

**(2009) 07 JH CK 0015**

**Jharkhand High Court**

**Case No:** Criminal Appeal (D.B.) No. 678 of 2003

Jugal Kishore Singh and Others

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

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**Date of Decision:** July 31, 2009

**Acts Referred:**

- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 304B, 324, 34, 498A

**Hon'ble Judges:** Rakesh Ranjan Prasad, J; Amareshwar Sahay, J

**Bench:** Division Bench

**Advocate:** A.N. Deo and Y.N. Misra, for the Appellant; V.S. Sahay, Assistant Public Prosecutor, for the Respondent

**Final Decision:** Allowed

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**Judgement**

1. All the appellants, named above, on being put to trial, for the charges of subjecting the deceased-Kiran Devi @ Pinki to torture on account of non-fulfillment of demand of dowry and also for causing dowry death to her, were convicted for offences under Sections 498A/34, 324 and 304B of the Indian Penal Code and also u/s 3/4 of the Dowry Prohibition Act. Consequently, all the appellants were sentenced to undergo R.I. for three years each for offences under Sections 498A and 324 of the Indian Penal Code and further the appellant-Jugal Kishore Singh, Smt. Sandhya Devi and Binay Kumar Singh, were sentenced to undergo R.I. for life for offence u/s 304B of the Indian Penal Code, whereas other three appellants were sentenced to undergo R.I. for ten years for offence u/s 304B of the Indian Penal Code. All the sentences were ordered to be run concurrently, whereas no separate sentence was passed u/s 3/4 of the Dowry Prohibition Act.

2. The case of the prosecution is that one Kiran Devi @ Pinki daughter of Sukhdeo Singh (P.W.8), was married to the appellant No. 3-Binay Kumar Singh son of Jugal Kishore Singh, in the year 1998. After the marriage, she stayed for few a days at her

in-law's place and then came back to her parent's house until 5<sup>th</sup> March, 2001, when she, after her Gauna (second marriage), came to her in-law's place, where her father-in-law, mother-in-law, brother-in-law (Devar) and sister-in-law (Nanad), put forth the demand of Rs. 25,000/- so that the appellants may bear the expenses of the marriage of her sister-in-law (Nanad). At the same time, the husband of deceased-Kiran Devi, always held out threat of taking another marriage.

Further case is that on 08.07.2001 at about 1.00 p.m. while she was taking rest on her cot in the bedroom, accused persons put her on fire, by sprinkling kerosene oil. When she raised alarm, the person living in the neighbourhood came over there, but by that time, she was severely burnt. However, her husband and the person living in the neighbourhood, removed her to Bokaro General Hospital, where she was attended by Dr. Dhananjay Rajak (D.W.3) to whom the deceased-Kiran Devi informed that she accidentally caught fire at about 11.30 a.m. while she was cooking food and this was reduced in writing over the history sheet (Ext. A). Thereafter, O.D. slip was sent to Bokaro Steel City Police Station. Probably on getting O.D. slip, A.S.I, Bokaro Steel City Police Station, Shyamal Chatterjee (P.W.11), came to the said hospital and recorded the fardbeyan (Ext.1) at about 4.15 p.m. on 08.07.2001. Upon which, a formal first information report (Ext.8) was drawn and the case was instituted against all the accused persons and the matter was taken up for investigation by P.W.11 himself. Meanwhile, Deputy Commissioner, Bokaro, on getting information of the aforesaid incidence, deputed Smt. Mukta Sahay (P.W.3), Executive Magistrate-cum-Special Land Acquisition Officer, Bokaro for inquiry. Accordingly, the said Officer came to burn unit of the hospital, where Kiran Devi was receiving the treatment under Dr. Anurag Krishna Sahay (P.W.6), who allowed the said Officer to record the statement. Thereafter, P.W.3, recorded the statement (Ext.3) of Kiran Devi, at about 5.30 p.m., on 10.07.2001, which was reduced in writing in presence of P.W.7, a Nurse working in the said hospital, wherein she reiterated that all the accused persons burnt her, by sprinkling kerosene oil and by tying her hands and feet with the cot. In the meantime, the I.O., Shyamal Chatterjee (P.W.11) inspected the place of occurrence from where half burnt Saree was seized from the bedroom under the seizure list (Ext.-5). On 13.07.2001, another I.O. Bishwanath Prasad (P.W.10), took over the investigation of the case and on the very next date i.e. on 14.07.2001, Kiran Devi died. On getting information about her death, the second I.O. (P.W.10), came to the hospital and held inquest on the dead body and prepared inquest report (Ext.7) and the dead body was sent for postmortem examination, which was conducted by Dr. Ratneshwar Pd. Varma (P.W.4) on 14.07.2001 itself whereby he found burn injury covering about 80% of the body surface. According to him, the cause of death is Cardio respiratory failure due to septicemia shock and extensive bum injury. The postmortem report has been proved as Ext.4. Subsequently, another I.O. Rijhan Paswan (P.W.9), took over the said investigation and submitted charge sheet, where upon cognizance of the offences was taken.

3. On committal of the case, charges were framed to which accused persons pleaded not guilty and claimed to be tried. Prosecution examined all together eleven witnesses. Of them, P.W.1, Nagendra Kumar, a colleague of P.W.2, Rajesh Kr. Singh, brother of the deceased, have testified that on getting information that the accused persons have burnt the deceased, they came to hospital where she told them that it were the appellants, who after tying her hands and feet burnt her. P.W.2 has gone to state further that the accused persons had asked for Rs. 25,000/-. Similar is the testimony of P.W.8-Sukhdeo Singh, father of the deceased, who has deposed that when he came to hospital, after receiving information of her daughter being admitted, he was told by her about the manner in which, the appellants had burnt her. He has also testified that the accused persons were asking for Rs. 25,000/-.

4. The trial court, having found the statements made by the deceased under Exts.-1 and 3 to be true and also finding P.W.2 and P.W.7 to be the trustworthy witnesses, recorded the order of conviction and sentence.

5. Learned Counsel appearing for the appellants submits that the prosecution, in course of the investigation, very conveniently suppressed the fact that when the husband of the deceased (appellant No. 3) found the deceased receiving burn injury, he along with Umesh Kr. Sharma (D.W.2) and her mother-Phulpatf Devi (D.W.1), both residing in the neighbourhood, brought the deceased-Kiran Devi immediately to Bokaro Genral Hospital where she made statement before the Doctor-on-Duty, Dhananjay Rajak (D.W.3), that she had received injury while she was cooking food, which was reduced in writing over the history sheet (Ext. A). But, after the father and the mother of the deceased reaches to the hospital, she made entirely different statement which was recorded by the I.O. under Ext.1 and subsequently, after two days, she made another statement under Ext.3, recorded by an Officer, deputed by the Deputy Commissioner, Bokaro, where she put the matter in such a manner as it may appear that the accused persons have committed offence brutally, but both the statements made by the deceased, as recorded under Exts. 1 and 3, can be said to be a false and after thought in view of the earliest statement given by the deceased to Dr. Dhananjay Rajak (D.W.3), but the learned trial court did not consider this aspect of the matter in the right perspective and hence, committed illegality in recording the order of conviction and sentence, which is fit to be set aside.

6. Having heard learned Counsel appearing for the parties and going through the material available on the records, we do find that though the learned trial court has found the appellants guilty, but none of the witnesses either P.W.2, brother of the deceased or the father of the deceased, P.W.8 or even the deceased, in her statement made under Ext.1, has said anything about the infliction of cruelty, on account of non-fulfillment of the demand of the dowry, whereas the prosecution is required to establish the following ingredients in order to secure the conviction u/s 304B of the Indian Penal Code:

- (1) 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) the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
- (iv) cruelty or harassment must be for or in connection with demand for dowry;
- (v) such cruelty or harassment is shown to have been meted out to the woman soon before her death.

7. It be stated that the deceased, in her second statement made on 10.07.2001, under Ext.3, has stated that the accused persons used to abuse her whereas husband of the deceased used to beat her, on account of non-fulfillment of the demand of the dowry, but this fact is never there, in her first statement recorded on 08.07.2001 under Ext.1. Therefore, that can easily be taken to be after thought or can be said to be tutored and hence, that part of the statement is fit be rejected. Not only that part of the statement of the deceased, but the entire statement of the deceased, as contained under Ext. 1 and 3, are fit to be disbelieved in view of the first statement of the deceased, recorded at the Bokaro General Hospital before Dr. Dhananjay Rajak (D.W.3), who was on duty at that time, when Kiran Devi was brought to Bokaro General Hospital by her husband with the help of Umesh Kr. Sharma (D.W.2) and her mother-Phulpati Devi (D.W.1), who were residing in the neighbourhood of the appellants, wherein she categorically stated before D.W.3 that she received burn injury, while she was cooking food, which was reduced in writing over the history sheet (Ext. A). It further appears that the Doctor started making treatment of the deceased only when D.W.1, took guarantee on behalf of the appellants to bear the expenses of the hospital and under these circumstances, there appears to be no reason whatsoever for disbelieving the statement as contained in Ext. A made by the deceased, which was recorded by D.W.3. Once the statement made by the deceased, as recorded under Ext. A is believed, entire case as projected by the prosecution appears to be a false. That apart, version of the deceased, as contained under Exts.1 and 3, never finds corroboration from the objective finding of the I.O., as the I.O. (P.W.11), in course of inspection of the place of occurrence, never did notice a semblance of proof of burning of anything such as Bedsheet, cot etc. at the bedroom, where occurrence is said to have taken place and this aspect alone, belies the entire prosecution case and under these circumstances, the trial court certainly committed illegality, in recording the order of conviction and sentence, as the prosecution has palpably failed to establish the guilt of the appellants.

8. In the result, the judgment of conviction and order of sentence as passed by the trial court is hereby, set aside. Consequently, all the appellants are acquitted of all the charges. The appellant Nos. 1, 2 and 3, namely, Jugal Kishore Singh, Smt.

Sandhya Devi and Binay Kumar Singh, who are in custody, are hereby directed to be released forthwith, if not wanted in any other case. The appellant Nos. 4, 5 and 6, namely, Sudhir Kumar Singh, Deepak Kumar Singh and Seema Kumari, who are on bail, are discharged from the liability of their bail bonds.

Thus, this appeal is allowed.