

IN THE HIGH COURT OF JHARKHAND AT RANCHI

Cr. Appeal (SJ) No. 286 of 2024

Kunal Kumar

... Appellant

-Versus-

The State of Jharkhand

...

... Respondent

CORAM :- HON'BLE MR. JUSTICE RATNAKER BHENGRA

For the Appellant :- Mr. Rohan Mazumdar, Advocate

For the State :- Mr. Pankaj Kr. Mishra, APP

...

05/14.08.2024: IA (Cr) No. 7511 of 2024

Heard the learned counsel for the appellant as well as the learned counsel for the State on the interlocutory application filed by the appellant for suspension of sentence, during the pendency of this criminal appeal.

The prosecution case, in brief, is that on 10.11.2017 Dipti Kumari was married with the appellant, namely, Kunal Kumar, which was a love marriage and she used to reside with the accused-appellant along with her mother-in-law Lata Devi. Afterwards, the accused started demanding dowry and ultimately she was being dragged out from her matrimonial house by her mother-in-law and they used to reside at her sister's house. The deceased used to call the informant and her mother Ganga Devi and stated about the demand of dowry by the mother-in-law and her husband and because of that she was subjected to cruelty – mentally and physically. On 24.11.2017, the daughter of the informant came and told that the accused was demanding dowry and if the dowry will not be fulfilled, she will be killed and on the same day, she returned. Subsequently, on 28.11.2017 the accused came to the house of the informant and took Ganga Devi to the local police station informing that her daughter had committed suicide by hanging herself. After that, the informant also reached at the police station where he came to know about the suicide by the victim-deceased at her residential house where he found that victim-deceased was hanging by a rope. The apprehension has been shown in the written report that due to non-fulfillment of dowry, both, Kunal, the husband and Lata Devi, mother-in-law of the deceased had killed and hanged her.

The learned counsel for the appellant has submitted that the appellant has been convicted under section 304-B of the Indian Penal Code as well as under section 498-A of the Indian Penal Code and sentenced to undergo RI for seven years for the offence under section 304-B of the Indian Penal Code and RI for three years and a fine of Rs.10,000/- for the offence under section 498-A of the Indian Penal Code and both the sentences were directed to run concurrently.

The learned counsel has taken this Court to evidence of the relevant and important witnesses and has submitted that in the evidence of PW-1 Vibha

Devi nowhere she has said that the deceased came to the house of the informant to tell that the appellant and his mother had asked for dowry. The learned counsel has further submitted that in the deposition of PW-1, she has said that the marriage had not taken place and, therefore, the learned counsel has submitted that if that is so then there is no question of offence under section 304-B taking place at all.

The learned counsel has then taken this Court to the evidence of PW-2 Bharat Lal, who is the father of the deceased as well as the informant. The learned counsel has pointed out to the deposition of PW-2 and has submitted that mother of the appellant had made demands. The learned counsel has further submitted that it is apparent from the deposition of PW-2 that though there is reference to financing of motor bike, however, the motor bike was in the name of the wife of the appellant or the deceased. The learned counsel has further pointed out that PW-2 has said in para-3 & 4 of his evidence that he had not attended the marriage because he did not agree to the marriage. In para-5 of his evidence he has said that he did not know when the marriage had taken place. The learned counsel, therefore, has submitted that disposition of the father is adverse to the appellant right from the outset. The learned counsel has further submitted that PW-2 has said in his deposition, particularly in para-6 regarding the motorcycle, which was financed, but he cannot show the papers, therefore, the appellant could not be negatively charged for this. The learned counsel has further referred to the para-8 of the evidence of the father and has submitted that he has deposed that he has written in the FIR that his daughter via phone call told his wife about the demand and that if the demand is not fulfilled then she will be eliminated. The learned counsel has further submitted that he makes contradictory stand because he knows about the phone call by his daughter with regard to demand and if the demand is not fulfilled, she will be eliminated but he himself has said that he does not know whether he has written about the same in the FIR or not. This witness has further deposed that he does not know how much money was demanded. The learned counsel has then referred to para-14 of the deposition of PW-2 and has submitted that as per this paragraph both the appellant and the daughter of PW-2 or the deceased had come twice to the home of PW-2 and had taken food and thereafter gone back and here there is no reference of any demand that was made. The learned counsel, therefore, has submitted that the relationship between the appellant and the deceased was cordial and there is no reason why the appellant was placed in a position to murder his own wife. The learned counsel has further submitted that this witness has also deposed that his daughter used to earn a lot of money and if that is so, then where is the question of making unnecessary demand when his daughter was already married to the appellant.

The learned counsel has then referred to the evidence of PW-3 Ganga Devi, who is the mother of the deceased and has submitted that this witness has deposed that she was not present at the time of marriage and that her daughter had never told how much demand (dowry) was being made. She has not agreed to the marriage and she does not know the month and year of the marriage and that she has not seen how her daughter had died.

The learned counsel has then referred to the deposition of PW-4 and has submitted that this witness has deposed that the appellant and the deceased had love marriage and from his deposition, it is clear that at the time of death of the deceased, when she was found hanging both this witness and the appellant were not in the house and it is only after they had returned, they had entered into the house of the room and then found her in hanging situation. The learned counsel has therefore submitted that it is clear from the evidence of PW-4 that at the time of death of the deceased, the appellant was not present in the house where she was found hanging and, therefore, the appellant cannot be charged for the offence under section 304-B of the Indian Penal Code or even for suicide. This witness has further deposed that he has never seen arguments taking place between the appellant and his wife.

The learned counsel has then referred to the evidence of PW5 Sisiliya David, who is not a biological sister in relation to the appellant and has submitted that this witness has deposed that her husband informed her that Dipti or the deceased had hanged herself. She has further deposed that when Dipti hanged herself, the appellant had taken her daughter to the school. The learned counsel has therefore submitted that it is clear from her deposition that at the time when the deceased had hanged herself, the appellant was not at all at the place of occurrence. This witness has further deposed that both the appellant and the deceased had good relationship between themselves and that the appellant had never tortured the deceased.

The learned counsel has further referred to the evidence of PW-6 Dr. Uma Shankar Prasad and has submitted that there is no ante-mortem injuries and the cause of death was due to asphyxia as a result of hanging.

Therefore, the appellant may be granted privilege of suspension of sentence, during pendency of this criminal appeal.

Learned counsel for the State has opposed this interlocutory application for suspension of sentence, during the pendency of this criminal appeal and has submitted that PW-2, the informant, has stated that on 24.11.2017, the daughter of the informant came to his house and told to his wife that money was demanded and a motorcycle was financed. This witness has further stated that mother-in-law of the deceased had demanded money. It is also stated that they i.e. the appellant and his mother had demanded the money. Thereafter, the learned counsel has referred to the inquest report and

has submitted that in the inquest report it is indicated that she was hanged with the help of gamchha but more precisely her feet was touching the floor and more so, her feet was even bent, therefore, the learned counsel has submitted that it is not totally an indicative of suicide by hanging and it only indicates that the deceased was first done away with and then she was hanged. Therefore, the appellant may not be granted privilege of suspension of sentence, during pendency of this criminal appeal.

Having gone through the records of the case, considering the arguments advanced by the learned counsel for the parties and in the facts and circumstances of the case, I am not inclined to suspend the sentence of the appellant, at this stage, in connection with ST No. 229 of 2018.

Accordingly, IA (Cr) No. 7511 of 2024 is dismissed.

S.B.

(Ratnaker Bhengra, J.)