

Patna High Court

Janeshwar Pandit And Anr. vs State Of Bihar on 16 September, 2002

Equivalent citations: 2002 (3) BLJR 2067

Author: S Pathak

Bench: S Pathak

JUDGMENT S.N. Pathak, J.

1. The appellants have assailed the order of conviction and sentence passed by the 2nd Additional Sessions Judge, Bhojpur at Ara, rendered in Sessions Trial No. 146 of 2000. The appellants were convicted for the offences under Sections 304B and 201 of the Indian Penal Code and they were sentenced to undergo rigorous imprisonment for seven years and one year respectively. The sentences were directed to run concurrently.

2. The prosecution case originated on the written report (Ext. 1) of the brother of one Asha Devi, who was married to appellant No. 2 Ram Kumar Pandit on 11.5.1999. On 12.5.1999 the informant (P.W. 4) went to the house of the father-in-law of his sister, appellant No. 1, Janeshwar Pandit, with "Kalewa", Janeshwar told this informant that he will not allow him (the informant) to meet his sister because the materials agreed to be supplied at the time of marriage were not supplied (T.V. Golden ring etc.). However, after much persuasion, the informant was allowed to meet his sister. The deceased told the informant that she was being harassed and tortured for non-fulfillment of the dowry demands made at the time of marriage. The informant returned to his village on the next day, but after two months again visited the house of appellant No 1 when he met his sister, the latter was found weeping and intimated him that her husband, father-in-law and mother-in-law, were demanding Colour T.V., Golden ring etc. and they had also threatened her that if the aforesaid materials were not supplied, she will be killed. There was a further complaint that she used to be assaulted and tortured in various other ways on account of non-supply of those materials. Then the informant wanted to take her back to her "Maika", but he was not allowed to take her away, However, on the intervention of one Kishun Thakur of Mukundpur, the appellant No/1 agreed to send the deceased to her fathers' place on 27.9.1999. When the informant came to Mukundpur village on 26.9.1999 in the evening he was informed by Kishun Thakur that the deceased was done to death on 25.9.1999, by poisoning her and her dead-body was cremated stealthily. On 27.9.1999 the informant went to the police station where he was asked to come on 28.9.1999. When he again visited the police station on 28.9.1999, he was chastised and his case was not registered by the Police Officer. The informant then filed a written complaint before the S.P. Bhojpur and at his direction the case was registered and investigated and this is how on submission of the charge-sheet, the appellants were tried and convicted as stated above.

3. The prosecution has examined, five witnesses put of whom P. W. 1 is father of the deceased, P.W. 2 was a Health Worker who had turned hostile. P.W. 3 is the mother of the deceased and P.W. 4 was the informant. P.W. 5 is the Investigating Officer of the case.

4. P.W. 1 and 3 both have supported the facts that at the time or marriage T.V. and other materials were demanded, but the same could not be supplied. So for the evidence of P.W-4, he supported all the facts that was contained in his written report. He rather specifically said that he was informed by

the deceased about torture 'and assault upon her on account of non-fulfilment of the dowry demands. P.W. 2, who was a Health Worker was admittedly called at the house of the appellants on 25.9.1999 at 2 a.m. (26.9.1999). He has stated in his evidence that one Dineshwar Pandit had come to him and asked him go to his house to see his ailing daughter-in-law, who was having pain in her stomach. He found that the deceased was lying on a cot in an unconscious state and he advised Dineshwar Pandit to take her to a doctor. In cross-examination in paragraph 3 he admitted that he learnt in the morning (meaning 26.9.1999) that the patient had died. The reference to Dineshwar Pandit is perhaps a reference to the appellant No. 1 Janeshwar Pandit because in cross-examination at paragraph 4 he has stated that the daughter-in-law of Janeshwar Pandit died a natural death. This statement of the witness cannot be relied upon because when he had found that the deceased was in an unconscious state and he did not state as to whether he had examined her, it was utterly wrong on his part to say that the deceased died a natural death.

5. I have already stated the substance of the evidence of P.W. 3 and 4. So far P.W. 5 is concerned, although he denied that he informant had come to his police station on 27.9.1999, his statement cannot be given any credence because the informant was levelling an allegation against him and it was only at the instance of Superintendent of Police that the case was registered. So it was quite natural for this witness to deny the allegation made against him. So the delay in instituting the case well explained. So far the D.Ws. are concerned, their evidence is that there was no demand of dowry etc. from the appellants and that there was no case of poisoning of the deceased. Since, the demands of dowry etc. are made by the in laws and the husband of the deceased and they are directed to the parents of the deceased, it cannot be supposed or imagined that the demands will be made in presence of any body outside the family members of both the parties. None of the D.Ws stated that they had gone to the house of the accused and had examined the condition of the deceased in order to give an opinion that she was suffering from bowel pain and that on account of this pain, she died. Co the evidence D.Ws. was neither here nor there.

6. Admittedly, the deceased died when she was at the house of the appellants and admittedly she was cremated without any post-mortem. Moreover; the evidence of P.W. 2 is very crucial to given a circumstances that the appellants did not abide by the advice of this witness to take the deceased to any doctor, when she was found unconscious and the case of unconsciousness was not known to the Health Worker. It is also not understandable why the deceased was not taken to a doctor if at all she was suffering from any bowel pain. It is also surprising as to why the appellant No. 1 went to call a Health Worker to his house instead of a doctor, practicing, in any of the pathis-allopathy, homeopathy or Ayurvedic. From all circumstance on record, therefore/the appellant did not take care to get the deceased examined by a doctor or to take her to the doctor if at all she was suffering from any bowel pain. They also did not subject her dead-body to post-mortem so that the exact cause of death could be known. Admittedly as per the evidence there was demand of dowry which remained unfulfilled. This circumstance gave a clear inkling to the fact that the deceased might certainly have died in a circumstance indicating her dowry death within four months of her marriage. So an adverse inference of course, could be drawn against the appellants under Section 113B' of the Evidence Act. The aforesaid circumstances read with the aforesaid provision of the Evidence Act would bring the appellants under the mischief of Section 304B of the Indian Penal Code. They have further been found guilty of the guilty of the offence under Section 201 of the

Indian Penal Code because they failed to inform the paternal family members of the deceased before her cremation and this was done with a clear motive to hide their guilt.

7. In the result, I am of the considered opinion that the trial Court was perfectly justified in convicting the appellants for the offence under Sections 304B and 201 of the Indian Penal Code. The sentence of seven years was rather light one and, therefore, there is no question of interfering with the order of sentence as well. This appeal is accordingly dismissed.