burns sustained by

her at her matrimonial house in the night intervening 15.02.1993 and 16.02.1993.

13. Now let us examine whether evidence on record established that soon before her death she was subjected to cruelty or harassment by the

appellant for or in connection with demand of dowry.

14. To establish dowry death of Lalita Devi, the prosecution has examined P.W.1 Laxman Das and P.W.2 Dev Prasad who happen to be the

neighbourers residing in the vicinity of matrimonial house of Lalita Devi. However, both these witnesses are unanimously stating that Lalita Devi was

having good relations with her in-laws. P.W.1 Laxman Das has stated that he rushed to the spot soon after sustaining injuries by Lalita Devi and found

that she sustained burn injuries because of fall of kerosene lamp. He further testified that there was no quarrel between Lalita Devi and her mother-

in-law i.e. appellant/convicted accused. In cross examination, this witness testified that deceased Lalita Devi was having good relations with her

matrimonial relatives who took her urgently to the hospital for medical treatment. Similar is the version of P.W.2 Dev Prasad. In addition, this witness

has stated that Lalita Devi married son of the appellant in the year 1990 and there was no quarrel between appellant and deceased Lalita Devi. Thus,

evidence of both these witnesses is not depicting any cruelty or harassment to the deceased by appellant-mother-in-law.

15. P.W.3 Binod Kumar is brother of deceased Lalita Devi. His version is only to the effect that he had put his signature on statement of Lalita Devi

(Ext.1) which was treated as the First Information Report. This witness who happens to be close relative of the deceased from the parental side has

not spoken about any cruel treatment or harassment by the appellant to his sister-deceased Lalita Devi.

16. Rest of the witnesses examined by the prosecution are the doctors and the Investigating Officer whose evidence is not reflecting anything to infer

about cruel treatment to the deceased by the appellant.

17. The defence has examined none other than mother of the deceased Lalita Devi as D.W.1. She is Lalmani. This mother of the deceased has stated

that when she received information about sustaining burns from the brother-in-law of Lalita Devi, with him she went to the hospital of P.W.4 Dr.

Shushil Kumar Singh. At that hospital, Lalita Devi was under medical treatment for 15 days. D.W.1 Lalmani testified that then she took her daughter

Lalita Devi to her house and admitted her to P.M.C.H. Hospital on 05.03.1993. As per her information, most of the expenses on treatment of Lalita

Devi were incurred by her in-laws. D.W.1 vouched that her daughter was not making any complaint against her in-laws and her in-laws were not

demanding anything including gold Nathuni from her. Thus, version of mother of the deceased is totally demolishing the case of the prosecution against

the accused.

18. Another witness examined by the defence is D.W.2 Lalan Kumar who happens to be neighbour of parents of the deceased. This neighbour has

deposed that deceased Lalita Devi was having good relations with her in-laws and there was no demand of dowry by in-laws of the deceased at any

point of time. Thus another blow is dealt on the prosecution case by this witness.

19. The learned trial court then summoned Rajnath Singh, a police official, as court witness. This witness has recorded the F.I.R. in the form of the

statement of deceased Lalita Devi (Ext.1) on 13.03.1993 at the P.M.C.H. Hospital, Patna. However, the version of the deceased reflected from the

F.I.R. is not substantiated or corroborated by any of the witnesses examined by the prosecution and as such this dying declaration of the deceased is

of no consequence. On the contrary, it is contradicted by the mother of declarant and unsupported by her brother.

20. In the result, we are unable to endorse the conviction of the appellant for the offence punishable under Section 304B of the Indian Penal Code

recorded by the learned trial court and therefore the appeal deserves to be allowed and is allowed in the following terms.

(I). The appeal is allowed.

(II). The impugned Judgment and Order of conviction and resultant sentence imposed on the appellant/accused no.1 Navlakho Devi in respect of the

offence punishable under Section 304B of the Indian Penal Code passed by the learned Additional Sessions Judge-VIII, Patna, in Sessions Trial

No.205 of 1994 on 18th April, 1995 is quashed and set aside.

(III). Appellant/accused no.1 Navlakho Devi is acquitted of the offence alleged against her. She be set at liberty forthwith. Fine if any paid by her be refunded to her.

21. We record our appreciation for strenuous efforts taken by Mr. Prince Kumar Mishra the learned Advocate appointed to represent the appellant at

the cost of the State, in assisting us for arriving at the correct conclusion in the matter. We quantify the fees payable to him at Rs.5000/- and direct the

High Court Legal Services Authority to pay the said amount to Mr. Prince Kumar Mishra, the learned appointed Advocate.