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Court : Patna

Decided On : Aug-19-2006

Judge : Chandramauli Kumar Prasad and Rekha Kumari, JJ.

Appellant : Suresh Singh

Respondent : State of Bihar

Disposition : Appeal allowed

Prior history : Chandramauli Kumar Prasad, J. 1. Sole appellant, besides his younger brother and father were put on trial for offence under Sections 304B., 498A and 201/34 of the Indian Penal Code. The Additional Sessions Judge. Fast Track Court No. III, East Champaran, Motihari, by judgment dated 2nd of April, 2002, passed in Sessions Trial No. 517/16 of 2000/2002 acquitted accused persons but held the appellant guilty under Sections 498A, 304B and 201/34 of the Indian Penal Code and sentenced him to undergo

Judgement :

Chandramauli Kumar Prasad, J.

1. Sole appellant, besides his younger brother and father were put on trial for offence under Sections 304B., 498A and 201/34 of the Indian Penal Code. The Additional Sessions Judge. Fast Track Court No. III, East Champaran, Motihari, by judgment dated 2nd of April, 2002, passed in Sessions Trial No. 517/16 of

2000/2002 acquitted accused persons but held the appellant guilty under Sections 498A, 304B and 201/34 of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for life for offence under Section 304B of the Indian Penal Code and three years each for the offence under Sections 498A and 201/34 of the Indian Penal Code. The sentences were directed to run concurrently.

2. Aggrieved by the same, appellant has preferred this appeal.

3. Prosecution started on the basis of a written report given by P.W. 6 Siva Ram Singh addressed to the officer-in-charge of Chhatauni Police Station on 7-11-1999. According to the report, his daughter Kavita Kumari was married to the appellant Suresh Singh on 10-5-1998 according to the Hindu rituals. She had gone to matrimonial home on 11-5-1998 and since then, she had not returned to her parental place. After the marriage, his daughter used to write him about the demand of motor cycle and Godrej almirah made by her in-laws and in the letter, she had stated that on failure to meet the dowry demand, any untoward incident may take place. In the first information report, it was further alleged that on 11-10-1998, he had gone to meet his daughter at Her matrimonial place but he was not allowed to meet her and he was told that so long motor cycle and godrej almirah are not given, he will not be allowed to meet her and the consequence of not meeting the dowry demand shall be very bad. According to the report, he received information from P.W. 1 Rudal Mahto and P.W. 5 Kapildeo Rai that all the accused persons, after pouring kerosene oil on her daughter Kavita, set her on fire and removed the dead body. On the basis of the aforesaid information, Chhatauni P.S. Case No. 99 of 1999 was registered under Sections 304B and 201/34 of the Indian Penal Code.

4. Police, after investigation, submitted charge-sheet and the appellant besides two other accused persons were committed to the Court of Session to face trial.

5. Prosecution, in support of its case, examined altogether eight witnesses, P.W. 1 Rudal Mahto and P.W. 5 Kapildeo Rai have been declared hostile. P.W. 2 Abhay Kumar Sinha, P.W. 3 Amarjeet Kumar Chaubey and P.W. 4 Chandeshwar Singh have been examined to support the prosecution version. P.W. 6 Siva Ram Singh is the informant himself whereas P.W. 7 is a formed witness. P.W. 8 is an

Assistant Sub Inspector of Police who had investigated the case and submitted the charge-sheet.

6. The appellant denied to have committed any offence and from the trend of cross-examination of the witnesses examined by the prosecution, it seems that the deceased died accidentally. Appellant, in support of his case, has also examined three witnesses and they had stated that the deceased died while cooking.

7. The trial Court, on appraisal of the evidence, acquitted two accused persons, namely, the appellant's father and younger brother but held the appellant guilty as above. While doing so, the learned Judge, observed as follows:

The accused Harendar Singh is the father-in-law of the deceased and accused Munna Singh is brother-in-law of the deceased. They are riot shown to be present by the prosecution or the demand of dowry against them, so to that extent, benefit of doubt may be awarded in favour of them. But so far as the Suresh Singh, the husband of the deceased, is concerned, he has been unable to explain his innocence knowing well that the case is Under Section 304B of the IPC and also that the case of unnatural death has been proved by all the witnesses.

8. P.W. 1 Rudal Mahto, in paragraph No. 2 of his evidence, has stated about the fact of the appellant having married the informant's daughter about a year ago and living at her matrimonial home after the marriage. However, in his examination-in-chief, he has clearly stated that he does not know anything about the occurrence and he has been declared hostile by the prosecution.

9. P.W. 2 Abhay Kumar Sinha has stated in his examination-in-chief that the deceased died while cooking as the stove had burst. In his examination-in-chief, he has further stated that the deceased was taken to the hospital but she died.

10. P.W. 3 Amarjeet Kumar Choubey, in his examination-in-chief, has stated that he went on the roof of his house after hearing the weeping sound from the house of the appellant and saw that the mother-in-law of the deceased was giving water to her. Thereafter, according to this witness, he went to the house of the appellant where he found the deceased in burnt condition and she was being taken to the

doctor by a rickshaw. He has further stated that the deceased died while she was taken to the hospital.

11. P.W. 4 Chandeshwar Singh, in his examination-in-chief, has stated that he saw the wives of the accused Harendra Singh and Munna Singh removing the deceased from an ambulance and found her dead. On enquiry, according to this witness, he learnt that the deceased died while cooking as the stove had burst.

12. P.W. 6 Siva Ram Singh, who happens to be the father of the deceased and the informant of the case, has stated in his examination-in-chief that his daughter was married with the appellant on 10-5-1998 and on the following day, i.e. 11-5-1998, she went to her matrimonial home along with her husband and started living there. In his deposition, he has stated that she died 14-15 months thereafter and he received the information of her death from P.W. 5 Kapildev Rai and P.W. 1 Rudal Mahto. According to this witness, the information received by him was that his daughter was burnt to death. In his examination-in-chief, he has further stated that his daughter used to send letters in which she used to inform about the demand of motorcycle and Godrej almirah by her husband and on failure thereof, they threatened to kill her. However, in paragraph No. 7 of the cross-examination, he was clearly stated that no demand was made at the time of her marriage nor quarrel had taken place on account thereof. He did not produce the letter written by his daughter and stated that he cannot produce the same. In paragraph No. 10 of his cross-examination, he has further stated that later on inquiry, he came to know that in fact, his daughter died while cooking as the stove had burst.

13. P.W. 7 Amrendra Singh is a formal witness who has proved the first information report.

14. P.W. 8 is the Assistant Sub Inspector who had investigated the case, examined the witnesses and submitted charge-sheet.

15. The trial Court, placing reliance on the evidence of P.W. 6 Siva Ram Singh held that the prosecution has been able to prove its case beyond all reasonable doubt but did not prove the case against other accused persons and accordingly, acquitted them as above.

16. Mr. Ghitrnanjan Sinha, Senior Advocate, appearing on behalf of the appellant, submits that for bringing home the charge within the mischief of Section 304B of the Indian Penal Code, the prosecution has to prove homicidal death within seven years of marriage and soon before the death, the victim was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with demand for dowry. He submits that the prosecution has not been able to prove the aforesaid ingredients. In support of his submission, he has placed reliance on a judgment of the Supreme Court in the case of State of Rajasthan v. Teg Bahadur (2004) 13 SCC 300 and our attention has been drawn to paragraph No. 18 of the judgment which reads as follows:

18.- Our attention was drawn to Section 113B of the Evidence Act and Section 304B of the Indian Penal Code by the learned Counsel appearing for the accused. A conjoint reading of Section 113B of the Indian Evidence Act and Section 304B of the Indian Penal Code shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of 'death occurring otherwise than in normal circumstances'. For the above proposition learned Counsel appearing for the accused cited the judgment of this Court in the case of Hira Lal v. State (Govt of NCT) Delhi 2003 Cri LJ 3711. In that case this Court observed thus (SCC pp. 86-87, para 9) : (Para 9 of Cri LJ):

The expression 'soon before' is very relevant where Section 113B of the Evidence Act and Section 304B, I. P.C. are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by the prosecution. 'Soon before' is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113B of the Evidence Act. The expression 'soon before her death' used in the substantive Section 304B, I. P. C. and Section 113B of the Evidence Act is present with the idea of proximity test. No definite period

has been indicated and the expression 'soon before' is not defined. A reference to the expression 'soon before' used in Section 114, Illustration (a) of the Evidence Act is relevant. It lays down that a Court may presume that a man who is in the possession of goods 'soon after the theft is either the thief or has received the goods knowing them to be stolen unless he can account for their possession'. The determination of the period which can come within the term 'soon before' is left to be determined by the Courts depending upon facts and circumstances of each case. Suffice, however, to indicate that the expression 'soon before' would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of approximate and live link between the effect of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb the mental equilibrium of the woman concerned, it would be of no consequence.

17. Mr. Lala Kailash Bihari Prasad, Additional Public Prosecutor, appearing on behalf of the State, however, submits that the deceased died of burn injuries within seven years of marriage and in view of presumption as provided under Section 113B of the Evidence Act, there is no escape 'from the conclusion that the appellant is guilty of the offence. He also points out that the conduct of the appellant in not informing the victim's parents, clearly prove his guilt.

18. Having appreciated the rival submissions, we find substance in the submission of Mr. Sinha. It is well settled that before an accused can be held guilty of offence under Section 304B of the I.P.C., the prosecution has to establish that the homicidal death had taken place within seven years of the marriage. In case, the death is found to be accidental, Section 304B of the I. P. C. is not at all attracted.

19. P. W. 2 Abhay Kumar Sinha, P. W. 3 Amarjeet Kumar Choubey, P. W. 4 Chandeshwar Singh and P. W. 6 Siva Ram Singh the father of the victim lady, have clearly stated in their evidence that the deceased died accidentally while cooking as the stove had burst. Not only this the defence witnesses have categorically stated that the deceased died accidentally while cooking. In face of aforesaid, it is very difficult to hold that the death of the deceased is homicidal.

Once this has not been proved, the conviction of the appellant under Section 304B of the I. P. C. cannot be allowed to stand.

20. Mr. Sinha, further points out that there is no evidence on the record to show that before the death, the victim was subjected to cruelty or harassment by her husband or any relative of her husband for or in connection with demand of dowry. Only competent witness on this question is P. W. 6, the father of the victim lady. He draws our attention to paragraph Nos. 7 and 8 of the cross-examination of P. W. 6 Siva Ram Singh in which he has clearly stated that at the time of marriage, there was no demand of dowry and whenever the victim used to come to the matrimonial home, never used to make any complaint against her husband for the demand of dowry. He submits that in the absence thereof, the victim of the appellant for offence under Section 304B of the I. P. C. is fit to be set aside.

21. We find substance in the submission of Mr. Sinha. There is no evidence on record to show that the deceased was subjected to cruelty soon before her death. This renders his conviction under Section 304B of the Indian Penal Code unsustainable in law. Further there is no evidence to bring home the charge under Section 498A of the Indian Penal Code. Once it is held that the death of the deceased was not homicidal, appellant's conviction under Section 201/34 of the Indian Penal Code is also rendered illegal. In view of infirmities aforesaid, we are of the opinion that the conviction of the appellant under Sections 304B, 498A and 201/34 of the Indian Penal Code cannot be allowed to stand.

22. In the result, this appeal is allowed judgment and order of conviction and sentence is set aside and the appellant is directed to be set at liberty forthwith, if not required in any other case.