

(2003) 04 JH CK 0037

Jharkhand High Court

Case No: Criminal Appeal No. 437 of 2000

Khiru Rabidas

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision: April 8, 2003

Acts Referred:

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

Citation: (2003) CriLJ 3658 : (2003) AIR Jhar HCR 1016 : (2004) 1 DMC 539

Hon'ble Judges: D.N. Prasad, J

Bench: Single Bench

Advocate: Randhir Singh, for the Appellant; Anita Sinha, Assistant Public Prosecutor, for the Respondent

Judgement

Deoki Nandan Prasad, J.

This criminal appeal is directed against the judgment dated 27-11-2000, whereby and whereunder the learned Additional Sessions Judge, Bermo at Tenughat convicted the appellant u/s 304B of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for a period of nine years in connection with Sessions Trial No. 100 of 1997.

2. Prosecution case as alleged that one Suresh Ravidas lodged a First Information Report alleging therein that his sister Basanti Devi was married with the appellant-Khiru Ravidas and she was residing at her Sasural along with the accused persons peacefully, but later on they started torturing her and whenever she came to her Naihar she narrated the incident about torturing. The accused persons also used to assault her and were not supplying even food, oil and cloth to her. There was also Panchayati held and the accused persons were asked to keep his sister peacefully. On the basis of which his sister was take to her Sasural by the appellant but again they started torturing her. On 13-9-1996 the informant came to know that his sister was done to death by strangulation and they have made out a story of

suicide. Accordingly, the FIR was lodged against the accused persons including the appellant for the offences u/s 304B, I.P.C. and Section 3/4 Dowry Prohibition Act.

3. The police investigated into the case and submitted charge-sheet finding the case true against the accused persons. All the accused persons appeared before the Sessions Court and accordingly charges were framed against the accused persons for the offences u/s 304B, I.P.C. and Section 3/4 Dowry Prohibition Act. Witnesses were examined from both sides in the Court below and after hearing both sides, the learned Additional Sessions Judge, though acquitted other accused persons, convicted the appellant only for the offence u/s 304B of the Indian Penal Code and sentenced to rigorous imprisonment, in the manner as stated above by the judgment impugned. Hence, this appeal.

4. At the very outset, it may be noted that on the basis of the written report (Ext. 1), the F.I.R. was lodged against all the accused persons including the appellant. It is also evident that a written complaint was filed by the informant before the Superintendent of Police because of the fact that the police was not taking interest in the case and was not registering the same, as a result whereof the informant reported the matter before the Superintendent of Police, Bokaro (Ext. 3) and he stated all the facts related to torture and assault meted out to the deceased. There was also allegation made that the accused persons were demanding a sum of Rs. 15,000/- and a colour television in dowry and due to non-fulfilment of the said demand, his sister was subjected to torture. There was an endorsement over the said report of the informant for registration of a case u/s 304B, I.P.C. dated 24-9-1996.

5. Admittedly, Basanti Devi married with the appellant in the year 1992. The doctor, who held postmortem also found the cause of death asphyxia due to hanging. The doctor found the ligature mark on her neck and knot mark behind the right ear.

6. Altogether, six witnesses have been examined on behalf of the prosecution in support of its case. P.W. 1, Chandu Ravidas is the father of the deceased. According to him, the appellant and others used to demand a sum of Rs. 15,000/- and a colour T.V. in dowry. There was Panchayati held and the decision of the Panchayati was not accepted by the accused persons and they used to torture his daughter. He came to know about the death of his daughter from one Biru Ravidas but he stated in his cross-examination that the accused persons were also not supplying food to his daughter and she was deprived of even with the required amenities such as soap and clothes. P.W. 2, Urmila Devi, the mother of the deceased, is also consistent in her deposition and she stated that accused persons/appellant used to demand a colour T.V. and due to non-fulfilment of the said demand, her daughter was subjected to torture in different ways. According to her, the appellant used to take her daughter to the Sasural and thereafter they started demanding the colour T.V. and she was done to death by throttling. P.W. 3 is the cousin brother of the deceased. He also supported the prosecution case in the same way. P.W. 4 is the

informant. According to him, the accused/appellant used to demand a sum of Rs. 15,000/- and also a colour T.V. in dowry and due to non-fulfilment of the said demand, his sister was subjected to torture. According to him, his sister Basanti Devi was done to death by throttling and he had seen sign of blackness on the neck of the deceased. He also claimed about holding Panchayati. P.W. 6 is the Investigating Officer, who submitted the charge-sheet after completion of investigation. The Investigation Officer visited the place of occurrence but he has not said anything about breaking up the ventilator or the door of the room in which the deceased to have committed suicide. However, he claimed that there an U.D. case registered on the basis of the written report of Suresh Ravidas, the informant.

7. Four witnesses have also been examined on behalf of the defence.

D.W. 1 stated in his evidence that Basanti Devi committed suicide by putting herself from the hook of fan and the door was closed from inside and, therefore, Rekha Kumar entered into the said room from ventilator. According to him, Punit Rajwar, the father of the appellant was not present in his house at the relevant time because he was on duty in BCCL. But, he admitted in his cross-examination that he cannot say as to why Basanti Devi committed suicide. D.W. 2 claimed in his evidence that Punit Ravidas, father of the appellant was on duty at the relevant time. He is Supervisor at Kathara Coal Washery. D.W. 3 is a formal witness, who proved the agreement of the Panchayati (Ex. B). He admitted in his cross-examination in para 6 that there was an allegation made in the panchayati that the accused persons were not giving food and cloth to Basanti Devi and for which the Panchayati was held. D.W. 4 is also a formal witness.

8. The learned counsel appearing on behalf of the appellant submitted that the trial Court has not appreciated the evidence on record properly as there was no allegation made in the FIR about demand of dowry and such story has been developed at the belated stage, when a petition was filed before the Superintendent of Police, Bokaro, in which there was allegation made about demand of Rs. 15,000/- and a colour T.V. and, therefore, this case cannot be said to be of dowry death. It is further argued that actually the deceased died by committing suicide herself and for which one U.D. case was already registered on the report of one Punit Ravidas in which there was no allegation about torturing to the deceased or any demand of dowry and actually the deceased committed suicide herself because of the fact that the appellant was unemployed and there was poverty and the deceased could not adjust in the family.

9. It is true that there is no specific allegation made in the written report dated 13-9-1996 about allegation for demand of dowry but there is a specific allegation already made in the petition submitted before the Superintendent of Police, Bokaro dated 21-9-1996 (Ext. 3) and there is a specific allegation about demand of Rs. 15,000/- and one Colour T.V. That fact has also been corroborated specifically and consistently by the witnesses including the father and mother of the deceased. Story

of the defence alleging about committing suicide also become falsified from the evidence of Investigating Officer: itself as no other otherwise circumstanced found at the place of occurrence. The ventilation was intact. The door was also found to be intact and, therefore, it cannot be said that the deceased actually committed suicide by hanging. The doctor, who held postmortem found blood stained forth coming from nose and mouth. There was also ligature mark at her neck and knot mark behind the right ear. She was married in the year 1992 and she died in the year 1996. Therefore, death occurred within seven years of her marriage in the house of the appellant in otherwise circumstance.

10. Section 113B of the Evidence Act raises a presumption against the accused and reads as follows :

"Presumption as to dowry death -- When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such ! woman has been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.-- For the purpose of this section "dowry death" shall have the same meaning as in Section 304B of the Indian Penal Code."

11. Thus, it is evident from the legal position that death of Basanti Devi occurred within seven years of her marriage and also is caused or occurred otherwise than under normal circumstances.

Therefore, the entire submissions as raised by the learned counsel for the appellant is of no substance in the facts and circumstances of the case.

12. It has come in evidence specifically that the appellant used to visit the parental house of the deceased and brought the deceased after staying there one or two days to which the parents of deceased were satisfied about good relations with the appellant, who is the husband but from the evidence collected during trial, it is apparent that the deceased was subjected to torture before her death due to non-fulfilment of the demand of Rs. 15,000/- and a colour T.V.

13. For the purpose of attracting cruelty, it means--

(a) any wilful conduct which is of such a nature as is likely to drive, the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman; or

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand.

14. There appears consistent and definite evidence adduced from the side of the prosecution about demand of dowry and due to non-fulfilment of the dowry, the deceased was subjected to torture even by not supplying food. It may be mentioned here that the performance of police official was not proper and, therefore, the informant approached to the Superintendent of Police, Bokaro as well by filing application there. Therefore, even if one U.D. case registered by some one the same cannot or will not help in any way to the defence. The agreement (Ext. B) which was reduced into writing in Panchayat also goes to establish about ill-treatment with the deceased from before.

15. Thus, it is evident that the Court below rightly passed the order of conviction against the appellant u/s 304B of the Indian Penal Code as the prosecution has fully established the charge for the said offence against the appellant beyond all reasonable doubts, which does not require for any interference.

16. So far as sentence is concerned, it appears that the appellant has already been in custody since 29-9-1996 and he has already served a sentence of about 6 and half years. Therefore, in my view, he has sufficiently been punished and that period of sentence already undergone will meet the ends of justice and, therefore, order of sentence to undergo rigorous imprisonment for nine years is modified to the sentence already undergone.

Thus, with the modification in sentence only, as mentioned above, this criminal appeal is dismissed. The appellant shall be released forthwith, if not wanted in any other case.