(2007) 11 JH CK 0016

Jharkhand High Court

Case No: None

Jhaboo Mahato and Kartik Mahato		APPELLANT
	Vs	
The State of Jharkhand		RESPONDENT

Date of Decision: Nov. 27, 2007

Acts Referred:

- Dowry Prohibition Act, 1961 - Section 3, 4
- Evidence Act, 1872 - Section 113B, 114
- Penal Code, 1860 (IPC) - Section 304B, 34

Citation: (2008) CrLJ 2511

Hon'ble Judges: Dabbiru Ganeshrao Patnaik, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

D.G.R. Patnaik, J.

By the impugned judgment dated 7.8.2003 passed by the learned 12th Additional Sessions Judge, Dhanbad, both the appellants were convicted for the offences under Sections 304B/34 of the IPC as well as Section 3/4 of the Dowry Prohibition Act and by order dated 8.8.2003, they were sentenced to undergo imprisonment for 10 years for the offences u/s 304B of the IPC, 5 years for the offences u/s 3 of the Dowry Prohibition Act besides fine of Rs. 15,000/- and 6 months for the offence u/s 4 of the Dowry Prohibition Act.

2. Case against the appellants was registered on the basis of the fardbeyan of the informant Rasun Mahato (PW8) on 27.1.1994. The just of the charge against the appellants, who were tried along with six others, is that the informant''s daughter Jamni Devi was married to the appellant No. 2 Kartik Mahato about 1 and ﷺ years prior to the date of occurrence. As consideration for the marriage, substantial amount of cash besides gift articles including utensils were given by the informant

to his aforenamed son-in-law (appellant No. 2) and his father Jhaboo Mahato (appellant No. 1). After marriage, his daughter went to her matrimonial house where for about a month she was treated well, but thereafter, she was brought back by her husband and in-laws to her paternal home. Her husband and in-laws refused thereafter to take her back to their house unless their demand for payment of Rs. 10,000/- being the balance of the (sic) dowry amount, and transfer of cultivable land, was made in their favour. The informant was thus prevailed upon to arrange for the money and to transfer 8 decimals of his land in favour of the appellant No. 1 and after three months, the girl was taken back to her matrimonial house. The informant used to visit his daughter at the house of her in-laws frequently and during such visits, his daughter used to complain that her husband and in-laws were continuously ill-treating and subjecting her to cruelly for fulfillment of their demand of a V.C.R and a television set and that she was denied food and even physically assaulted. The informant had tried to console her and had also pleaded with her husband and inlaws. The last occasion when he met his daughter was on 25.1.1994 and on that occasion also, she had complained that she was being subjected to cruelty on account of non fulfillment of their aforesaid demands. Two days later i.e. on 27.1.1994 he received information from his brother that his daughter was set on fire in the right of 26.1 1994 by her husband and in-laws. The informant went to the house of his daughter where he was informed that the girl was taken to Dumra hospital and from where she was tram ferred to the Central Hospital, Jagjivan Nagar, Dhanbad. By the time he reached the hospital, he found his daughter dead.
As per the report of autopsy, the doctor had observed that partial skin with deep ante mortem injury were seen all over the body except soles and head barring mid line portion 5 &#65533; ''x 2". On dissection, he had found that internal organs were found congested. Both sides of heart were partially full and uterus was non pregnant. Upper respiratory passage was congested and showed presence of carbonaceous matter on its wall. Skull and brain showed nothing particular. He had also found smell of ke osene in the scalp hair. In his opinion, death was resulted from shock due to burn injuries.

3. Both the appellants had denied the charges and had pleaded not guilty claiming that they have been falsely implicated in this case. Their case in defence is that the deceased while cooking at home, had accidentally caught fire which had resulted in her death.

4. As many as 16 witnesses were examined by the prosecution at the trial, while the defence had also examined two witnesses. Out of the total witnesses examined by the prosecution, PWs 1,2,5,6 and 7 had failed to support the prosecution''s case and consequently, they were declared hostile by the prosecution. PW 8 is the informant while PWs 4 and 9 are brothers of the deceased. PW 10 is the mother of the deceased and PWs 3 and 15 are the co-villagers of the informant. PW 11 is the uncle of the deceased. The investigating officer was though examined by the prosecution

as PW 13, but his attendance could not be secured for his cross-examination and, therefore, his evidence was omitted by the trial court.

5. The defence has examined two witnesses out of whom, DW 2 is the appellant No. 1 himself, while DW 1 is the co-villager of the appellants.

6. The trial court placed reliance on the testimony of the informant and that of other members of his family including PWs 3,4,9,10 and 11 as well as on the evidence of PW 3 and that of PW 14 besides the evidence of the doctor and had also discussed the evidence of the defence witnesses. On the basis of inference drawn by it from the evidences of the prosecution''s witnesses, the trial court recorded its finding of guilt against the present appellants for the aforementioned offences. However, finding the evidences deficient against the remaining co-accused persons who had faced trial, the trial court had acquitted them from the charges.

7. Appellants have assailed the impugned judgment of conviction and sentence on the following grounds.

a. that the trial court has committed grave error in failing to appreciate the evidences on record in proper perspective,

b. that the trial court ought to have considered that the allegations in the FIR is palpably false and even otherwise, allegations are general and omnibus in nature without attributing any specific overt act against any of the accused persons including the present appellants,

c. that the trial court has erred in giving credence to the FIR despite the fact that it contains overwriting in the dates mentioned therein,

d. that the trial court has committed error in placing reliance on the testimony of the interested witnesses even while the independent witnesses have not offered any support to the prosecution''s case,

e. that the trial court has erred in refusing to rely on the testimony of the defence witnesses particularly that of DW1 from whose testimony, it would be abundantly clear that the deceased had suffered burn injury accidentally while cooking and she had in fact given such statement explaining her injury to the said witness at the earliest point of time.

8. Counsel for the respondent State on the other hand, offers support to the findings of guilt against both the appellants as recorded by the trial court Learned Counsel submits that the prosecution has relied on the statements of the informant and his family members and on the evidence of the independent witness including PWs 3 and 15 and from the testimony of the informant and his family members, there is ample evidence to confirm that the deceased used to be subjected to cruelty and ill-treatment on account of non-fulfillment of demand for the balance of the settled dowry amount and for the transfer of the cultivable lands in favour of the

appellants and that the deceased had suffered such torture even 2/3 days prior to her death. Learned Counsel submits further that the evidence do confirm that the deceased had suffered unnatural death while she was living in the company of the appellants at her matrimonial house and before her death, she had suffered torture and ill-treatment at the hands of the appellants over demand for dowry. Learned Counsel adds further that the testimony of the defence witnesses has rightly been discarded by the trial court since, their evidences are contradictory to each other and belied by the testimony of PW15 who is a doctor and an independent witness.

9. The informant in his evidence has reiterated the same statements as contained in his FIR. He has affirmed that the deceased who was his daughter was married to the appellant No. 2 Kartik Mahato about 1 and years prior to the date of occurrence and that pursuant to the demand for dowry, amount of Rs. 1.00 lakh was settled out of which, he had given a sum of Rs. 80,000/- to the appellant No. 1 as consideration for the marriage, where-after the girl had gone to her matrimonial house. He has also affirmed that after a month of the marriage, the girl was brought back to his house and the appellants had refused to take her back unless their demands for the balance of the dowry amount and transfer of the agricultural land was made in their favour and under such circumstances, he had to pay a sum of Rs. 10,000/- in cash to the appellant No. 1 beside transferring 8 decimals of his cultivable land by way of a sale deed in favour of the appellant No. 1. He has further affirmed that three days prior to the date of occurrence, he had visited the deceased at the house of her in-laws and at that time, she had repeated her complaint that her husband and in-laws were subjecting her to ill-treatment and refusing food to her and even subjecting her to assauit on account of non-fulfillment of their demand for a V.C.R. and T.V. set. He further affirms that two days later, he was informed that his daughter was burnt to death by her in-laws at their house and by the time he reached the hospital where the deceased in her burnt condition was taken, he found her dead. The above testimony of the informant finds support and corroboration from the testimony of PWs, 4,9,10 and 11 besides evidence of PW 3. While PWs 4,9,10 and 11 happen to be the members of the informant''s family being closely related to him, PW3 is an independent witness who has given credible support to the testimony of the informant by stating that the appellants had brought back the girl to her father''s house and had refused to take her back to their house unless their demands for dowry were met and this matter was informed to the other villagers including him for intervention in the matter to resolve the dispute. This witness has also affirmed that being constrained under the compulsive demand of the appellants, the informant had transferred 8 decimals of his land in favour of the appellant No. 1 besides making payment of a sum of Rs. 10,000/- to the appellant No. 1 and it was thereafter that the deceased was taken back by the appellants to their house from her father''s house. He has also affirmed that about three days prior to the death of the deceased, he had learnt from the informant that on the informant''s visit to the deceased at her matrimonial house, she had con plained to

him that her husband and in-laws were persistently subjecting her to ill-treatment and cruelty over demand of a V.C.R. and T.V. set.

It is apparent from the evidences of these witnesses that the deceased used to be subjected to continuous and persistent ill-treatment and cruelty by the appellants in particular who happen to be her husband and father-in-law and that the appellant No. 1 being the head of his family was more demanding and exacting. The conduct of both the appellants, as appearing from the evidences on record, do attract the offences both under Sections 3 and 4 of the Dowry Prohibition Act. The learned trial court has rightly recorded its finding of guilt against both the appellants for the aforesaid offences.

10. As regards the circumstance under which the deceased had suffered unnatural death, though there is no direct evidence, nor is there any witness from the side of the prosecution to give an eye witness account, but the facts which emerge from the evidence of the prosecution''s witnesses is that the deceased had suffered burn injuries in the early hours of the morning of 24.1.1994 while she was living in the house of the appellants in their company. This fact has been admitted even by the defence through DWs 1 and 2. Defence has tried to explain through the evidence of DW1 that the deceased had sustained burn injuries accidentally while she was cooking. DW1 has claimed that he is a neighbouring resident living at a distance of about 100 yards from the matr monial house of the deceased and in the morning of 27.1 1994 at about 7-8 AM, he came to the house of the deceased on hearing alarms from the house. There was no other person in the house at that time except the deceased and he saw that the lady was burning. He claims that though the lady had suffered burn injuries, ut she was conscious enough 10 tell him that while she was trying to put the can of kerosene on the shelf above the oven, she got burnt accidentally.

DW2 is the appellant no. 2 himself. He has acknowledged that the time of occurrence is between 5-6 AM in the morning on 27.1.1994. Contradiction in the statements of this witness with regards to the time of occurrence assumes (sic). PW15 who is a doctor by profession living near the house of the appellants, has stated that on the date of occurrence at about 5-6 AM while he was at his house, two persons came to him. He recognized appellant No. 2 Kartik Mahato as one of them. He adds that both the visitors told him that a lady had suffered burn injury and wanted him to attend her immediately, but he gave them some ointment and advised them to take the injured to the hospital for proper medical treatment. PW 15 is an independent witness and his testimony is clear, reliable and convincing. His testimony regarding the time of occurrence tallies with the time acknowledged by DW 2 namely the appellant No. 1 and do confirm that the incident had occurred in the early hours of the morning on (sic).1.1994. It is also evident from the testimony of this witness that at the time of occurrence, both the appellants were present in their house.

11. Another aspect which is more significant and highly relevant is the medical evidence which confirms not only the fact that the deceased had died of account of ante mortem burn injuries, but also the fact that there was presence of smell of kerosene oil on scalp and hair of the deceased except the soles and head barring mid line portion 5 &#65533; ''x 2 and rest of the body was severally burnt. As rightly observed by the trial court, the prosecution has led enough evidence to lead to the presumption that the present appellants were responsible for the homicidal death of the deceased. The onus had shifted upon the appellants to prove that they were not responsible for the death of the deceased. Though, defence has tried to offer explanation through the evidence of DW 1 but the same is not reliable and convincing. This witness has failed to explain as to why did he not inform the investigating officer about his own knowledge of the (sic) On the other hand, the manner in which the deceased had suffered burn injuries with presence of kerosene oil on parts of her head and her body, gives a clear inference that she was first soaked in kerosene oil and thereafter set ablaze. The deceased had suffered burn injuries even in the presence of both the appellants in the house. The evidence of the informant and other witnesses confirm that soon before her death, the deceased was (sic) to cruelty, ill-treatment and was even assaulted by her husband and this fact was narrated by the deceased herself to her father when he had last visited her at her matrimonial house three days prior to the occurrence. Evidences on record do lead to a reasonable and convulsive inference to draw adverse inference against both the appellants and the presumption that they had caused the homicidal death of the deceased on account of non-fulfillment of their demand for articles by way of dowry.

12. Learned Counsel for the appellants has tried to argue that the testimony of the witnesses do not confirm any evidence for demand for dowry prior to the death of the deceased as because, such demand if any, was purportedly met by the informant as per his own deposition and, therefore, there is no scope for any further demand for dowry from the side of the appellants. Learned Counsel adds further that the allegation that the appellant No. 1 had demanded transfer of informant''s land in his favour is also not true as because, though the informant had transferred some pieces of his land in favour of the appellant No. 1, but such transfer was admittedly made by way of sale deed and against the consideration paid by the purchaser. The above argument is not appealing. In the case of Hira Lal v State (Govt. of NCT), Delhi reported in (2003) SCC 2016, while explaining the expression "soon before her death" as contained in Section 304B of the IPC, the Supreme Court has observed as follows:

The expression ''soon before her death'' used in the substantive Section 304B IPC and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression ''soon before'' is not defined. A reference to the expression ''soon before'' used in Section 114 illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who

is in the possession of goods ''soon after the theft, is either the thief or has received the goods knowing them to be stolen, unless he can account for their possession". The determination of the period which can come within the term ''soon before'' is left to be determined by the courts, depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression ''soon before'' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

13. In the instant case, evidences on record do clearly make out that soon after her marriage, persistent demand used to be made by the appellants for payment of the balance of the settled amount of dowry and for transfer of the agricultural land of the informant in favour of the appellant No. 1. It is also in evidence that though the informant was compelled to met the above demands of the appellants and the girl was (sic) to her matrimonial house, but soon thereafter, demand of a T.V. set and V.C.R. began to be made and ill-treatment and cruelty to the lady was also resumed by the appellants and this was complained by the deceased to her father on his visit to her about three days prior to her death.

14. It is true that the appellants were deprived of the opportunity to cross-examine the investigating officer, but defence has not demonstrated as to what prejudice they have suffered on account of failure of the investigating officer to appear. The fact as confirmed by other witnesses examined by the prosecution as also described in the case diary recorded by the investigating officer, has not been denied or disputed by the defence. The fact that smell of kerosene oil was found on the scalp and hair of the deceased by the doctor who had conducted autopsy, gives a definite inference that the presence of kerosene oil on head and hair could not accidental.

15. Learned trial court has elaborately discussed the evidences of the prosecution''s witnesses and has assigned adequate reasons for relying upon the testimony of the witnesses. It has also assigned adequate reasons for discarding the evident e of the defence witnesses DWs 1 and 2. Finding of guilt as recorded by the trial court is, therefore, well conceived.

I do not find any infirmity or impropriety in the impugned judgment of conviction and sentence as passed by the trial court against the appellant. I do not find any merit in this appeal. Accordingly, this appeal is dismissed. Judgment of conviction and sentence imposed by the trial court against the appellants, is hereby sustained.