

**(2006) 08 JH CK 0049****Jharkhand High Court****Case No:** None

Anguri Devi and Others

APPELLANT

Vs

State of Jharkhand

RESPONDENT

**Date of Decision:** Aug. 29, 2006**Acts Referred:**

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

**Citation:** (2007) CriLJ 1074 : (2007) 1 DMC 189 : (2007) 1 JCR 162**Hon'ble Judges:** Amareshwar Sahay, J**Bench:** Single Bench**Judgement**

Amareshwar Sahay, J.

All the three appellants were charged for the offence under Sections 304B/34 of the Indian Penal Code for causing dowry death of the deceased, Sema Devi. The trial Court i.e. learned 3rd Addl. Sessions Judge, Dumka, by his judgment dated 20th January. 2004, in Sessions Case No. 284 of 2001 convicted the appellants for the offence u/s 304B/34 of the Indian Penal Code and sentenced them to undergo rigorous imprisonment for a period of seven (7) years.

2. The case was initiated on the basis of the first information report lodged on 21.2.2001 by Sri Krishna Mahto (PW-3) against these three appellants. In the fardbeyan, the informant alleged that he had got his daughter, Sema Devi married in the year 1996 with Arun Mandal (appellant No. 3), the son of the appellant Nos. 1 and 2. After marriage, she went to her in-law's place. After sometime, the Son-in-Law. Arun Mandal, Samdhi, Bhagwat Mandal and his wife, Anguri Devi started torturing his daughter in various ways and they were also asking her to bring Rs. 5,000/- (Rupees Five thousand) and a T.V. from her parents. It was further alleged in the fardbeyan that his daughter always complained about ill treatment by her husband, Mother-in-law and father-in-law but the informant always sent her

back to her in-law's place by making her to understand and adjust. It was further alleged that his daughter was also not been given proper food and clothing by her in-law's. About a months back, his daughter was driven out of her in-law's place due to ill treatment and demand of the dowry and she went to the house of Fagu Panjiyara, her maternal brother in village Raksi. When the informant came to know about it, he went to village Raksi and brought his daughter back to his village. His daughter, Sema Devi again complained that the accused persons had told her that unless the demand of Rs. 5000/- (Rupees Five thousand) and a T.V. was fulfilled, she would not allowed to stay her in-law's place. A panchayati was convened at the instance of the informant, which was attended by several villagers. In the said panchayati, the husband, father-in-law and the Mother-in-law of the deceased promised to keep Sema Devi with all dignity and honour and then Sema Devi was again sent with them. On 20th February, 2001 at about 5.00 a.m. Jai Ram Choudhary of village Lakarbak came to the informant village and told him that his daughter, Sema Devi was ill and, therefore, he should go to see her. At this, the informant along with the other villagers, namely, Jiyadhari Manjhi-PW 1, Badri Mahto, Vijay Manjhi and his son Manilal Mahto, PW 2, went to in-law's place of his daughter and there he found that the dead body of his daughter was lying in the courtyard of the accused persons. After inquiry, he came to know that the accused persons had killed her by administering poison i.e. "Thimet" an insecticide which is used for killing insects.

3. On the basis of this information, a first information report was registered against the accused persons. Police look the investigation and thereafter submitted the charge sheet and the accused persons put on trial.

4. In course of the investigation, post mortem of the deceased was conducted by the PW 5, who did not find any external injury ether anti-mortem or postmortem on the person of the deceased. However, he preserved viscera and sent it for examination. Viscera Report of the deceased was marked as Ext.-7. From the Viscera Report, it appears that "Thimet" was detected to be present in the body of the deceased.

5. The defence of the appellants was total denial of the occurrence and false allegation.

6. A number of documents were also exhibited. On behalf of the defence one witness was also examined, who was formal in nature and he proved Ext.-A.

7. On the basis of the evidence adduced on behalf of the prosecution, the learned trial Court convicted and sentenced the appellants guilty for the offence u/s 304B/34 of the Indian Penal Code.

8. Mr. Sharma, learned Sr. counsel for the appellants submitted that though there was no positive and consistence evidence of the prosecution to the effect that the deceased was subjected to cruelty and torture for the demand of the dowry soon before her death, even then learned trial Court wrongly convicted and sentenced

the appellants for the said offence. According to him, the prosecution did not establish the guilty of the accused persons beyond all reasonable doubts. He further submitted that, according to the prosecution, a panchayati was held for resolving the dispute between the parties and a paper was also prepared sent the same, was not brought on the record on behalf of the prosecution, which creates grave doubt on the prosecution case. He further submitted that, according to the evidence of the Investigation Officer, the witnesses, namely. Maha Prasad Mandal, Indradev Panjiyara, Prem Mandal, Badal Panjiyara, Ramu Manjhi were examined by the police, during investigation, but they did not support the fact that any demand of dowry was made by the accused persons, but these witnesses were purposely withheld by the prosecution. Mr. Sharma, learned Counsel for the appellants lastly submits that at any event so far as the appellant No. 1 and 2, who are Mother-in-law and Father-in-law of the deceased, against them no specific evidence-has come to show that in fact they ever demanded dowry or they ill treated or tortured the deceased in any manner and, therefore, at least their conviction and sentence for the offence 304B/34 of the Indian Penal Code cannot be sustained.

9. In order to test of the submission of Mr. Sharma learned Counsel, for the appellants, it is necessary to scrutinize the evidence led by the prosecution.

10. In order to establish the charges altogether five witnesses were examined on behalf of the prosecution. PW 1, Jiyadhar Manjhi is a co-villager of the informant and he also went with the informant to the in-Law's place of the deceased and there he saw the dead body of the deceased lying in the courtyard of the accused persons. He has further stated that in the thatch roof of the house of the accused persons, poison was found, which was seized by the police. He put his signature on the seizure list, which was marked as Ext-1. In paragraph-3 of the evidence, he has further stated that in-law's were demanding cash and a T.V. from the deceased and for that a panchayati was also held. He has further stated that just fifteen (15) days prior to the alleged occurrence, she was sent back to her in-law's place.

PW-2, Mani Lal Mahto is the brother of the deceased, he has stated that five (5) years prior to the alleged occurrence, his sister Sema Devi was married with the Arun Mandal (appellant No. 3). He further stated that subsequently, Arun Mandal, Bhagwat Mandal and Anguri Devi (appellants herein), started demanding Rs. 5,000/- (Rupees five thousand) and a T.V. and they are also saying the deceased that she is ugly. He further stated that one month prior to the occurrence, his sister was taken back by the accused persons to her in-law's place, but only after fifteen (15) days, she was again driven out from her in-laws place, after torture and assault. His sister went her village Raksi to the house of her maternal brother and from there father of the deceased brought her back to his village and thereafter she narrated the story that the accused persons were demanding dowry and due to non-fulfillment of the same, she was driven out of her in-Law's place. A panchayati was also held, in which the accused persons promised to keep her sister with all dignity and honour and

then she went to her in-law's place. On 19.2.2001 in the night, his sister was murdered and this information was given by Jairam. Thereafter he along with Jiyadhar Manjhi (PW-1) and his father went to the in-law's place of his sister and there they saw the dead body of his sister lying in the Court yard and he also saw poison kept in the thatch roof of the house, which was seized by the police. In paragraph-6 of the cross-examination, he has stated that thrice panchyati was also held and once a paper was also prepared. In paragraph-7 of the evidence, he has stated that a day prior to the occurrence, Anguri Devi (appellant No. 1) and Bhagwant Mandal (appellant No. 2) had gone to attend "shradh" ceremony of the father of the Anguri Devi and they came back a day after the occurrence.

PW-3, Krishna Mahto is the informant. He has supported the statement made in the first information report. In his evidence, he has stated in paragraph-1 itself that his daughter was ill treated by her husband regularly and used to demand T.V. and due to non-fulfillment of the said demand, he used to drive her out from in-law's house. He further stated that he was informed by his daughter that her husband used to torture and ill treat her regularly due to the demand of dowry. From the evidence of this witness, PW-3 the informant, it appears that he made specific allegations of demand of dowry and torture against Arun Mandal, appellant No. 3 only. So far as appellants, Anguri Devi and Bhagwant Mandal are concerned, no specific allegation was made against them to show that they actually demanded dowry or illtreated the deceased in any manner.

From the Viscera Report Ext.-7 and the Post Mortem Report, it is established that the deceased died due to poisoning. From the evidence of the prosecution witnesses, it appears that the prosecution has been able to establish the fact that the deceased died within seven (7) years of her marriage and she died under abnormal circumstance. PW 4, Awadhesh Thakur is the IO and PW-5. D.N. Pandey is the doctor, who conducted the postmortem.

11. In order to establish the charges under Sections 304B/34 of the Indian penal Code, the essential ingredients to attract the application of Sections 304-B, IPC are that:

- (i) The death of a woman should be caused by burns or bodily injury on otherwise than under normal circumstances,
- (ii) Such a death should have occurred within seven years of her marriage,
- (iii) She must have been subjected to cruelty or harassment by her husband or any relative of her husband,
- (iv) Such cruelty or harassment should be for, or in connection with, demand for dowry, and
- (v) Such cruelty or harassment is shown to have been meted out to the woman soon before her death.

12. Section 113B of the Indian Evidence Act envisages regarding the presumption as to dowry death. Under this provision a presumption against the husband and other relatives of the husband for causing dowry death would be presumed if it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand of dowry. The Court shall presume that such person has caused the dowry death. In the explanation of Section 113B of the Evidence Act it has been provided that for the purpose of this Section, dowry death shall have the same meaning as u/s 304B of the Indian Penal Code.

13. In the present case, as noticed and discussed above specific evidence on behalf of the prosecution has come that the deceased was being ill treated, tortured by her husband, Arun Mandal since his greed for dowry was not being fulfilled and due to which he used to ill treat, torture and assault his wife and he also drove his wife out from her in-law's place for which a panchayati was also held. In the said panchayati, he promised to keep his wife with all dignity and honour. Though it has come in evidence that a paper was prepared in the pandayati but only because the said value of evidence of the witnesses, PW-1, 2 and 3, who were consisted and from their evidence, it is established that the deceased was being ill treated, tortured and assaulted by her husband, Arun Mandal, due to non-fulfillment of the demand of the dowry. The fact of non-examination of those five persons, namely, Maha Prasad Mandal, Indradev Panjiyara, Prem Mandal, Badal Panjiyara, Ramu Manjhi does not effect the case of the prosecution because of the fact that at best they were only hearsay witnesses.

14. After considering the entire evidence and considering totality of the circumstance, I come to the conclusion that the prosecution has established the charge u/s 304B of the Indian Penal Code against the appellant, Arun Mandal, husband of the deceased.

15. So far as the appellants, Anguri Devi and Bhagwat Mandal are concerned, as per the discussion of the evidence above, I hold that no specific evidence has come against them that in fact they ever demanded dowry from the informant party or ever ill-treated or tortured the deceased in connection with the demand of dowry and, therefore, in my view, their conviction and sentence for the offence u/s 304B/34 of the Indian Penal Code cannot sustained in law.

16. Accordingly, the appeal is partly allowed. The conviction and sentence passed by the trial Court, against the appellant No. 3, Arun Mandal, is affirmed and the conviction and sentence against the appellant Nos. 1 and 2, namely, Anguri Devi and Bhagwat Mandal is hereby set aside and they are acquitted for the charge under Sections 304B/34 of the Indian Penal Code, these two appellants, namely, Anguri Devi and Bhagwat Mandal, who are on bail, are discharged from the liabilities of their bail bonds.