

Kedar Mandal Vs State Of Jharkhand

Court: Jharkhand High Court

Date of Decision: Jan. 27, 2025

Acts Referred: Indian Penal Code, 1860 " Section 34, 302, 304B

Hon'ble Judges: Pradeep Kumar Srivastava, J

Bench: Single Bench

Advocate: Kaushal Kishore Mishra, S.K. Srivastava

Final Decision: Disposed Of

Judgement

Pradeep Kumar Srivastava, J

1. Heard Mr. Kaushal Kishore Mishra, learned counsel appearing for the appellants and Mr. S.K. Srivastava, learned A.P.P. appearing for the State.

2. Appellants of both the criminal appeals have challenged the judgment of conviction dated 21.06.2006 and order of sentence dated 22.06.2006

passed by learned 5th Additional Sessions Judge (F.T.C.), Jamtara in Sessions Case No. 35 of 2005 / 98 of 2003,whereby and whereunder, the

appellants have been held guilty for the offence under Sections 304B / 34 of the I.P.C. and sentenced to undergo R.I. for seven years.

FACTUAL MATRIX

3. The factual matrix giving rise to these appeals is that daughter of the informant namely, Chameli Devi (deceased) was married with the one Deo

Narayan Mondal (appellant in Cr.A.(S.J.) No. 1308/2006) in the year 1999 in accordance with Hindu rites and customs. It is alleged that at the time of

marriage, as per capacity, dowry was given and informant's daughter went to her matrimonial home and started discharging her matrimonial

obligations and also gave birth to female child. After birth of female child, a demand of Rs. 5,000/- was raised from her as an additional dowry, which

could not be fulfilled, due to poverty of informant. As a result of which, the deceased was subjected to cruelty and torture by all the accused persons

and ousted from matrimonial home several times. It is alleged that ultimately on 01.06.2002 at about 5:00 PM a message was given to the informant

that his daughter has been admitted at Narayanpur Hospital, due to diarrhoea. The informant went to said Hospital, but did not find his daughter and

when he went to her matrimonial home, where his daughter dead body was lying on a cot and there was black ligature mark on her neck. Her in-laws

were absconding from the house.

4. On the basis of fardbeyan of informant, FIR being Narayanpur P.S. Case No. 36 of 2002 dated 01.06.2002 was registered against the accused

persons for the offence under Sections 304B read with Section 34 of the I.P.C.

5. After completion of investigation, the I.O. of the case has submitted charge sheet. Cognizance of the offence was taken and subsequently, the case

was committed to the court of Sessions. Charges have been framed for the offences under Sections 304B/34 and 302/34 of the I.P.C., to which the

accused persons denied the charges, pleaded not guilty and claimed to be tried.

6. In order to substantiate the charges leveled against accused persons, altogether nine witnesses were examined by the prosecution. Apart from oral

evidence of ocular witnesses, following documentary evidences were also adduced:-

Exhibit-1 :Ã, Ã, Signature of Jagdish Mondal & 1/1Ã, SitalÃ, Mondal respectively on Ã, Ã, fardbeyan.Ã,

Exhibit-2 : SignatureÃ, Ã, of witnesses on & 2/1Ã, inquest report.Ã,

Exhibit-3 : Fardbeyan.Ã,

Exhibit-4 : Formal F.I.R.Ã,

Exhibit-5 : Inquest report.Ã,

Exhibit-6 : Post-mortem report of Chameli Ã, Ã, Devi.Ã,

8. On the other hand, the defence has also examined five witnesses and also adduced following documents:-

Exhibit-A : InvitationÃ, cardÃ, ofÃ, marriageÃ, of & A/1Ã, ChameliÃ, DeviÃ, andÃ, itÃ¢â¬âsÃ, envelop respectively.

Exhibit- : InvitationÃ, Ã, cardÃ, Ã, alongÃ, Ã, with A/2Ã, envelopeÃ, ofÃ, theÃ, marriageÃ, of Chameli Devi.

Exhibit-B : InvitationÃ, cardÃ, ofÃ, marriageÃ, of Tejeshwar with Malti Devi.

Exhibit-C : Prescription of Chameli Devi.

9. After conclusion of trial, considering the evidence adduced by the prosecution and defence, acquitted the appellants for the offence under Section

302/34 of the I.P.C., but convicted and sentenced for the offence under Section 304B / 34 of the I.P.C., which has been assailed in these appeals.

Argument on behalf of appellants in Cr.A.(S.J.) No. 901 of 2006

10. Learned counsel for the appellants has vehemently argued that the appellants happened to be bhaisur, mother-in-law and gotni of the deceased,

against whom there was general and omnibus allegation simply demand of Rs. 5,000/-, but there is no evidence at all that the present appellants had

ever subjected the deceased to cruelty soon before her death and no specific overt act has been attributed against them. The real fact is that bhaisur,

mother-in-law and gotni of the deceased were separate in mess and resident and have no connection in the matrimonial affairs between the deceased

and her husband. The F.I.R. was lodged by father of the deceased, who has stated nothing against these appellants showing their any specific overt

act. Similarly, other witnesses have been examined by the prosecution have also not been able to say date, day, time or demand of dowry of Rs.

5,000/- by the present appellants and any ill-treatment or torture meted to the deceased at the hands of these appellants. The learned trial court has

sued upon the general and omnibus allegation, who are interested witnesses to robe falsely all the family members in order to satisfy their vengeance.

The appellant no. 2 namely, Sushila Devi is more than 87 years of age and cannot move freely and discharge her pursuit of life. Similarly, appellant no.

1 namely, Kedar Mandal and appellant no. 3 namely, Gangia Devi have also no relation with the alleged occurrence and convicted and sentenced

without any cogent and reliable evidence. Therefore, the impugned judgment of conviction and order of sentence of appellants is absolutely not

justified under law and is fit to be set aside, by allowing their appeal.

I.A. No. 394 of 2025 in Cr.A.(S.J.) No. 901 of 2006

11. Learned counsel for the appellants has submitted that the instant interlocutory application under Section 430(1) of B.N.S.S. has been filed on

behalf of the appellants for grant of bail after suspension of sentence during pendency of the appeal.

Argument on behalf of appellant in Cr.A.(S.J.) No. 1308 of 2006

12. It is further submitted that appellant, who is the husband of the deceased, has been falsely implicated in this case. There was cordial relationship

between husband and wife and also with all the family members and they were blessed with one female child. There was general and omnibus

allegation against all the accused persons. There was no eye-witness to the alleged occurrence and the trial court has proceeded to convict the

appellant on the basis of hearsay evidence. The trial court has also failed to appreciate that the prosecution witnesses could not substantiate the

allegation of demand of dowry and after considering the prosecution as well as defence evidence, the trial court has acquitted the appellant for the

offence under Section 302/34 of the I.P.C., but has erroneously convicted him for the offence punishable under Section 304(B)/34 of the I.P.C.

Therefore, the impugned judgment of conviction and order of sentence of appellant is absolutely not justified under law and is fit to be set aside, by

allowing his appeal.

13. In alternative, learned counsel for the appellant has submitted that the appellant, who is the husband of the deceased, has undergone imprisonment

for more than half of the period imposed by the trial court. Learned counsel further explains that the appellant has been sentenced to undergo seven

years imprisonment and the appellant has undergone imprisonment for about five years. Therefore, appellant may be awarded sentence of

imprisonment already undergone instead of awarding the sentence as granted by the concerned trial court, if his conviction is upheld by the

Hon'ble Court.

14. Per contra, learned APP appearing for the State has opposed the aforesaid contentions raised on behalf of the appellants and has submitted that

the trial court has very wisely and aptly analyzed, scanned and appreciated oral as well as documentary evidence available on record and arrived at

right conclusion holding the appellants to be guilty for the offences charged against him and adequately passed the order of sentence. There is no

illegality and infirmity in the impugned judgment and order, which calling for any interference, by way of these appeals, which are devoid of merit and

fit to be dismissed.

15. I have gone through the record the case along with impugned judgment in the light of contentions raised on behalf of both side.

16. It appears that the first information was lodged in the year 2002 for the offence under Sections 304B/34 of the I.P.C. against the appellants, but

the accused persons had faced the trial for the offence under Sections 304B/34 as well as Sections 302/34 of the I.P.C., but the trial court after

evaluating and appreciating the evidence available on record has acquitted from the charges under Sections 302/34 of the I.P.C. and has convicted the

appellants for the offence under Section 304B/34 of the I.P.C.

17. For better appreciation of the case, a brief resume of oral testimony of witnesses is required to be discussed.

18. P.W.-1 Sital Mondal " is the uncle of the deceased and got information that his niece has dead due to diarrhoea. Thereafter, he went to

Narayanpur Hospital, but got information that no patient was brought in the name of Chameli Devi (deceased). Thereafter, he went to the matrimonial

house of the deceased and found the dead body of Chameli Devi lying on the cot. He has not stated that whether the husband of the deceased was

living separately or in the joint family.

19. P.W.-2 Rekha Devi " is the mother of the deceased. He has stated the same line as P.W.-1 has stated in his evidence, but was not asked any

question regarding the jointness of the family.

20. P.W.-3 Teklal Mondal " is the brother of the deceased and also a hearsay witness. He deposed that he had gone to the house of the deceased

after his father, mother and uncle had gone and when he reached there, the door of the house was closed.

21. P.W.-4 Jagdish Mondal " is the father and informant of this case. In his evidence, he has stated in the same line as stated in his fardbeyan and

supported the FIR. But prosecution has not asked the question regarding the jointness of the family of the deceased.

22. P.W.-5 Lilu Mondal " is the witness, who has proved the Inquest Report. He has deposed that on the date of occurrence, he had heard the

sound of quarreling in the house of deceased, but has not stated that he has seen the incident.

23. P.W.-6 Doman Mallah " is the villager of the matrimonial house of the deceased. He has stated in para-2 that he had heard about the death of

the deceased when he came to his house at the evening, but has not gone to her house.

24. P.W.-7 Bhim Rajwar " has been declared hostile and nothing has been found which support the case of prosecution.

25. P.W.-8 Chandra Prasad " is the I.O. of this case, who has proved the fardbeyan (Exhibit-3) is in his handwriting. He also proved the

endorsement of then Officer-in-Charge Madan Mohan on the fardbeyan. He further deposed that when he went to the house of the deceased, he

found the dead body of the deceased was lying on a cot inside the house. He further deposed that family members of the deceased were not present

at that time in their home. He after preparing the Inquest Report sent the dead body for the post-mortem. He further stated that witnesses have stated

before him that on the date of incident deceased had gone to jungle for fire wood in the noon at 2½ hours and in the evening, there was quarrel

amongst the family of the deceased. However, he has replied in the negative that witness before him have stated that other family members such as

father-in-law, mother-in-law, brother-in-law and sister-in-law were used to quarrel with deceased regarding demand of dowry.

26. P.W.-9 Dr. Sambhu Nath Sinha " is the Doctor, who has conducted the autopsy of the deceased and has proved the Post-mortem report, which

has been marked as Exhibit-6 and found followings:-

(i) Ligature mark seen upon the neck at the level of thyroid cartilage completely except at one point on the nape of neck (behind the neck). On dissection " ligature

mark dry, white, not too much grooved.

(ii) Bruise and abrasion present near ligature.

He has opined the cause of death is "due to asphyxia due to strangulation caused by a ligature".

27. From the discussion of testimony of above witnesses, it is quite clear that the allegation against the appellants of Cr.A.(S.J.) No. 901/2006 namely,

Kedar Mandal, Sushila Devi and Gangia Devi is general and omnibus for demand of additional dowry of Rs. 5,000/-, but there is no evidence at all that

the present appellants, who were separate in mess and residence, had ever subjected the deceased to cruelty soon before her death and no specific

overt act has been attributed against the appellants, who were bhaisur, mother-in-law and gotni of the deceased.

28. Considering the facts and circumstances of the case, I find force in the argument of learned counsel for the appellants in Cr.A.(S.J.) No. 901 /

2006. Accordingly, the impugned judgment of conviction dated 21.06.2006 and order of sentence dated 22.06.2006 passed by learned 5th Additional

Sessions Judge (F.T.C.), Jamtara in Sessions Case No. 35 of 2005 / 98 of 2003, so far appellants namely, Kedar Mandal, Sushila Devi and Gangia

Devi are concerned, is hereby set aside.

29. So far appellant in Cr.A.(S.J.) No. 1308/2006 namely, Deo Narayan Mandal is concerned, admittedly he was husband of the deceased and there

was demand of additional dowry of Rs. 5,000/- and also the deceased died unnatural death within seven years of her marriage. The death was due to

strangulation. Therefore, on merits, I find no reason to interfere with the impugned judgment of conviction, so far appellant-Deo Narayan Mondal is

concerned.

30. So far sentence of appellant-Deo Narayan Mondal is concerned, he has been awarded sentence of seven years R.I., out of which, he has

undergone about five years custody during trial of the case.

31. In the facts and circumstances of the case, it appears that appellant has sufficiently been punished for his guilt and more than two decades has

been elapsed from the date of occurrence and further incarceration of the appellant would not meet any fruitful result or have any deterrent effect in

this peculiar case. Therefore, the sentence of Deo Narayan Mondal (appellant in Cr.A.(S.J.) No. 1308 of 2006) is reduced to the imprisonment

already undergone instead of seven years R.I. as awarded by the concerned trial court.

32. In view of the above, Cr.A.(S.J.) No. 901 of 2006 filed on behalf of appellants namely, Kedar Mandal, Sushila Devi and Gangia Devi is allowed

and Cr.A.(S.J.) No. 1308 of 2006 filed on behalf of appellant namely, Deo Narayan Mandal is dismissed on merits with modification in sentence as

stated above.

33. So far pending I.A. i.e. I.A. No. 394 of 2025 in Cr.A.(S.J.) No. 901 of 2006, which is for grant of bail of appellants after suspension of sentence,

who have been arrested in this case due to cancellation of their suspension of sentence order earlier passed in this case, is hereby disposed of in view

of acquittal of appellants.

34. Appellants are in judicial custody, as such, trial court is directed to release the appellants forthwith from the judicial custody, if not wanted in any

other case.

35. I.A. No. 395 of 2025 filed in Cr.A.(S.J.) No. 1308 of 2006 also stands disposed of.

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