

(2010) 05 JH CK 0005
Jharkhand High Court
Case No: None

Durga Ram Gope, Kali Charan
Gope and Dewki Devi

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: May 18, 2010

Acts Referred:

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

Hon'ble Judges: Rakesh Ranjan Prasad, J

Bench: Single Bench

Final Decision: Allowed

Judgement

R.R. Prasad, J.

This appeal is directed against the judgment of conviction dated 20.6.2000 and order of sentence 27.6.2000 passed by 5th Additional Sessions Judge, Dhanbad in S.T. No. 539 of 1995 whereby, and whereunder learned Additional Sessions Judge having found the appellants guilty u/s 304B of the Indian Penal Code sentenced each of the appellants to undergo rigorous imprisonment for ten years.

2. The facts giving rise this appeal are that the deceased Hinu Devi, daughter of Mukhteshwar Prasad (P.W.9) was married to the appellant Kali Charan Gope, son of other appellant Durga Ram Gope three years before the date of occurrence, i.e. 6.7.1995. After the marriage, both lived happily for some times. After one and half year, one daughter begotten out of their wed-lock. Thereafter accused persons started putting forth demand of Rs. 5000/- on the plea that all the money given in dowry at the time of marriage has been spent in the delivery of the child. In order to get the demand fulfilled the accused persons used to held out threat of dire consequence.

3. On 6.7.1995 the informant Mukhteshwar Prasad Yadav (P.W.9) was informed by Bikhari Gope that her daughter has died. The informant along with others, namely,

Bhola Gope (P.W.1), Ganga Yadav (P.W.2) and others came to the place of her daughter where they found Hinu Devi lying dead on a cot and her body was full of marks which appeared to have been caused by assault. At the same time, they also noticed blood coming out of her private parts. They did not find accused persons in the house. However, in the meantime, Enamul Hembram (P.W.10), the then A.S.I posted at Govindpur Police Station on getting (sic) that some one has died at village Sundarpahari come over there and recorded the Fardbeyan (Ext.3) of Mukhteshwar Prasad Yadav (P.W.9) and took up the matter for investigation. He also had inquest on the dead body and prepared inquest report (Ext.5) as well as dead body challan (Ext.4). With those two documents, dead body was sent for post mortem examination which was conducted by Dr. Vinod Kumar (P.W.8), who in course of examination found ligature mark around the neck and also noticed of blood stain at the vulva. He issued post mortem examination report (Ext.2) with an opinion that death occurred due to asphyxia as a result of hanging.

4. After completion of investigation, police submitted charge sheet against these three appellants as well as Jagannath Gope u/s 304B of the Indian Penal Code, upon which cognizance of the offence was taken. Upon committal of the case, charge was framed to which the accused persons pleaded not guilty and claimed to be tried.

5. The prosecution examined altogether ten witnesses. Of them, P.W.9, Mukhteshwar Prasad Yadav, is the informant, P.W.1 Bhola Gope and P.W.2 Ganga Yadav are the persons, who on getting information that Hinu Devi has died at her in-law's place went there. According to them, they did find ligature mark around the neck and that apart, they also noticed mark of assault on the body as well as blood coming out of the private parts. According to informant (P.W.9), the accused persons used to subject the deceased to cruelty on account of non-fulfillment of demand and ultimately they murdered her daughter. The trial court having placed implicit reliance on the testimonies of witnesses recorded the judgment of conviction and order of sentence as aforesaid.

6. Being aggrieved with the judgment of conviction and order of sentence, this appeal has been filed.

7. Mr. G.P. Roy, learned Counsel appearing for the appellants submits that though the prosecution has projected the instant case as that of the case of dowry death but, in fact, it was a case of suicide which has been confirmed by the Doctor by giving opinion that death occurred due to asphyxia and this fact gets support from the evidences of some of the witnesses of the same village, particularly Mansria Ram Gope (P.W.5) testifying that when villagers noticed that the deceased is hanging through the beam of the house, villagers brought her down but the trial court did not appreciate these evidences in right perspective and found the appellants guilty of the charge which on the face of other evidences is bad and illegal and hence, the judgment of conviction and order of sentence deserve to be set aside.

8. Learned Counsel appearing for the State submits that presence of mark of assault and also presence of the blood (sic) the private part completely rules out the possibility of deceased committing suicide in absence of any explanation with respect of mark of assault and blood being found on the private parts and that apart, there has been cogent evidence that the deceased was subjected to cruelty soon before the occurrence on account of non-fulfillment of the demand of dowry.

9. Having heard learned Counsel appearing for the parties, I do find that when the informant Mukhteshwar Prasad Yadav (P.W.9) got information from Bhikhan Gope (P.W.6) who is resident of the same village where the occurrence took place that Informant's daughter Hinu Devi has died, Mukhteshwar Prasad Yadav (P.W.9), Bhola Gope (P.W.1), Ganga Yadav (P.W.2) and also other persons came to the place of Hinu Devi and found Hinu Devi dead lying on a cot. There they noticed ligature mark around the neck and also several marks all over the body which appeared to them to have been caused by assault but the Dr. Vinod Kumar (P.W.8) who held autopsy of the dead body never seems to have found any injury on the body, though he has found ligature mark around the neck but from the inquest report, it does appear that the Investigating Officer, Enamul Hembram (P.W.10) also did find several marks all over the body which, according to him, was due to clotting of the blood. He also found presence of blood at the private part of the deceased. Thus, on one hand, Doctor did not find any other injury than the ligature mark but on the other hand, the witnesses particularly, Bhola Gope (P.W.1), Ganga Yadav (P.W.2) and informant Mukhteshwar Prasad Yadav (P.W.9), did find presence of the mark of assault which was also found by Enamul Hembram, the Investigating Officer. Nothing has been elicited from them in their cross-examination to disbelieve the version of the witnesses in this respect. It is quite possible that Dr. Vinod Kumar (P.W.8) may not have considered those marks of assault as injury as it may not have been in the nature of contusion abrasion or cut injury and hence, opined that there was no any other injury and therefore, opinion with this respect would not be helpful to the defence. Further I do find that Mukhteshwar Prasad Yadav (P.W.9) has categorically deposed that after the marriage, when her daughter gave birth of the child, accused persons started putting forth, demand of Rs. 5000/- on the plea that the money which was given at the time of marriage has been spent at the time of delivery of the child and therefore, they were insisting on the deceased to bring money from her father and this fact was being told by the daughter to him whenever she came to his place. Nothing seems to have been brought on behalf of the defence to discard the aforesaid facts testified by the informant Mukhteshwar Prasad Yadav (P.W.9). I may say that the demand, in the facts and circumstances of the case, can certainly be said to be in connection with the marriage as demand was made on account of the fact that the money given at the time of marriage had been spent at the time of delivery of the child and therefore, the said demand of Rs. 5000/- can well be put under the definition of dowry.

10. So far the defence taken by the accused that it is a case of suicide is not acceptable at all, first for the reason that there were marks of assault on the entire body and that apart, blood was found at the private part which normally could not have been found if it would have been a case of suicide and furthermore, no explanation has been given by the accused persons about the presence of the marks of assault and also presence of the blood at the private part. That apart, I do find that the beam (dharan) through which the deceased is said to have been hanging was at the height of 5" only and in that event a person of average height as of the deceased as found by the Doctor, can not commit suicide. Thus, the case never appears to be of suicide, rather it appears to be a case of unnatural death. Under the circumstances, I do find that the prosecution has been able to establish all the ingredients of Section 304B of the Indian Penal Code.

11. Now the question does arise as to whether all the three appellants or only husband is responsible for causing dowry death of the deceased.

12. No doubt it is true that Mukhteshwar Prasad Yadav (P.W.9) has testified about the demand of dowry being made by all the appellants and subjection to cruelty but I do find that the prosecution witness particularly Chhatu Gopa (P.W.4) has testified that the appellant Durga Ram Gope had not been there in the house on the day of occurrence, rather 2-3 days before, he had gone somewhere else. Suggestion to this effect had also been given to the witnesses, namely, Bhola Gopa (P.W.1) and Mukhteshwar Prasad Yadav (P.W.9) which they denied. But according to Investigating Officer, the appellant Durga Ram Gope was away from home and, therefore, no difficulty is there in accepting the fact that the appellant Durga Ram Gope was away from home since last 2-3 days of the occurrence. Further, I do find that evidence has been led by the prosecution that when Mukhteshwar Prasad Yadav (P.W.9), Bhola Gope (P.W.1) and Ganga Yadav (P.W.2) came to the place of the deceased, none of the appellants was found present in the house but Ganga Yadav (P.W.2) has testified that the appellant Dewki Devi was very much in the house, though all the witnesses have said about the absence of Kali Charan Gope, husband of the deceased which is one of the circumstances indicating towards guilt of the accused Kali Charan Gope but it is not (sic) in case of the appellant Dewki Devi. Further keeping in view the age of Dewki Devi couple with the fact that she was very much present in the house it looks improbable that she would have played any role in the commission of the murder of the deceased, rather entire circumstances and the evidences are directed against the husband. In the circumstances, it would not be safe to hold the appellants Dewki Devi and Durga. Ram Gope guilty of the charge.

13. In the circumstances, they deserve benefit of doubt and, accordingly, both Durga Ram Gope and Dewki Devi are hereby acquitted and are discharged from the liability of the bail bonds whereas judgment of conviction and order of sentence is confirmed so far Kali Chai an Gope is concerned.

14. Thus, this appeal is allowed but in part.