

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (DB) No.774 of 2019

[Against the judgment of conviction and order of sentence dated 17.06.2019 (sentence passed on 24.06.2019) in connection with Sessions Trial Case No.225/2014, arising out of Barkatha P.S. Case No.32/2011, corresponding to G.R. Case No.765/2011, passed by Sri Ramesh Kumar, learned Additional Sessions Judge-I, Hazaribag]

Suresh Prasad

... Appellant

-Versus-

The State of Jharkhand

... Respondent

PRESENT

HON'BLE MR. JUSTICE RATNAKER BHENGRA
HON'BLE MR. JUSTICE AMBUJ NATH

For the Appellant

: Mr. Anil Kumar Jha, Advocate

For the State

: Mr. Manoj Kumar Mishra, Addl.P.P

C.A.V. On : 03/01/2024

Pronounced On: 18/01/2024

Ambuj Nath, J. Heard the parties.

The appellant Suresh Prasad has filed this appeal against the judgment of conviction and order of sentence dated 17.06.2019 (sentence passed on 24.06.2019) in connection with Sessions Trial Case No.225/2014, arising out of Barkatha P.S. Case No.32/2011, corresponding to G.R. Case No.765/2011, passed by Sri Ramesh Kumar, learned Additional Sessions Judge-I, Hazaribag, holding the appellant guilty of offence under Section 304-B of the Indian Penal Code and thereby, sentencing him to undergo rigorous imprisonment for life along-with fine of Rs.10,000/- and in default of payment of fine, he was further directed to undergo rigorous imprisonment for one year.

The prosecution case was instituted on the basis of written report of the informant Dwarika Mahto, alleging therein that his daughter Lakhiya Devi was married to the appellant one year ago as per Hindu rites and customs. After five months from the date of marriage, the appellant along-with his family members started torturing her to enforce the demand of a color television and a motorcycle and on 24.03.2011, she was found murdered in her matrimonial home.

After investigation, the police found the occurrence to be true and submitted the chargesheet against the appellant under Section 304-B of

the Indian Penal Code. The cognizance of the case was taken by the learned Chief Judicial Magistrate, Hazaribag under the aforesaid Section.

The case was committed to the court of learned Sessions Judge by Smt. Garima Mishra, learned Judicial Magistrate, First Class, Hazaribag on 17.05.2014, as it was exclusively triable by the Sessions Court.

The charge was framed against the appellant on 26.05.2015 under Section 304-B of the Indian Penal Code. The contents of the charge was read over and explained to him in Hindi, to which, he pleaded not guilty and claim to be tried.

In order to prove its case, the prosecution has adduced both oral and documentary evidence.

Dr. Rajesh Kumar Gupta P.W.1 is the doctor, who had performed the postmortem of the deceased Lakhiya Devi. He has proved the postmortem report, which is Exhibit-1.

Niwas Singh P.W.2 is the Investigating Officer of this case. He has proved the formal F.I.R which is Exhibit-3. He has also proved the inquest report, which is Exhibit-4. He has proved the place of occurrence which is the matrimonial home of the deceased and house of the appellant.

Janki Devi P.W.3 is the mother of the deceased. She has supported the prosecution case.

Dwarika Mahto P.W.4 is the informant of this case. He has also supported the prosecution case. He has proved the written report, which is Exhibit-2/1.

The statement of the appellant was recorded under Section 313 of the Cr.P.C. The defence is general denial of occurrence and false implication.

On the basis of the evidence available on record, learned Trial Court held the appellant guilty of offence under Section 304-B of the Indian Penal Code and sentenced him accordingly.

Mr. Anil Kumar Jha, learned counsel for the appellant has submitted that there is no eyewitness to the occurrence and the prosecution has failed to prove its case against the appellant under Section 304-B of the Indian Penal Code. He has relied upon the judgment of the Hon'ble Apex Court, rendered in the case of *State of Madhya*

Pradesh Vs. Jogendra & Another, reported in (2022) 5 SCC 401. On this ground, it was prayed that this appeal be allowed and the appellant be acquitted of the charge.

Mr. Manoj Kumar Mishra, learned A.P.P on behalf of the State has submitted that the deceased died within one year of the marriage in her matrimonial home in an unnatural circumstances. He has further submitted that the appellant used to demand dowry and to enforce the demand, deceased was tortured. He has finally submitted that the appellant has failed to discharge his burden under Section 106 of the Indian Evidence Act and as such, this appeal be dismissed.

Now, it has to be ascertained whether the prosecution has been able to prove its case against the appellant beyond all reasonable doubts.

In order to come to the aforesaid finding, it has to be further ascertained :

Whether the appellant died within seven years of marriage ?

Whether her death was an unnatural death ?

Whether there was demand of dowry, coupled with torture to enforce the demand just before the occurrence ?, and

If the aforesaid facts are proved then it has to be finally ascertained whether the appellant has discharged his burden as imposed under Section 106 of the Indian Evidence Act.

Janki Devi P.W.3 is the mother of the deceased. She has stated that her daughter Lakhiya Devi was married to the appellant seven years ago as per Hindu rites and customs. After marriage, she started residing at her matrimonial home. After five months of marriage, the accused persons started demanding motorcycle and color television. She has further stated that after ten months of marriage, her daughter was murdered in her matrimonial home. The accused persons did not inform them about her death. She has further stated that on the next day, when she came to know about the occurrence, she along-with others went to the matrimonial home of her daughter and found her dead body, lying on a cot. The accused persons had fled away after locking their house.

She has been cross-examined at length. In her cross-examination, she has stated that her daughter used to reside in her matrimonial home. Suggestion has been given that the deceased was suffering from epilepsy,

which she has denied.

Dwarika Mahto P.W.4 is the informant of the case. He has stated that his daughter Lakhiya Devi was married to the appellant in the year 2010. After marriage, the appellant used to demand a motorcycle and T.V and to enforce the demand, she was tortured. His daughter used to convey that she wanted to commit suicide. Few days after *Holi*, he came to know that his daughter had died, on which, he went to her matrimonial home and saw her dead body, lying in the courtyard on a cot. There was sign of strangulation on her body. In his cross-examination, he has stated that his daughter informed him about the demand of dowry. He has denied that his daughter was having illicit relationship with one Kishore Pandit.

From the oral testimony of both these witnesses, it is apparent that the marriage of the deceased Lakhiya Devi was solemnized with the appellant. It further appears that she died within a year of her marriage. They also stated that the appellant used to demand a motorcycle and color television and to enforce the demand, she was tortured.

Both these witnesses have stated that the deceased Lakhiya Devi was strangulated to death. Her dead body was lying in her matrimonial home on a cot and the appellant and other family members had fled away from there.

Dr. Rajesh Kumar Gupta P.W.1 has performed the postmortem on the dead body of the deceased Lakhiya Devi. He has stated that on the postmortem of the deceased Lakhiya Devi, he found the following injuries :-

Larynx- Some haematoma on back of larynx, more on right size 1 1/2" x 3/4". Wall Congested.

Nature of Injuries -Ante-Mortem, grievous and possible for death in due course. Injury was due to compression over neck as in smothering.

Internal findings-Brain and spinal cord congested, larynx-wall congested, Haematoma right back of larynx, Lungs-Bilateral congested. Heart-Blood right chamber, Stomach-Wall congested, content - mucoid fluid dirty looking, pungent smelling approximately four ounces, small intestine, large intestine, liver, spleen, kidney all congested.

According to this witness, the cause of death of the deceased was Asphyxia due to smothering over neck. He has proved the postmortem report, which is Exhibit-1. On perusal of the postmortem report (Exhibit-

1), it transpires that the findings of Dr. Rajesh Kumar Gupta (P.W.1) in the postmortem report regarding injuries sustained by the deceased Lakhiya Devi and the cause of her death fully corroborates his oral testimony, recorded during the trial.

From the aforesaid oral and documentary evidence, it transpires that the deceased Lakhiya Devi died because of Ashpysia due to smothering. It is apparent that the deceased Lakhiya Devi died homicidal death. Both Janki Devi P.W.3 and Dwarika Mahto P.W.4 have stated that when they came to know about the death of the deceased, they went to her matrimonial home and found her dead body, lying on a cot and the appellant and other family members after locking the house had fled away.

Niwas Singh P.W.2 is an Investigating Officer of the case, who has proved the place of occurrence. He has stated that the place of occurrence is the house of the appellant Suresh Prasad, situated in Village-Turkbad, Barkatha, Hazaribag. He has given the boundary of the place of occurrence. In his cross-examination, he has stated that he had inspected the place of occurrence on the same day at about 12:30 noon.

From the aforesaid oral and documentary evidence, it is apparent that the prosecution has been able to show that the deceased Lakhiya Devi was married to the appellant Suresh Prasad about one year prior to her homicidal death. The prosecution has also been able to show that the appellant used to demand a motorcycle and color television and to enforce the demand, the deceased was tortured. The prosecution has further been able to prove that the deceased died homicidal death in her matrimonial home.

Once the aforesaid facts have been proved, Section 113-B of the Indian Evidence Act, 1872 comes into play.

Section 113-B of the Indian Evidence Act deals with presumption as to dowry death, which reads as under :-

113-B. Presumption as to dowry death- "When the question is whether a person has committed the dowry death of a woman and 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 for dowry, the Court shall presume that such person had

caused the dowry death.

Explanation-For the purposes of this section, "dowry death", shall have the same meaning as in section 304-B of the Indian Penal Code (45 of 1860)."

The provision of Section 113-B of the Indian Evidence Act, 1872 manifests the intention of legislature making mandatory application on the part of the Court to presume that death has been committed by a person who had subjected her to cruelty and harassment in connection with demand of dowry. Once the basic ingredient of Section 304-B of the Indian Penal Code is proved by the prosecution then the Court will presume the guilt of the accused. At this stage, the burden shift upon the accused as per the provision of Section 106 of the Indian Evidence Act to rebut this presumption of guilt and to prove his innocence.

Statement of the appellant was recorded under Section 313 of the Cr.P.C. Apart from stating that he had not demanded dowry nor he had committed the murder of the deceased, he has not brought any material on record to rebut the basic presumption of his guilt and to prove his innocence. The fact that the appellant and his family members fled away from the place of occurrence, leaving behind the dead body of the deceased, further weighs the scale of evidence against the appellant.

From the aforesaid facts and circumstances, it transpires that the prosecution has successfully proved its case against the appellant under Section 304-B of the Indian Penal Code and the appellant has failed to discharge his burden as envisaged under Section 106 of the Indian Evidence Act.

Accordingly, we come to the finding that the learned Trial Court has rightly held the appellant guilty for the offence under Section 304-B of the Indian Penal Code.

From perusal of the record, it transpires that the appellant is in custody since 06.12.2012, i.e., he has remained in custody for about eleven years. The offence under Section 304-B of the Indian Penal Code is punishable for the period between seven years to imprisonment for life. Learned Trial Court has imposed the maximum sentence on the appellant without discussing the mitigating and aggravating circumstances against him. Considering the entire facts of this case and the period of custody

undergone by the appellant, the sentence imposed by the learned Trial Court directing the appellant to undergo imprisonment for life along-with a fine of Rs.10,000/- and in default of payment of fine, to further directed to undergo R.I for one year is hereby, set aside.

The appellant is sentenced to period already undergone by him during the trial and during the pendency of this appeal. The appellant shall pay the fine amount as directed by the learned Trial Court, failing which, he shall further undergo simple imprisonment for two months.

Accordingly, this appeal is partly allowed with modification of sentence.

Pending I.A, if any, also stands disposed of.

(Ratnaker Bhengra, J.)

(Ambuj Nath, J.)

Jharkhand High Court, Ranchi
Dated : 18/01/2024
N.A.F.R./BS