

Dinesh Jha and Others Vs. the State of Bihar

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Court : Patna

Decided On : Apr-30-2014

Judge : I.a. Ansari & Samarendra Pratap Singh

Appeal No. : Criminal Appeal (DB) Nos. 257 & 293 of 2014

Appellant : Dinesh Jha and Others

Respondent : The State of Bihar

Advocate for Pet/Ap. : Mr. Ajay Kumar Thakur

Judgement :

I.A. Ansari and S.P. Singh, JJ.

1. Under challenge, in the present appeals, are the judgment of conviction, dated 24.02.2014, passed, in Sessions Trial No. 238 of 2011, by the learned Sessions Judge, Vaishali, at Hajipur, and the order of sentences, dated 28.02.2014, whereby the appellants have been convicted under Sections 304B and 201 read with Section 34 of the Indian Penal Code.

2. Consequent upon their conviction under Section 304B read with Section 34 of the Indian Penal Code, the appellants have been sentenced to undergo imprisonment for life and also suffer, for their conviction under Section 201 read with Section 34 of the Indian Penal Code, simple imprisonment for seven years and pay fine of Rs. 10,000/- (Ten thousand) each and, in default of payment of fine,

undergo imprisonment for one year. Both the sentences have been directed to run concurrently.

3. These two appeals, having impugned the same judgment of conviction, dated 24.02.2014, and the order of sentences, dated 28.02.2014, passed, in Sessions Trial No. 238 of 2011, by the learned Sessions Judge, Vaishali at Hajipur, are heard together for the purpose of final disposal and are being disposed of accordingly.

4. The case of the prosecution, as unfolded at the trial, may, in brief, be described as under:

(i) Marriage of Sonam Devi (since deceased) was solemnized about seven years ago with accused Sanjay Jha @ Kanhai Jha, who is appellant in Criminal Appeal (DB) No. 293 of 2014. A demand for motorcycle was raised at the time of solemnization of marriage and, thereafter, several other demands for valuables were made, but consequent upon the failure of the parents of Sonam Devi to meet the demands so raised, Sonam Devi was subjected to cruelty and, on 21.09.2011, at about 10.00 and 11.00 A.M., the informant (PW 5), father of Sonam Devi, came to know that his daughter had been killed by the accused persons (who are appellants in these two appeals), by setting her on fire and, upon killing his daughter, Sonam Devi, the accused persons had fled away.

(ii) With the accusations so made, as mentioned above, a fardbeyan was lodged, at Mahua Police Station, by the informant, Ranjeet Kumar Jha, father of the said deceased, and treating the said fardbeyan as First Information Report, Mahua P.S. Case No. 442 of 2010 was registered, under Sections 304B/201/34 of the Indian Penal Code, against the accused persons aforementioned.

(iii) During investigation, inquest was held over Sonam Devi's dead body, which was also subjected to post mortem examination, and the post mortem examination revealed that Sonam Devi had suffered burn injuries to the extent of 75 per cent and died as a result of shock arising from the burn injuries, which Sonam Devi had suffered from.

(iv) On completion of investigation, a charge sheet, under Sections 304B and 201 read with Section 34 of the Indian Penal Code, was laid against the present accused-appellants, namely, Sanjay Jha @ Kanhai Jha, Dinesh Jha, and Sudha Devi.

(v) At the trial, when charges, under Sections 304B and 201 read with Section 34 of the Indian Penal Code, were framed against the said accused persons, they all pleaded not guilty thereto.

5. In support of their case, prosecution examined altogether eight witnesses including the informant. The accused-appellants were, then, examined under Section 313(1)(b) of the Code of Criminal Procedure and, in their examinations aforementioned, all of them denied that they had committed the offences, which were alleged to have been committed by them, the case of the defence being that of denial. In support of their case, the defence, too, adduced evidence by examining two witnesses.

6. Having, however, reached the finding that the accused-appellants were proved guilty of the offences, which they stood charged with, learned trial Court has convicted them accordingly and, consequent thereupon, sentences have been passed against the appellants as have been mentioned above. Aggrieved by their conviction and the sentences, which have been passed against them, the three convicted persons have preferred these appeals.

7. We have heard Mr. Ajay Kumar Thakur, learned Counsel for the appellants, and Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

8. While considering the present appeals, it may be noted that it has not been disputed, at the trial, that Sonam Devi had died as a result of burn injuries suffered by her.

9. Because of the fact that Sonam Devi died as a result of burn injuries, it logically follows that her death had occurred otherwise than under normal circumstances. There is also no dispute that if Sonam Devi's death had occurred, within seven years of her marriage, otherwise than under normal circumstances, and if it was

shown that soon before her death, she had been subjected to cruelty or harassment by her husband or any relative of her husband for, or in connection with, any demand for dowry, her death shall have called dowry death? and her husband and/or his relative concerned shall be deemed to have caused her death.

10. From a bare reading of Section 304B of the Indian Penal Code, it becomes abundantly clear that there are, broadly speaking, four ingredients of the offence of dowry death. These ingredients are as follows:

(a) The death of a woman was caused by burns or bodily injury or had occurred otherwise than under normal circumstances;

(b) Such death should have occurred within seven years of her marriage;

(c) The deceased was subjected to cruelty or harassment by her husband or by any relative of her husband; and

(d) Such cruelty or harassment should be for, or in connection with, the demand of dowry.?

11. What, now, needs to be noted is that even if one of the ingredients, which we have pointed out above, is found missing or is not proved to the hilt, the penal provisions, contained in Section 304B of the Indian Penal Code, would not be attracted.

12. Bearing in mind the above aspect of the law, when we turn to the evidence on record, we notice that the informant (PW 5), father of deceased Sonam Devi, had claimed, in the First Information Report, that Sonam Devi's marriage was solemnized about seven years ago. The First Information Report was, thus, vague and did not assert that Sonam Devi's death took place within seven years of her marriage with Sanjay Jha @ Kanhai Jha. However, at the trial, it has been claimed not only by the father of the said deceased, but also by her mother that Sonam Devi died within seven years of her marriage with accused Sanjay Jha @ Kanhai Jha. These witnesses denied to have not stated, in their respective statements made during investigation, that Sonam Devi's death had taken place within seven years of her marriage with accused Sanjay Jha @ Kanhai Jha.

Belying the said assertions of the parents of the said deceased, the Investigating Officer has confirmed that what these witnesses had stated, during investigation, was that Sonam Devi had died about seven years ago meaning thereby that as far as the informant and the members of his family are concerned, they were not sure if Sonam Devi's death had occurred within seven years of her marriage or beyond the said period of seven years.

13. In the circumstances indicated above, it was incumbent, on the part of the learned trial Court, to determine if Sonam Devi had, or had not, died within seven years of her marriage with accused Sanjay Jha @ Kanhai.

14. While considering the above aspect of the case, it needs to be pointed that in the wedlock of Sonam Devi and her husband, three issues were born and, out of these three issues, the eldest issue died, but the second and third issues have survived.

15. The defence has brought on record the admission register of the school, which has been proved as Exhibit-A, in respect of the second child of the said deceased and Exhibit-A shows that Sonam Devi's second issue was six years old at the time of the occurrence. This apart, Investigating Officer has also confirmed that during investigation, it transpired that the child, in question, was six years old.

16. Situated thus, it becomes abundantly clear that when the second child of deceased Sonam Devi was six years old at the time of occurrence, it would mean, logically extended, that the marriage of Sonam Devi was solemnized more than seven years ago inasmuch as her eldest child had died. Thus, the very first ingredient of the offence of dowry death, as described by Section 304B of the Indian Penal Code, was not satisfied in the present case. The accused-appellants could not have, therefore, been convicted of the offence under Section 304B read with Section 34 of the Indian Penal Code.

17. So far as the conviction of the accused-appellants, under Section 201 read with Section 34 of the Indian Penal Code, is concerned, it needs to be noted that in order to make a person liable to conviction under Section 201 of the Indian Penal Code, knowledge or reason to believe, on the part of an accused, that an

offence has been committed is imperative.

18. In order to, therefore, hold, in the present case, any of the appellants guilty of an offence under Section 201 of the Indian Penal Code, it was the duty of the prosecution to prove as to what offence, if any, had been committed by the appellants and how the appellants could have been held to have caused any evidence of the commission of that offence to disappear, with the intention of screening the offender from legal punishment, or with that intention gave any information, respecting the offence, which the appellants knew or believed to be false.

19. Considering the fact that the conviction of the appellants, under Section 304B read with Section 34 of the Indian Penal Code, was impermissible in law, the same cannot be sustained. At the same time, however, there are materials on record, which warrant the trial of the accused-appellants under Sections 498, 302 and 201 read with Section 34 of the Indian Penal Code. There is also material on record showing that demand for dowry was raised at the time of solemnization of Sonam Devi's marriage and, hence, a charge, under Section 498A read with Section 34 of the Indian Penal Code, and also a charge under Section 4 of the Dowry Prohibition Act, 1961, were required to be framed against the accused-appellants and they needed to be tried accordingly.

20. In the result and for the reasons discussed above, these appeals partly succeed. The impugned judgment of conviction of the accused-appellants and the sentences passed against them by the judgment and order, under appeal, are hereby set aside and the case is remanded to the learned trial Court for framing of the charges under Sections 498A, 302 and 201 read with Section 34 of the Indian Penal Code and a charge under Section 4 of the Dowry Prohibition Act, 1961, and, then, try the accused-appellants in accordance with law.

21. Before parting with these appeals, we may make it, however, clear that we have expressed no opinion with regard to the veracity or truthfulness of the evidence adduced by the prosecution or with regard to the nature and quality of the evidence on record so that the learned trial Court remains completely free to come to its own judicious findings on the basis of the evidence, which may be

adduced. We must not also be treated to have held, or concluded, that a case has been made out for conviction of the accused-appellants in terms of the penal provisions, whereunder charges have been directed to be framed.

22. Let the accused-appellants be set at liberty, forthwith, unless they are required to be detained in connection with any other case.

23. In order to expedite the trial, we direct that appellants shall, on 28.05.2014, appear, in the learned trial Court, in connection with Sessions Trial No. 238 of 2011, arising out of Mahua P.S. Case No. 442 of 2010, and their further appearance, in the case, shall be governed by such further direction or directions as may be passed by the learned trial Court.

24. With the above observations and directions, both these appeals stand disposed of.

25. The Registry shall, forthwith, send the Lower Court Records along with a copy of the judgment and order to the learned trial Court.

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