

(2012) 09 PAT CK 0086

**Patna High Court****Case No:** Criminal Appeal (SJ) No. 141 of 2000 and Cr. A. (SJ) No"s. 157 and 186 of 2000

Kalawati Devi and Another

APPELLANT

Vs

State of Bihar

RESPONDENT

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**Date of Decision:** Sept. 6, 2012**Acts Referred:**

- Dowry Prohibition Act, 1961 - Section 3, 4
- Penal Code, 1860 (IPC) - Section 304B

**Citation:** (2013) 1 DMC 475 : (2013) 2 PLJR 995**Hon'ble Judges:** Sheema Ali Khan, J**Bench:** Single Bench**Advocate:** Sujit Singh and Mr. Raghavnand, for the Appellant; Sujit Kumar Singh, APP., for the Respondent**Final Decision:** Allowed

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**Judgement**

Sheema Ali Khan, J.

The four appellants in this batch of three appeals have been found guilty for offences u/s 304B, IPC and Sections 3 and 4 of the Dowry Prohibition Act. They have been sentenced to undergo R.I. for ten years, one year and two years respectively for the aforesaid offences by the 3rd Additional Sessions Judge, Patna in Sessions Trial No. 295 of 1989. The appellants of Criminal Appeal No. 144 of 2000 are the mother-in-law and father-in-law of the victim girl. The appellant of Criminal Appeal No. 186 of 2000 is the son-in-law of victim girl and the appellant of Criminal Appeal No. 157 of 2000 is the brother-in-law (Devar) of the victim. The First Information Report was instituted by the father of the victim Ram Uchit Prasad on 27.1.1988.

2. The prosecution case as per the First Information Report is that Sudha Rani, the daughter of the informant was married to Kumar Dharendra Nath in May, 1984. Sudha Rani left her matrimonial home in May, 1987. It is said that she had complained that her husband and his parents had demanded a watch and a T.V. and

due to non-fulfillment of demand she was tortured. According to the informant his son-in-law had made demand even prior to the "Ruksati" of his daughter by writing a letter to the younger sister expressing his demands. On 18.1.1988 the informant had gone to Fatuha for some work where he learnt that his daughter was admitted in hospital at Patna due to burn injuries. She died in hospital on the same day and he participated in her last rites. On 19.1.1988 he went to attend the function performed after the death of a person, in the village of his Samadhi, where he learnt that from some villagers that his daughter had been burnt by her husband, father-in-law, mother-in-law, brother-in-law and sister-in-law (Nanand) by pouring kerosene oil over the body. She had run out of the house to seek help during the time she was set on fire and had told the villagers that she had been burnt by the aforesaid persons. After learning of the aforesaid facts the present case has been filed. Certain facts may be highlighted from the reading of the First Information Report. Firstly that the informant was present in the hospital when his daughter died, he participated in the last rites, signed on the inquest report and attended the function held just after the death of his daughter on 19.1.1988. Till 19.1.1988 he did not suspect that his daughter could have been burnt to death. Although, according to his own case in the First Information Report his daughter had disclosed to her parents that she was tortured at her in-law's house, yet he does not suspect any foul play. It may also be noted that the informant does not disclose the name of the villagers who supposedly disclosed the story of burning by the in-laws. The informant has not even tried to explain the delay in lodging of the First Information Report, considering that he was informed on 19.1.1988 regarding the suspicious circumstances in which his daughter had received burn injuries. The allegations made in the First Information Report shall now be tested by examining the evidence that has come during the trial.

3. There are fourteen witnesses examined in this case. Out of the fourteen witnesses PW 5, PW 6, PW 7, PW 8, PW 9, PW 11 and PW 12 have turned hostile.

4. PW 2 is the doctor who had conducted the post-mortem of the victim girl.

5. I should begin with the evidence of PW 10 Ram Uchit Prasad who is the informant and father of the victim girl Sudha Rani. The informant is a clerk in Canara Bank and it would appear from the evidence of PW 4 Siya Saran Paswan and PW 14 Smt. Prem Lata that he was posted at Sigrاما at the relevant time. He has supported the First Information Report, inasmuch as, he has stated in the chief that the daughter of the informant was married in the year 1984 and "Ruksati" took place in the year 1987. He has further stated that his daughter used to complain that her husband and his family members tortured her on account of non-fulfillment of certain demands made by the husband. For the first time in Court, he has made out a case that his son-in-law had visited his house in his absence and demanded money. On the demand being made, his wife gave her ear-rings to the goldsmith through PW 4, Siya Saran Paswan, who mortgaged them for Rs. 800 which money was handed over

to the son-in-law. He admits that he had signed on Exhibit A. He has also produced Exhibit-1 which is a letter addressed by Dharendra to his sister-in-law (Sali) Sabera Rani PW 1. He admits that he had signed on the inquest report, participated in the last rites by going to the burning ghat. He also admits that Dharendra (husband) was present at the burning ghat at Patna. On 19.1.1988 he went to the house of son-in-law and participated in the last rites that took place after death. It has been stated before that his second daughter PW 1 was 14-15 years of age when the occurrence took place. The informant denies the suggestion that there was a proposal by him that his son-in-law should marry his second daughter namely Sudha Rani, on refusal the present case was instituted.

6. The evidence of PW 10 cannot be believed by this Court, for several reasons, the first being that Exhibit-A, which was admittedly signed by PW 1. Exhibit-A is the information given by Bishnudeo Das, the father-in-law of victim girl to the police on 18.1.1988 regarding the occurrence i.e. death of his daughter-in-law, although this written information has been produced by the appellants, it is admitted by PW 1 as he has signed on it. This Court has no hesitation on relying or referring to this document. The father-in-law, Bishnudeo Das has stated that on 17.1.1988 at 6.00 p.m. that his daughter-in-law caught fire while she was cooking food. In course of cooking, her Saree caught fire, she ran outside the house for help. At the time of occurrence, his daughter was alone in the house and he was informed by one of the villagers regarding the occurrence. This information has been signed by the father of the victim girl. He also specifically admitted his signature. It cannot be believed that the informant, knowing that his daughter was tortured by the husband and other in-laws, would believe the statement made by Bishnudeo Das, father-in-law of the victim girl that his daughter was burnt because of an accident. If, in fact, the victim girl had been tortured on account of demand of dowry, her father would not have been party to Exhibit-A. On the other hand, it may be argued that because of the circumstances, he could not comprehend the implications regarding the circumstances surrounding her death. But it would appear that this argument would not be sustainable in view of the fact that not only did PW 1 sign on Exhibit-A, but he also signed on the inquest report and has admitted that his son-in-law had attended the last rites. Apart from which, if the death had been in suspicious circumstances, then the in-laws would not have performed the last rites of the victim girl, which are performed after the death of the person, rather they would have abandoned the responsibility of performing the rituals that takes place after the death. Apart from this fact, this Court may also refer to the fact that FW 1 claims that he came to know that his daughter was burnt by the husband and the in-laws through the villagers on 19.1.1988 surprisingly. Ram Uchit Prasad PW 1 does not disclose the name of a single villager from whom he had learnt that his daughter had been burnt by pouring kerosene oil. Having learnt this fact, there is no explanation for instituting the case on 27.1.1988 after a delay of eight days. All these facts lead this Court to disbelieve the story being weaved by the informant regarding the demand of the

dowry and the subsequent death of his daughter because of non-fulfillment of the demand of dowry.

7. This Court will now examine the statements made by the other family members of the informant and other witnesses in this case, keeping in mind the evidence of the informant.

8. PW 1 is the daughter of the informant, who proved the prosecution case and stated that she had been received a letter Exhibit-1 from her brother-in-law (Bahnoi) (Exhibit-1) dated 24.6.1986. I shall refer the details of the letter which are as follows:

Hindi mater omitted

9. It may be noted here that this letter had been written before the Ruksati of the victim girl. It is true that Dharendra had expressed his desires and his expectation that he shall receive some gifts at the time of "Ruksati" or what is commonly known as Gauna. It has been stated in the letter that there was no demand at the time of marriage. This letter is only expression by Dharendra, the husband, that he expected certain gifts from his in-laws. It also expresses his desire that he was impatient for the "Ruksati" to take place at an early date. It is obvious that this letter has been written much before the "Ruksati" of the girl which took place, which was in May, 1987 i.e. almost a year prior to the Ruksati. This letter cannot be treated to a demand of dowry, made after the girl had left for her matrimonial home. Obviously, after the letter was written, the victim lady had gone to matrimonial home, a long time had elapsed since the letter was written and thereafter there is no proof of demand after May 1987. Apart from this fact, PW 1 cannot give details and dates as to when her sister came to visit her parents after the "Ruksati" took place, etc. Therefore, the evidence of PW 1 Sabera Rani does not conclusively prove that there was a demand or that Sudha Rani was tortured for dowry before her death.

10. The next witness in this case is PW 3, Lallu Prasad Gupta, he is from village Govindpur, Police Station Fatuha, district Patna. According to this witness, he was sitting in his shop when the victim girl ran out of her house calling for help. He saw that the Saree was on fire. This witness says that the victim ran back in the house. Later she was taken to hospital for treatment. In his cross-examination he says that he had heard rumours regarding the cause of the death. The natural reaction of a person would be to immediately rush to help the victim, which he did not do. Besides which rumours cannot form the basis of conviction.

11. PW 4 Siya Saran Paswan is colleague of the informant and his evidence is with regard to the demand made by Dharendra, the husband, when he came to visit his mother-in-law's house. He was the person who took the ear-rings of the mother PW 14, so that she could supposedly fulfill the demand and pay Rs. 800 to her son-in-law. At paragraph 8, this witness states that: "Hindi mater omitted".

12. It would, thus, appear that this witness has been set up by the informant and, therefore, reliance cannot be placed on the evidence of PW 4. It has also been argued that no documentary evidence has been produced to show that the ear-ring was mortgaged to one Sobara Singh, (Swarath Singh). Sobara Singh has not been examined to support the story of mortgage. Apart from which, the story of giving Rs. 800 to the son-in-law has been stated for the first time in Court and, as such, this Court cannot believe this piece of evidence as it has been developed at a belated stage of the case.

13. PW 13, Ram Suresh Paswan, was "resident of village Ghosi, Police Station Hilsa, district Nalanda. He has been produced by the prosecution to substantiate that a demand was made by the appellants. Such evidence has come for the first time in Court. According to this witness, Ram Uchit Prasad, the informant had given him Rs. 500 to buy a watch for son-in-law. According to this witness, he had visited the house of the appellants. This witness admits that he had been informed regarding the death of his niece and he also admits that he attended the funeral of his niece along with his brother and his brother's wife. On perusal of the evidence of PW 13, it would appear that he attended the last rites of Sudha Rani. The story of purchasing a watch is a later development not brought to the notice of the Investigating Officer.

14. The last witness to be examined in this case is the mother of the deceased PW 14 Prem Lata. According to Prem Lata, she was not informed about the death of her daughter. She has supported the prosecution version by stating that her daughter had disclosed that her in-laws and her husband Dhirendra had demanded T.V. and a watch. She also disclosed that on one occasion Dhirendra had tried to electrocute her daughter because of protest by her, assaulted her. He also claimed that she had taken her daughter to be examined by a doctor who had advised for X-ray. She claims that X-ray report has been produced by her before the Investigating Officer of the case. At paragraph 30 she had denied that the in-laws of her daughter had taken to the hospital, rather she states that her daughter was taken to hospital by the neighbours. At paragraph 31 she has denied that they were informed regarding the death of Sudha Rani or that her husband had gone to the hospital. The evidence of this witness is unreliable for the reason that she has in fact denied the case as made out by her husband that he was present at the hospital when his daughter died and that he signed on the inquest report, attended her funeral on 18.1.1988. Apparently this witness is not speaking the truth and her evidence is contrary to the evidence of PW 10 the informant of this case.

15. In conclusion, I must refer the evidence of PW 2, the Doctor who conducted the post-mortem in this case. The doctor has found that the victim girl had received burn injuries on the front part of the body except her face. The fact is that the appellants do not deny that the victim died due to burn injury. The only difference is that it is the specific case of the defence that the burn injuries were caused while

she was cooking. The hostile witnesses in this case are all from the village of Govindpur. They have not supported the prosecution version. Unfortunately, the Investigating Officer has not been examined, as he could have disclosed the statements of the witnesses made in the case diary. The Trial Court ought to have considered the case diary for the purposes of aiding the Court in coming to the conclusion as to whether these witnesses had stated that the in-laws of victim girl had set her on fire.

16. Sub-section (2) of Section 172 specifically provides that "Any Criminal Court may send for the police diaries of a case under inquiry or trial in such Court, and may use such diaries, not as evidence in the case, but to aid it in such inquiry or trial". After considering the evidence, this Court finds that the prosecution has failed to bring home the charges against the accused. Not only is the evidence unreliable and unbelievable, but there is an unexplained delay in lodging the First Information Report. In the result, the appeal is allowed and the conviction of the accused is set aside.