

(2010) 04 JH CK 0053**Jharkhand High Court****Case No:** None

Narayannath Goswamy and
Praveennath Goswamy

APPELLANT**Vs**

The State of Jharkhand

RESPONDENT**Date of Decision:** April 1, 2010**Acts Referred:**

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

Citation: (2010) CriLJ 3519 : (2011) 1 Crimes 426 : (2011) 1 DMC 147 : (2011) 8 RCR(Criminal) 3113 : (2010) 4 JLJR 394

Hon'ble Judges: Pradeep Kumar, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Pradeep Kumar, J.

Heard the learned Counsel for the appellants and learned Counsel for the state.

2. The instant appeal is directed against the judgment of conviction dated 27.2.2002 and order of sentence dated 28.2.2002 passed by Md. Sarfaraz Khan, 1st Additional Sessions Judge, Koderma in Sessions Trial No. 187 of 1998 by which judgment both appellants were found guilty u/s 304B/34 of the I.P.C. and sentenced to undergo R.I. for 10 years.

3. It is submitted by learned counsel for the appellants that in absence of any direct evidence that immediately before her death deceased, Renu Devi was subjected to any torture, conviction of the appellants u/s 304B I.P.C taking help of section 113B of the evidence act is bad in law and fit to be set aside. He has further submitted that appellant No. 2, Praveennath Goswamy has remained in custody for about 12 years, since, 27.2.2002 on which date he was taken into custody and there is no case of torture and demand of dowry against appellant No. 1, Narayannath Goswamy.

4. On the other hand, learned Counsel for the state has opposed the prayer and submitted that there is directed evidence against both the appellants that they after marriage demanded dowry and were constantly torturing the victim, Renu Devi resulting into her unnatural death and as such they have rightly been convicted and sentenced as aforesaid.

5. After hearing both the parties and after going through the record, I find that the prosecution case was started on the basis of the written report given by the informant, Paronath Goswamy on 27.11.1997 at 12.30 hrs at Koderma Police Station stating therein that in the last year Baishak month his daughter, Renu Devi was married with Praveennath Goswamy S/o Narayannath Goswamy of village Tetaria according to Hindu rites and he had given dowry in the marriage as per his means. Thereafter, Renu Devi started living happily in her sasural at village Tetaria, but after sometime her father-in-law, Narayan Nath Goswamy, mother-in-law, Chameli Devi and her husband, Praveennath Goswamy started demanding Rs. 5000/-as further dowry. He told them that he is poor man and he cannot give further 5000/- rupees, but they started torturing to his daughter for not bringing the demanded dowry. She came to her house in the last Chat festival and stated that she is being tortured for dowry, then he sent his nephew Rajendra nath Goswamy to his daughter's sasural, who talked with her father-in-law ,but her father-in-law stated that they should give Rs. 5000/- as early as possible. However, it is stated that they will not torture her any further and saying so they took her daughter back after Chat Puja. But, immediately after they took her today on 27.11.19997 he received information at 6 am That his daughter's in-laws and husband have committed her murder by throttling her neck, hanged her dead body and tried to dispose of the same. Then they returned to the sasural of his daughter and saw the dead body. On inquiry, local villagers sated that his daughter was badly bitten in the list night and there after she was killed. Then he gave this written report.

6. On the basis of the said written report, police registered a case u/s 304B/34 of the I.P.C and after investigation submitted charge sheet in the case. Since, the case was exclusively triable by the court of Sessions, learned C.J.M. after taking cognizance of the case committed the case to the court of Sessions and the trial was held lastly by 1st Additional Sessions Judge who convicted the appellants as aforesaid.

7. It will appear that in course of trial the prosecution has examined altogether 9 witnesses.

P.W.1 is Dashrath Singh

P.W.2 is Munshi Yadav

P.W.3 is Rajendra Nath Gaswamy

P.W.4 is Kishun Nath Goswamy

P.W.5 is Basant Nath Goswami

P.W.6 is Arjun Nath Goswamy

P.W.7 is Paro Nath Goswamy, informant of the case.

P.W.8 is Dr. Joybrat Roy

P.W.9 is Satya Narayan Singh, I.O. Of the case.

8. P.W.1, Dashrath Singh and P.W.2 Munshi Yadav are only formal witnesses. They have stated that they saw the dead body and stated nothing.

9. P.W.3, Rajendra Nath Goswamy has stated that the victim, Renu Devi was his cousin sister and she was married approximately 3 years back and she stayed happily for 2/3 months. After that her in-laws started demanding Rs. 5000/- . The dowry was being demanded by Narayannath Goswamy, Chameli Devi and Praveennath Goswamy. Her father was not in a position to give money. Then they started torturing Renu Devi. After that 3 panchayati were held. Finally they took Renu Devi to their house, but while taking her in laws stated that if, money is not paid, they will return back their daughter. But, after 3/4 days they received information on 27.11.1997 that she has died, then they went to her sasural and saw her dead body and informed the police station. Police read over the statement given by his uncle Paro Nath Goswamy, then he put his L.T.I and also put his signature. He identified the same which was marked as Ext. 1 in the trial. He also identified the accused persons in the court. He has also prove the seizure list of rope on which he also signed. He identified his signature marked Ext. 2. In cross examination he has stated that no written document was prepared in panchayati. He has stated that he had gone to her sasural once when he learnt about the torture, but no information was given to the police. He has stated that the victim , Renu Devi was taken back by her father-in-law, Narayan Nath Goswamy just one months before the occurrence. He has also stated in cross examination that rope which was recovered was 3/4 hand long.

10. P.W.4, Kisun Nath Goswamy has also supported the prosecution case and stated the when they received information on 27.11.1997 that Renu Devi had died due to torture by the accused persons for not providing dowry, then he went there. He stated that earlier panchayati was held for the same , but they lastly committed her murder at their house at Tetariadhi. He had seen the dead body. There was mark of violence in her neck. He identified the accused in the court. He has stated in cross examination that her sasural was at a distance of 10 km from his house. In cross examination he has stated that before the occurrence they had not made any information with regard to demand of dowry.

11. P.W.5, Basant Nath Goswamy has also supported the prosecution case and stated that at the time of occurrence the victim, Renu Devi was at her sasural and he had seen her dead body which the accused persons were trying to dispose of. Then they informed the police. He has stated that the accused persons had committed

her murder for not providing proper dowry. In his cross examination he has stated that they had not fight with the accused persons and Renu Devi had gone to her sasural just 15 days before the occurrence. He also stated that he saw no blood stain in the "Kothri" where the dead body was lying.

12. P.W.6, Arjun Nath Goswamy has also stated that Renu Devi's inlaws used to fight with her for not bringing proper dowry and they were not giving her proper food. After death he went to her sasural and saw the dead body.

13. P.W.7, Paro Nath Goswamy is the informant and father of the victim, Renu Devi. He has stated that after receiving information that her daughter has died, he went to her sasural and saw the dead body lying in the coat. There was a mark of rope in her neck and the appellants committed her murder for only Rs. 5000/- . Then he gave his fardbeyan to the police which was read over to him and finding it to be correct he put his L.T.I. He identified the accused persons in court. In his cross examination he stated that he had not asked the villagers about the occurrence. In his cross examination he also stated that before this occurrence twice he had gone to the sasural of her daughter and due to fight he had brought back his daughter. He has stated that he does not remember the date of panchayati.

14. P.W.8. Dr. Joybrat Roy who has stated that on 27.11.1997 he conducted postmortem on the dead body of the deceased, Renu Devi aged about 16 years .The dead body has mark of rope in the neck about 3/4" in width which is consisting of three rope of about 5 mm gap. The mark of rope present on three sides and one side it is oblique mark of knot below left ear. The area covered lying rope is parchment like. No other mark found on the body. In the opinion of the doctor, the victim died due to asphyxia caused by hanging. He proved the postmortem report marked as Ext.3.

15. P.W.9, Satyanarayan Singh is the investigating officer of the case who has proved the fardbeyan marked as Ext.1 and also proved the formal F.I.R marked as Ext.4. He also proved the inquest report marked as Ext.5. He has also proved the seizure of the rope marked as Ext.2. He took the statement of the witnesses and after completing the investigation he submitted charge sheet in the case.

16. Thus, from the evidences discussed , it appears that the prosecution has proved the feet that there was demand of dowry and there is also allegation of torture against both appellants, but there is no specific allegation that torture was being made by the father-in-law, Narayannath Goswamy also. As stated in the evidence of P.W. 5, Basant Nath Goswamy that although, there was demand of Rs. 5000/- by the appellant, Narayannath Goswamy, but it is he who had taken the deceased, Renu Devi back to her sasural just 15 days before and her husband had not come. There used to be fight between the Husband and wife for the dowry and the torture was being committed by her husband. Since, there is no specific allegation of torture against the father-in-law, Narayannath Goswamy, in my opinion his conviction u/s

304B/34 of the I.P.C is not maintainable and the charge against him has not been proved beyond reasonable doubts.

17. No doubt the victim girl, as it appears from the evidences of the doctor, due to torture and demand of dowry by her husband, committed suicide by hanging herself in her room which means unnatural death within 7 years of her marriage, rather she has died within one year of the marriage. As such the case u/s 304B/34 is rightly made against the husband, Praveennath Goswamy and he is found guilty there under and his conviction and sentence requires no interference by this Court. Accordingly, the appeal of Praveennath Goswamy is dismissed. Further, as far as father-in-law is concerned, as discussed above, I do not find that there is any specific allegation of torture against the father-in-law, although, he supported the demand made by his son of Rs, 5000/-, but it was made at the time of marriage itself. In that view of the matter, the conviction of father-in-law, Narayannath Goswamy u/s 304B/34 of the I.P.C is set aside and he is found and hold guilty u/s 498A of the I.P.C and sentenced to undergo the period already undergone by him during trial and rigor suffered by him during the long drawn trial and appeal since, 1997.

18. It is submitted by learned Counsel for the appellants that appellant No. 2, Praveennath Goswamy has remained in custody for about 12 years since, 25.4.1997, since his bail was rejected even by the High Court. In that view of the matter, the trial court is directed to verify whether he has been released or not after 10 years and if not, he shall be released forthwith, if not wanted in any other case.

19. Accordingly, the appeal is dismissed with the alteration in the sentence.