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Updesh Singh Vs. State of Bihar

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Court : Patna

Decided On : Jan-06-2000

Judge : D.P.S. Choudhary, J.

Acts : Indian Penal Code (IPC), 1860 - Sections 109, 201, 302, 304B, 498A, 506 and 511; Evidence Act - Sections 113B

Appeal No. : Criminal Appeal No. 93 of 1994

Appellant : Updesh Singh

Respondent : State of Bihar

Advocate for Def. : Anant Prakash Sahay, A.P.P.

Advocate for Pet/Ap. : Radha Rani Mitra, Amicus Curiae

Disposition : Appeal dismissed

Prior history : D.P.S. Choudhary, J. 1. This appeal has been preferred against the judgment and order dated 9-3-1994 passed in Sessions Trial No. 352 of 1991 by XIIth Additional Sessions Judge, Patna convicting the appellant under Section 304B of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentencing him to undergo R.I. for 10 years. 2. The brief fact of the case is that the informant Sushil Paswan in his fardbeyan dated 2-6-1990 stated that on the previous day i.e. 1st of June, 1990 a

Judgement :

D.P.S. Choudhary, J.

1. This appeal has been preferred against the judgment and order dated 9-3-1994 passed in Sessions Trial No. 352 of 1991 by XIIth Additional Sessions Judge, Patna convicting the appellant under Section 304B of the Indian Penal Code (hereinafter referred to as the 'I.P.C.') and sentencing him to undergo R.I. for 10 years.

2. The brief fact of the case is that the informant Sushil Paswan in his fardbeyan dated 2-6-1990 stated that on the previous day i.e. 1st of June, 1990 after getting treatment of his daughter along with his wife had gone to the house of his father-in-law and after taking meal in the evening he went to sleep. At about 9-00 p.m. mother of accused Updesh Singh came to him and requested to rescue the victim wife of Updesh Singh saying that accused Updesh Singh was trying to kill her. The informant went to the courtyard of Updesh Singh and then entered inside the female apartment of the house. He saw Updesh Singh had already sprinkled kerosene oil on the body of his wife and lighted a match and threw it on his wife. The informant tried to put off the fire from the body of the victim lady but accused Updesh Singh caught hold of him and left the lady burning. The victim lady with fire on her body fled towards the house of one Ram Krishna Singh and in the way near a tree she fell down naked. Thereafter Deoprit Singh, brother of Updesh Singh put a Gendra over the body of victim lady. In the mid-night the burnt victim lady was brought to village Lakhana for treatment but in the morning of 2-6-1990 the infornant saw her dead, her body was brought to the house of the accused. When the body was taken out by the accused and others for cremation the police arrived and case under Section 302 of the IPC was registered. After investigation charge-sheet was submitted under Sections 302, 201, 511, 506, 498A and 109 of the IPC. After commitment the trial proceeded in the Court below. Before the Court below four accused persons including the appellant were tried under Sections 304B, 304B/109, 498A and 201 of the IPC but other three accused persons, except the appellant were not found guilty and hence acquitted.

3. The case of the defence is that the lady died due to accidental fire while preparing meal. She was treated at the hands of the accused and his family members. The allegation that she was burnt to death for dowry is false and concocted.

4. The prosecution examined in all five witnesses, out of which P.W. 1 (Sushil Paswan) is the informant. P.W. 2 (Sakaldip Paswan) is the village Chaukidar. This witness was declared hostile because he stated that the victim caught fire while preparing food, but before the I.O. he has supported the prosecution case. P.W. 3 (Kamala Singh) was tendered by the prosecution for cross-examination.

P.W. 4 (Deo Prasad Singh), a retired Teacher has stated that the victim has caught fire while she was preparing meal. As such, this witness was declared hostile by the prosecution, P.W. 5 (Narsing Singh) is the father of the deceased girl Baby Devi. He stated that his daughter was married with accused Updesh Singh in the year 1989. He had given dowry at the time of her marriage but accused Updesh Singh was not satisfied and he was regularly demanding Rupees 5,000/- from him. On the date of occurrence at about 3.00 p.m. accused had come to his house and made a demand of Rs. 5,000/-. He expressed his inability to pay the amount Thereupon, his son-in-law (accused) gave threat and stated that he will face the consequences for not paying the amount to him. On the next day in the morning he learnt that accused appellant Updesh Singh with the help of other accused killed his daughter by sprinkling kerosene oil on her body. He rushed to the sasural of his daughter and reached there at about 2.00 p.m. and saw the dead body of his daughter placed on a Ranthi. The witness has admitted that he has not seen the accused sprinkling kerosene oil and putting fire to his daughter but in the cross-examination he further reiterated that there was regular demand of Rs. 5,000/- from his son-in-law and he used to give threat if the demands are not fulfilled.

5. The learned lawyer appearing on behalf of the appellant as amicus curiae, submitted that the Investigating Officer had not been examined, which has caused serious prejudice to the accused. She further submitted that there is not a single eye-witness to support the prosecution case that accused appellant sprinkled

kerosene oil and set fire to the deceased lady, even the father of the victim girl is a hear-say witness and all other witnesses either turned hostile or tendered for cross-examination. The evidence of P.W. 5 on the point of demand of Rs. 5,000/- as dowry by the accused has not been corroborated either by any direct evidence or circumstantial evidence.

6. In the last the learned appellant's lawyer submitted that the alleged occurrence took place in the night of 1/2-6-1990 and the accused appellant surrendered in the Court on 15th of June, 1990. Since then he is in custody and his bail was earlier rejected up to this Court. Therefore, he has been in jail custody for more than nine years. As such, his period of sentence may be reduced to the period already undergone in custody.

7. The learned A.P.P. submitted that non-examination of the I.O. has not caused any serious prejudice to the defence because except P.W. 5 other witnesses have been declared hostile or tendered. No vital contradiction has been pointed out in the evidence of P.W. 5 with his earlier statement made before the I.O., The learned A.P.P. further submitted that this fact is not denied by the defence that victim lady was married with the accused-appellant in the year 1989 and she died on 2-6-1990 within a year of her marriage. She died due to burn injuries is also not in dispute. Therefore, the onus is now on the accused appellant to prove that it was not the case of dowry death but she died due to accidental fire while cooking. From the evidence of P.W. 5 who is father of the deceased it is proved beyond doubt that the appellant made regular demand of Rs. 5,000/- as dowry even after the marriage and just before a day of her death he had come to the house of P.W. 5 and gave threat that if the demand of Rs. 5,000/- is not fulfilled he will face the consequences. In the same night the victim was burnt to death. These are strong circumstances to come to the conclusion that accused appellant with the help of other accused committed murder of his wife by burning because his demand of dowry was not fulfilled by the parents. Under provisions of Section 113(B) of the Evidence Act where it is alleged that a person has committed dowry death of a woman and it is shown that soon before her death such woman has been subjected to by such person to cruelty or harassment for, or in connection with any demand for dowry, the Court shall presume that the person had caused the dowry

death. Section 304B of the IPC also provides that where death of a woman is caused by 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 and any relative of her husband 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. Therefore, both under the Evidence Act and under the I.P.C. there is strong presumption that if the victim lady died due to burn in her Sasural within seven years of her marriage and there is also evidence to the effect that she was subjected to cruelty, or dowry, the conclusion would be that she was done to death at the hands of her husband or his relative for the non-fulfilment of demand of dowry. Since the prosecution has been able to prove all the above ingredients required under the law, the presumption would be that the accused appellant with the help of other accused had committed murder of his wife (victim lady).

8. From, perusal of the evidence of P.W. 5 and considering the facts and circumstances of the case I find substance in the contention made on behalf of the learned A.P.P. In view of the fact that the deceased lady died within a year due to burning injury in her Sasural and in view of the evidence of P.W. 5 that appellant used to demand dowry of Rs. 5,000/- from him regularly and had given threat only before a day of her death, are the circumstances leading to the conclusion that the accused appellant had committed murder of his wife for dowry and as such the prosecution has been able to prove that it is a case of dowry death.

9. In the result, I do not find any merit in this appeal which is accordingly dismissed. However, since the appellant had remained in custody for more than nine years. After remission as per Jail Manual, he has several period of sentence, hence, the jail authorities are directed to release the appellant forthwith, if not released as yet or not wanted in any other case.

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