

(2009) 11 JH CK 0060**Jharkhand High Court****Case No:** None

Ramjee Yadav

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision: Nov. 10, 2009**Acts Referred:**

- Evidence Act, 1872 - Section 113, 113B
- Penal Code, 1860 (IPC) - Section 304B, 328, 34

Hon'ble Judges: Pradeep Kumar, J**Bench:** Single Bench**Final Decision:** Dismissed**Judgement**

Pradeep Kumar, J.

By Court,, This appeal is directed against the judgment and order of conviction and sentence dated 21.2.2002 and 25.2.2002 passed by Sri N. Mishra, 1st Additional Sessions Judge, Godda in Sessions Trial No. 100/1999/28/2000, by which he found, the appellant, Ramjee Yadav guilty u/s 304(B) of the Indian Penal Code and sentenced him to undergo R.I. for 10 years while acquitting his father, Dhaneshwar Yadav and his mother, Budhni Devi.

2. It is submitted by the learned Counsel for the appellant that there is absolutely no evidence that the victim-wife of the appellant was done to death by him except the evidence of his son, who was child witness (P.W.11) Pawan Kumar Yadav and as such the learned trial court committed an error by relying upon the evidence of a child and hence the finding of conviction is bad in law and fit to be set aside.

3. On the other hand, learned Counsel for the State has opposed the prayer and submitted that it is a full proof case, where the victim lady, Anjani Devi was tortured for dowry and subsequently, she died at her sasural in a very suspicious condition. The husband-appellant has not given any statement as to how she died. In that view of the matter, as per Section 113 of the Evidence Act, the trial court rightly found the

appellant guilty u/s 304B of the Indian Penal Code and convicted him.

4. After hearing both the parties and going through the record, I find that the prosecution case has started on the basis of a Fardbeyan given by P.W.6, Tulsi Yadav stating therein that his daughter, Anjani Devi was married with the appellant, Ramjee Yadav in the year 1991 and he had given sufficient dowry. During marriage subsequently, a son was borne to her, whose name is Pawan Kumar Yadav and after the birth of the son the appellant, Ramjee Yadav and his family members started demanding cow and when he failed to fulfill their demand they started torture his daughter. As per the fardbeyan at about 9. a.m. one Chabilal Yadav informed the father of the deceased that his daughter was done to death by poisoning. Then, the informant went to sasural of his daughter and found all the family members of his daughter sasural have ran away from the house leaving the dead body. His grandson, Pawan Kumar Yadav said that his mother has been killed.

5. On the basis of the said fardbeyan police registered a case u/s 304(B) of the Indian Penal Code read with Section 328/34 of the Indian Penal Code and after investigation submitted charge-sheet in the case. Since the case was exclusively triable by a Court of Sessions the learned Magistrate after taking cognizance of the case committed the same to the court of sessions where the trial was held and the appellant was found guilty as aforesaid.

6. It appears that in course of trial the prosecution has examined 12 witnesses. P.W.I, Jaria Devi, P.W.2, Suraj Narayan Yadav, P.W.3, Muhammad Kalo, P.W.4, Nand Lal Yadav, P.W.5, Sanichara Yadav, P.W.6, Tulsi, P.W.7, Kalawati Devi, P.W.8, Sumitra Devi, P.W.9, Mundrika Pathak, P.W.10, Kameshwar Dubey is I.O. of the case, P.W.11, Pawan Kumar Yadav, child witness being the son of the deceased, P.W.12, Doctor Satyendra Kumar Mishra, who proved the postmortem.

It appears that the informant (P.W.6) fully supported the prosecution case in his evidence and stated that after the birth of his grandson there was a demand of cow by the appellant and his family members and they used to torture and assault his daughter. The other witnesses have also supported the same fact.

P.W.3, Muhammad kalo is also villager of the informant has also stated that the informant's daughter, who was married with the appellant, Ramjee Yadav used to be tortured by the appellant and his family members for not providing a cow as demanded by them. She also stated that for not providing a cow Anjani Devi was done to death.

The other witnesses have also stated the same fact and supported the prosecution case.

P.W.12, Doctor Satyendra Kumar Mishra, who proved the postmortem report as Ext.-5. He has also proved the viscera report received by him as Ext.-6.

P.W.9, Mundrika Pathak & P.W.10, both are Investigating Officer, have also given a detailed place of occurrence and they examined the witnesses during investigation and after investigation submitted charge-sheet in the case.

7. The important point raised by the defence is that the doctor has given no cause of death rather he sent the viscera for chemical examination, which is as Ext.-6, shows that no poison was found and as such he has submitted that there is no evidence of death.

P.W. 11, the child witness has stated that his father committed the murder of his mother by pressing her neck, but that fact has not been found by the doctor in his postmortem report which is as Ext.-5.

8. In a case u/s 304(B) of the Indian Penal Code-where a married girl died within 7 years of her marriage in a very suspicious circumstances.

9. It is a case u/s 113(B) of the Indian Penal Code-the presumption is that she has been done to death by her husband and her in-laws and the proof shifts to the defence side and the husband should have explained as to how, she died in his house, when there was demand of dowry and torture allegations made against him.

10. No doubt it is apparent from the post-mortem report that the doctor (P.W.12) although he found that all the vital organs of the body of the deceased, Anjani Devi were congested like liver, spleen etc. which points out that poison was administered to her, but the report which is as Ext. 6 does not give a clear finding. P.W. 11, the son of the deceased shows that she was done to death but that is not supported. In that view of the matter, her death is surrounded with suspicion and the suspicion should have been cleared by the defence and not by the prosecution. Since, none of the witnesses of the girl side were present in the house where she died. In that view of the matter, in my opinion, since there is no clear cause of death that creates more suspicion that she was done to death in a mysterious way by the husband and his family members.

11. I find nothing to interfere with the judgment which has given benefit of doubt to the father and mother of the appellant, but the husband should have explained as to how his wife has died within 7 years of the marriage and as such the learned Sessions Judge rightly convicted the appellant taking u/s 113B of the Indian Evidence Act.

12. I find no merit in this appeal and the same is accordingly dismissed.

13. The appellant is on bail, his bail bond is cancelled. The learned trial court is directed to issue warrant of arrest for serving out the sentences.