

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPEAL NO.2173 OF 2009

**PANCHANAND MANDAL @
PACHAN MANDAL & ANR.**

... APPELLANTS

VERSUS

STATE OF JHARKHAND

... RESPONDENT

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

This appeal has been preferred against the judgment dated 20th September, 2006 passed by the Division Bench of the Jharkhand High Court, Ranchi in Criminal Appeal No. 441 of 2001. By its impugned judgment, the Division Bench dismissed the criminal appeal filed by the appellants and affirmed the order of conviction and sentence passed by the Trial Court. Thus Trial Court order, finding the appellants- Panchanan Mandal @Pachan Mandal and Malti Devi

alongwith two others guilty of the offence under Section 304(B)/34 IPC and convicting them with imprisonment for life was upheld by the High Court.

2. The case of the prosecution is based on fard-beyan (I.R.) of informant Bachchu Sao (PW-14) who is the brother of the deceased – Basanti Devi. According to the fard-beyan(I.R.) recorded on 14th August, 1998 at Sadar Hospital, Giridih, the marriage of his deceased sister Basanti Devi was solemnised with the accused Kaleshwar Mandal about five years prior to her death. On 12th August, 1998, Bachcho Sao got information that his sister- Basanti Devi had suffered burns and was admitted in Giridih Sadar Hospital for treatment. He came to Sadar Hospital, Giridih alongwith other members of his family in the evening of 12th August, 1998 itself. He saw his sister had been badly charred with fire. Her whole body had sustained burns. On 13.8.1998 at about 11.00A.M. when she regained her senses, she told him that at about 9.00-10.00 at the night of 11.8.1998 while she was baking bread in the kitchen of her –in-laws house; her father-in-law-accused Panchanan Mandal, his wife-accused Malti Devi and his two sons Falo Mandal and Daso

Mandal came there. Her father-in-law poured kerosene oil on her head from a tin and her mother-in-law set fire to her sari with a burning wood of her oven saying that she had not brought a cow and a golden ring in dowry. Her elder brother-in-law (jaith)- Falo Mandal and younger brother-in-law(Daiver)- Daso Mandal took out knives and started threatening her that if she cried aloud she would be killed. When she tried to extinguish fire and came out of the room, all the accused persons pushed her inside the kitchen with lathis and they kept on watching her burning. She also stated him that her husband had gone to Calcutta but while leaving for Calcutta, he had asked the members of his family to kill the deceased by burning. In the fard-beyan, it is further stated that whenever the deceased used to come to the house of her informant brother, she used to say that her-in-laws always harass her for a cow and a ring as dowry and sometimes they even assaulted her. Her statement had also been recorded by an A.S.I. of Police on 13.8.1998 at about noon at the hospital itself. The deceased succumbed to the injuries at about 2.00 A.M. on 14.8.1998 during the course of her treatment.

3. On the basis of fard-beyan(I.R.), Madhupur P.S. case No.160/98 dated 16.8.1998 was registered at Madhupur Police Station. After investigation father-in-law, mother-in-law, two brother-in-laws and husband of the deceased were charge-sheeted for trial.

4. The accused denied the charges leveled against them and pleaded their innocence. Their defence was that Basanti Devi had accidentally caught fire while she was cooking food in her in-laws house; the accused persons had tried their level best to extinguish the fire, but still she sustained injuries. Her in-laws brought her to Giridih hospital for her treatment and the accused persons had spent a huge amount for her treatment. Thus, they were not liable for any offence on account of her death which was actually caused due to accidental fire.

5. To bring home the charges, the prosecution examined 16 witnesses. PW-1(Chhatradhari Mandal; PW-2(Sanjay Kumar Mandal); PW-3 (Kedar Ram); PW-4 (Pairu Kole; PW-5 (Tulsi Mandal), PW-7(Nunulal Mandal); and PW-11 (Janki Mandal) did not support the case of the prosecution and were declared hostile. PW-6 (Kameshwar Mandal); PW-8 (Tribhuvan Ram);

PW-10 (Jiwan Mandal) tendered on behalf of the prosecution. PW-16 (Ashok Kr. Mishra) being a formal witness has proved the post-mortem report of the deceased which was marked as Ext.7.

PW-14 Bachchu Sao is the brother of the deceased who is also the informant, PW-13; Bholia Devi is the mother of the deceased, PW-12; Gulab Sah is the co-villager of the informant, who had also gone with informant to see the deceased in hospital; PW-9; Janardhan Tiwary is the I.O. of the case. Ext.4 is stated to be the dying declaration. Mainly on the basis of the dying declaration (Ext.4) and the statements of the PW-12, PW-13 and PW-14, the Trial Court held the charges under Section 304B/34 IPC proved against the four accused. All the four accused were convicted and sentenced. The other accused Kaleshwar Mandal, husband of the deceased was acquitted of the charges on the ground that he left the village prior to the occurrence which means that he was not present at the scene of occurrence.

6. Learned counsel for the appellants submitted that PWs 13 and 14 being mother and brother of the deceased are

interested witnesses. PW-12 is also their co-villager. Therefore, their evidences are not fit for reliance. According to him, the other independent witnesses PWs. 1,2,3,4,5,7 and 11 have not said that the deceased was subject to cruelty for dowry. The evidences of PWs 12, 13 and 14 should be rejected out-right. Further, according to the learned counsel for the appellant, no reliance should be placed on Ext.4, so called dying declaration, for different reasons. C.Paswan, ASI, who recorded the dying declaration has not been examined. There is no certificate in the dying declaration that the deceased was in a mentally and medically fit condition for making those statements. Further, according to the learned counsel for the appellant, in the case of burning it is not possible for the person to be in medically fit condition to give statement as recorded in Ext.4.

7. Learned counsel for the State urged that in fard-beyan, ingredients of Section 304B(1)I.P.C. being present, the presumption of dowry death will go against the accused. According to him, as per statement of PW-14, brother of the deceased and PW-13, mother of the deceased, the marriage

took place about 5 years prior to her death, cow and golden ring demanded by her in-laws, the said demand was not met by her family and her in-laws used to assault her because those demands were not fulfilled. The informant has made clear statement in his evidence that in the beginning, the conjugal life of his deceased sister was sweet but later on the accused persons started subjecting her to cruelty in connection with demand for a cow and a golden ring by way of dowry. These demands definitely fall within the meaning of dowry as contemplated under Section 2 of the Dowry Prohibition Act. Therefore, from the evidence of PWS-13 and 14, it is clear that the deceased was subjected to cruelty and harassment by her husband and in-laws.

8. We have heard Mr. Anil Karnwal, learned counsel, who assisted the Court as Amicus Curiae on behalf of the appellant and Mr. Jayesh Gourav, learned counsel for the State.

We have also perused the evidence on record.

9. From the findings of the Trial Court, as affirmed by the High Court, we have noticed that the case of the prosecution is solely based on an FIR(Ext.1), Dying

Declaration(Ext.4) and the statements made by PWs 13 and 14.

10. Section 304B(1), IPC deals with Dowry Death and is stated as follows:

(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."

To attract the provision, the following basic ingredients of the offence are required to be established:

- (i) The Death of the woman should be caused by burns or fatal injury or otherwise; than under normal circumstances;
- (ii) Such death should have occurred within 7 years of her marriage.
- (iii) She must have been subjected to cruelty or harassment by husband or any relative of her husband; and

(iv) Such cruelty or harassment should be for or in connection with demand of dowry.

11. This Court in the case of ***Biswajit Halder Alias Babu Halder And Others vs. State of W.B., (2008) 1 SCC 202*** held that under Section 304-B IPC the prosecution cannot escape the burden of proof that the harassment or cruelty was relating to the demand for dowry and the same was caused within seven years of marriage.

12. In the present case, PW-14; Bachchu Sao, brother of the deceased has stated that marriage of the deceased took place about 5 years prior to the date of death. He also stated that the relationship of the deceased with her husband and with in-laws were good initially. He further stated that later there was a demand of dowry in the form of demand for a cow and a gold ring. PW-13; Bholia Devi, mother of the deceased has also made statement that the marriage of the deceased took place about 5 years prior to the death. According to her, the deceased at death bed told her about the burning by father-in-law and mother-in-law and stated that there was a demand of dowry and harassment. But her statement cannot be relied upon in view of the fact that

there is no evidence to suggest that just before the death PW-13; Bolia Devi had talked to the deceased or that the deceased was in the condition to make statements. Her statement is corroborated by PW-14, Bachchu Sao, who was present in the hospital, but not corroborated by PW-12; Gulab Sah- a neighbor who was also said to be present in the hospital.

13. Ext.4 – the dying declaration also suffers from infirmities. The author who recorded the dying declaration C.Paswan, ASI was not produced by the prosecution for examination or cross-examination. The explanation given by the prosecution in this matter was that the attendance of the ASI could not be secured inspite of summons issued against him and the letters written to the Superintendent of Police, Deoghar and Giridih. The Trial Court wrongly held that this was a convincing explanation. In fact, non-appearance of ASI has prejudicially affected the defendant's interest as they were denied the opportunity to cross-examine him. It is admitted that dying declaration (Ext.4) was not certified by any medical expert stating that the deceased was in medically fit condition for giving

statement. Though such certificate is not mandatory, it was the duty of the officer who recorded the same to mention whether the deceased was in mentally and medically fit condition for making such statement, particularly when the case was of a third degree burn which could lead to death.

14. In the instant case, ominous allegations have been made against the in-laws of the deceased. No specific incident has been stated by the PW-13; Bholia Devi, mother of the deceased or PW-14; Bachchu Saw, brother of the deceased in their statements. Nothing is on the record to suggest that the deceased was subjected to cruelty and harassment "soon before her death" and "in connection with the demand of dowry".

15. Thus, we find that, practically there was no evidence to prove that there was any cruelty or harassment for or in connection with the demand of dowry soon before the death of the deceased. Moreover, the deceased has not made any statement in her dying declaration indicating demand of dowry. Defence has successfully created a valid doubt as to authenticity of the dying declaration as the police officer who recorded the same was not examined. Such deficiency in

evidence proves fatal for the prosecution case as evidence of cruelty and harassment in general is not sufficient to attract Section 304B IPC.

16. In view of the above facts, we hold that the prosecution miserably failed to prove the case beyond reasonable doubt. Hence, the conviction and sentence awarded cannot be maintained. We accordingly set aside the impugned judgment dated 10.8.2001 passed by the Session Judge, Deoghar in Sessions Trial No.; 158/1999 in respect to Panchanan Mandal and Malti Devi and the judgment dated 20.9.2006 passed by the Division Bench of the Jharkhand High Court in Criminal Appeal. No. 441/2001. Appeal is allowed. The accused are directed to be released forthwith, if not required in any other case.

JUDGMENT

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(KURIAN JOSEPH)

NEW DELHI,
OCTOBER 4, 2013.

SUPREME COURT OF INDIA



JUDGMENT