

Cr. Appeal (D.B.) No.850 of 2002

[Against the Judgment of conviction dated 26.11.2002 and order of sentence dated 28.11.2002 passed by learned Additional Sessions Judge, F.T.C.- I, Chatra in S.T. No.415 of 1989]

- 1. Pachkauri Mahato son of late Pritam Mahto.
2. Smt. Chaki Devi wife of Pachkhori Mahto.
3. Kameshwar Mahto son of Pachkhouri Mahto.
4. Bijay Mahto son of Pachkhouri Mahto.

All residents of village- Rajpur, Police Station-Chatra,
District-Chatra. Appellants

Versus

The State of Jharkhand Respondent
With

Cr. Appeal (D.B.) No.161 of 2003

Inderdeo Mahto, Son of Pachkauri Mahto, resident of village-
Rajpur, P.S. and District-Chatra

.... Appellant

Versus

The State of Jharkhand Respondent

For the Appellants : Mr. Binod Kumar Dubey, Advocate
[In Both Cases]

For the State : Mr. Vishwanath Roy, S.P.P.

PRESENT

Sri Ananda Sen, J.

Sri. Pradeep Kumar Srivastava, J.

JUDGEMENT

03/12/2024

By court:

1. Heard, Mr. Binod Kumar Dubey, learned counsel for the appellants and Mr. Vishwanath Roy, learned Special Public Prosecutor appearing for the State.
2. This criminal appeal is preferred against the judgment of conviction dated 26.11.2002 and order of sentence dated 28.11.2002 passed by learned Additional Sessions Judge, F.T.C.-I, Chatra passed in S.T. No.415 of 1989 arising out of Chatra P.S. Case No.27 of 1988, whereby and whereunder, the appellants were convicted under Sections 304B r/w 34 of IPC and sentenced them to imprisonment for life and under section 201 of IPC to undergo Rigorous Imprisonment for a period of 3 years.
3. The FIR of this case is based on the information given by the P.W. 2 (father of the deceased). He has stated that his daughter was married to Indradeo Mahto about 5 to 6 years prior to lodging the FIR. The said Indradeo Mahto used to torture the deceased due to non-fulfillment of a demand of cycle and wrist watch by way of dowry. The deceased used to come to the house of the informant and reported to him about said

torture but the informant, after pacifying the matter, used to send her back to her matrimonial home. On 01.04.1988 at about 9:00 AM, the elder brother of the informant's son-in-law came to the house of the informant and reported that his daughter has fled from her matrimonial house. Thereafter, the informant started searching his daughter but he did not find. On 11.04.1988, when the informant reached near Panda Khap situated in village Kanha Chatti, he found one dead body buried under sand and wild animals had taken out the feet of the dead body and also saw a ribbon tied in head was lying out. The informant suspected that the said dead body of the deceased is of his daughter, who was murdered by the appellants due to non-fulfillment of the dowry. It has been further mentioned in the FIR that the daughter of the informant had filed a petition for maintenance in the court of S.D.M., Chatra against her husband Indradeo Mahto wherein by the order of the Court, the family members had taken away his daughter to her matrimonial home on 16.03.1988 after swearing an affidavit in the court of S.D.M., Chatra that they will keep his daughter properly.

4. On the basis of fardbayan, the FIR being Chatra P.S. Case No.27 of 1988 was registered. The police investigated the case and submitted charge-sheet against the appellants for the offences under sections 304 (B), 201 r/w 34 of IPC. Charge has been framed against the appellants and they have been put under trial as pleaded not guilty.

5. Altogether four witnesses have been examined in this case, who are as follows:-

(i) P.W. 1 Mathura Ram Dangi

(ii) P.W. 2 Deva Mahto (Informant)

(iii) P.W.3 Manibhushan Jha (I.O.)

(iv) P.W. 4 Dr. Narendra Kumar

P.W. No. 4 Dr. Narendra Kumar has stated that he has not conducted post-mortem but he is acquainted with the hand writing of the doctor, who had conducted the post-mortem and the said post-mortem report has been exhibited as Ext. X.

While going through the post-mortem report, we find that the doctor has not opined about the cause of death of the deceased and the viscera was kept preserved for chemical examination but the viscera examination report has also not

reached to the Court. The doctor in his evidence has stated that it was not possible to give any opinion about the cause of death. Thus, as per the post-mortem report and the statement of the doctor, the cause of death is unknown.

6. The conviction of the appellants in this case under sections 304(B)/201 r/w 34 of IPC.

Section 304 B of IPC reads as follows:-

[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. (emphasis supply)

(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.]

7. This section has to be read in conjunction with section 113 B of Indian Evidence Act. Section 113 B of Indian Evidence Act read as follows:

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."

On conjoint reading of these two sections, it is clear that where the dowry death has occurred, it will be presumed that the in-laws have committed the dowry death.

8. So far as section 304 B of IPC is concerned, there are three basic ingredients, which needs to be established and proved by the prosecution. These are:- (i) death occurred within 7 years of marriage; (ii) the death by burns or had occurred otherwise than under normal circumstances; and (iii) demand of dowry and torture for non-fulfillment of aforesaid demand soon before the death. (*emphasis supplied*)

Once, these three ingredients are proved simultaneously and is established by the prosecution, then only the onus will shift upon the accused to prove their innocence. Until and unless, the prosecution proves their aforesaid ingredients, the onus will not shift.

9. From the evidence of P.W. Nos.1 and 2, we could not find any material to suggest that soon before death, there was torture and demand of dowry. Though, there was demand of cycle

and wrist watch as dowry but the same was soon after the marriage. We noted that the deceased died after 5 to 6 years of marriage. There is no specific averments and material evidence, which can suggest that soon before the death, there was demand for dowry and torture. Thus this ingredient has not been proved by the prosecution.

10. From the medical evidence, the cause of death has not been established. Thus, it is not clear as to whether the death was natural or not.

11. In absence of these two important ingredients, naturally, we have to come to the conclusion that the prosecution case has not proved and established two of the basic ingredients to attract section 304 B of IPC. Once, the prosecution has failed to establish and prove two ingredients, there cannot be a presumption that the family members of the husband has committed dowry death.

12. So far as section 201 of IPC is concerned; there are no materials in evidence to suggest that after causing death to the deceased, her dead body was buried by the appellants near Panda Khap situated in village Kanha Chatti.

13.In view of the aforesaid findings, we allow these criminal appeals by acquitting the appellants.

14.The judgment of conviction dated 26.11.2002 and order of sentence dated 28.11.2002 passed by learned Additional Sessions Judge, F.T.C.-I, Chatra passed in S.T. No.415 of 1989 arising out of Chatra P.S. Case No.27 of 1988 is set aside.

15.As the appellants are already on bail, thus they and their bailors are discharged from the liabilities of the bail bonds.

16.Pending I.A(s), if any, is also disposed of accordingly.

17.Let the copy of this judgment along with Trial Court Record be sent back to the court concerned for information and needful.

(Ananda Sen, J.)

(Pradeep Kumar Srivastava, J.)

High Court Of Jharkhand, Ranchi

Date:- 03/12/2024

N.A.F.R/ Pappu-Simran/ Cp 03.