
(2024) 12 JH CK 0089

Jharkhand High Court

Case No: Criminal Appeal (S.J.) No. 858 Of 2006

Pankaj Kumar Sharma

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Dec. 20, 2024

Acts Referred:

- Indian Penal Code, 1860 - Section 304B
- Evidence Act, 1872 - Section 113B

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: B.K. Dubey, Azeemuddin

Final Decision: Allowed

Judgement

Pradeep Kumar Srivastava, J

1. Heard learned counsel for the parties.

2. Present appeal against judgment and order dated 29.06.2006 by Additional Sessions Judge 1st Hagaribagh in S.T. Case No. 171 of 2000 whereby and whereunder the sole surviving appellant (Pankaj Kumar Sharma) has been convicted and sentenced for the offence under Section 304-B along with other accused Chandwa Devi, who died during the pending of this appeal and her appeal was abated vide order dated 25.11.2024 and sentenced to undergo R.I. of seven years along with fine of Rs.5,000/- with default stipulation.

FACTUAL MATRIX

3. Factual matrix giving rise to this appeal is that informant's daughter (Babita Devi) deceased was married in the year 1994 with one Ramesh

Chandra Sharma in accordance with Hindu rites and customs and as per capacity, household articles were presented. It is alleged that after expiry of three years of marriage, the informant brought his daughter (Babita Devi) to her parental home, where she disclosed that her mother-in-law and brother-in-law (present appellant) always used to torture her for bringing scooter as additional dowry. It is further alleged that the husband and father-in-law were protesting against any demand, but the above named accused persons were always insisting on the demand of scooter and threatening to kill the deceased. The informant sent his daughter to her matrimonial home with assurance to fulfill the demand of scooter, but on 20.04.1994, he came to know that informant's daughter has been died in matrimonial home and her dead body was lying at nursing home. The informant rushed towards the nursing home and found the dead body of his daughter and also found froth was coming out from the mouth and also saw the mark of strangulation. Therefore, he suspected that mother-in-law and brother-in-law (Pankaj Kumar Sharma) of the deceased have killed his daughter due non-fulfillment of dowry demand.

4. On the basis of above written report of the informant (Prabhu Vishwakarma) Patratu (Bhurkunda) P.S. Case No. 75 of 1999 dated 20.04.1999 was registered for the offence under Section 304-B of the I.P.C. and after completion of investigation, charge sheet was submitted against the accused persons for the aforesaid offence. After taking cognizance, the learned C.J.M. committed the case to the Court of Sessions, accordingly, Sessions Trial Case No. 171 of 2000 was registered. The charges were framed against the appellant to whom he did not plead guilty and tempted to be tried. After conclusion of trial, impugned judgment and order has been passed.

5. Learned counsel for the appellant assailing the impugned judgment and order has vehemently argued that there are general and omnibus allegations against the appellant. The appellant happens to be Devar (Brother-in-Law) of the deceased and had no concern with the family affairs between the deceased and her husband and he had no reason to demand scooter for his own purpose. There is no evidence at all that the present appellant ever treated with cruelty to the deceased at any point of time. The husband of the deceased was not made accused in this case. There is no iota of legal

evidence against the appellant to substantiate the charge under Section 304-B of the I.P.C. against him. The impugned judgment and order of conviction and sentence of the appellant is totally based on irrelevant and hypothetical evidence of the witnesses. Hence, appellant deserve to be exonerated from the charge levelled against him setting aside the impugned judgment and order passed by learned trial court.

6. On the other hand, learned APP has defended the impugned judgment and order on merits and submitted that there is no legality or infirmity in the impugned judgment, rather the learned trial court has very wisely and aptly considered all the aspects of the case and material evidence adduced by the prosecution and arrived at right conclusion. There is no reason for interference in the impugned judgment and order. This appeal has no merits and fit to be dismissed.

7. I have gone through the prosecution evidence available on record along with impugned judgment and order in the light of contentions raised on behalf both side.

8. It appears that altogether eleven witnesses have been examined in this case by the prosecution.

P.W.-1 Md. Rafique Khan is a heresay witness from the informant Prabhu Bishwakarma. He is not a doctor by profession, but admitted in his cross-examination that he prescribed Difen tablet to be taken in morning and evening four tablets by the deceased and also injected her of Diatone. He also admits that he had not issued any prescription for treatment of the deceased and he has no licence for practicing as a doctor. He has also no licence of compounder-ship. He also admits that in the month of January, 1999 he injected the deceased at about 4-5 PM.

P.W.-2, Ram Kumar Sao is also heresay witness from Prabhu Bishwakarma (informant) of this case and had no knowledge of the occurrence. P.W.-

3, Anil Ram has been declared hostile by the prosecution.

P.W.-4, Chandan Kumar Vishwakarma is the younger brother of the deceased. According to his evidence on 20.04.1999, he along with his father went to Bhurkunda at matrimonial home of Babita Devi (deceased) for giving invitation of marriage of his another sister. He has simply stated about the demand of scooter in general and omnibus manner by the in-laws of deceased.

P.W.-5, Dr. A.A. Farooqui has conducted autopsy on the dead body of the deceased. According to his evidence upon post-mortem examination of the dead body, he found following facts.

Both eyes closed. Rigor mortis absent in the upper limb and present in lower limbs. Mouth partially open, face swollen and engorged. There was abrasion 1½" around the neck above thyroids bone not visible. No other external injury was found.

On Internal examination found the followings:

Larynx congested, Hyoids bone intact, slings intact of congested, Heart both chamber empty, liver, kidney intact and congested, stomach contains about 4 on mucofluid. Uterus NAD other viscera's NAD.

Opinion about the cause of death is reserved till the report of chemical examination of viscera received. The viscera was preserved and sent for chemical examination.

Time since death about 48 hours. Therefore, he has given no definite opinion about the cause of death.

P.W.-7, Subhash Bishwarkarma is the maternal uncle of the deceased. He is also a heresay witness and has no personal knowledge of any demand of dowry or torture meted with the deceased at the hands of the appellants.

P.W.-8, Rukmini Devi is the mother of the deceased. According to her evidence, Babita Devi was married with the Ram Sharma in the year 1998,

where she lived about one year quite well, thereafter, a demand of scooter was raised by her mother-in-law and Devar (Pankaj Kumar Sharma).

When this witness went to the matrimonial home of her daughter, she disclosed about the said thing and physical torture meted with her. She has

disclosed that about one month prior to her death, Babita Devi came to her parental home at the time of tilak ceremony of her younger sister, then she

disclosed about the aforesaid demand and consequent torture meted with her. But she sent her daughter to live at matrimonial home and in course of

time, everything will be settled.

P.W.-9, Prabhu Bishwakarma is the informant of this case and father of the deceased. According to his evidence, there was demand of scooter by

the present appellant and his daughter was consistently treated with cruelty by her mother-in-law and present appellant. He received information that his daughter has been killed by strangulation at her matrimonial home by her mother-in-law and Devar (brother-in-law). He has also assured to fulfill the demand in the meantime her daughter was killed by accused persons.

P.W.-10, Reshma Kumari, is a daughter of deceased and aged about 9 years, on the date of her deposition dated 15.04.2004 has stated that on the date of occurrence in the year 1999. (It means at that time, she was about 4 years) she was residing at her Grandfather's house. She has stated that her grand-mother and uncle (Pankaj Kumar Sharma) were always scuffling with her mother for bringing scooter. On the date of occurrence, her grand-mother caught hold of hands of her mother and uncle (Pankaj Kumar Sharma) started assaulting by handle of "Hathaudi" to her mother and also hanged her tying knot in the neck due to which her mother died. Thereafter, her uncle and grandmother fled away.

In her cross-examination, she has admitted that on the date of occurrence, she was not studying in any school and was not reading anything. She cannot recollect as to whether police has asked about incident from her or not? But her attention has been drawn by the defence that she has stated before police that on the date of occurrence, she has gone to school and when returned, she saw that her mother was hanging. She has also denied the suggestion of defence that she has been tortured by her maternal Grandfather and uncle and knows nothing about the incident.

P.W.-11, Babulal Sharma is also a hearsay witness and has no personal knowledge.

P.W.-12, Mahendra Kumar Pandey is Advocate's Clerk, who has proved carbon copy of inquest report of the deceased as Exhibit-4 and signature of then Officer-In-Charge on the written report of the informant as well as formal FIR as Exhibit-1/3 and Exhibit-1/4 respectively.

P.W.-6, Raju Sharma is also a hearsay witness and has no personal knowledge about the internal affairs of both the families.

9. On the other hand no oral or documentary evidence has been adduced by the defence. The case of defence is denial from occurrence and false implication.

10. From the aforesaid discussion of testimony of witnesses, it is crystal clear that the cause of death of the deceased is not by hanging, rather no opinion about the cause of death has been given by the doctor and the viscera report was never brought on record by the prosecution. It also appears that the deceased was medically treated by incompetent doctor (P.W.-1) having no degree or diploma for profession of a Doctor and he has injected as well as providing the medicine to the deceased without any prescription. The demand of scooter as alleged by the prosecution witnesses by the present appellant has not been consistently proved. The husband of the deceased has not been prosecuted and given clean chit. There is no iota of evidence at all that soon before her death, the deceased was treated with cruelty by the appellant in connection with non-fulfillment of demand of dowry, which is very important element to attract the offence of Dowry Death as per provisions of Section 113-B of the Evidence Act. Similarly, the death of the deceased, due to burn or otherwise under normal circumstances has also not been brought on record. What treatment she was undergoing at the instance of P.W.-1, Md. Rafique Khan is also kept under suspicion. Therefore, no presumption of dowry death can be raised against the appellant.

11. In view of aforesaid discussions and reasons, I find that prosecution has miserably failed to prove the very foundational ingredients of Section 304-B of the I.P.C. as such no presumption of Dowry Death invoking the provisions of under Section 113-B Evidence Act can be raised in this case against the appellant. Therefore, impugned judgment and order of conviction and sentence of the appellant is hereby set aside and accordingly, this appeal is allowed.

12. Appellant is on bail. He is discharged from the liability of bail bond. Sureties shall also be discharged.

13. Let a copy of this judgment along with trial court record be sent back to the court concerned for information and needful.

14. Pending, I.A. if any, disposed of.