

(2009) 09 JH CK 0025
Jharkhand High Court
Case No: None

Suresh Sao, Gouri Devi and
Bodhi Sao

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Sept. 17, 2009

Acts Referred:

- Penal Code, 1860 (IPC) - Section 201, 304B, 34, 498A

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Pradeep Kumar, J.

This appeal is directed against the judgment of conviction dated 2.1.2002 and order of sentence dated 8.1.2002 passed by Sri Hari Shanker Prasad, Sessions Judge, Giridih in Sessions Trial No. 41 of 1999, by which judgment he found all the appellants guilty under Sections 304B, 498A and 201 of the Indian Penal Code and sentenced then to undergo R.I. for 10 years u/s 304B, R.I. for 2 years u/s 498A and R.I. for one year u/s 201 of the Indian Penal Code, all the sentences were directed to run concurrently.

2. On repeated call, nobody appeared on behalf of the appellants then on the request of the Court Mr. Bibhas Sinha, Advocate argued on behalf of the appellants as amicus curie. He submitted that it will appear from the evidence of the witnesses i.e. P.Ws. 2, 7, 8 and 9 that the only allegation of demand of dowry and torture is against the husband-appellant No. 1, Suresh Sao while there is no evidence against the other appellants i.e. old mother-in-law (appellant No. 2) and father-in-law (appellant No. 3) that they ever demanded any dowry or tortured the victim girl and as such the conviction of the said appellant Nos. 2 & 3 under Sections 304B, 498A of the Indian Penal Code is bad in law and fit to be set aside. Learned Counsel further submitted that most of the independent witnesses have turned hostile and the

prosecution case has been supported only by the informant, P.W.9, mother of the deceased except that all witnesses have turned hostile and hence the Court should not have relied on their evidences since they are interested witnesses, should have acquitted the appellants.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that all the prosecution witnesses have supported the prosecution case and proved beyond reasonable doubt that the appellants soon after the marriage started demanding dowry and since the parents of the victim girl was not in a position to fulfill the said demand the appellants continued torture, till soon before the death of the victim girl and as such all ingredient of Sections 304B I.P.C. has been proved beyond all reasonable doubt against the appellants and they have rightly been convicted.

4. After hearing both the parties and going through the evidence, I find that the prosecution case was started on the basis of a first information report given by the informant, Ramani Devi to the Officer-in-charge, Dhanwar Police Station stating therein that her daughter, Kanchan Kumari was married with appellant No. 1-Suresh Sao, son of Sri Bodhi Sao in the year 1997. At the time of marriage she had given 50,000/- in cash and other articles and ornaments. After sometime of the marriage the father-in-law of the deceased, Bodhi Sao son of late Kunjo Sao and her mother-in-law, Gouri Devi started demanding a motorcycle and a T.V. from her daughter when informant came to know about this then she along with village panches, went to the sasural of her daughter, where Sukhdeo Sao (master) and Gurucharan Sao (master) asked them that unless and until a motorcycle and a T.V. are given they will not accept her daughter. They also threatened that her daughter will be killed. The informant could not fulfill the said demand due to poverty. When the daughter of informant went to her sasural, then after 3-4 days, the informant went to the sasural, where she learnt that since she has not given a motorcycle and a T.V. to her son-in-law, her daughter has been killed by the accused persons along with two masters, namely, Sukhdeo Sao and Gurucharan Sao and her dead body has been thrown into a well.

5. On the basis of said F.I.R., police registered a case under Sections 304B/201/34 of the Indian Penal Code and after investigation submitted charge-sheet under all said sections.

6. Since, the case was exclusively triable by a court of sessions the learned Chief Judicial Magistrate after taking cognizance of the case committed the same to the court of sessions and lastly was heard by learned Sessions Judge, Giridih himself, who found the appellants guilty as aforesaid.

7. In course of trial, the prosecution has examined 9 witnesses. P.W.1 is Brahmeshwar Nayak, P.W.2 is Kishori Sao, P.W.3 is Ganesh Nayak, P.W.4 is Tapeshwar Nayak, P.W.5 is Lakhan Sao, P.W.6 is Bandhan Nayak, P.W.7 is Saryug

Yadav, P.W. 8 is Dr. B.P. Singh and P.W. 9 is the informant (Ramani Devi).

8. It is important to note that P.W.1, Brahmeshwar Nayak, P.W.3, Ganesh Nayak, P.W.4, Tapeshwar Nayak, P.W.5, Lakhan Sao, who have turned hostile during their examination in Court. P.W.6, Bandhan Nayak has been tendered for cross-examination and nothing was taken from him. The prosecution is left with only P.W.2, P.W.7, Saryug Yadav and P.W.9, the informant. Beside that, P.W.8, is Dr. B.P. Singh. The Investigating Officer of the case was not examined by the prosecution.

9. P.W. 2, Kishori Sao stated in Court that the deceased, Kanchan Kumari was his cousin sister and she was married with appellant No. I, Suresh Sao in the year, 1997. At the time of her marriage sufficient dowry and gift were given to her husband, Suresh Sao. After marriage she lived happily for about 3 months in her sasural. Thereafter her husband, Suresh Sao started demanding a motorcycle and a T.V. When the deceased came to her naiher and told about the same that her husband is demanding T.V. and a motorcycle she did not want to go to her sasural because her husband and father-in-law was demanding motorcycle and a T.V. When the husband of Kanchan and others came to take her, they have also given dowry at that time. But after two months of the said bidagari, accused Suresh Sao assaulted her and started not giving food to her, as such, the deceased came to her naiher and told about the torture to her parents. He had also heard the said incident. Thereafter they went to her sasural along with the girl (deceased) and asked mother-in-law, father-in-law, husband of the deceased and Gurucharan Sao that they are not in a position to give motorcycle and T.V., whereupon they have replied that they will not keep the girl unless and until the said demand is not fulfilled and they left the girl there and came back. Just after 4-5 days he heard the accused persons assaulted the deceased and threw her in a well. Prakash Sao came and told that Kanchan Kumari died by drowning in the well. Thereafter on 3.5.1998 they went to the sasural of deceased and found her dead body lying on a cot near a well about 2 kilometers away from her sasural's house. Then, they came to their house and went to the police station where this written report was given and he also put signature therein, and the informant had put her L.T.I., which is marked as Ext.-2

In his cross-examination, in para 5 he stated that whenever Kanchan Kumari (deceased) had come to her parent's house she told her parents that her husband is demanding T.V. and a motorcycle. When second time she had come to her parent's house she again told about the demand. He further stated that on 25.4.98 he along with the informant and her husband had gone to the house of the accused, Suresh Sao and told to her parents, but they had not filed any case of torture and demand of dowry.

P.W.7, Saryug Yadav has stated in Court itself that Kanchan Kumari (deceased) was the residence of his village and after marriage she stayed in her sasural for about 7-8 months. Thereafter the husband of Kanchan Kumari started demanding a

motorcycle and TV. This was told to him by Kanchan Kumari and her mother. After her death he had gone to the sasural of deceased and saw her dead body was lying on a coat near a well. He had identified he accused persons in Court.

He has further stated, in his cross-examination, that he has not made any statement before the police earlier and today he has come to Court for his evidence on the request of informant.

P.W.8, Dr. B.P. Singh, who conducted the postmortem examination on the dead body of the deceased on 5.5.98 and found: Teeth is intact. Tongue protruded blood stained both at mouth and nostrils. The Visceras were preserved. The doctor gave no opinion about the cause of death.

P.W.9, is the informant (Ramani Devi), she has stated that her daughter was married with the accused, Suresh Sao in the year 1997 and after marriage she lived her sasural happily.

Thereafter her husband, Suresh Sao, his father Bodhi Sao, and uncle Dwarika Sao started demanding a motorcycle and a T.V. When her daughter came to her naiher and reported the matter to Panchyati then, she had gone to her sasural with panches, but they did not agree and said that she will have to give a T.V. and a Motorcycle, then she came back. After eight days of her coming back from her sasural, she was done to death. She had given her statement to the police as also written report on which she had put her thumb impression. She identified the accused persons in Court.

In her cross-examination, she stated that she is a poor lady and this was also known to the sasural people of her daughter.

10. Thus after going through the prosecution evidences, namely, P.Ws. 2 & 9 are on the point of demand of dowry and torture while P.W. 7 is a hearsay witness and has very clearly stated in para 1 itself that he came to know about the demand of motorcycle and a T.V. from Kanchan Kumari (deceased) and her mother.

11. As stated above, P.W.2 has very clearly stated in para 1 of his evidence that the demand of a T.V. and a Motorcycle was made by the accused, Suresh Sao and when the victim girl came then she also stated that the demand of Motorcycle and a T.V. was from her husband, Suresh Sao. He has further stated that no doubt that when they went to the house of the appellants then all the three accused persons asked them that the demand has to be fulfilled, but that does not mean that the parents were also demanding motorcycle and a T.V.

12. The 2nd witness on this point the informant (P.W.9), Ramani Devi has stated in Court that the demand was made by all three accused persons, but her evidence with regard to the appellant Nos. 2 & 3 has not been corroborated by any other evidence. It is relevant to note that although when the informant (P.W.9) gave her statement in Court that her husband father of the deceased was alive, but he has

not been examined nor any other family member has been examined during trial and as such from the evidences of P.Ws. 2 & 9 which appears that definitely there was a demand of T.V. and Motorcycle made by the appellant No. 1, Suresh Sao, who used to neglect and torture her wife and even allowed her to go back to Naihar in order to bring a motorcycle and a T.V. and after persuasion by the informant and others the accused came and took her back, but as alleged by P.W.2 after two weeks he again assaulted her for dowry then, she again came back to Naihar, whereupon just 5-8 days before the occurrence the informant along with panches took her back to sasural and left her there. When the informant refused to give his demand for additional dowry and after just 5-8 days the victim died an unnatural death and as such a clear case u/s 304B I.P.C. as also u/s 201 I.P.C. is made out against the appellant No. 1, Suresh Sao, hence he has rightly been found guilty under all sections and convicted and sentenced there under.

13. I find no illegality in the finding of conviction as far as appellant No. 1, Suresh Sao is concerned. However, since the evidence of demand of dowry and torture has not been proved beyond reasonable doubt against appellant Nos. 2 and 3, Bodhi Sao and Gouri Devi and hence they are given benefit of doubt and acquitted from the charges leveled against them.

14. In the result, the appeal is allowed in part. The appellant No. 1, Suresh Sao is on bail. The court below is directed to issue warrant of arrest against him for serving out the remaining sentence.

15. The other appellant Nos. 2 & 3 are also on bail. They are discharged from the bondage of their bail bond.