

Parvati Devi vs The State Of Bihar Now State Of Jharkhand on 17 December, 2021

Author: Hima Kohli

Bench: Hima Kohli, Surya Kant, N. V. Ramana

CRIMINAL APPEAL NO. 574 OF 2012

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 574 OF 2012

PARVATI DEVI

.....

APPELLANT

VERSUS

THE STATE OF BIHAR NOW
STATE OF JHARKHAND & ORS.

..... RESPONDENTS

WITH

CRIMINAL APPEAL NO. 575 OF 2012

RAM SAHAY MAHTO

.....

APPELLANT

VERSUS

STATE OF BIHAR NOW
STATE OF JHARKHAND & ORS.

.....

RESPONDENTS

JUDGMENT

HIMA KOHLI, J.

1. Ram Sahay Mahto, appellant in Criminal Appeal No. 575/2012 (hereinafter referred to as A-1) and his mother Parvati Devi, appellant in Criminal Appeal No. 574/2012 (hereinafter CRIMINAL APPEAL NO. 574 OF 2012 referred to as A-3) are aggrieved by the common judgment dated 1st May, 2007 passed by the High Court of Jharkhand upholding the judgment of conviction dated 20th September, 1999 under Sections 304B and 201 read with Section 34 IPC passed by the 5th Additional Sessions Judge, Giridih, sentencing them and Nema Mahto (father of A-1 and husband of

A-3) to undergo rigorous imprisonment for a period of ten years and three years respectively on each count with both the sentences running concurrently. For the record, Nema Mahto had also preferred an appeal registered as SLP (Crl.) No. 6955 of 2009 which abated on his expiring during its pendency.

2. The case of the prosecution as culled out from the impugned judgment is that the informant, Bodhi Mahto (PW-3) had got his daughter, Fulwa Devi, married to Ram Sahay Mahto (A-1) in the year 1997 and within a few months of the marriage, A-1, his father Nema Mahto (since deceased) and mother, Parvati Devi (A-3) started to harass Fulwa Devi raising a demand for a sum of Rs. 20,000/- in cash and a Rajdoot Motor cycle. On expressing the inability of her parents to satisfy their demands, she was brutally assaulted and threatened that A-1 CRIMINAL APPEAL NO. 574 OF 2012 would be married off to another girl. Thereafter, on information being received that his daughter had gone missing from her matrimonial home, P.W.3 rushed to her home but finding her traceless, he approached Birni Police Station and lodged a missing complaint. A case was registered by the local police on 8th August, 1997 against A-1, A-2 and A-3 being Case No. 71 of 1997, for the offences under Sections 304/201/34 IPC. On completion of the investigation, a charge-sheet was filed against all the three accused for the aforesaid offences along with Sections 3 and 4 of the Dowry Prohibition Act.

3. Five days after the FIR was lodged by PW-3 on 13 th August, 1997, a skeleton was recovered from the banks of river Barakar, at a distance of about one kilometer short of Village Sirmadih which was assumed to be that of Fulwa Devi. Charges were framed against the three accused under Sections 304B/34, 201/34 IPC. To bring home the guilt of the accused, the prosecution examined seven witnesses, whereas the accused examined six witnesses. The material witnesses examined by the prosecution included Dr. B.P. Singh (PW-1), the doctor who had conducted the post-mortem examination of the CRIMINAL APPEAL NO. 574 OF 2012 dead body, Sahdeo Mahto (PW-2), brother-in-law of the deceased, Bodhi Mahto (PW-3), father of the deceased as well as the informant, Jogeshwar Mahto (PW-4), brother of the deceased, Tiki Devi (PW-5), wife of PW-4 (sister-in-law/Bhabhi of the deceased) and Suresh Prasad Singh (PW-6), the Investigating Officer.

4. After a critical analysis of the deposition of the aforesaid witnesses, the High Court summarized their testimony. Dr. Bhupendra Prasad Singh (PW-1) deposed that he had conducted the autopsy of the dead body produced before him as that of Fulwa Devi and found the body to be highly decomposed. The left leg, left forearm and left hand were absent. Similarly, the right upper limb and right lower limb below the knee joint were absent. No evidence of any ante- mortem injury was found. The time that had elapsed till the post-mortem examination was conducted, was assessed as one week.

5. Bodhi Mahto (PW-3), the informant and the father of the deceased testified that his deceased daughter was married to A-1 and within a few months of her marriage, the accused had CRIMINAL APPEAL NO. 574 OF 2012 started maltreating her and complained about inadequate dowry given by her parents. They had demanded cash of Rs. 20,000/- and a Rajdoot Motor cycle from his daughter and had threatened that if their demand was not met, she would be exterminated. Fulwa Devi had shared this demand of additional dowry with her parents, brother and sister-in-law. A similar

message was conveyed to PW-3 by his son-in-law, Sahadeo Mahto (PW-2) with whom the accused had raised the issue of insufficient dowry. PW-3 deposed that when he went to the matrimonial home of his daughter in the month of "Ashar", A-1 and his father (A-2, since deceased) had cautioned him that if he did not fulfill their demand, they would throw out Fulwa Devi from the matrimonial home and get A-1 married to someone else. It was within a period of fifteen days of the aforesaid incident that PW-3 received information from PW-2 about his daughter having gone missing from her matrimonial home. On rushing to her matrimonial home and looking all over for her, when she could not be traced, an FIR was lodged with the local Police as PW-3 stated that he had reason to believe that the accused had murdered her and concealed her body CRIMINAL APPEAL NO. 574 OF 2012 somewhere. It was only after five days of lodging of the complaint that the dead body of the deceased was recovered. PW-2 and PW-3 went to the spot where the dead body was recovered. On seeing the face that was partly intact and by identifying the clothes, PW-3 identified the body as that of his daughter. In the cross-examination conducted on behalf of the accused, PW-3 stood firm by his testimony, that remained unshaken.

6. Sahdeo Mahto (PW-2), son-in-law of PW-3 and Jogeshwar Mahto (PW-4) son of PW-3 testified on the very same lines as PW-3. They deposed that Fulwa Devi was being ill-treated and besides demanding dowry from her, she had been threatened that if the demand for dowry was not fulfilled, her husband would get re-marrried to someone else. PW-4 stated that during her visit to her parental home, Fulwa Devi had informed her family members about the demands of dowry made on her by all the accused and the threat extended to her that if their demands were not met, they would go in for a second marriage of their son, A-1.

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7. Both the witnesses narrated as to how they came to know about the deceased going missing from her matrimonial home. PW-2 deposed that he came to know from third parties that Fulwa Devi was missing from her matrimonial home and her dead body had been thrown into Barakar river after she was murdered. He immediately informed his father-in-law, PW-3 who set out in search of his daughter on the banks of the river. PW-3 made an extensive search along with his son-in-law, PW-2 and his son, PW-4 and also informed the Police. The rest of the version of both the witnesses on the aspect of recovery of a dead body from the banks of the nearby river and identification by them of the body as that of Fulwa Devi, remained consistent with one corroborating the other.

8. The High Court has observed that the evidence of Sahdeo Mahto, PW-2, is relevant to the extent that prior to her death, Fulwa Devi had spoken to him about the dowry demand made on her by the accused persons. He was not an eye-witness to the incident but stated on hearsay that he came to know from a villager that the dead body of Fulwa Devi was thrown in Barakar river after she was murdered by the accused. The said witness CRIMINAL APPEAL NO. 574 OF 2012 did identify the dead body as that of Fulwa Devi on the basis of the clothes that she was wearing. Jogeshwar Mahto, PW-4 has corroborated the testimony of his father, PW-3 on the aspect of demand of dowry and the fact that Fulwa Devi had communicated this at her parental home during one of her visits. All the three witnesses took a common stand that demands of dowry were made on the deceased close to the time that she had gone missing from her matrimonial home and that she was last residing at her

matrimonial home when she had suddenly vanished one fine day.

9. The High Court has adversely commented on the slip shod manner in which the investigation was conducted by the Investigating Officer, Suresh Prasad Singh (PW- 6) who recorded the statements of the witnesses, prepared the inquest report of Fulwa Devi, testified about the two places of occurrence namely, the matrimonial home of the deceased at village Karni and the spot at the bank of river Barakar where the dead body was found, but failed to record the statements of any of the residents of the village that comprised of only twenty-five houses including the statement of the neighbours of the CRIMINAL APPEAL NO. 574 OF 2012 accused; nor did he make any concerted effort to trace the dead body of the deceased. It was only on persistent efforts made by the father, brother and brother-in-law of the deceased viz., PW-3, PW-4 and PW-2 respectively, that the dead body was ultimately located after almost a week from the date Fulwa Devi had gone missing from her matrimonial home by which time, the body had got decomposed to a large extent.

10. Linking the chain of circumstantial evidence from the point when Fulwa Devi had informed her parents and relations about the dowry demands made upon her by the accused within a few months of her marriage to the stage when she had suddenly gone missing from her matrimonial home and finally, when her body was recovered on the banks of river Barakar, the High Court concurred with the findings returned by the trial Court for inculcating all the three accused on the following basis:

“(i) The deceased Fulwa Devi was married with Ram Sahay Mahto S/o.

Nema Mahto and Parvati Devi within seven years of her death;

(ii) The dead body of the deceased was found in river Barakar on 13.8.97 and there are consistent evidence CRIMINAL APPEAL NO. 574 OF 2012 that the deceased died otherwise than under normal circumstances;

(iii) The deceased was at her Sasural prior to her death;

(iv) The deceased was traceless but neither information was given to her parents nor information was given to the police;

(v) The deceased was subjected to assault and harassment by the accused persons who are husband and his other relatives;

(vi) Such cruelty and harassment was in connection with demand of dowry;

(vii) Such cruelty and harassment was made soon before her death.”

11. The High Court agreed with the view expressed by the trial Court that the accused have miserably failed to explain the circumstances under which the deceased had vanished from her matrimonial home and has outrightly rejected the defence set up by the accused that she was not residing with her husband and in-laws; rather, she was living with her brother-in- law, PW-2. Another plea taken

by the accused that the dead body recovered from the banks of river Barakar was unidentifiable, was also turned down, having regard to the fact that the accused failed to explain the circumstance in which the deceased went missing from her matrimonial home and became traceless. The conduct of the accused of failing to CRIMINAL APPEAL NO. 574 OF 2012 inform the family members or the police about the deceased going missing from her matrimonial home and failure on their part to make any effort to search her out, were also held against them. In fact, PW-4, brother of the deceased had categorically deposed that when he had gone to her matrimonial home, he found it to be locked and all the accused were absconding just after the occurrence which was a critical circumstance that was held against them.

12. For examining the case of the prosecution and the evidence adduced by the accused, we may extract below the relevant provision of Section 304B IPC that relates to “dowry death”: -

“304B Dowry Death - (1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.—For the purpose of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.” CRIMINAL APPEAL NO. 574 OF 2012

13. As can be seen from the aforesaid provision, for convicting the accused for an offence punishable under Section 304B IPC, the following pre-requisites must be met:

- (i) that the death of a woman must have been caused by burns or bodily injury or occurred otherwise than under normal circumstance;
- (ii) that such a death must have occurred within a period of seven years of her marriage;
- (iii) that the woman must have been subjected to cruelty or harassment at the hands of her husband, soon before her death; and
- (iv) that such a cruelty or harassment must have been for or related to any demand for dowry.

14. Coming next to Section 113B of the Indian Evidence Act, 1872, the same refers to a presumption relating to a dowry death and is phrased as below:-

“113B. 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 has 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.

CRIMINAL APPEAL NO. 574 OF 2012 Explanation - For the purposes of this section, “dowry death” shall have the same meaning as in section 304B of the Indian Penal Code (45 of 1860).” The explanation appended to Section 304B IPC states that the word “dowry” shall have the same meaning as provided in Section 2 of the Dowry Prohibition Act, 1961 which reads as follows:

“2. Definition of ‘dowry’ - In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly –

(a) by one party to a marriage to the other party to the marriage; or

(b) by the parents of either party to a marriage by any other person, to either party to the marriage or to any other person;

at or before or any time after the marriage in connection with the marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim Personal law (Shariat) applies.”

15. The import of the aforesaid provisions has been explained in several decisions of this Court. In Bansi Lal vs. State of Haryana¹, it has been held that:

“17. While considering the case under Section 498-A (Sic. Section 304-B), cruelty has to be proved during the close proximity of time of death and it should be continuous and such continuous harassment, physical or mental, by the accused 1 (2011) 11 SCC 359 CRIMINAL APPEAL NO. 574 OF 2012 should make life of the deceased miserable which may force her to commit suicide.”

16. In Maya Devi and Anr. vs. State of Haryana², it was held that:

“23. To attract the provisions of Section 304-B, one of the main ingredients of the offence which is required to be established is that “soon before her death” she was subjected to cruelty or harassment “for, or in connection with the demand for dowry”. The expression “soon before her death” used in Section 304-IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. In fact, the learned Senior Counsel appearing for the appellants submitted that there is no proximity for the alleged demand of dowry and harassment. With regard to the said claim, we shall advert to while considering the evidence led in by the prosecution. Though the language used is “soon before her death”, no definite period has been enacted and the

expression “soon before her death” has not been defined in both the enactments. Accordingly, the determination of the period which can come within the term “soon before her death” is to be determined by the courts, depending upon the facts and circumstances of each case. However, the said expression would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. In other words, there must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the women concerned, it would be of no consequence.” 2 (2015) 17 SCC 405 CRIMINAL APPEAL NO. 574 OF 2012 [Also refer to G.V. Siddaramesh v. State of Karnataka³ and Ashok Kumar vs. State of Haryana⁴]

17. Section 304B IPC read in conjunction with Section 113B of the Evidence Act leaves no manner of doubt that once the prosecution has been able to demonstrate that a woman has been subjected to cruelty or harassment for or in connection with any demand for dowry, soon before her death, the Court shall proceed on a presumption that the persons who have subjected her to cruelty or harassment in connection with the demand for dowry, have caused a dowry death within the meaning of Section 304B IPC. The said presumption is, however, rebuttable and can be dispelled on the accused being able to demonstrate through cogent evidence that all the ingredients of Section 304B IPC have not been satisfied.

18. In the instant case, despite the shoddy investigation conducted by the prosecution, we are of the view that the circumstances set out in Section 304B of the IPC have been established in the light of the fact that the deceased, Fulwa Devi had gone missing from her matrimonial home within a few 3 (2010) 3 SCC 152 4 (2010) 12 SCC 350 CRIMINAL APPEAL NO. 574 OF 2012 months of her marriage and immediately after demands of dowry were made on her and that her death had occurred under abnormal circumstances, such a death would have to be characterized as a “dowry death”.

19. Recovery of the body from the banks of the river clearly indicates that Fulwa Devi had died under abnormal circumstances that could only be explained by her husband and in-laws, as she was residing at her matrimonial home when she suddenly disappeared and no plausible explanation was offered for her disappearance. The plea raised on behalf of the accused that the body recovered from the banks of Barakar river was unidentifiable, is devoid of merits when PW-3, father of the deceased testified that he could recognize the dead body as that of Fulwa Devi, from a part of the face that had remained intact and from the clothes that were found on the body. As regards A-1, the High Court and the trial Court have rightly raised a presumption against him under Section 113B of the Indian Evidence Act which prescribes that the Court shall presume that a person has caused a dowry death of a woman if it is shown that soon before her death, she had been subjected CRIMINAL APPEAL NO. 574 OF 2012 by such person to cruelty or harassment for or in connection with any demand for dowry. How far could this be held against A-3, will be discussed later.

20. The plea taken by A-1 that he was not present in the village at the time of the occurrence and was at Kolkata, has been rightly rejected as meritless. Similarly, the testimonies of Babulal Yadav, DW-3

and Basudeo Mahto, DW-4 were disbelieved, particularly since DW-3 claimed to be the uncle of A-1, but could not even furnish the name of his nephew's wife and DW-4, cousin of A-1 had deposed that he did not know about his marriage or whether his wife was dead or alive. Neither of the two witnesses could produce any documentary evidence in support of their stand that at the relevant time, A-1, was working in Kolkata. DW-6, Kauteshwar Yadav, who hails from the village where the said accused resided but has deposed that he himself is not a permanent resident thereof, miserably failed to establish an illicit relationship between the deceased and her brother-in-law, Sahdeo Mahto (PW-2) or that she was living with him and not residing at her matrimonial home.

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21. As discussed above, the case of the prosecution rests solely on circumstantial evidence. No eye witness has been produced who could testify as to how the body of the deceased was found on the banks of river Barakar. From the circumstances narrated above, there can be two hypothesis. One is that the deceased was done away with within the four walls of her matrimonial home, her dead body was smuggled out and dumped into the river. The second pre-supposition would be that the deceased was alive when she was taken to the river-side under some pretext and pushed in, leading to her death by drowning. If the first assumption is taken to be correct, then surely, some villager would have seen the accused persons carrying the dead body to the river where it was finally dumped. However, the prosecution has not produced any villager who was a witness to the body of the deceased being taken out of the matrimonial home and carried to the river. Therefore, this version would have to be discarded in favour of the second one which is that the deceased was alive, when she was accompanied to the river and then she was forcibly pushed in and could not emerge alive from the watery CRIMINAL APPEAL NO. 574 OF 2012 grave. The latter assumption also gains strength from the post mortem report which records that there were no signs of any ante mortem injury on the body. If the deceased was killed in the house, then the body would certainly have revealed some signs of struggle.

22. There is sufficient evidence brought on record to inculcate Ram Sahay Mahto, A-1 (husband of the deceased). The circumstances put together, unerringly point to his guilt in extinguishing the life of his wife within a few months of the marriage on her failing to satisfy the demands of dowry. In our view, the impugned judgment and order of sentence imposed on A-1 does not deserve interference and is maintained. Criminal Appeal No. 575 of 2012 filed by A-1 is accordingly dismissed. The said appellant who is presently on bail, is directed to surrender before the Trial Court/Superintendent of Jail within four weeks to undergo the remaining period of his sentence.

23. As for Parvati Devi, A-3 (Mother-in-law), from the evidence on record only certain omnibus allegations have been made against her with respect to dowry demands. Learned counsel CRIMINAL APPEAL NO. 574 OF 2012 for the respondent-State has not been able to indicate any specific allegations, nor point to any specific evidence or testimony against her. In fact, in the only direct evidence before the Court, PW-3 (informant and father of the victim) mentions that A-2 threatened to harm the deceased. In view of the above, we are of the opinion that it is necessary to interfere with the findings of the Courts below convicting A-3 (appellant in Criminal Appeal No. 574 of 2012) for the offence under Sections 304B and 201 read with Section 34, IPC. The said appeal

filed by A-3 is accordingly allowed. She is directed to be released forthwith, if not required to be detained in any other case.

.....CJI.

[N. V. RAMANA]J. [SURYA KANT]J. [HIMA KOHLI]

New Delhi, December 17, 2021