

Sujan Kumar Das and Others Vs State of Jharkhand

Court: Jharkhand High Court

Date of Decision: April 19, 2002

Acts Referred: Evidence Act, 1872 " Section 21
Penal Code, 1860 (IPC) " Section 201, 302, 304B, 34

Citation: (2003) 1 DMC 238

Hon'ble Judges: Vikramaditya Prasad, J; Lakshman Uraon, J

Bench: Division Bench

Advocate: A.K. Das, for the Appellant; B.B. Kumar, APP, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The appellants stand convicted for the offence u/s 302/34, IPC and have been sentenced to undergo R.I. for life. Besides, for the offence u/s

201/34, IPC, they have been convicted and sentenced to undergo R.I. for two years. However, both the sentences have been ordered to run

concurrently.

2. The substance of the case is that one Usha Das, wife of Sujan Kumar Das, A1, sister-in-law of A2 Shashi Kumar Das, daughter in-law of

Sukumar Das A3 and also of Taramani Das A4 (father-in-law and mother-in-law of the deceased) died within four years of her marriage. She

(deceased) had one son and at the time of alleged death, as per the post-mortem report, she was also pregnant for the last 5 months. It transpires

that the father of the deceased received an information from A2 Sashi Kumar Das, who went to his house, that his daughter was suffering from

diarrhoea and her condition was serious. Thereafter, it appears that he came to the matrimonial house of his daughter and saw that his daughter

was lying dead and on her neck, there was certain mark of abrasion. He felt that she had been done to death by strangulation. At that time, there

was none in that house. After one or two hours the neighbours called them and thereafter the final rites of his daughter was performed.

3. The peculiar circumstances in this case is that first of all, Sujan Kumar Das had filed a written report at Kotwali P.S. Ranchi, on that basis U.D.

Case No. 9/92 dated 23.5.1992 was recorded and the investigation was made over to the Court witness No. 2 who has been examined in this

case. It also transpires that on the basis of that report, the S.I. concerned, i.e. CW 2 filed a report before the Officer-in-Charge of Jagarnathpur

P.S. stating therein that he had been given investigation in U.D. Case No. 9/92 on 23.5.1992 and had also alleged that the informant of that U.D.

Case No. 9/92 in his written report had disclosed that on 23.5.1992 in the morning after taking breakfast, he had gone to Hatia Rly. Market and

when he came back at 11.00 a.m. then he found that his wife Usha Devi aged about 20 years, who was also pregnant, lying on the palang. When

she did not speak anything, then the said Sujan Kumar Das shook her and found that she was senseless. Thereafter he called a Lady Doctor from

the Rly. Hospital who administered an injection to his wife and also asked to take her to some other big hospital. Thereafter, the said Sujan Kr,

Das along with his mother and others took his wife to Nagar Modi Seva Sadan where she was declared dead. Thereafter, he brought the dead

body of Usha Devi to the police station. With regard to the ligature mark on the body of the said Usha Devi, the said Sujan Kumar Das in his

written report disclosed that she was ill and suffering from Diarrhoea and therefore, it appears, due to that illness she has committed suicide by

hanging herself. In that report, the said Officer further reported that if Usha Devi would have committed suicide then the body would have been

hanging from some higher place and therefore, there should have been some loops for hanging at P.O. Thereafter, it transpires that he enquired the

matter from Taramoni Das and they said that they have no knowledge and all of them said that at that time of occurrence, they were not in the

home. They all said that when they came back, they found Usha lying on the palang. The Officer further reported that in the course of inspection of

the dead body, on her neck a round mark (ligature mark) was found and in the post-mortem report, the ligature mark has been found by the

Doctor and it has been stated in the post-mortem report that the cause of the death was hanging. Then the Officer concerned further stated that

considering all the facts it appeared that the informant of the U.D. Case, Sujan Kr. Das, his father, mother and other members of his family, in

order to conceal the facts and to cover the truth, were taking all possible steps. Therefore, he further stated that after hanging the lying of the dead

body of Usha Devi on the palang herself and non-existence of means of hanging in the room raises suspicion about Sujan Kr. Das, his mother,

father and his brother Sashi Kr. Das and it appears that the deceased was done to death by tying a knot in her neck and in order to wipe out the

evidence and in order to save them, they have taken all possible steps. Consequently, he recommended for institution of a case u/s 302/201/34,

IPC against them. This report of the officer is Ext. 2 in this case.

On the basis of this report, a formal FIR was drawn up and a case was instituted, police submitted charge-sheet and the appellants were charged

under Sections 302/34 and 201/34, IPC to which they pleaded not guilty and claimed to be tried.

4. The defence version of the case, as appearing from the trend of the cross-examination, is that Usha Devi had hanged herself and died and the

accused persons have been falsely implicated. A suggestion was given to the father of the deceased vide para 18 that his son-in-law informed him

that his daughter had committed suicide by knotting her neck by saree and when the knot opened, then she fell down on chouki. In their statement

u/s 313, Cr PC, when the attention of the appellants was drawn towards the evidence that appeared and when they were asked what to tell in their

defence, the reply of Sajan Das was that he would given the evidence in defence, the same was the reply of Shashi Kumar Das, Sukumar Das said

that he has been falsely implicated and Taramani Das said that she has nothing to say in her defence.

5. On perusal of the total evidence it transpires that particularly from the evidence of PW 1, father of the deceased, that he received information for

the first time on 23.5.1992 from Sashi Kumar Das that the victim girl was suffering from Diarrhoea, he came to Ranchi and found her dead in the

house and also noticed an abrasion on the neck of the victim and formed an impression that she was murdered.

6. Learned counsel for the appellants, referring to paragraph 7 of the cross-examination of this witness, said that on that very date, i.e. 23.5.1992

when the father came, he did not go to the police station to get any information recorded, rather he says that on that date, after performing the last

rites he went back to Jamshedpur and on that date he did not consider to meet any Police Officer of Ranchi. Referring to this evidence, learned

counsel for the appellants, has argued that in fact, on that particular date i.e. 23.5.1992, there was no suspicion in the mind of the father that

something foul was done with his daughter, otherwise her father suspecting truly that something wrong had been done, he must have rushed to the

police and referring to this evidence and extending this argument, he further argued and referred to paragraph 7 and 11 of the evidence of this

witness that in fact, he went back to Jamshedpur and the matter somehow or other came to the notice of the Jamshedpur Mahila Samaj and it is

the members of the Mahila Samaj who rather instigated or inspired him to approach the police and get falsely implicated the inmates of the house

including the husband. His view is that till the appearance of the Manila Samaj on the scene, there was nothing wrong, the police had already

recorded the U.D. Case but after the Mahila Samaj entered into the scene, everything was manufactured and manoeuvred under their pressure.

7. He says further that the original report that Sujan Kumar Das had filed with the police alleging the illness of his wife has not been brought on

record even by the CW 2 and therefore, it is not known as to what was the original statement made by Sujan Kumar Das in that report and

consequently, he impresses us that adverse inference may be drawn against whole of the prosecution case. He further says, coming to the evidence

at paragraph 2, in order to make more forceful argument with regard to the pressure of the Mahila Samaj, of Luxmi Rani Palit PW 2, where she

says that on 23.5.1992 it was Tarana Prasad PW 1 who had informed her to come with him to Ranchi as his daughter Usha Devi had died and

then she came to Ranchi on 24.5.1992 after Tarana Prasad had already gone to Ranchi and when she came she found Usha Devi dead, her body

was covered with clothe, when she removed the clothe covering the body she found abrasion on the neck, which gave an impression to her that

she (Usha) had been done to death by strangulation. In paragraph 4 she says that she is the President of the Jamshedpur Mahila Samaj and in the

cases of similar nature taking place at Jamshedpur, she never appeared as a witness. Referring to this statement, the learned counsel for the

appellants firmly argued that this shows the interestedness of this witness because if she is the Chairman of the Mahila Samaj at Jamshedpur, she

has never received notice in any case taking place at Jamshedpur, thus there appears to be no reason as to why she was very much interested in

appearing in a case taking place at Ranchi. In paragraph 5 she says that on 24.5.1992 she entertained a suspicion that Usha Devi had been killed

and consequently she filed a written report to Jagannathpur P.S. on 24.5.1992 itself and along with her Tarana Prasad had gone to the P.S. That

information that she gave is not also available in this case, and when they went to the P.S. there was nobody in the house vide para 5. Again she

says that at the time when the dead body was in the house and when she came back to the P.S. in the meantime somebody called Tarana Prasad

from the P.S. for performing the last final rites. In the night Tarana Prasad told her that in the cremation ground photograph of the dead body was

being taken. Police did not come to the P.O., later police told her that they knew that the girl had been killed. She further says in paragraph 7 that

Tarana Prasad had given a written information to them on 24.5.1992 that under the pretext that his daughter was suffering from Diarrhoea, she was

murdered and there was the sign of roping of the neck. She says that on 24.5.1992 at about 5.00 a.m., the information referred to was given to

her. This letter of Tarana Prasad allegedly handed over to her has also not been brought on record. She says that on 24.5.1992 she has come with

Gulabi (PW 4) and Lalmani (not examined) and went to the house of the victim girl. She had further said that she had enquired from Tarana Prasad

and it was Tarana Prasad who was waiting for them at the Bus Stand and when she went there she found that the dead body was kept on arti

(pyre) and there was preparations made for funeral. She said Tarana, Gulabi and Lalmani reached there together and by that time, the post-

mortem of the dead body had already taken place. In paragraph 11 she says that whatever information Tarana Prasad had given, she did not tell it

to the police. She has further said that on 24.5.1992 it was Tarana Prasad who had given an information to the police. She further said that on

25.5.1992 she went back to Jamshedpur and again came to Ranchi on 30.5.1992. PW 4 is one of the Social Workers attached with the Mahila

Samaj, who according to PW 2, came to Ranchi with her. When her evidence was being taken in the Court on 10.1.1994, Luxmi Rani Palit PW 2

was sitting in the Court and she had come on that date of evidence along with her. Though this Laxmi Rani Palit had also been examined earlier on

6.10.1993, it appears that she had not made any statement before the police prior to the evidence that she gave in the Court. She has not stated in

her examination-in-chief that she had also come to Ranchi along with Laxmi Rani Palit on 24.5.1992. Therefore, there is nothing in her evidence

which can be of some value for this case.

8. PW 3 is a Samandhi of PW 1. He came to Ranchi alone on 24.5.1992 on the information received by Tarana Prasad that his daughter was

suffering from Diarrhoea and at Ranchi he found that Usha Devi was dead, her body was covered and some people informed that she had died of

Diarrhoea but it created some suspicion and he found after removing the clothes that her body had swollen and there was some mark on the neck

and consequently, he felt that she had been killed forcefully. In his evidence he says that he has received information from the neighbour of Tarana

Prasad on 24.5.1992 that he came to Ranchi and police enquired from him at the residence of the accused persons. He said in paragraph 6 that on

24.5.1992 when he went there, he found Tarana, the wife of Tarana Prasad and all his four sons present there, other than them none was there

from Jamshedpur and in paragraph 10 he says that he came back along with Tarana Prasad in a car along with other family members of Tarana

Prasad.

9. From this evidence, the learned counsel for the appellants wants to impress that there was the real involvement of the Mahila Samaj members,

and had not they motivatingly involved themselves in this case, this case of natural death would not have been converted by the police into a case

u/s 302, IPC Learned counsel for the appellants was of the view that even in cases of natural death, it is such organizations which do create a

situation and build pressures on the authorities to take a course which is not supported by other evidence.

10. Learned counsel for the respondent-State to contrary says that such organizations have a definite role to play, it is they which protect the

interest and sometimes their intervention is very necessary and fruitful.

11. Without commenting upon any other aspect of the matter, as argued, definitely we find two things:--firstly the U.D. Case was registered and

but for some flutter that was created by this Mahila Samaj, perhaps the case would not have been investigated in the manner it has been

investigated, but at this stage we are not telling on the merit of investigation and secondly the evidence also shown that this Mahila Samaj was over-

sensitive and over-interested into the matter because the Chairman of the Mahila Samaj was also present one year after in the Court also when

Gulabi was examined, No doubt, we can appreciate the roles played by such organizations, but at the same time say that such organizations should

not lose their paise balance and should not show their over indulgence because in certain circumstances, this over Indulgence may suffer and lead

to a wrong conclusion defeating the cause for which they are fighting.

12. Now the main evidence in this case are as follows:--(1) death is proved or admitted, (ii) the deceased girl died within four years of her

marriage, (iii) the deceased died in matrimonial house, (iv) the girl died leaving a young child and also was pregnant, and (v) the death in the opinion

of the Doctor is due to hanging.

13. Learned counsel for the respondent argued that when PW 1 has already given evidence that there was demand of dowry and there was a letter

written by the victim girl then in fact this case should have been instituted and the appellants should have been tried for an offence u/s 304-B, IPC.

That letter allegedly written by the victim girl has not been brought on record and prior to the evidence of PW 1 there is no evidence on the record

that any demand of dowry was made earlier. So whatever the evidence came on the record for the first time with regard to the demand of dowry it

came on 5.10.1993 itself when PW 1 deposed. In that situation definitely charge-sheet could not have been processed u/s 304-B, IPC. Hardly,

the trial Court would have amended the charge-sheet and could have tried the accused for that. Therefore, the argument of the respondent-State

cannot be entertained and deserves to be rejected.

14. Learned counsel appearing for the appellants has argued that as the learned trial Court has found the story of demand of dowry false and the

State had not filed any appeal, this finding of the learned trial Court cannot be upset at this appellate stage. The essence of this argument is that at

this stage there can be no examination of the matter as to whether a case u/s 304-B, IPC is proved or not. This stand has empathetically been

pressed by the learned counsel for the appellants only in order to escape the mischief of the presumption of Section 113-B of the Evidence Act.

We are also of the view that at this stage we cannot look into this aspect of the matter.

15. The real question now is whether the charge under Sections 302/34 and 201/34 is made out against the appellants or not and this definitely

drives us to find out whether the death was suicidal or homicidal i.e. the crux of the decision on this case.

16. As stated above, on the basis of the evidence from the prosecution side, no motive for committing suicide is there but the defence has set up

that she was suffering from Diarrhoea and consequently she committed suicide. A girl having a small child already and being on the way to deliver

another baby as she was pregnant, cannot, in any circumstances, drive herself to commit suicide only because she suffered from some Diarrhoea

for a few days. So there is no strong or even feeble motive for committing suicide. The Doctor, who conducted the autopsy, has found the

following injuries on the person of the deceased:--

Ligature mark.--02-2x2 Cms. in width situated on the upper part of neck. It is oblique & high up towards back of the neck. The ligature mark is

prominent all around except back of neck upper part where it is discontinuous. The ligature mark is abided and continuous at places.

Opinion:--(1) The ligature mark is ante- mortem

(2) Death due to hanging

(3) Time of death 12 to 36 hrs. from the time of P.M. Examination.

In the opinion of the Doctor the injuries were due to hanging. In the Court, when the Doctor was cross-examined as PW 5, vide paragraph 3, he

said that the death, in his opinion, was due to hanging. In his cross-examination, he categorically said that such injury cannot be caused by throttling

as there was no damage of bone in the neck. If the opinion of the Doctor is believed, prima facie then out and out it becomes a case of hanging. In

this context, the description of the P.O. and the inquest report become important. The I.O., CW 1, found, vide para 5 that in that room there was

a palang lying and he was told (it is not known who told) that on that palang Usha Devi was lying and in room, no table, no chair, no rope, no

saree and no cloth was found. The evidence of the I.O. does not describe that there was any beam on the roof of the room from which she hanged

herself. The other circumstances that have come with regard to the P.O. as stated above do not suggest that she could have hung herself and

committed suicide by hanging.

17. In order to appreciate the opinion of the Doctor, the opinion of the Doctor is always an opinion which has to be tested from the other attending

circumstances as there is no law that the opinion of the Experts should be blindly accepted. Modi's Medical Jurisprudence and Toxicology, 22nd.

Edition at page 270 has given a table of comparison of hanging and strangulation this is a very detailed comparison almost on 16 points. With

regard to neck, in case of hanging, neck is stretched and elongated in fresh bodies whereas in case of strangulation, it is not so. In case of hanging,

bleeding from nose, mouth and ears is very rare whereas in case of strangulation, bleeding from nose, mouth and ears may be found. Abrasions

and ecchymosed round about the edges of the ligature marks are rare in case of hanging whereas in case of strangulation abrasions and

ecchymoses round about the edges of the ligature mark are common. Then at page 269 Modi says that in case of strangulation there can be no

time for the victim to raise any noise, even noise cannot be heard by a person who is living nearby. Then again at page 256 Modi says that the

muscles of the neck, especially platysma and sterno-mastoid are likely to be ruptured only when considerable violence has been used in hanging.

Of course, Modi says that the presence of ligature mark alone is not the document of the death of hanging. In case of hanging, the lungs are

congested (page 256). The Doctor does not find such a thing in post-mortem. In suicidal hanging fracture or dislocation of the upper cervical

vertebrate together with laceration of spinal chord would be there. The Doctor did not find anything like such. This post-mortem was performed on

24.5.1992 at 11 hours. Compliance of Section 174 Cr PC was not made. The post-mortem was already done before the intervention of the

Mahila Samaj. The Doctor opined clearly that the hanging was there because of the ligature mark and because of no damage of the neck muscles.

As stated in the comparative statement that has been made there that in case of strangulation there may not be any damage of the muscles. The

evidence that has been suggested by the defence is that on the palang she was lying and on that palang she fell down after she had tied her neck

and in that course she died. From the medical evidence that has come it will not amount to hanging in this manner.

18. The defence case was that after she had fallen down, a Doctor from the Rly. Hospital was called, she had given an injection then she advised

them that she should be taken to a hospital, then she was rushed to Seva Sadan, there, she was declared dead. It is not known or even admitted

by the defence that actually the victim had reached Seva Sadan or she died on the way to hospital. Had the Doctor, allegedly being called from the

Rly. Hospital by the accused, who administered injection on the victim, been called as a defence witness, then many thing might have been clear. It

is true that defence is not obliged to prove anything but it is a typical case in which the accused gave the information of unnatural death to police.

Thus in essence, he was the informant, though found an accused after investigation. In such a circumstance, he is bound by his statement which he

gave to police as informant and it will become an admission and relevant u/s 21 of Evidence Act and he is bound to prove the same otherwise he is

liable to be prosecuted u/s 201, IPC. Thus he cannot maintain silence of an accused. Though he said that he will adduce evidence in defence but

did not. Thus, we hold that an informant who is found ultimately to be an accused has no right to maintain silence of an accused and his first

information given to the police as his admission u/s 21 of Evidence Act has to be proved by him further.

19. If it is homicidal death, then a question comes for decision as to who is the person behind it. In case of unnatural death, there can be no

positive evidence and circumstances will have to be checked. One circumstances is that the husband of the victim girl sent an information to the

father of the victim girl that she was suffering from Diarrhoea and hearing that the father of the victim girl came. The father PW 1 has given a

positive evidence on that point then the police says that it was the husband who had given to the police an information that she was suffering from

Diarrhoea or something and so she had tied her neck and had failed down and died. There is no evidence to show that the other members of the

family i.e. father, mother, brother-in-law were also helping the husband even in sending information to the police etc. So they circumstances has

created a doubt about their trying or concealing the evidence or misdirecting the investigation.

20. Learned counsel for the appellants has relied on a decision reported in 1995 (1) PLJR 195 and suggested that if there is no eye-witness and

circumstantial evidence are doubtful, then in that circumstances, no conviction can be allowed on the basis of the post-mortem report alone.

Secondly he relied on a decision reported in 1997 CriLJ 1004 and argued that suspicion howsoever be strong cannot take the place of legal

evidence. Thirdly he relied on a decision reported in (2) 1995 DMC 185 to show that there is no motive and in case of circumstantial evidence, if

there is no motive then there can be no conviction. He also relied upon a decision reported in Sakharan Vs. State of Madhya Pradesh, and argued

that any defence set up by the defence cannot be used against the appellants because it is the prosecution that has to prove its own case and he

further relied on a decision reported in 1997 SCC 822 and argued that because of the non-proving of the facts of the prosecution, there can be no

conviction. The learned counsel for the appellants has also relied on a decision reported in AIR 2001 SCW 4116 and argued that if there is no

evidence of demand of dowry or subjecting the deceased to cruelty in connection with the demand of dowry, then conviction cannot be made. We

have discussed that in this case this ruling will not apply because the matter of dowry is not involved.

21. Learned counsel for the prosecution relied on a decision reported in Baldev Krishan etc. Vs. State of Haryana, and argued that if the defence

creates adverse evidence to prove the possibility of accidental death, then in that circumstances, this very circumstance will be appreciated against

the appellant, particularly this fact happened in this case.

22. Considering the entire facts discussed above, we find that the death has occurred and the attempts were made to misdirect the investigation

and conceal the evidence by the husband of the victim girl. Consequently, In these circumstances, we find that the conviction and sentence against

the husband Sujan Kumar Das under both Sections 302 and 201, IPC are well established because in situations like this, there can be no direct

evidence. But so far the other appellants are concerned, it is not at all proved. Consequently, the conviction and sentence against the other

appellants Shashi Kumar Das @ Shashi Das, Sukumar Das and Taramani Das. A2, A3 and A4 respectively, are set aside. As they are on bail,

they are discharged from their bail bonds.

23. The appeal of A1, Sujan Kumar Das, is dismissed and the appeal of A2, A3 and A4 is allowed.