

Criminal Appeal (DB) No. 385 of 1996 (P)
With
Criminal Appeal (DB) No. 529 of 1996 (P)

Against the judgment and order of conviction and sentence dated 30.08.1996 (sentence passed on 31.08.1996) passed by Shri Swaroop Lal, 1st Additional Sessions Judge, Godda in Sessions Case No. 14 of 1995/46 of 1995 .

1. Mannu Mirdha
2. Shambhu Mirdha
3. Atni Devi

All residents of Vill- Mali Palganja, P.S- Godda (Muffasil), Dist.- Godda.

... Appellants
(in Cr. Appeal (DB) No. 385 of 1996(P))

Niranjan Mirdha

R/o Vill- Mali Palganja, P.S.- Godda (Muffasil), Dist.-Godda.

... Appellant
(in Cr. Appeal (DB) No. 529 of 1996(P))

Versus

The State of Bihar (now Jharkhand)

... Respondent

PRESENT

HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

HON'BLE MR. JUSTICE NAVNEET KUMAR

For the Appellant : Mrs. Abha Verma, Advocate

For the Respondent : Mrs. Priya Shrestha, Spl. P.P.

Dated 31st July, 2024

Rongon Mukhopadhyay, J. : 1. Heard Mrs. Abha Verma, learned counsel appearing for the appellants and Mrs. Priya Shrestha, learned Spl. P.P. Since both these appeals arise out of a common judgment, they are being disposed of by this common order.

2. These appeals are directed against the judgment and order of conviction and sentence dated 30.08.1996 (sentence passed on 31.08.1996) passed by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 14 of 1995/46 of 1995, whereby and whereunder, the appellants have been convicted for the offences punishable u/s 302/201 of the Indian Penal Code and Section 3/ 4 of the Dowry Prohibition Act and

have been sentenced to undergo imprisonment for life for the offence under Section 302 IPC, rigorous imprisonment for seven years for the offence under Section 201 IPC and rigorous imprisonment for five years and two years for the offences under Section 3 and 4 of the Dowry Prohibition Act respectively. All the sentences were directed to run concurrently.

3. The prosecution case arises out of the fardbeyan of Basant Yadav in which it has been stated that the marriage of his daughter Ambika Devi was solemnized with Niranjan Mirdha about four years back. About a year back, the Bidai ceremony had taken place in which his son-in-law and his father (Mannu Mirdha) had demanded an amount of Rs. 6,000/- but he had managed to fulfil only a part of the demand by giving Rs. 3,000/-. When his daughter came back to his house, she disclosed that if the rest demand of Rs. 3,000/- is not fulfilled, she will be done to death by her husband and in-laws. She had also disclosed about the regular torture being committed upon her at her matrimonial house. When his son-in-law and others had come to take the Bidai of his daughter, they were assured that the balance amount shall be paid to them in a few days. They reciprocated such assurance by giving a promise to treat his daughter in a proper manner. On 28.12.1993, he had gone to the matrimonial house of his daughter but no one was found present. The informant then went to the house of the sister-in-law of his brother-in-law and she had disclosed that there was a quarrel in the house and that his daughter-in-law is now no more. He thereafter met the sister-in-law of the mother-in-law of his daughter, who disclosed that in the night of 27.12.1993, there was a quarrel in the house due to non-fulfilment of the demand of dowry and in course of such quarrel, his daughter was done to death by the accused persons.

Based on the aforesaid allegations, Godda (M) P.S. Case No. 344/93 was instituted under Section 304B/201/34 IPC. On completion of investigation, charge sheet was submitted and after cognizance was taken, the case was committed to the Court of Sessions where it was registered as Sessions Case No. 14 of 1995/46 of 1995. Charge was framed against the accused persons under Section 302/201 IPC and Section 3/4 of the Dowry

Prohibition Act which was read over and explained to the accused in Hindi to which they pleaded not guilty and claimed to be tried.

4. The prosecution has examined as many as ten (10) witnesses in support of its case.

P.W.1 Basant Yadav is the informant who has stated that the marriage of his daughter Ambika Devi was solemnized with Niranjana Mirdha four years back. The Bidai of his daughter was done after four years. There was a demand of Rs. 6,000/- out of which Rs. 3,000/- was already paid. There was also a demand of a T.V. but the entire demands could not be fulfilled because of paucity of money. He has stated that his daughter had come to his house after bidai and disclosed about the threats she had received at her matrimonial house due to non-fulfillment of the demand. His daughter became traceless on 29.12.1993. When he had reached the matrimonial house of his daughter at 01:00PM, he could not find anyone in the house and there was a lock on the door. The sister-in-law of his brother-in-law had disclosed that there was a quarrel with his daughter who was done to death after which everyone had fled away. When he could not make any headway in his quest for tracing out his daughter, he had lodged a case at Godda (Muffasil) Police Station. He has identified his signature in the fardbeyan in two pages which have been marked as Exbt.-1 and Exbt.-1/2. He had come to know that Niranjana Mirdha, Mannu Mirdha, Bhuwan Mirdha, Shambhu Mirdha, Lakhu Mahamarik, Atani Devi and two other females who were standing in the dock had committed the murder of his daughter.

In cross-examination he has deposed that his daughter had gone back to her matrimonial house after staying for only 3-4 days at his house after the bidai ceremony was done and after a month when he went to meet his daughter, he could not find her. His re-statement was recorded by the Police, wherein he had stated that he had gone to Jagarnathpur where he had met Kamleshwari and Haldhar Pramanik. He had also stated about going to Khetni P.S and thereafter to Godda (Muffasil) P.S. He has denied that his daughter frequently used to flee away from her matrimonial house and come back to his house.

P.W.2 Haldhar Yadav has stated that on 29.12.1993, he was returning after watching a football match when he had met Ambika Devi and her family members. Ambika had disclosed that she was being tortured by her in-laws and a demand of a gold ring was also being made from her. She requested him to inform her father to come and meet her. After conversing with Ambika Devi, he left for Jagarnathpur. He had informed the father of Ambika Devi to go and meet her. The father of Ambika had gone to meet her on 29.12.1993 but he could not find her and no satisfactory explanation was given regarding her whereabouts. The father of Ambika Devi had thereafter come to meet him at Jagarnathpur and requested him to search for his daughter. They had accordingly met some persons and they had an inkling that Ambika Devi has been murdered and the accused persons have caused disappearance of her dead body.

In cross-examination he has deposed that the informant is his uncle. On 27.12.1993, he had gone to Palganjiya where he had met the daughter of the informant. He had not found any irregular behavior of the husband and in-laws of Ambika Devi. On 29.12.1993, the informant had come to his village at 02:00 PM and thereafter he, the informant, Upendra Yadav, Surendra Yadav and others had gone to Palganjiya. There was a lock in the house. The Police had come from Khetni and had recorded the statement of several persons. The body of Ambika Devi could not be found.

P.W.3 Upendra Yadav has stated that on 27.12.1993 Haldhar had come to play a match at Palganjiya and he had met his sister Ambika Devi, who was in a depressed state of mind and who requested Haldhar to ask her father to come and meet her. When on 28.12.1993, his father had gone to meet Ambika Devi, he could not find anyone in the house. He stayed in the night in the village and on 29.12.1993, he was told that his daughter has been murdered and the accused persons have caused disappearance of her dead body. When he had gone to Palganjiya, he could find no one. The slippers which were recovered from near a pond were identified to be that of his sister. The in-laws of Ambika Devi always used to quarrel with her and they had made a demand of a T.V and Rs. 3,000/- from her.

In cross-examination he has deposed that it was his father who had disclosed about the incident to him. His statement was recorded by the Police on 29.12.1993. On 29.12.1993, he had gone to Palganjiya and had found the house of the accused locked.

P.W.4 Kamleshwari Yadav has stated that Basant Mirdha had informed him on 29.12.1993 that his daughter has been murdered by her in-laws and the body could not be traced out. He had disclosed that there was a demand of dowry and due to non-fulfillment of such demand, she was murdered.

In cross-examination, he has deposed that his statement was recorded by the Police.

P.W.5 Pramod Kumar Thakur has stated that nothing was seized in his presence.

P.W.6 Mohammad Rajjak has identified his signature in the seizure list which has been marked as Exbt.-2. Nothing was seized in his presence. He was made to sign in a blank piece of paper.

P.W.7 FaniBhushan Marandi was posted at Godda (Muffasil) P.S. and on 29.12.1993 at 01:00PM, he had recorded the fardbeyan of Basant Yadav. He has proved the fardbeyan which has been marked as Exbt.-3. He has proved the formal FIR which has been marked as Exbt.-4. He had taken over the investigation and had inspected the place of occurrence which is at village Mali Palganjiya in a tiled house constructed of mud and bricks. He had seized a piece of slipper from the place of occurrence and had prepared a seizure list which has been proved and marked as Exbt.-5. He had recorded the statements of Md. Rajjak, Pramod Kumar Thakur, Kariya Mossamat, Upendra Yadav, Kamlesh Yadav, Bandhan Yadav, Surendra Yadav, Kanti Mandal, Brahmdeo Yadav, Assi Yadav, Mir Musammad, Ganesh Yadav, Podu Yadav, Radha Mirdha, Nakul Yadav, Muneshwar Yadav and Vakil Yadav. On completion of investigation, he has submitted the charge sheet.

In cross-examination he has deposed that nothing of importance was detected in the place of occurrence.

P.W.8 Surendra Prasad Yadav has stated that on 29.12.1993, Basant Mirdha had come to his place and had disclosed that he has come to know

that his daughter Ambika has been murdered. He had accompanied Basant Mirdha to the house of Bhuwan Mirdha at Palganjiya but Ambika could not be found. The slippers of Ambika Devi were found in a ditch in the northern side of the house and the courtyard was smeared with cow dung where traces of blood could be detected. Ambika used to disclose about the demand of T.V and cash by her in-laws. They had come to know that the accused persons had committed the murder.

In cross-examination he has deposed that Ambika was his cousin sister. His statement was not recorded by the Police and, for the first time, he is giving his evidence in Court.

P.W.9 Nakul Yadav was in Drupad where he came to know about the incident on 29.12.1993. He had gone to the house of Niranjana Mirdha with Basant Mirdha but he could not find anyone in the house.

In cross-examination he has deposed that his father and the father of Basant Mirdha are brothers.

P.W.10 Mantu Yadav has stated that on 29.12.1993, Basant Mirdha had disclosed to him about the murder of his daughter committed by the accused persons. He had gone to Mali Palganjiya but he could not find anyone in the house.

In cross-examination he has deposed that his statement was recorded by the Police.

5. The statement of the accused persons was recorded under Section 313 Cr.P.C. in which they have denied their complicity in the incident.

6. The defence has examined a solitary witness in support of its case.

D.W.1 Nakul Mirdha is the Sarpanch of village-Amlo. He has proved the application given by Bhuwaneshwar Mirdha to the Sarpanch which has been marked as Exbt.-A. He has identified the handwriting of Gopal Krishna Jha in the said application which has been marked as Exbt.-B.

7. It has been submitted by Mrs. Abha Verma, learned counsel for the appellants that there is no evidence brought forward by the prosecution to demonstrate that it was the appellants who have caused disappearance of Ambika Devi, the daughter of the informant, after committing her murder for

non-fulfillment of the illegal demands made by the appellants. She has submitted that Ambika Devi used to frequently run away from her matrimonial house and this was the reason of her disappearance. The information of her absence was promptly given to the Sarpanch and the said document Exbt.-A proves beyond any reasonable doubt about the innocence of the appellants.

8. Mrs. Priya Shrestha, learned Spl. P.P has relied upon the evidence of P.W. 1, P.W.2, P.W.3, P.W.4 and P.W.8, in order to substantiate her contention, that the victim was tortured at her in-laws' house and murdered and the conduct of the appellants is a pointer to the said fact.

9. We have heard the learned counsel for the respective sides and have also perused the trial court records.

10. The daughter of the informant, as per the allegations, was done to death by the appellants and they had also caused disappearance of the dead body of his daughter. This discovery was made by the informant on 28.12.1993 leading to institution of the case. As per the evidence of the informant (P.W.1), the bidai of his daughter was performed four years after marriage. Neither P.W.1 nor any of the witnesses of the prosecution have disclosed about any demand of dowry made either prior to the marriage or immediately after the marriage. The demand seems to have primarily surfaced after P.W.1 could not trace out his daughter in her matrimonial house. After the bidai ceremony was done, the daughter of P.W.1 had once again come back to her matrimonial house where, as per P.W.1, she stayed for 3-4 months before returning back to her matrimonial house. The purported disclosure made by the daughter of P.W.1 regarding demand of dowry during her stay of 3-4 months was not acted upon by P.W.1 as neither any complaint was made nor any efforts were taken to pacify the situation. The seed of suspicion seems to have been planted in the mind of the informant by the disclosure made by the sister-in-law of the brother-in-law of the informant. She had stated about the quarrel in the matrimonial house of the daughter of P.W.1 and her consequent murder. However, the prosecution has failed to examine such witness and this has created a dent in

the prosecution case. P.W.2 seems to be a witness to whom the victim had confided about being tortured for non-fulfillment of the illegal demand and at the same time, in his cross-examination, P.W.2 has stated about not finding any irregular behavior of the husband and in-laws of Ambika Devi. The body of Ambika could not be traced out. Nothing incriminating was found by the Investigating Officer (P.W.7) at the place of occurrence. The disappearance of Ambika Devi was promptly reported to the Sarpanch. There has been an absolute dearth of evidence to indicate any manner of complicity of the appellants in the offence as alleged. The chain of circumstances has not been completed. The finding given by the learned trial court has not considered these aspects of the matter.

11. We therefore, on the basis of the discussions made hereinabove, set aside the judgment and order of conviction and sentence dated 30.08.1996 (sentence passed on 31.08.1996) passed by Shri Swaroop Lal, learned 1st Additional Sessions Judge, Godda in Sessions Case No. 14 of 1995/46 of 1995.

12. Both these appeals are allowed.

15. Since the appellants are on bail, they are discharged from the liabilities of their bail bonds.

(RONGON MUKHOPADHYAY, J.)

(NAVNEET KUMAR, J.)

Jharkhand High Court, Ranchi

Dated the 31st July, 2024

Preet/N.A.F.R.