
(2006) 04 JH CK 0009

Jharkhand High Court

Case No: Criminal Appeal No. 354 of 2000 (R)

Anil Rana

APPELLANT

Vs

The State of Bihar
(Now Jharkhand)

RESPONDENT

Date of Decision: April 24, 2006

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 304B, 34

Citation: (2006) 04 JH CK 0009

Hon'ble Judges: Dhananjay Prasad Singh, J

Bench: Single Bench

Advocate: T.R. Bajaj and A.K. Das, for the Appellant; Md. Hatim, APP, for the Respondent

Final Decision: Allowed

Judgement

D.P. Singh, J.

The sole appellant Anil Rana stands convicted u/s 304B and Section 201 of the Indian Penal Code and has been sentenced to serve R.I. for 10 years and 3 years respectively in S.T. No. 344 of 1991 by 3rd Additional Sessions Judge at Hazaribagh.

2. Brief facts leading to this appeal are that Anil Rana was married with Anita, daughter of the informant Kewal Rana in the year 1988. Further stated, Anita used to visit regularly her parents at village Bonga and her Sasural at village Hazandhamna. Prosecution case is that on 21.5.1989, Anil Rana came for Bidai of Anita at Bhurkunda and when they were going back on 22.5.89, Ami Rana asked the informant to provide him Motor Cycle, television and Rs. 5000/- in cash. The informant requested Anil Rana that at the moment he has got no money, thereafter they went away. Further stated on 04.06.1989, someone from Hazaridhamna went to the Sasural of the informant and informed P.W. 5, Ishwardayal Rana, brother-in-law of the informant that Anita has died in the night of 02.06.1989. P.W. 5 thereafter informed the brother of the informant Jugal Rana (P.W. 1) about the incident who, in turn, informed the informant. After which the informant went

along with his brother and brother-in-law to village Hazandhamna on 05.06.1989 where he was informed by the appellant and his father that Anita has expired on 02.06.1989 due to diarrhoea. Thereafter when informant asked him why he was not informed, both of them became angry and Anil Rana said whatever he has to do, he has done. According to the informant, Anil Rana has got the dead body of Anita disposed of in the morning of 03.06.1989. The informant tried to find out what has happened to Anita and he could learn from villagers and the neighbours where Anita was last brought by the appellant that her daughter has not been ill. According to them Anita was killed by Anil Rana and his parents for non-fulfillment of dowry demands. This information was given to the Officer Incharge of Barhi police station on the basis of which Barhi P.S. Case No. 77 of 1989 was registered u/s 304B, 201/34 of the Indian Penal Code against three persons. The police investigated the case and finally submitted charge sheet against Anil Rana and his parents for the above offences.

3. The case was committed for trial by the court of sessions. The learned lower court after examining the witnesses and after evaluating prosecution and the defence evidences found and held that parents of Anil Rana were not guilty. However the learned lower court held that the appellant Anil Rana is solely responsible of the death of Anita and further destroying the evidence by burning dead body. Accordingly this appeal has been preferred.

4. This appeal has been preferred on the grounds that he learned lower court has committed mistake of law and facts. It is further submitted that there was no evidence on record that Anil Rana used to demand dowry. It is also asserted that the prosecution has failed to prove that Anita was subjected to any torture and cruelty in connection of non fulfillment of dowry demands before her death. It is also asserted that the deceased met natural death due to illness, dysentery and vomiting in spite of treatment given by doctor at Barhi. In the memo of appeal, it is further asserted that the defence witnesses were not given proper consideration and disbelieved without any cogent reason on record, therefore the appellant Anil Rana be acquitted of the charges. These points were, further argued strenuously before me. Mr. T.R. Bajaj further pointed out that even in cases u/s 304B of the I.P.C., primary burden remains on the prosecution to prove that death has occurred in consequence of the dowry demands and the torture for it must be within close proximity of the alleged death. The learned Counsel further pointed out that learned lower court while accepting the prosecution version failed to consider that Anita was being treated by D.W. 1, which has also been supported by independent witnesses. D.W. 2, Sarpanch and D.W. 4, Mukhia of the Village.

5. The learned APP opposed this contention on the grounds that there is specific evidence that Anil Rana demanded Rs. 5000/- in cash, motorcycle and television on 22.05. 1989 and Anita was dead by 2.6.1989. The learned APP further pointed out that the death of Anita was not communicated to the informant which creates strong circumstantial evidence against the appellant. Therefore the judgment of conviction and sentences, passed against the appellant may be affirmed.

6. I have carefully gone through the material available on records and the argument advanced by both sides. The prosecution version is that Anil Rana demanded cash and items on 22.05.1989 when he was taking Anita to Hazaridhamna her sasural, the informant P.W. 2 is the only eyewitness of this fact. He has supported his earlier statement vide para 3, his version has been supported by P.W. 1 Jugal Rana and P.W. 5 Ishwardayal Rana all related with the informant, though they were not eye witness of the demand of dowry made by the appellant from the informant. P.W. 1 has stated in cross examination that he could not say the dates when the dowry demands were made in his presence. This witness has admitted in para 9 of the cross examination that the Bidai was performed in happy atmosphere and no complaint were made earlier regarding his dowry demands to anyone. Ishwardayal Rana P.W. 5, has similarly supported the informant as hear say witness, however this witness has admitted in para 3 of his chief that Anita was alive till 12 p.m. on 2.6.1989 and he does not know how she died. This witness has admitted in para 8 that he cannot say who informed him about death of Anita after three days of alleged occurrence. According to him, informant was called and on the same day he along with informant went to Barhi. He has not been able to mention who has informed him that Anita was seeing T.V. in the night of 2.6.1989.

7. In the background of these statements when P.W. 3 Uma Devi and P.W. 4 Suresh Prasad examined by prosecution, have supported the defence version. According to Uma Devi, the daughter-in-law of Accused Bhikhan suffered from vomiting and diarrhea who was taken to for her treatment on Rikshaw. Similarly Suresh supported the defence version. They have been cross examined by the prosecution. P.W. 6 and P.W. 7 are formal witnesses proving FIR and the fardbeyan as Ext. 1 and 2 series. The I.O. of this case has not been examined. The learned Counsel for the appellant submitted that in view of these facts on record the story of prosecution that dowry demands were made and Anita lost her life due to any torture or cruelty committed by Anil for non fulfillment of dowry demands stands not proved. Learned Counsel further pointed out that D.W. 1 Medical Officer of State dispensary Barhi has specifically mentioned in his statement that he treated Anita Kumar from 24.5.1989 for fever and stomach pain vide Ext. A and further proved the prescription written by him dated 2.6.1989 (Ext. A/1) and the death certificate issued by him (Ext. B).

8. The learned Counsel for the appellant Mr. Bajaj contended that D.W. 1, the doctor has not been believed just because he has prescribed the medicines and finally issued the death certificate. It was further pointed out that D.W. 2 has also supported the story of death because of diarrhoea, he has proved the certificate dated 22.8.1989 in his writing and signature This witness has supported the defence version and finally D.W.-4, the Mukhia has issued the death certificate as Ext. C/2.

9. From perusal of the evidence brought on record, it appears that the prosecution case is depending upon the circumstantial evidence. The informant along with P.W. 1 has asserted that Anil Rana asked for motorcycle, television and cash on 22.05.1989 but during cross examination they have admitted that the cause of death could not be

ascertained because the dead body has been disposed of. They have further admitted that when they tried to ascertain from neighbours where Anita was last residing, they were informed that in the night of 2.6.1989 Anita was seeing T.V. serials up to 11 p.m. and in the morning her dead body was taken away to Hazaridhamna for disposal. The informant has further admitted vide para 19 that father of appellant was weeping in presence of the villagers. P.W 1 has admitted vide para 9 that Bidai was performed in good atmosphere. P.W. 5 Ishwardayal Rana has also admitted in para 8 that he can not recollect who has informed about the death of Anita to him. He further admitted vide para 11 that he can not recollect who informed that Anita was seeing T.V. till 11 p.m. on 2.6.1989:

10. In above facts, I find that there is no consistent evidence regarding demand of dowry made by Anil Rana even on 22.5.1989. This view further gets support from the fact that four D.Ws have been examined, who have stated specifically that Anita died due to diarrhea and dysentery in spite of her treatment by D.W. 1, a medical officer of State dispensary. The impugned judgment mentions the evidences vide para 6 and held the appellant guilty just because the informant was not informed about the death of Anita. Learned lower court has presumed vide para 12 that P.W. 3 and 4 and D.Ws have supported the defence version as they did not like to earn wrath of accused persons. As such, I find that the learned lower court has convicted the appellant on weak and uncorroborated evidence.

11. Having regards to all the facts and circumstances, mentioned above, I find and hold that the prosecution, in the present facts, has failed to prove beyond doubt that Anil Rana has caused death of his wife Anita for non fulfillment of dowry demands and disposed of the dead body to destroy the evidence. Accordingly the present appeal has got merit and deserves to be allowed. In result this appeal is allowed. The appellant is discharged from the liabilities of his bail bond.