

(2003) 11 PAT CK 0019

Patna High Court

Case No: Criminal Appeal (DB) No. 75 of 2000

Ranjeet Singh

APPELLANT

Vs

State of Bihar

RESPONDENT

Date of Decision: Nov. 10, 2003

Acts Referred:

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

Citation: (2004) 2 DMC 134 : (2004) 3 PLJR 100

Hon'ble Judges: Sachchidanand Jha, J; Braj Nandan Prasad Singh, J

Bench: Division Bench

Advocate: Sitraj Narain Prasad Sinha, Ranjan Kumar Singh, Rama Sankar Prasad and Mukesh Kumar, for the Appellant; Lala Kailash Behari Prasad, for the Respondent

Final Decision: Allowed

Judgement

Braj Nandan Prasad Singh, J.

Though four persons of the in-laws house of deceased Poonam Devi had been put on trial on accusation of causing dowry death and disposing of the dead body without information to her parents, appellant alone suffered conviction under Sections 304B and 201 of the Indian Penal Code, others having been acquitted of the charges by the Trial Court. As for the sentence awarded on these two counts, appellant was sentenced to suffer rigorous imprisonment for life on the first count and on the second count, he was sentenced to suffer rigorous imprisonment for a term of five years with rider that both the sentences shall run concurrently.

2. At this juncture, it would be convenient to notice salient features of the prosecution case. Poonam Devi was wedded to the appellant some time in the year 1992. She came to her in-laws' house in the year 1993 and before second marriage, by communication made through a letter, purportedly written by the appellant, to the brother of the deceased, demand for provision of television and accessories was made. As parents were not possessed of sufficient means and had not been

financially affluent, they could not make provisions of dowry asked by the appellant. When some persons came from her in-laws' house to take her back to their house, Poonam was not permitted to go with them, as husband had not come to take her with him. Subsequently, when appellant came, mother of the deceased made all entreaties before him for not torturing her and it is alleged that the appellant took the deceased to his house cautioning them that in case provision of television and accessories is not been made by them, Poonam shall not return alive. Some time on 16th October, 1997 Bhunesh Kumar (P.W. 4) had been to the in-laws' house of Poonam when some sort of evasive reply had been given by her mother-in-law about absence of Poonam and he was told that she had been to village Sikha for treatment. Shortly, therefore, on 17th October, 1997, only a day thereafter, Hari Kishore Singh (P.W. 6), brother of the deceased, who also happened to be maker of Fardbeyan was informed by two persons of village Jatiahi about tragic end of Poonam in in-laws' house whose dead body too had been cremated. It was alleged that Hari Kishore Singh, shortly on receipt of tragic news, sent Santosh Kumar Singh (P.W. 1) and Pramod Singh (P.W. 2) to village Jatiahi for confirmation of death of Poonam and on their return to village, they confirmed her death. Brother of the deceased took recourse to public authority and set the criminal law in motion. As usual investigation followed during which Police, in the process of collection of evidences, recorded statement of witnesses, visited place of occurrence, seized ashes of the dead body of Poonam from cremation ground, and on conclusion of investigation, laid charge-sheet before the Court. In the eventual trial that followed, State examined seven witnesses to establish charges against the accused.

3. Defence of the appellant and also those who were put on trial along with him, was that of innocence and they ascribed their false implication. Explicit defence of the appellant, and others was that since Poonam had not been blessed with child after marriage, she was upset and more than often she used to leave her in-laws' house. Other defence of the appellant and others at trial was that Poonam died in house of her parents, and without good excuse, a false case had been instituted against them for no good reasons. Defence too examined two witnesses, namely, Sudishth Singh (D.W. 1) and Sitaram Singh (D.W. 2) ostensibly to counter accusation attributed to the appellant about demand of dowry and torture meted out to the deceased. They rather claimed themselves to be relation of Hari Kishore Singh, and countering accusations attributed to the appellant they stated that Poonam had died in her parents' house, pursuant to which they were informed by Hari Kishore Singh about her death, However, as has been noticed, though Trial Court acquitted other accused persons, put on trial, recorded finding of guilt against the appellant alone on the same set of evidence which is also one of the criticisms that had been made at Bar against the findings recorded by the Court below.

4. The witnesses, by whom the guilt was sought to be established by the State happens to be Santosh Kumar Singh (P.W. 1), Pramod Singh (P.W. 2), Bhunesh Kumar (P.W. 4) and Hari Kishore Singh (P.W. 6). Scathing comments have been made

by the learned Counsel for the appellant on credibility of these witnesses, and with all stress, it was sought to be urged that when some sort of vague and omnibus accusations were sought to be attributed to the appellant with the aid of evidence of these witnesses about demand of dowry and related torture or harassment allegedly meted out to the deceased, simply such narrations made by witnesses about torture to the deceased without reckoning to time which must refer to a period "soon before her death" would not attract mischief of Section 304B, Indian Penal Code

5. We may now analyse evidence of these witnesses on this anvil. Omnibus accusations have been attributed to the appellant by Santosh Kumar Singh (P.W. 1), who happens to be brother of the deceased, about demands made by in-laws of Poonam for provision of television set and its accessories and also torture meted out to the deceased on their failure to make provisions of sufficient dowry to them. He would, however, acknowledge in no uncertain terms that such demands were made by the appellant only after receipt of letter that was carried to him by Hiralal Sah (P.W. 3) and evidence available on the record would suggest that letter in question was carried to Hari Kishore Singh, a week back preceding 22nd February, 1994, when second marriage of Poonam had been fixed. No explicit evidence would come from Santosh Kumar Singh (P.W. 1) either about the period when such demands were made or about the period of torture allegedly meted out to Poonam before her death. Though the witness claims that he had been repeatedly visiting his sister's house, evidence of this witness, as it is, either about demand of dowry or torture meted out to Poonam has to be rejected for more than one reason. Attention of this witness had been drawn by the defence either about torture meted out to the deceased or this witness even visiting house of Poonam Devi in the year 1994, for he having not made such parallel statement before the Police during Investigation.

6. Evidence of Pramod Singh (P.W. 2) also was not on better footing. He states that when he visited house of Poonam, she complained to him about assault made on her by the in-laws for failure of her parents to make provisions of sufficient dowry to them. He too claimed to have been visiting house of Poonam regularly but would acknowledge that though he had last meeting with Poonam only. In the year 1994, but no complaint was made by the deceased to him either about demand of dowry or torture meted out to her by the in-laws. Though this witness made vacillating statement about meeting Poonam again in the year 1997 in Raxaul market, but it is not in explicit terms about any complaint having been made by her to him either about demand of dowry or torture to her by the in-laws. Narration made by this witness was also sought to be impeached by the defence, there being no such parallel statement made before the Police during investigation. Omnibus accusations about harassment and torture meted out to the deceased was stated also by Bhunesh Kumar (P.W. 4) but that too without reference to any period when either such demands were made by the in-laws for dowry or torture was inflicted on

the deceased. Attention of this witness too had been drawn by the defence, for there being no such parallel statement before the police during investigation.

7. While reiterating his earliest version. Hari Kishore Singh (P.W. 6), too who happens to be brother of the deceased and also maker of the Fardbeyan, would make omnibus accusation either about demand of dowry or torture meted out to the deceased by the in-laws for their failure to make provision of television and accessories. The witness states that Poonam had been complaining to him about harassment made by in-laws for dowry. When Poonam came to her parents' house in the year 1993 after marriage, that time too, she had complained to him that her husband who happens to be appellant, ignoring her, had established physical relation with his elder brother's wife, and on resistance had been beating her. The witness states also about receipt of a letter allegedly written by the appellant, in which while making demand for dowry he had threatened that in case these demands were not met, Poonam shall not be taken back to his house. The witness states to have received information about death of Poonam on 17th October, 1997 from two persons of village Jatiahi, and death of Poonam was confirmed by Santosh Kumar Singh and Pramod Singh, who on his instruction had visited Jatiahi. However, this witness admits in most candid terms about visiting village Jatiahi last time only in the year 1996. He met Poonam when she/ he had made queries about study of the appellant. The witness does not say about Poonam making any complaint either about demand of dowry or torture to her by in-laws when this witness visited village Jatiahi in the year 1996 or thereafter. As was admitted by him, he did not visit village Jatiahi. Attention of this witness too had been drawn by the defence to persuade the Court to believe that substantial improvement had been made by this witness at trial, on all material particulars of the case.

8. In backdrop of these evidences, contentions were raised on behalf of the appellants that this witness did not render statement before the police during investigation, either about harassment to her on failure of her parents to make sufficient dowry to them or the husband beating her on resistance made by her, for his questionable relation with his elder brother's wife.

9. Evidence of other witnesses too who are of ancillary nature, can be noticed, Hiralal San (P.W. 3) stated to have carried the letter purportedly written by appellant to Hari Kishore Singh (P.W. 3), Credibility of this witness was open to question for more than one reasons. He happens to be none else but driver of Hari Kishore Singh (P.W. 6) and that too he happened to be driver with him only for a month, He had no occasion to have any interaction with the appellant, preceding the day of carrying letter to Hari Kishore Singh (P.W. 6) and it seems quite unusual as to why the appellant had picked up this witness for carriage of his letter to Hari Kishore Singh. Attention of this witness too had been drawn by the defence that while giving said letter to him the appellant had asked him to carry a message to Hari Kishore Singh for making provision of television and accessories. Though not of such significance,

there has been evidence of Tahsildar Singh (P.W. 5) about seizure of ash from cremation ground by the Police Officer. The Police Officer, namely, Sanjay Kumar Verman (P.W. 7), simply stated to have laid charge-sheet before the Court on receipt of charge from the erstwhile Investigating Officer. He, however, brought on the record First information Report, seizure memo and some parts of police case diary of Raxaul P.S. Case No. 144 of 1997. Admittedly he had not made any contribution towards investigation. This goes without saying that though attention of all prosecution witnesses had been drawn by the defence towards their earlier versions made during investigation, as the Investigating Officer, who recorded their statement had not been examined, many question remained un-answered, and grievance of the appellant had been that he was seriously prejudice on account of non-examination of the Investigation Officer.

10. Though suggestion had been given to Harish Kishore Singh (P.W. 6) by the defence that Sudisht Singh, Sitaram Singh and Jagdish Singh of village Jatiahi happen to be related to him, and that suggestion- was refuted by the witness, here is the evidence of Sudisht Singh (D.W. 1) who claims to be related to Hari Kishore Singh as maternal brother-in-law, and the deceased as such happened to be his niece. Contrary to accusation, this witness countered, with all stress accusations attributed to the appellant either about deceased having been tortured by in-laws or any demand for dowry having been made by them. In tune with the suggestion given to the prosecution witnesses, Sudisht Singh states about death of Poonam in her parents' house. Though attention of this witness had been drawn by the State about some sort of affidavit having been sworn by him during investigation, that had not been placed on record. True it is that this witness does not appear to have been examined by the Investigating Officer during investigation, relationship as stated by him have not been emphatically refuted in the suggestion. Similar had been the evidence of Sitaram Singh (D.W. 2) also who apart from his relationship with Hari Kishore Singh, also stated about information with regard to death of Poonam Devi having been given to him by none else but Hari Kishore Singh.

11. If evidence of Santosh Kumar Singh (P.W. 1), Pramod Singh (P.W. 2) and Hari Kishore Singh (P.W. 6) and was to be given any credence, they got information about torture to the deceased, for failure to make provisions of sufficient dowry, only in the year 1994 and, if this be accepted to be true, this seems to be quite a stale matter which would not make them answerable within the mischief of Section 304B of the Indian Penal Code. We must reiterate that simply assertion made by witnesses about torture meted out to the deceased, without referring to a particular period, would not come within mischief of Section 304B, Indian Penal Code, as statute itself postulates that it must be shown that the deceased was subjected to cruelty and torture soon before her death, Though Legislature intends to convey that torture must refer to a period immediately before her death, the said period has not been defined nor it was feasible to define, but as has been reiterated time without numbers that there should be nexus between death of the deceased and

the dowry related harassment or cruelty inflicted on her, if interval between dowry related time and death happens to be wide, that would not necessarily lead to the conclusion that demand was immediate cause of death of the deceased. Legislature intended to provide such radius of time by implying the words "before her death" simply to emphasize the idea that her death, in all probability, had been aftermath of such cruelty or harassment. Applying this well recognised principle reiterated by Court it must be shown that evidence of clinching nature was available on record about such demand having been made by the in-laws, which happened to be cause of death, pursuant to torture inflicted on the deceased, and viewed from this angle, we find that evidence available on the record would not saddle the appellant with the charges for which he was made answerable at trial to bring the offence within mischief of Section 304B, Indian Penal Code. Though death of the deceased in the in-laws house had been seriously disputed by the appellant for which evidence too had been led, since the appellant has not been found guilty on the primary charge u/s 304B, Indian Penal Code, finding of guilt recorded by Court below u/s 201, Indian Penal Code, which is associated with the primary offence, has also to be set aside.

12. In the result, on consideration of the evidence available on the record and also regard being had to the facts and attending circumstances of the case, finding recorded by the Court below, which is found unsustainable, is set aside. The appeal accordingly succeeds. Since appellant happens to be in custody, he is directed to be set free forthwith, if not wanted in any other case.

S.N. Jha, J.

13. I agree