
(2025) 10 JH CK 0062

Jharkhand HC

Case No: Criminal Appeal (S.J.) No.671 Of 2003

Julekha Bibi

APPELLANT

Vs

State Of Jharkhand

RESPONDENT

Date of Decision: Oct. 16, 2025

Acts Referred:

- Indian Penal Code, 1860 — Section 34, 304B
- Dowry Prohibition Act, 1961 — Section 2

Hon'ble Judges: Rongon Mukhopadhyay, J; Pradeep Kumar Srivastava, J

Bench: Division Bench

Advocate: Nitu Sinha, Kumari Rashmi

Final Decision: Dismissed

Judgement

Pradeep Kumar Srivastava, J

1. Instant criminal appeal is preferred by above named appellants being aggrieved and dissatisfied with the Judgment of conviction and Order of sentence both dated 24.04.2003 passed by learned Sessions Judge, Pakur in SC Case No.04 of 2002/5 of 2002 arising out of Pakur (M) P.S. Case No.91 of 2001, whereby and whereunder the appellants have been held guilty for the offence under sections 304 B of Indian Penal Code and sentenced to undergo R.I. for a period of 10 years.

2. We have already heard the arguments of Mrs. Nitu Sinha, learned counsel for the appellants and Mrs. Kumari Rashmi, learned A.P.P. for the State.

Factual Matrix:-

3. The factual matrix giving rise to this appeal is that one Rehana Bibi (since deceased) was married with Akhtar Sheikh (appellant) about three years ago. It is alleged by informant Hamphool Bibi (mother of the deceased) that her daughter was living happily with her husband for some time but thereafter her husband started demanding Rs. 5,000/- from Rehana Bibi on instigation of his mother and brother. Due to non-fulfilment of which Rehana Bibi was subjected to cruelty, harassment and torture in various ways. It is further alleged that the informant called her

son-in-law Akhtar Sheikh and assured him to fulfil his demand and she also arranged Rs. 3000/- about twenty days prior to the occurrence and sent her daughter with him and also assured to pay the remaining amount within few days. It is alleged that in the meantime, on 29.04.2001, the informant got information that her daughter Rehana Bibi has been throttled by her husband, mother-in-law and brother-in-law namely Babbar Sheikh.

On the basis of above information, FIR was registered for the offence under section 304B/34 of IPC against the above-named accused persons. After completion of investigation, charge-sheet was submitted.

The case was committed to the Court of sessions where S.C. No.04 of 2002/5 of 2002 was registered. The accused persons denied from the charges and claimed to be tried. After conclusion of trial, impugned judgment of conviction and order sentence of the appellants was passed as stated above.

4. In the course of trial, altogether 10 witnesses were examined by the prosecution.

P.W.-1 Abdul Subhan (Father of the deceased) P.W.-2 Asgar Ali

P.W.-3 Dr. Lalit Kumar P.W.-4 Mamlat Sheikh P.W.-5 Manirul Sheikh P.W.-6 Naresh Sheikh
P.W.-7 Kalu Sheikh P.W.-8 Ekmal Haque

P.W.-9 Hamphool Bibi (Informant)

P.W.-10 Santosh Kr. Suman (I.O. of this case)

5. Apart from oral testimony of the witnesses, following documentary evidence has also been adduced by the prosecution: -

Ext.1- Post-Mortem Report

Ext.2- Signature of P.W.-4 Mamlat Sheikh on Carbon Copy of Inquest report

Ext.2/1- Signature of Saidur Rahman on the Carbon Copy of Inquest Report

Ext.3-Inquest Report

Ext.4-Fardbeyan

6. On the other hand, the case of the defence is denial from occurrence and false implication due to unnatural death of the daughter of the informant at her matrimonial home. One witness namely Saidur Rahaman has also been examined on behalf of defence.

7. The learned trial Court after examining the evidence available on record, oral as well as documentary arrived at definite finding about guilt of the appellants for the offence under Section 304-B of the IPC and sentenced them as stated above which has been assailed in this appeal.

Submissions on behalf of appellants:-

8. Learned counsel for the appellants has contended that the prosecution has miserably failed to prove the specific date, day and time of demand of money by the appellants as dowry from the deceased. The cause of death of the deceased was due to hanging and all symptoms of hanging has been found but the Doctor conducting the autopsy on the deceased has wrongly opined the cause of death throttling. It is further submitted that the appellant No. 1 is an old lady who happens to be

mother-in-law of the deceased who were never involved in asking any demand of dowry by torturing the deceased at any point of time and there are general and omnibus allegations against her. Admittedly, the prosecution witnesses have stated about demand of Rs. 5,000/- by the appellant No. 1 and out of which Rs. 3000/- was paid by the mother of the Rehana Bibi (informant). It is further submitted that even it may be considered that the deceased died an unnatural death within seven years of her marriage on her matrimonial home but the main ingredient for commission of offence under Section 304-B of the IPC that soon before her death, such woman was subjected to cruelty or harassment for/or in connection with demand of dowry has not been proved by the prosecution. Therefore, the very important ingredient of evidence is lacking in this case. It is further submitted that the learned Trial Court has committed serious error of law in not considering the ingredient of offence under Section 304B IPC in right perspective in the light of the evidence adduced by the prosecution and moved on wrong conclusion. Therefore, the order of conviction and sentence of appellants is fit to be set aside and they deserve acquittal from the charges levelled against them.

In the alternative, it is submitted that appellant No. 2 has remained in custody for four and half years out of 10 years imprisonment awarded to him and has sufficiently been punished for his guilt. The appellant No. 2 was granted bail vide order dated 27.07.2005 and settled a normal life. More than two decades have been elapsed from the happening of the occurrence. The appellants have sustained the agony of trial for such a long period of time, therefore, sending them again for sustaining the remaining period of imprisonment would serve no useful purpose in the ends of justice. Hence, the appellant No. 2 may be reduced to the imprisonment already undergone.

Submissions on behalf of the State

9. On the other hand, learned A.P.P. defending the conviction and sentence of the appellants has submitted that the prosecution has proved the guilt of the appellants beyond all reasonable doubt. The learned trial Court has very wisely and aptly considered all aspects of the case including the ingredient of offence under Section 304B IPC and passed a well reasoned judgment and order which suffers from no illegality or infirmity calling for any interference by way of this appeal and this appeal is devoid of merits and fit to be dismissed.

10. We have gone through the record along with the impugned judgment in the light of rival contentions of the parties.

11. The sole point for determination in this appeal is “as to whether the impugned judgment of conviction and sentence of the appellants suffers from any error of law and based beyond the weight of evidence available on record, which requires any interference in this appeal?”

Analysis, reasons and decision:

12. Before imparting our verdict on above point, it would be appropriate to extract the relevant provisions of law applicable in this case which are reproduced hereinbelow:

“304B. Dowry death. -- (1) *Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any*

demand for dowry, such death shall be called "dowry death", and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, "dowry" shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life."

"113B. Presumption as to dowry death. -- *When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.*

Explanation.- For the purposes of this section, dowry death shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860)."

498-A. Husband or relative of husband of a woman subjecting her to cruelty-*Whoever, being the husband or the relative of the husband of a woman, subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine.*

Explanation.-For the purposes of this section, "cruelty" means-

(a) Any willful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) Harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.]

13. In view of the above provisions, in order to convict an accused for the offence punishable under Section 304(B) of the IPC, the following essentials must be satisfied:-

(i) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;

(ii) such death must have occurred within seven years of her marriage;

(iii) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or any relatives of her husband;

(iv) such cruelty or harassment must be for, or in connection with, demand for dowry.

When the above ingredients are established by reliable and acceptable evidence, such death shall be called dowry death and such husband or his relatives shall be deemed to have caused her death.

14. The provision of section 304-B of IPC as regards cause of death does not categorize death as homicidal, suicidal or accidental rather any death occurring "otherwise than under normal circumstances" may attract the provision of section 304-B of IPC, if other ingredients are fulfilled.

15. In light of legal proposition applicable in this case, we have to examine the evidence available on record as adduced by the prosecution.

P.W.-1, Abdul Subhan, is the father of the deceased. According to his evidence, on the next day of occurrence, he came to know that his daughter Rehana Bibi has been murdered at her matrimonial

home. Then, he proceeded to the matrimonial home of his daughter and saw ligature mark on his neck which was also swollen. He has also stated that the marriage was solemnized about three years ago with Akhtar Sheikh and about nine months ago Akhtar Sheikh and his mother and brother were asking Rs. 5,000/- from his daughter and also assaulted and driven away from matrimonial home and said that unless Rs. 5000/- is paid, they will not keep her. This occurrence was disclosed by Rehana Bibi to this witness.

Then, he managed some money and called upon his son-in-law Akhtar Sheikh and gave Rs. 3000/- to him with assurance that rest amount will be paid later and his daughter were sent with his son-in-law.

In his cross-examination, he admits that brother-in-law of Akhtar Sheikh informed him about the occurrence. He also admits that the occurrence of assault and demand of Rs. 5000 from the deceased was not complained before any authority and no Panchayati was held in this regard.

P.W.-2, Asgar Ali proceeded to matrimonial home of the deceased after hearing about the occurrence along with father of deceased namely Abdul Subhan, P.W.-1 and saw the dead body of the Rehana Bibi lying on her matrimonial home. He also came to know from father of the deceased about demand of Rs. 5000/- and due to non-fulfillment of which, deceased was driven to her home prior to some days of occurrence, thereafter, Rs. 3000/- was given by father of the deceased to the husband of the deceased namely Akhtar Sheikh and the deceased was sent to her matrimonial home. Thereafter, she was killed in her Sasural. There is nothing in his cross-examination to rebut his above testimony.

P.W.-3, Dr. Lalit Kumar posted as Medical Officer, SDO, Pakur on 29.04.2001 who conducted post-mortem examination on the dead body of Rehana Bibi and found following injury:

- (i) One ligature mark at upper middle of neck measuring 4"x1"
- (ii) Easy movement of head all round
- (iii) Froth coming from nose on both sides
- (iv) On dissection
 - (a) On opening skull, there is no finding the brain except brain is congested. All ors. Meninges are also congested.
 - (b) Neck- On opening neck, hyoid bone is fractured, cricoid cartilage is ruptured. 1st and 2nd cervical vertebrae are also fractured leading to easy movement of skull bone or neck. Laryngeal opening is blocked. Airways is blocked leading to asphyxia death.
 - (c) Thorax -both lungs congested. Both chambers contain blood.

V. Time elapsed since death-written 6 to 36 hours from time of post-mortem examination.

vi. Opinion

Cause of death is asphyxial death caused by blockage of airways of upper respiratory trachea due to fracture of hyoid bone, cricoid cartilage and blockage of laryngeal opening caused by throttling by rope hard blunt substance.

This witness has proved post mortem report which is marked as Ext.-1.

P.W.-4, Mamlat Sheikh is a witness of inquest report which was prepared by police in his presence and proved the carbon copy of inquest report along with his signature and signature of other witnesses which is marked as Ext. 2 and 2/1, respectively. P.W.-5, Manirul Sheikh is a local witness who was working in his field nearby pond then heard about death of wife of Akhtar Sheikh and went to his house. He saw the dead body of the wife of Akhtar Sheikh lying and villagers were saying that she has committed suicide by hanging.

P.W.-6, Naresh Sheikh, he is also hearsay witness and came to know about death of the deceased. He also saw the dead body of the deceased in the house. He has further deposed that about three years ago, everything was going well, thereafter, due to demand of money, there was tense relationship between the husband and wife. He has also disclosed that Rs. 5000/- was demanded by Akhtar Sheikh from Rehana Bibi and Rs. 3000/- was given to him by father of Rehana Bibi and rest amount was undertaken to be paid later on.

In his cross-examination, he admits to be Fufera brother of the deceased. He admits that the money was being demanded for opening a shop by Akhtar Sheikh. He also admits that money was not given as a loan.

P.W.-7, Kalu Sheikh has expressed no knowledge about the occurrence and declared hostile by the prosecution.

P.W.-8, Ekmal Haque is also hearsay witness and claimed to have seen the dead body of the deceased at her matrimonial home lying in the Bramda. He also came to know that she has committed suicide by hanging. This witness has been declared hostile by the prosecution.

P.W.-9 is Hamphool Bibi. She is the mother of the deceased who has corroborated the contents of her Fardbeyan and stated that her daughter was married about three years ago and about one and half years lived well in her matrimonial home but thereafter her husband namely Akhtar Sheikh, brother-in-law namely Gabbar Sheikh and his mother namely Julekha Bibi, appellant No. 1 started demanding Rs. 5,000/- from her daughter and started threatening to kill her if demand is not fulfilled. Her husband also went to the house of her daughter where the deceased complained about demand of Rs. 5000/- and torture meted with her. She has also deposed that due to constant harassment, torture and cruelty, her daughter came to her paternal house and told that her Bhaisur is demanding Rs. 5000/-, thereafter, she called upon her son-in-law and gave him Rs. 3000/- and sent her daughter to matrimonial home with him. She has also assured to manage the rest amount which will be paid later on but, in the meantime, within twenty-one days taking her daughter to matrimonial home, the accused persons killed her. She also went to matrimonial home of the deceased after the occurrence and saw the dead body in the Bramda. In her cross-examination, she has also reiterated the aforesaid facts.

P.W.-10, Santosh Kr. Suman, is the I.O. of this case. According to his evidence, on 29.04.2001, he was posted at Mufassil Police Station, Pakur, on that day, about 2:10 PM, he got information from rumor that one woman has been killed. He made SD entry and proceeded to village Manikapara along with armed forces where he saw the dead body of the deceased lying in the house of her

husband Akhtar Sheikh in his Bramda. He prepared inquest report of the deceased in presence of witness Saidul Rehman and Mamlot Sheikh which is marked as Exhibit-3. He also recorded Fardbeyan of Hamphool Bibi, the mother of the deceased and marked as Exhibit-4 and on the basis of above Fardbeyan, Pakur (M) P.S. Case No.91 of 2001 was registered for the offence as noted above. He himself took the charge of investigation of this case and he has also inspected the place of occurrence upon identification of the witness which is house of Wahid Sheikh situated in village Manikpara made out from mud, bushes and tin shaded. It is comprising two rooms like Bramda fitted with wooden and doors. The room situated at North-East was occupied by Rehana Bibi along with her husband and in the Bramda towards northside her dead body was lying. He also recorded statement of independent witness and obtained post-mortem report of the deceased and finding sufficient evidence against accused persons submitted charge-sheet against them for the offence under Section 304-B/34 of the IPC. His attention has been drawn towards statement of witness Kalu Sheikh, P.W.-7 who has stated before him that mother of the Akhtar Sheikh was demanding dowry from the deceased and subjecting her cruelty for non-fulfillment of the same. He also stated about 20-22 days prior to occurrence, mother of Rehana Bibi called Akhtar Sheikh to her home and gave Rs. 3,000/- and also sent her daughter with her husband to matrimonial home. But again, she was being tortured for rest of money Rs. 2,000/-. Her husband was saying that he will solemnize second marriage and also threatening to kill his wife Rehana Bibi.

16. On the other hand, the case of the defence is denial from occurrence and false implication.

17. The defence has also examined D.W.-1, Shaidur Rahman who has deposed that he cannot tell how Rehana Bibi died. He came to know from the father of Akhtar Sheikh that Rehana Bibi has committed suicide. He suggested him to inform at police station. He has also stated about cordial relationship with deceased and her husband and other family members of her husband. He also stated that his statement was not recorded by the Police during investigation but in his cross-examination by prosecution, he admits that police has interrogated with him about the occurrence and he was also present along with present informant at the time of her Fardbeyan.

18. No documentary evidence has been adduced by the defence.

19. On the basis of aforesaid evidence of prime prosecution witnesses, namely, P.W.-1, Abdul Subhan, P.W.-9, informant-cum-mother of the deceased namely Hamphool Bibi and other witnesses of case, it is crystal clear that deceased was married with appellant No. 2 Akhtar Sheikh. She has been died within 7 years of her marriage at her matrimonial home, otherwise than under normal circumstances which also finds corroboration from Post-Mortem report of the deceased wherein the cause of death of the deceased has been opined to be throttling. Therefore, so far as the ingredient No. (i) and (ii) for the offence under Section 304-B of the IPC as discussed above, has been proved beyond all reasonable doubt through unrebutted evidence.

20. So far as ingredient Nos. (iii) and (iv) are concerned, it has been stated that the mother of the Akhtar Sheikh is only instigator. It is also proved that just before 22 days of the occurrence, the appellant No. 2 was called upon by his mother-in-law and she gave Rs. 3000/- out of Rs. 5000/- as demanded. Thereafter, appellant No.2 brought his wife to her matrimonial home along. It is also proved by witnesses that due to non-fulfillment of rest amount of Rs. 2,000/-, the deceased was

again subjected to cruelty by her husband on instigation of her mother-in-law (appellant No. 1). The factum of demand of Rs. 5000/- as dowry and receipt of partial money Rs. 3000/- has not been controverted by appellant No. 2 rather the suggestion has been extended to P.W.-6 that the money was given for opening shop and it was not in the form of loan.

21. From the aforesaid discussion and overall background of this case as brought on record by the prosecution, it is crystal clear that all the specific allegations are centered around against the appellant No. 2 alone, who happens to be husband of the deceased himself. Appellant No. 1 has been alleged to be an instigator but without attributing any specific overt act either making any demand or subjecting the deceased to cruelty or harassment. Therefore, presumption under Section 113B of the Evidence Act come only against appellant No. 2, therefore, we do not find any error of law in convicting the appellant No. 2 for the offence under Section 304B of IPC. The sentence awarded to the appellant No. 2 is also proportionate to his guilt and do not require any interference.

22. So far as conviction of appellant No. 1 is concerned, we find that there are general and omnibus allegations against her about the instigation of her son to demand Rs. 5000/- from the deceased. No overt act or any kind of assault or torture is imputed against her, therefore, we find that the conviction and sentence of appellant No. 1 is based upon conjecture and surmises and without any reliable substantial piece of evidence, therefore, conviction and sentence of the appellant No. 1 is hereby, set aside and she is acquitted from the charge levelled against her and she is discharged from the liabilities of bail bonds and sureties are also discharged.

23. In view of the above discussion and reasons, the appeal preferred by appellant No. 1 is allowed and the appeal filed by appellant No. 2 is dismissed and his conviction and sentence passed by learned trial Court is upheld and confirmed.

24. Accordingly, the appellant No. 2 is directed to surrender before the learned Trial Court within two months from the date of this Judgment and undergo the remaining period of sentence awarded to him by the learned trial Court, failing which, the learned trial Court shall take all coercive steps for arrest and detention of the appellant No. 2 namely Akhtar Sheikh for sustaining the remaining period of sentence awarded to him.

25. The suspension of sentence granted to Appellant No. 2 namely Akhtar Sheikh during pendency of this appeal is hereby cancelled.

26. Pending I.A(s), if any, is also disposed of accordingly.

27. Let a copy of this judgment along with Trial Court Records be sent back to the court concerned for information and needful.